GMA Review
Desk Reference

Department of Commerce
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Washington State
Department of Transportation

GMA Review Desk Reference 2014

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PROCESS AND PERSUASION IN COMMENTING ON GMA PLANS AND REGULATIONS

GMA Training for Agency Personnel

Fifth Edition, October 2006

presented by

THE DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT

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THE DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT (CTED)

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State of Washington
GMA TRAINING MATERIALS

Time-Dated Material

These materials contain time-dated material. Statutes and administrative rules change over time. In addition, the courts and Growth Management Hearings Boards issue decisions interpreting statutes and rules on an ongoing basis. Whenever using these materials, care must be taken to review current statutes, rules, and decisions of the courts and the Boards.

Not a Substitute for Legal Advice

These materials are provided to state agency personnel for informational and reference purposes as a component of an overall training program. The information contained in these materials is not a substitute for legal advice by an agency's assigned assistant attorney general. When presented with a specific factual situation where legal advice is necessary or desirable, an agency should contact its assigned assistant attorney general for that advice.

Outline Not an Opinion of the Attorney General

The information and opinions expressed in these materials are those of the authors, all of whom have significant experience with the subject matter of this training. However, nothing in these materials represents or should be construed as an opinion of the Attorney General.

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PART II: UNDERSTANDING THE LOCAL LAND USE PROCESS

A. PLAYERS IN THE LOCAL GOVERNMENT PLANNING PROCESS.

1. **Planning staff.** Planning staff or a planning consultant hired by a county or city typically will develop a recommendation for consideration by the planning commission and the local legislative body. Significantly, however, some 70 cities and counties have no paid planning staff. In larger jurisdictions, there also may be staff that report to or advise the legislative body that are outside of the jurisdiction's program or line staff.

2. **Planning commission.** The planning commission usually is composed of citizens appointed by the local legislative body. They may or may not have special expertise in planning. Most counties and cities are required to obtain a recommendation from the planning commission on a comprehensive plan, development regulation, or amendment. The planning commission is generally the body that is required to hold the public hearing on the plan, regulation, or amendment, in which case the local legislative body is to review the record of the hearing, along with the planning commission's recommendation, before final adoption. This public hearing usually constitutes the first opportunity for state agencies and other interested parties to submit materials and testimony for the record.

3. **Legislative body.** Depending on the county or city, the legislative body may be a county commission, county council, city commission, or city council. A comprehensive plan, development regulation, or amendment is a legislative action that must be taken by vote of the legislative body. Often the legislative body will hold another public hearing. Another public hearing is required if the proposal changes substantially from the planning commission's recommendations. In jurisdictions without a planning commission, this hearing may be the only public hearing held by the jurisdiction. In some cities and counties, there is also a directly elected executive, either a strong mayor or a county executive. They usually have the power to veto proposed legislation, but their veto can be overridden by the legislative body.

4. **Other Players to Consider.** An agency providing comments on local plans or regulations is seldom the only voice in the process. Interest groups, other local governments, special purpose districts, citizen and neighborhood groups all may be involved in the proposal. Local elected officials must respond to a wide array of often-conflicting demands.

B. THE LIFE CYCLE OF A PROPOSED AMENDMENT

Each planning project is unique, but there are some commonalities in the process of their development. Understanding their life cycle can help you ensure your comments are provided a meaningful time in the overall process, especially because there is no set time at which local governments must initiate its public participation process, so long as notice is provided to CTED 60 days before adoption. RCW 36.70A.106(1). CTED recommends that notice be provided at the start of the public participation process, but a jurisdiction may be far along in the process by the time state agencies receive formal notice.

1. **Recognize a need or opportunity:** A proposed amendment generally starts as a proposal to address a perceived need or opportunity. It can start as a request from a property owner or interest group, as an idea suggested by an elected official, or as a response to a new or existing statutory or other legal obligation. Understanding the need or goal the proposal is designed to address is a very important piece of understanding the proposal. It helps you understand the motivations of the local government and helps you understand the boundaries of what the local government can accept as a change before the process as a whole become unsuccessful. Understanding where the proposal comes from also will help you understand who is likely to support or oppose the proposal and any changes you may be seeking.

   Once an idea for a proposal is formulated or a need is identified, the first step is to allocate staff resources to the task and get it on the planning department's work program. Like most governments, there are more ideas or proposals than there are staff to develop them. Most proposals will die at this stage. In smaller jurisdictions, the planning staff may have current planning and long-range planning responsibilities. Planning staff are constantly trying to juggle the need to keep major projects on track while keeping up with permit review. For comprehensive plan amendments, this resource allocation process is more formal and transparent. Local governments will prepare, usually in the spring, a consolidated docket of amendments. This is a process where all potential changes to the comprehensive plan are collected and a decision is made, often by the legislative body, as to which ones will get further development and which ones will not.

2. **Formulate the proposal:** Once the decision to allocate resources has been made, staff can begin working on the project. For larger projects, there can be considerable opportunity to influence the formulation of the proposal at this state. Local governments may form technical advisory committees, hold public workshops or release concepts papers or "white papers" at this state to frame the issues and discuss possible alternatives. A good informal working relationship with local staff can provide an opportunity to influence the process at this stage. This is often the point where agency technical resources can be most helpful.

   The work done at this stage often forms the core of documents that become the legal record that is reviewed in subsequent administrative appeals. A SEPA threshold determination often is made at this stage. This stage can be considered

over when the staff conducts the first formal hearing before the planning commission.

3. **Planning Commission Hearing:** Proposed amendments to a comprehensive plan or development regulation must go to the planning commission. The role of the planning commission is to hold public hearings, take public testimony on the proposal and to make a recommendation to the council. To be considered in the process, formal agency comments, both written and oral, must be included in the record before the planning commission.

4. **Final adoption**: Once the planning commission makes a recommendation, the proposal goes to the legislative authority for adoption, revision, or rejection. The legislative body may or may not hold additional hearings and take additional testimony. If the legislative body adopts or rejects the planning commission recommendation, it does not need to hold a separate hearing. If the legislative body changes the proposal recommended by planning commission, one or more additional hearings usually are necessary. Once the legislative body adopts the proposal, it usually becomes effective 30 days after adoption. In some cases, it may become effective immediately. Notice of adoption must be sent to CTED within ten days following adoption. RCW 36.70A.106(2) and (3). Local governments also must publish notice of adoption in their paper of record. RCW 36.70A.290(2)(b).

C. TYPES OF LAND USE DECISIONS

Local governments generally make three types of land use decisions affecting the implementation of the GMA: comprehensive plan amendments, development regulation amendments, and project permit applications. Each type has separate implications and procedural requirements. It is important to understand what type of decision you are commenting on and how it fits into the jurisdiction's overall GMA implementation. Unfortunately, the line between these three types of decisions is not always clear.

1. **Comprehensive plan:** The comprehensive plan is the "generalized coordinated land use policy statement of the governing body of a county or city." RCW 36.70A.030(4). The comprehensive plan has been called the "nerve center" of the GMA's planning process, where fundamental decisions about land use and development are made, setting substantive standards and requirements that are implemented through development regulations and permitting decisions. The GMA specifies required elements that must be included in the comprehensive plan. *See* page 22 above.

2. **Development regulations:** These "development regulations" or "regulations" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020,

even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city."(RCW 36.70A.030.7)

3. **Project permits:** A project permit decision is a decision to approve a specific application. It is a quasi-judicial rather than a legislative process, even when the legislative body takes final action. This means that the local government is applying its development regulations to a specific situation in its decision and is bound by its existing regulations. Unlike the first two items, project permit applications are not subject to the 60-day notice provisions and are not under the jurisdiction of the Growth Management Hearings Boards. They are appealed under the Land Use Petition Act. In many jurisdictions, these appeals go forward to the Hearings Examiner.

PART III:
WORKING WITH LOCAL GOVERNMENTS

A note to the seasoned professional: *The state has a cadre of experience professionals who have developed their own style and methods for working with local governments. The GMA has been in existence for over a decade and many state and local partnerships are considerably older than that. Many state agency staff have been working effectively with local governments for their entire career. Many agency staff have spent some or most of their career working in local governments, or may even have been local elected officials.*

This section of this guidebook has been developed to help those who are new to working with local governments and land use and to serve as a reference to more experienced persons. It is based on proven methods and general rules of good professional conduct. Unless clearly noted, this section should not be viewed as a directive. State agencies have their own operating policies and procedures. Nothing in this guidebook should be read as superseding agency policies and procedures.

These methods may not work in all situations and are not a substitute for good professional judgment. These are useful tips and suggestions and should be viewed as such.

A COMMENTING ON LOCAL LAND USE LEGISLATION.

1. **The purpose of comment letters.** Comment letters accomplish multiple purposes. They attempt to persuade jurisdictions to take actions consistent with the GMA. They encourage people otherwise inclined to implement the GMA to do so. They provide them some political cover, and they serve as a counterweight to other voices urging them to disregard the GMA or implement it with less vigor. Comment letters celebrate the success of jurisdictions doing good things, making them feel better about their accomplishments. They serve to develop and articulate state policy on GMA issues. They serve as marketing tools to connect our customers with resources, materials, and programs developed by your agency and your sister agencies. They are necessary to get your issues and concerns on the record to achieve standing to bring challenges in front of a growth management hearings board.

   Comment letters become part of the legal record of adoption. Other groups or agencies may use our letter in subsequent administrative or legal appeals. Although they have no formal weight beyond the arguments on their face, they are often used to bolster certain positions. For this reason, we must be careful how we state concerns. Poorly chosen words may take on a life of their own or be taken out of context.

2. **Public comment period.** There is no fixed comment period under the GMA. The planning commission and the legislative body will establish a period where they will allow for public comment before they make their decision. The

comment period may be only the time in which they are conducting the public hearing or an extended time that includes a period before and after the public hearing.

Some local governments will accept comments only if received during the designated public comment period and only if directed to the designated person or entity.

Because the public comment period does not necessarily correspond to the 60-day period referenced in RCW 36.70A.106, state agencies cannot assume they will have 60 days in which to provide comments. Indeed, state agencies should never assume local governments will provide them with any notice of a comment period.

3. **State agency correspondence principles.** Several state agencies, in cooperation with local governments, have developed a set of principles to guide state agency participation in local planning. These principles have been developed cooperatively with state agencies and local government planning staff, with the help of your associations. They were developed during a series of meetings including state agency and local governments in the fall of 2004. You should check to see of your agency has signed on to the principles. Even if they have not, local governments are expecting state agencies to act consistent with these principles.

   The principles recognize the shared responsibility between state and local government for implementation of the GMA and reflect our shared commitment to work together in this task. These principles are designed to ensure that our participation in the planning process is timely, helpful, and effective. They are also designed to minimize the possibility of conflicts arising from misunderstandings, and to ensure that our written correspondence occurs in the proper context. Although differing interpretations and legitimate disagreements will continue to exist, the principles provide a framework for helping to resolve those disagreements efficiently and for ensuring that disagreements are focused on the substance of the issue itself. A copy of these principles is included as **Appendix A**.

4. **Recommendations.** It is most important to communicate with counties and cities during the period when they are accepting public comment.

   a. Do not assume you will be notified of the comment period and do not assume that the comment period will last for 60 days. If you are aware there is activity to adopt or amend a plan or regulation, you should submit a written request to the appropriate planning official to be notified of the comment period and to receive any draft proposals that are prepared.

   b. If you have a major concern, it is most effective to appear and testify at the public hearing. Oral testimony always should be accompanied by a written copy of the remarks and, if appropriate, by any supporting documentation. Only documents that have been submitted during the

appropriate time period can be included in the record in the event an appeal is necessary

c. Letters and other documents should be submitted during the comment period time, whether or not you testify orally, so that the decision-makers can consider your comments while they are making decisions.

d. If you provide comments and materials on three topics (for example, on urban growth boundaries, critical aquifer recharge areas, and the capital facilities element), consider submitting your comments in three letters, each with appropriate supporting materials. Comprehensive plans and development regulations often are developed in modules, and assembled into a coherent whole only near the end of the development process. If you write a single letter, you run a risk of having the local government place your letter in the file on urban growth boundaries (for example) without considering your comments on critical aquifer recharge areas and capital facilities.

e. Provide your comments as early as possible in the process. The ideal time is when the planning commission is making decisions.

f. If the legislative body has another public comment period, you can comment again on changes to the original recommendation or continued concerns. You also can call attention to documents already submitted and in the record.

g. All oral and written communications with local governments should be professional and courteous in tone and content. Your goal is persuasion, not intimidation or provocation.

h. Keep copies of everything you submit.

B. STEPS IN REVIEWING A LOCAL GOVERNMENT PROPOSAL

1. **Read the proposal.** Read the item for review with post-its and highlighter to get familiar with the item and what the issues are. Scan the categories listed in the PlanView database and add any new ones that apply or remove those that do not, based on your read of the material. If it is a good example in your opinion, mark it as such. This is a good time to make an initial assessment of whether your agency should provide written comments. Good tools to consult for reviewing items include the following:

   - Checklists assembled by your agency or CTED
   - WAC – Procedural Criteria and Minimum Guidelines
   - CTED reports and guidebooks
   - Hearings board subject matter digests

2. **Decide whether a comment letter is needed.** A variety of factors will determine whether a letter is needed. Depending on your agency's policies, you may have

been assigned the item with the direction to write a letter. If you are making the decision yourself, here are some factors to consider in your decision:

- *Does the proposal represent significant noncompliance with the GMA or substantially interfere with your agencies mandate?* These are typically expressed as concerns. Greater emphasis should be placed on noncompliance with the GMA requirements than noncompliance with the GMA goals, because local governments have more discretion under the GMA as to how they interpret and implement the GMA goals.
- *What is the potential for a real-world change in development patterns?* Does the policy set in motion permanent alterations to the landscape, or does it have more indirect or speculative impacts?
- *Can you suggest practical alternatives that comply with the GMA?* The more we can provide constructive and practicable alternatives, the more we should consider commenting.
- *Has the staff requested a letter from your agency?* If the local jurisdiction has requested or is in support of receiving a letter, make every effort to fulfill that request. Strive to not draft letters only when your agency has a concern. If a local government is proposing something positive, especially if it is taking some flak for doing so, support their actions.
- *Do you have something relevant to share with them?* Our letters are excellent marketing tools. If we know a local government is developing policies and we have resources to offer, a letter is a good way to pitch the resources of CTED or other state agencies. Where appropriate, agency resources can be shared by e-mail.
- *Are other agencies likely to respond?* Another agency with expertise bearing on a particular issue may prepare a letter to the local government. If a letter from your agency is likely to be the only one received from the state addressing a significant matter, you should more strongly consider a letter. Coordination with other agencies is critical.
- *Will your response be timely?* More weight should be placed on letters that will arrive early, than those that will arrive late in the process, especially if you have not been part of the ongoing process.
- *Do you have the time available to do a good job?* A rushed job can create more problems than it solves. Writing half a letter that does not make it in time for the hearing is also not a good use of time. Do not start a letter unless you have time to finish it.

3. Prepare a preliminary list of issues. After you have read the item and done a markup, develop a list of questions or issues that you may want to raise with the jurisdiction. You may consult other agency staff, or staff from other agencies. This is a good time to check in with your agencies GMA coordinator on the issues you plan to raise with the jurisdiction.

With the list of questions in front of you, make a phone call to the jurisdiction to go over your questions. This first phone call accomplishes the following:

- It can help you review the amendment with some background and an eye to what the jurisdiction is hoping to accomplish.
- It may allow you to dispense with some review items without spending any further time reviewing them.
- It provides a reminder to local planning staff that we are here and that someone at the state really is looking at the things they submit. It helps avoid the perception that the state agency review process is a black hole.

Good kinds of questions to ask include the following:

- What is the purpose or objective of the proposal?
- Is there anything I need to be aware of in terms of context?
- Are there any specific questions or areas where you would like us to focus?
- What are some of the questions that arose as you developed this proposal?

In some cases, you may want to involve other state agency staff or your GMA coordinator in a conference call at this point.

Regular contact with the jurisdiction throughout the drafting process reduces surprises and may allow you to dispense with some issues without taking the time to craft a written comment. It may give local staff an opportunity to help you think through some items and put some items in their proper context before you express concerns and take a position. Review with the local planner the issues or concerns you expect to include in your draft letter and let the planner know when to expect your draft comments.

Occasionally, you may notice typos, formatting errors or other small and insignificant mistakes in the draft ordinance. Do not note them in your comment letter. Since your comment letter ultimately goes to elected officials, it is best to avoid embarrassing staff by pointing out their mistakes in such a public manner. Better to mention to staff privately or on an errata sheet. Local staff are almost always appreciative of having potentially embarrassing mistakes discretely brought to their attention.

4. **From your final list, draft a letter**. You may be able to save time by looking through past comment letters. If you use stock language or bits from past letters, be careful to edit the language to place it in the proper context. Every jurisdiction and situation is unique. Do not copy language without an understanding of whether it is being used in context.

5. **Review your draft with your GMA coordinator**. Each agency has a process for handling comments to local governments, you should follow that procedure. But when in doubt, make sure your GMA coordinator is aware that you are preparing to send a letter and the general nature of the comments you are making before the draft goes to the local government. He or she may be able to save you considerable trouble.

6. **Share your draft with local government staff.** Share the draft with other state agencies, if appropriate, and with the jurisdiction. This is one of the steps specifically called for in the Principles Governing State Agency Correspondence. It is OK to e-mail or fax draft copies to staff for their review as long as it says "draft" on every page. Tell them when you need to hear back from them. Give them an appropriate amount of time to respond. Three days or so is usually sufficient. If needed, set up a time to talk through the issues with the jurisdiction. This can be done over the phone or in person. If appropriate, you may call in other state agency staff or other technical staff from your agency. Your GMA coordinator may also participate, especially on controversial or high profile concerns.

7. **Finalize the letter and send it to the local government.** After you have heard back from the local government and incorporated the comments as you can, finalize the letter. Proofread your letter and have it proofread by someone else. If your agency does not have a separate style manual, the Governor's office has an executive correspondence style manual that is contained in the back of your *Plan Review Desk Reference*. Also included are the Governor's Plain Talk guidelines. It is always a good idea to have someone else proofread your work before it is finalized. If you have used the Track Changes feature in Microsoft Word as part of reviewing and editing your letter, make sure that all track changes and comments are removed before you send an electronic copy of your letter.

   Comments typically go to the senior elected official or the chair of the body taking comments. Confirm the spelling of all names and make sure you enclose any attachments. When you send the letter, also copy any local government staff, any other state agencies you have been working with, and CTED.

   Please e-mail the copy to CTED as either a Word document or a PDF file. An electronic cc will allow CTED to include your letter in the PlanView database.

8. **CTED's role.** A local government usually sends a draft plan or regulation to CTED together with the required 60-day notice. The person who prepared a draft plan, regulation, or amendment is an important contact for the state agency reviewer, since the drafter usually is willing to answer questions and genuinely is interested in understanding state agency concerns.

   However, state agencies should not simply assume local governments will comply with the 60-day requirement in RCW 36.70A.106.[10] State agencies are well advised to monitor local land use planning and regulatory activities of potential concern and to develop good working relationships with local planning officials.

9. **Process for coordinating state agency review and comment.** When a state agency reviews a local government's comprehensive plan or development

[10] Although some local governments have not taken the 60-day requirement seriously, it appears the Growth Management Hearings Boards have begun to enforce this requirement. *See Cameron Woods Homeowners Association v. Island County*, WWGMHB No. 02-2-0004 (Order on Dispositive Motion, June 10, 2002) (required a local government that did not comply with RCW 36.70A.106 to submit its draft plan or regulations to CTED for state agency comment and wait 60 days for adoption).

regulation, it is important for the agency to keep in mind that its review is part of a state-wide review. The review should be coordinated among the individual agencies so as to present a coherent state position on the issue. A fragmented approach to review can cause confusion at the local level and may adversely impact the state's credibility as well as its position in any appeal it pursues. As the designated state government coordinator for the implementation of the GMA (RCW 43.330.120), CTED has developed a variety of tools, including this manual for coordinating state agencies' review and comments on local plans, regulations, and amendments.

If you will be commenting, check with other agency staff, or use the PlanView data system to check to see if other agencies are reviewing the item and intend to comment. Sometimes, when there are more than one agency involved, agencies can partner on a state agency technical team that can meet with the jurisdiction as a group in order to better coordinate agency comments.

a. The recommendations for providing effective comments also apply generally to communications with local governments regarding their land use planning activities, especially the recommendations involving the provision of documents and information and record keeping.

b. The importance of professionalism and courtesy in dealing with local officials cannot be overemphasized. Work to establish a professional working relationship with local officials, one in which there is mutual trust and respect. They operate within a certain political context and under particular political, fiscal, and operational constraints. You have information and recommendations that are of use to local officials in their efforts to achieve compliance with the GMA and other pertinent laws, and your goal should be to persuade them that your agency's concerns must be addressed in order to achieve that compliance.

c. Keep records of your contacts with local officials. If you keep a log or journal, note names, dates, subject matter and content of discussion, and specific documents and information provided to local officials.

d. If appropriate once a plan, regulation, or amendment has been adopted, write a follow-up letter that notes areas where the local government responded to your concerns and areas that still need improvement.

C. RECOMMENDATIONS FOR COMMENTING ON A COMPREHENSIVE PLAN OR DEVELOPMENT REGULATION.

1. State agency comments and recommendations are important. They are important in this context for at least three reasons.

a. ***Greater expertise and resources.*** As a general rule, state agencies have more expertise and more resources than most citizens, organizations, and others who comment on plans and regulations.

b. ***Credibility.*** For the most part the growth management hearings boards and the courts have recognized state agencies' expertise in land use planning, resource protection and conservation, transportation, and other areas. Many counties and cities also recognize this expertise and take note of it. Even those counties and cities that refuse to acknowledge state expertise at least acknowledge that the Boards and the courts treat state agencies as having credible expertise.

c. ***Fairness to local governments.*** Because private litigants also recognize state agencies' expertise, they may tailor their appeal to reflect issues identified in a state agency's comment letter. If the state agency has ensured its letter is accurate and fair to the county or city, the concerns identified in the letter will be real problems, and an appeal based on those concerns will be legitimate.

2. The GMA is not a panacea. The GMA imposes specific—and in many cases quite limited—requirements on local governments. While cities and counties planning under GMA may exceed these minimum requirements, there generally is no legal requirement that they do so.

For example, the GMA provides that "where applicable, the land use element shall review drainage, flooding, and stormwater run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state." RCW 36.70A.070(1). While it is tempting to view this provision as requiring local governments to clean up Puget Sound, it does not do so. Instead, it requires that, *where applicable*, cities and counties *review* drainage, flooding, and runoff, and provide *guidance* for corrective actions. Of course, other state or federal laws may require corrective actions beyond those required by the GMA, and nothing in the GMA minimizes the effect of those other requirements.

If there is any question as to what the GMA requires, ask your AAG. You should not represent a particular requirement as the minimum acceptable under the GMA unless it really is the minimum acceptable. An understanding of the legal arguments for and against a particular interpretation may assist the state agency in providing informed and accurate comments and recommendations.

3. Go ahead and ask for more than the minimum. Just because the letter of the GMA does not require something does not mean that it is not a good idea or that it is not within the spirit of the law. If an agency believes a local government or the citizens of the state would benefit from the inclusion of a particular element in a city/county comprehensive plan, it should request that element and support that request with persuasive analysis and documentation. It should not, however, state or imply that the desired element is required. A number of agencies currently do precisely this, dividing their comment letters into "required" and "desired" sections.

4. Recommendations regarding scientific or technical information: Where you provide scientific or technical information or recommendations to a local government in your comments, you should take special care to provide the

necessary documentation to support your comments along with your written comments. This is especially important if your comments are addressed to the development of critical areas regulations and you identify or provide the best available science or recommendations based on the best available science.

- Wherever possible, provide copies of all documents you reference or upon which you rely in your comment letter.
- Any time you reference or rely upon a document produced by a state agency, you should provide a copy of that document, unless you are absolutely certain the planning officials already have the document.
- Include in your comment letter a list of the documents you are enclosing with your comments.
- If you are providing a large number of documents to the local government, it is helpful to organize and index them to make them more useful for local officials.
- If you cannot provide copies of documents you reference or rely upon, state where copies may be obtained.
- You may provide the Internet address for a particular document in lieu of a paper copy if you are absolutely certain of the all of the following:
    - The document currently is available on the Internet;
    - The document will remain available on the Internet for the foreseeable future;
    - Local officials have access to the Internet and know how to use it;
    - You have a paper copy of the Internet version of the document in your file that can be reproduced later if necessary.
- If you provide scientific or technical information or recommendations informally or orally to local government planning personnel, follow up the informal discussion with a letter or memorandum summarizing the information and recommendations you discussed.
- Similarly, if you hand-deliver scientific or technical documents to local government planning personnel, follow up with a letter or memorandum noting the document delivery and explaining the application you intended for the information contained in the documents.
- If your comments are based on your personal expertise, include enough information about your qualifications to demonstrate the reliability and accuracy of your comments. Do not expect local governments to accept or use your information or recommendations solely because you represent an agency with expertise in the subject matter.

The standards by which scientific information should be analyzed are contained in the best available science rules adopted by CTED in 2000, which are found at WAC 365-195-900 through -925. An overview of the rules and standards is provided beginning at page 12, above.

- If possible, include things you like about the proposed plan, regulation, or amendment as well as your concerns.

D. PERSUASIVE WRITTEN COMMENTS.

Sample comment letters are included in the Appendix B at the end of these materials.

1. Structure of the letter.

- Create a format that is easy to follow.
- Use headings that clearly introduce each topic. One or two word headings seldom are helpful.
- For ease of reference, state in the heading or first sentence of the segment the subject matter at issue, as well as the section of the ordinance or plan. (Example: *Allowed Development Activities in Streams—§54.10.320, page 36.*)
- Refer to your individual program or agency when writing the comment letter. Do not claim to be the "state"; this is misleading because other agencies and programs of the state have interests in GMA planning and also provide input.

Proofread the letter before you send it out. If you have been working on it too long, ask a colleague to proofread it

2. Structure of the argument.

In developing a specific comment, the first task is to take the reader to the specific item in the plan or ordinance that your comment pertains to. Step 1 is to get you and your reader literally on the same page. Next, explain in as concise a manner as possible, exactly what your concern or suggestion is. Explain why you are concerned and what part of the state law or rule the proposal is inconsistent with.

Elaborate on the basic principles of good government or sound planning that underlies this particular part of the GMA and why they should consider an alternative. Arguments that rely only on statutory requirements (you should not do that because it is a violation of the GMA) are an appeal to authority. They may obtain compliance, but are not persuasive and are at least as likely to obtain more active defiance. Explain also why the GMA requires what it does and why this approach is a balanced common sense approach that they should follow. Generally, persuade them the GMA is the right thing to do. The fact that it is the law is a natural antecedent to the fact that it is good policy.

- Clearly state each issue or concern.
- Provide a factual basis that will demonstrate the issue.
- Connect the facts of the issue to scientific evidence, the technical information, the statute or rule, or the public policy reasons supporting your position. Attach copies of the pertinent documents, unless you are

absolutely certain the documents already have been submitted into the record.

- Point to specific scientific evidence or technical information rather than simply referencing a scientific or technical document. Point to specific language in a statute or rule, rather than simply citing it. Explain the public policy issues rather than simply asserting them.
- If you refer in your comment letter to several scientific or technical documents with similar analysis, you may provide copies of two or three of the documents and attach a bibliography or reference list that includes all cited documents. If scientific or technical issues are especially prominent in your comments—for example, if you are commenting on the appropriate buffers for salmon-bearing streams designated as fish and wildlife habitat conservation areas—you should consider providing copies of as many pertinent documents as feasible.
- If available, map and photographs can be very persuasive. They also may be very useful later, on appeal.
- If at all possible, suggest alternative language that would remedy the inadequacy from your agency's perspective. It gives the local government an alternative starting point and shows that the state agency is working in good faith towards a mutually acceptable resolution.
- Conclude your argument with a cogent conclusion and, if necessary, a summary. You can ask for more than the minimum. State agencies may provide guidance that urges local governments to exercise their discretion in ways that go beyond the minimum requirements of the law. State agencies may also point to a particular means of meeting the requirements of the GMA without the implication that this is the only way to meet those requirements. However, when doing so, it is important to clearly distinguish between legal requirements, guidance regarding best practice, matters of fact, and matters of professional opinion.

3. Alternatives to ineffective arguments.

- Do not simply disagree with the local government's evidence or analysis. Instead, explain why there is a problem with the evidence or analysis. If possible, provide the better evidence and explain the correct analysis.
- Do not insist that you are right simply because you represent your agency. (Harder still is to not assume you are right simply because you represent your agency.) Instead, support your position with facts and argument.
- Do not personalize your disagreement with the county or city's proposal. Instead, remain professional and courteous.

E. PERSUASIVE ORAL COMMENTS.

1. General observations. Positions advanced by state agencies are not always popular with local governments or their citizens. Historically, some meetings of planning commissions and county commissioners have been quite heated, some

so much so that state agency representatives and local elected officials have felt personally threatened. If you plan to testify in person, try to obtain as much information as possible about the circumstances of the public hearing before you go.

2. **Preparation.** Effective oral presentation is part personality and part preparation. Changing your personality is beyond the scope of these materials. Here are some suggestions, however, regarding preparation:

- Be familiar with all written comments you have provided on behalf of your agency, all written comments provided by others in your agency, and all written comments provided by other state agencies that bear on the concerns your agency has raised. Local officials and citizens may not view distinctions among the roles assigned state agencies as carefully as you do.
- Bring an extra copy of any document you intend to reference during your remarks. Make it available to the person or persons receiving your testimony.
- Bring any charts, maps, or photographs that will assist you in making your points. If possible, bring an extra copy that you can give to the person or persons receiving your testimony. The size of the copy does not matter, as long as it legibly conveys your point—even an 8” x 10” copy of a large map may be fine.
- Conversely, masterful slides and animated PowerPoint presentations lose effectiveness if there is no way for local officials to review them or extract information from them later.
- Bring a copy of your intended remarks and make sure you leave it with the person or persons receiving your testimony. Ask that your oral and written remarks be made part of the record.
- At crowded public hearings, persons testifying often are limited to three minutes each. Citizens may be asked not to testify if their issues have been addressed. Do not waive your opportunity to testify. No matter what, be sure you provide your intended comments, at least in writing, if not orally. Failure to do so means you have not made your record and may risk your agency’s standing to bring an appeal.
- Remain professional and courteous, even though all those around you may fail to do so. Anticipate the worst and hope for the best.

PART IV: INITIATING AN APPEAL UNDER THE GROWTH MANAGEMENT ACT

A. THE GMA'S ADMINISTRATIVE REVIEW PROCESS.

1. The Growth Management Hearings Boards. The GMA created three Growth Management Hearings Boards to review challenges to comprehensive plans and development regulations adopted by counties and cities. Three Boards were established to provide regional perspective, in recognition that different land use planning challenges face different parts of the state. The Central Puget Sound Board hears challenges in King, Snohomish, Pierce, and Kitsap counties; the Western Board hears challenges in other counties west of the Cascade Mountains that are planning under RCW 36.70A.040; and the Eastern Board hears challenges in counties east of the Cascade Mountains that are planning under RCW 36.70A.040. RCW 36.70A.250; *Moore v. Whitman County*, 143 Wn.2d 96, 100-03 (2001).

a. ***Composition of the Boards.*** Each Board consists of three members qualified by experience or training in matters pertaining to land use planning. One member of each Board must be an attorney and one must have been a county or city elected official. No more than two members of a Board may belong to the same political party. All three members of a Board must reside within the region of the state over which that Board has jurisdiction. Members are appointed by the Governor and serve six-year terms. RCW 36.70A.260.

b. ***Jurisdiction of the Boards.*** A Board may hear only cases brought before it in petitions for review. For the Board to have jurisdiction, a petition must allege that a county or city planning under the GMA is not in compliance with (1) the GMA's requirements; (2) the Shoreline Management Act (RCW 90.58) as it relates to the adoption of shoreline master programs or amendments thereto; or (3) the State Environmental Policy Act (RCW 43.21C) as it relates to comprehensive plans or development regulations or amendments thereto. RCW 36.70A.280(1)(a). In addition, the Board may hear a petition challenging the 20-year population projections adopted by the Office of Financial Management. RCW 36.70A.280(1)(b).

The Boards do not have jurisdiction to hear petitions for review brought against the 10 counties that are not subject to the full planning requirements of the GMA, or against the cities within those counties. *Moore*, 143 Wn.2d at 100-03. Appeals against those counties and cities must be brought to superior court. *Id.* at 103-04.

c. ***Nature of review by the Boards.*** The Boards are quasi-judicial bodies, which means a hearing before a Board is like a trial, but without some of

the rigidity of a trial in a court. Review by the Boards is governed by the Administrative Procedure Act (RCW 34.05), the GMA itself, and procedural rules adopted jointly by the three Boards (*see* WAC 242-02). A Board generally must base its review solely on the record developed by the county or city in adopting the comprehensive plan, development regulation, or amendment being challenged. Rarely, a Board will consider additional documents or testimony, but the Board must find the additional evidence to be "necessary or of substantial assistance to the Board in reaching its decision." RCW 36.70A.290(4).

The burden is on the party or parties challenging a comprehensive plan, development regulation, or amendment to demonstrate the action taken by the local government is not in compliance with the GMA's requirements. The petitioner must convince the Board that the local government's action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. RCW 36.70A.320(2), (3).

2. Administrative remedies available.

a. ***Noncompliance.*** If a petitioner convinces a Board that a comprehensive plan, development regulation, or amendment does not comply with the requirements of the GMA, the Board is to issue a final order, supported by findings of fact and conclusion of law, that specifies the portions of the plan, regulation, or amendment that do not comply. The Board remands the plan, regulation, or amendment to the local government with instructions to achieve compliance by a specific date, usually within 180 days. RCW 36.70A.300.

The Board may schedule as many compliance hearings as necessary to compel the county or city's compliance. RCW 36.70A.330.

b. ***Invalidation.*** Even though a Board determines a comprehensive plan, development regulation, or amendment does not comply with the requirements of the GMA, that plan, regulation, or amendment remains in effect in the county or city until the local government takes some action to amend or repeal it. In 1995, the Legislature authorized the Boards to invalidate noncompliant plans, regulations, and amendments if the petitioners also demonstrate that their continued validity would substantially interfere with the fulfillment of the goals of the GMA. An invalidated plan, regulation, or amendment cannot be enforced, nor can developers vest to it. The Board must enter specific findings of fact and conclusions of law supporting its determination of invalidity. RCW 36.70A.302.

When awarding grants and loans for public facilities in counties and cities that fully plan under the GMA, state agencies are to give preference to counties and cities that are in compliance with the GMA. RCW 43.17.250. Counties and cities subject to a determination of noncompliance or a determination of invalidity may be ineligible for certain state grants and assistance and may be barred from collecting or expending certain

revenues. *See, e.g.,* RCW 36.70A.500 (Growth Management Planning and Environmental Review Fund); RCW 43.155.070 (Public Works Trust Fund); RCW 70.146.070 (Centennial Clean Water Fund); RCW 82.02.050 (development impact fees); RCW 82.46.010 (real estate excise taxes).

Counties and cities that do not complete the review and update required in RCW 36.70A.130(1) and (4) lose their authority to receive certain grants, loans, pledges, or financial guarantees, as well as any preference for certain state grants and loans. RCW 36.70A.130(7).

c. ***Sanctions.*** Upon a determination of noncompliance, a Board may recommend that the Governor impose economic sanctions on the noncompliant county or city to compel compliance. RCW 36.70A.340. Where a county or city has failed even to act to comply with the GMA, the Governor may impose economic sanctions without waiting for a recommendation from a Board. RCW 36.70A.345.

B. STATUTORY REQUIREMENTS FOR OBTAINING REVIEW BY A GROWTH MANAGEMENT HEARINGS BOARD.

1. A petition for review must be filed within the statutory deadline. A comprehensive plan, development regulation, or amendment typically is adopted by ordinance or resolution. A petition for review must be filed within 60 days of the date the local government publishes the ordinance or resolution (or a summary thereof) by which it adopted the comprehensive plan, development regulation, or amendment. RCW 36.70A.290(2).

Although this 60-day appeal period would appear to give plenty of time for a state agency to weigh its options, in reality it gives barely enough time to complete the process required for a state agency to obtain review by a Growth Management Hearings Board.

In the 10 counties in which an appeal must be filed with superior court, rather than a Board, different deadlines probably apply. An agency should consult with its AAG.

2. A party must have standing to file a petition for review. Under the GMA, a party may obtain standing in one of four different ways. RCW 36.70A.280(2). A party must indicate in its petition which type or types of standing it claims, and its standing claim must be supported by the record. WAC 242-02-210.

Most petitioners assert "participation standing," which requires only that the petitioner participated orally or in writing before the local government on the matter on which it is seeking review. RCW 36.70A.280(2)(b). As indicated above, "participation" means more than simply attending a public meeting or signing a petition. To have participated adequately, a person must have informed the local government of the nature of his or her concerns with enough specificity that the local government had a fair opportunity to address those concerns in the first instance. *Wells v. Western Washington Growth Management Hearings Board*, 100 Wn. App. 657, 670-75 (2000). The nature and extent of a petitioner's involvement must be

contained in the record for the petitioner to successfully defend against an attempt to dismiss his or her petition for lack of standing.

While it appears that state agencies are not subject to this standing requirement, state agencies should proceed as if they are bound by it, since the Governor historically has inquired as to whether an agency participated in the local government process before approving any challenge before a board.

3. **A state agency generally may not obtain review by a Growth Management Hearings Board without the Governor's consent.** The Governor's written consent is required for a state agency to file a petition for review of a comprehensive plan, development regulation, or amendment. The only exception to this requirement is that the Commissioner of Public Lands may appeal a local action relating to state trust lands. RCW 36.70A.310.

   By its terms, RCW 36.70A.310 does not require the Governor's consent for an appeal to superior court in the 10 counties not subject to the GMA's full planning requirements under RCW 36.70A.040. Because the Washington Supreme Court considers appeal to superior court to be the mandated substitute for review by the Boards in these 10 counties (*Moore*, 143 Wn.2d at 103-04), state agencies should consider the Governor's consent to be required for appeal to superior court until that issue is resolved by the courts or the legislature.

   The process for obtaining the Governor's consent is summarized in Section D below. CTED's procedural document entitled *GMA Appeal Process Through Governor: Steps and Criteria* is included in Appendix C at the end of these materials.

4. **A state agency may participate otherwise in administrative proceedings before a Growth Management Hearings Board.** A state agency should assume the Governor's consent is required for any appearance before a Growth Management Hearings Board in which the state agency's position is in opposition to that of the local government. Even if the state agency's participation is that of an intervenor or amicus curiae, the Governor's consent is required if the agency's position is antithetical to that of the local government.

   Nothing in the GMA requires the Governor's consent, however, for a state agency to appear on the same side as the local government in a proceeding before a Board. Nor does the GMA require the Governor's consent for a state agency to appear in a superior court or appellate court proceeding in which the court is asked to review a decision of a Board, where the state agency was not involved in the proceedings before the Board. Nevertheless, even in these instances it is advisable and prudent to consult with the Governor's office using the process described in the next section. After all, GMA appeals often are politically charged events—they frequently involve clashes of politically powerful interests, typically are very expensive for the local governments involved, and may involve fundamental constitutional issues and challenges.

C. BUILDING A RECORD.

1. **What is "the record"?** The record is the assembled documents, transcripts, tapes, and any other materials properly presented to a county or city for consideration during the development and adoption of a comprehensive plan, development regulation, or amendment thereto. Depending on the complexity of the local legislative action at issue, the record may consist of only a few documents or it may consist of tens of thousands of documents and hundreds of thousands of pages.

2. **A good record is a vital element of a successful appeal.** Administrative and judicial review of local GMA plans and regulations is almost exclusively "on the record." Generally, a Growth Management Hearings Board or a court will review only the record developed by the county or city that took the action that is the subject of review by the Board. RCW 36.70A.290(4); 34.05.558; WAC 242-02-540. Additional evidence rarely is admitted.

   a. ***Importance of the record in light of the GMA's standard of review.*** The GMA affords deference to the planning decisions of local governments. RCW 36.70A.3201. A party challenging a comprehensive plan, development regulation, or amendment must overcome a general presumption of validity and must convince a Board the county or city's action was clearly erroneous under the GMA. RCW 36.70A.320. The challenging party generally must make the required showing by relying only on materials in the record. RCW 36.70A.320.

   b. ***Importance of the record in light of the GMA's standing requirements.*** In general, a party seeking to challenge a comprehensive plan, development regulation, or amendment must be able to show that it participated orally or in writing before the local government on the matter on which it is seeking review. RCW 36.70A.280(2)(b). The purpose of this requirement is to ensure that a petitioner gives the local government a fair opportunity to address his or her concerns in the first instance. The nature and extent of a petitioner's involvement must be contained in the record for the petitioner to successfully defend against a local government's attempt to dismiss his or her petition for lack of standing.

      Technically speaking, state agencies may not be subject to this standing requirement. It appears that a state agency need only obtain the Governor's consent. RCW 36.70A.280(2)(a), .310. However, the process developed for obtaining the Governor's consent requires the state agency to have participated meaningfully on the record before the local government. Moreover, the underlying purpose of the participation requirement is fair and appropriate—state agencies should not able to "sandbag" a local government during the local government's development and adoption proceedings, and then surprise the local government with a petition for review by the Board. *See Wells v. Western Washington Growth Management Hearings Board*, 100 Wn. App. 657, 670-75 (2000).

3. **Organizing the record.** As indicated above, the record may be very large. As a practical matter, given the short time frame for GMA appeals, it may be impossible to go through the entire record. Accordingly, the Assistant Attorney General (AAG) doing an appeal may frame an appeal in primary or exclusive reliance on the materials provided to local governments by state agencies. It is vital that these materials be presented to local governments at the appropriate times and in the appropriate manner to be certain they are placed in the record. It also is vital that the state agency organize its materials so they can be accessed and used by AAGs should an appeal be necessary. Here are several suggestions:

   a. Each time you submit materials or testimony, specifically request that your documents be made part of the record.

   b. If you submitted materials to the local government along with a letter (e.g., technical manuals, scientific papers, copies of other ordinances, etc.), those materials should have been specifically referenced and listed in your letter. Sometimes, the referenced materials get separated from the letter or left out of the record entirely. Check to be sure the referenced materials are in the record. If not, let your AAG know.

   c. If an appeal is filed, the county or city must create an index of the record for review. As soon as possible, you should review this index to ensure that documents your agency submitted are in the administrative record. If not, contact your AAG immediately.

   d. If there is oral testimony given by the state agency, you should specifically request that the transcripts be transcribed or a copy provided for the agency to transcribe at their own expense. Better yet (and cheaper), provide your testimony in writing along with your oral testimony.

D. THE STATE'S INTERNAL PROCESS FOR OBTAINING THE GOVERNOR'S APPROVAL TO PETITION A GROWTH MANAGEMENT HEARINGS BOARD FOR REVIEW.

1. **Rationale for the process.** CTED serves as the central coordinator for state government in implementing the GMA. RCW 43.330.120. CTED is required to make recommendations to the Governor regarding local compliance with the GMA. RCW 43.330.120(3). Consistent with the coordination role CTED plays in state agency review of local plans and regulations, which is described above, CTED has worked with other state agencies to develop this process for determining whether the state should appeal a local comprehensive plan, development regulation, or amendment.

   The process is designed to ensure coordination among state agencies, to confirm the merits of a proposed appeal in consideration of the significant logistical burdens associated with a state appeal, and to maintain the state's credibility before the Boards and courts.

2. **Criteria.** CTED uses three criteria to determine whether to recommend to the Governor that the state appeal a county or city's comprehensive plan, development regulation, or amendment:

   a. ***Is there significant noncompliance with the GMA?*** Does the adopted plan, regulation, or amendment seriously weaken effective growth management in the jurisdiction or region?

   b. ***Are the issues to be advanced on appeal consistent with the record made by the state in county or city's adoption process?*** One or more state agencies must be on the record on the issues to be appealed in order to go forward. This criterion is waived where the local government provided no opportunity for comment.

   c. ***Is an appeal the best available way to resolve the noncompliance?*** Is the local government willing to achieve compliance, but in need of technical assistance? Is there an opportunity for negotiation rather than litigation?

3. **The process.** The 60-day appeal window is barely enough time to accomplish all the coordination, negotiation, and approvals that go into an appeal decision. (If the appeal must go to superior court, rather than to a Board, the appeal window may be as short at 21 days.) An agency interested in appealing must obtain legal review, explain its appeal to CTED, coordinate with any other agencies interested in appealing, obtain CTED's recommendation to the Governor, and secure time on the Governor's schedule to determine whether he or she will approve an appeal. Consequently, a relatively formalized appeal approval process has been developed. A state agency wishing to appeal a county or city's comprehensive plan, development regulation, or amendment should begin the process as early as possible.

   a. As soon as an appeal appears as a reasonable possibility—preferably no later than 10 days after the adopting ordinance is published—a state agency should notify CTED and the agency's AAG. The agency's AAG should make an initial determination whether the issues to be proposed to the Governor for appeal are legally supportable.

      Ideally, the state agency will have been able to predict the action taken by a local government, based on the agency's participation in the development and adoption of the plan, regulation, or amendment. It may be apparent an appeal is appropriate even before the agency receives a copy of the adopted plan, regulation, or amendment—or even before the plan, regulation, or amendment is adopted. The agency is encouraged to contact CTED as soon as possible.

   b. CTED will immediately notify the Governor's office and all other reviewing agencies that an appeal is possible.

   c. In response, other state agencies should notify CTED as soon as possible to indicate their interest or position of the possible appeal.

   d. By the 30th day after publication, each state agency interested in appealing should submit to its AAG the following:

(1) A list of the issues to be appealed.

(2) A copy of the comprehensive plan provisions, development regulations, or amendments to be challenged, along with a copy of the adopting ordinance or resolution.

(3) A copy of all information provided to the local government by the agency regarding the issues to be appealed. If the agency is in possession of other relevant information provided to the local government, a copy of that information also should be provided.

e. Each agency interested in the appeal should develop a written summary of the issues to be appealed, addressing the three criteria listed above. This list may be prepared in draft form and sent to CTED early in the process, with a final version to follow after consultation with the agency's AAG.

f. CTED then will coordinate discussion of the issues among interested agencies, attempting to reach consensus on whether to appeal and, if so, on what issues will be raised in the appeal.

g. Following this discussion, CTED will indicate whether or not it will recommend that the Governor authorize an appeal. If so, CTED will arrange for time on the Governor's schedule to discuss the appeal. If not, the state agency desiring an appeal may ask CTED to reconsider and/or may arrange to make a separate recommendation to the Governor.

h. If CTED or another agency intends to request that the Governor authorize an appeal, the agency must provide CTED and the agency's AAG with a final summary of the issues to be appealed, addressing the three criteria listed above. The final summary should be provided to CTED and the agency's AAG at least three working days before the scheduled meeting with the Governor. CTED and the other agency seeking appeal will work with their respective AAGs to draft a letter from the Governor authorizing appeal.

i. CTED and/or the interested agencies meet with the Governor.

j. If the Governor authorizes an appeal, the designated lead agency should immediately notify its AAG and provide the AAG with the original of the Governor's written authorization. The AAG then files a petition for review.

k. As soon as it appears the Governor will authorize an appeal, and before the petition for review is filed, the head of the lead agency should notify the appropriate local elected official or officials of the impending appeal. If there are specific actions a city or county could take that would make an appeal unnecessary, the agency head should suggest those actions to the local officials. The objective is to try to obtain compliance with the GMA without having to proceed to litigation.

APPENDIX A:
PRINCIPLES GOVERNING STATE AGENCY CORRESPONDENCE

STATE OF WASHINGTON
DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT
128 - 10th Avenue SW • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000

January 27, 2005

Mr. Bill Vogler, Executive Director
Washington State Association of Counties
206 Tenth Avenue Southeast, Suite A
Olympia, Washington 98501

Mr. Stan Finklestein, Executive Director
Association of Washington Cities
1076 Franklin Street Southeast
Olympia, Washington 98501-1346

RE: Principles Governing State Agency Correspondence on Growth Management

Dear Mr. Vogler and Mr. Finklestein:

In response to a request from your members, we have developed principles that our agencies will use to provide comments on local growth management plans and development regulations. These principles have been developed cooperatively with state agencies and local government planning staff, with the help of your associations. They were developed during a series of meetings including state agency and local governments in the fall of 2004.

The principles recognize the shared responsibility between state and local government for implementation of the GMA and reflect our shared commitment to work together in this task. These principles are designed to ensure that our participation in the planning process is timely, helpful, and effective. They are also designed to minimize the possibility of conflicts arising from misunderstandings, and to ensure that our written correspondence occurs in the proper context. Although differing interpretations and legitimate disagreements will continue to exist, we hope these principles will provide a framework for helping to resolve those disagreements efficiently and for ensuring that disagreements are focused on the substance of the issue itself. We have instructed our staff to implement these principles and use them as a guide for working effectively with local governments.

The people of Washington look forward to a future where the economic vitality and growth of the state does not compromise the quality of our natural resources and the livability of our urban spaces. State and local governments have a shared responsibility to create this future.

Good planning decisions are an important part of realizing this future. Effective growth management plans facilitate decisions that protect the natural environment, manage the

costs of providing needed public infrastructure, and ensure timely and fair permitting decisions. We recognize the vital partnership between state and local government in working together to develop good plans and make them a reality. We hope that state agencies and local governments will continue to maintain a cooperative relationship and that we will continue working together to implement the goals of growth management and to realize a bright future for our state.

Sincerely,

Juli Wilkerson, Director
Washington State Department of Community, Trade and Economic Development

Valoria Loveland, Director
Washington State Department of Agriculture

Linda Hoffman, Director
Washington State Department of Ecology

Dr. Jeffery P. Koenings, Director
Washington Department of Fish and Wildlife

Mary Selecky, Secretary
Washington State Department of Health

Brad Ack, Chair
Puget Sound Action Team

Dennis Braddock, Secretary
Washington State Department of Social and Health Services

Doug MacDonald, Secretary
Washington State Department of Transportation

Principles Governing State Agency Correspondence Under the Growth Management Act

State and local governments have a shared responsibility to provide public services and facilities, improve the quality of life, protect the air and water quality, and protect fish and wildlife habitat for all Washington residents, present and future. Land use decisions and patterns of land development have a significant influence on these areas of responsibility. Under the GMA, it is primarily local governments who have responsibility for regulating land use and development, and for balancing the 14 goals of the GMA.

As a consequence, local government planning decisions, both individually and collectively, are matters of critical importance to state agencies. State agencies provide funding and technical resources to local governments and also comment on the effects of proposed local land use policies and regulations. State agencies are also responsible for developing and operating many facilities that residents of the state depend on and state agencies are required, under RCW 36.70A.103, to comply with local comprehensive plans.

This shared responsibility requires state and local governments to work together as partners during the drafting of local plans. WAC 365-195-710 calls on state agencies to use comment letters as one means of advising local governments of other laws that may be related to the local land use decision before them. WAC 365-195-735 also provides local governments a list of state and regional regulations that may affect their decisions. The following principles will establish expectations to guide collaborative input into local planning decisions.

<u>Principles Regarding State Agency – Local Government Coordination on GMA Actions</u>:

1. Early notification and involvement is critical to effective participation and is essential to provide sufficient time for state agencies and local governments to follow the principles established.

2. Local governments will make every effort to seek out state agency participation as early in the process as possible. State agencies will make every effort to respond to such requests as early as possible. For significant issues, this should be in advance of a formal public participation process and will allow reasonable time for comments to be prepared and discussed prior to a formal planning commission recommendation.

3. Effective participation requires on-going involvement. State agencies and local governments will make every effort to maintain contact throughout the planning process. This should include at least one contact, preferably by phone, with local government staff or elected officials before drafting a written comment letter.

4. State agencies will share draft comments informally with local government staff or elected officials and be available to discuss the language in the letter prior to sending formal written comments.

5. Each state agency will approve procedures that ensure written correspondence on growth management issues reflects the official agency position. Each state agency will designate a lead person for GMA issues. Local governments, including local elected officials, who have a serious policy disagreement with an agency position may contact the agency GMA lead directly to resolve a policy disagreement prior to the state agency finalizing its written comments. Because state agencies are required to meet local government deadlines for comments and hearings, state agencies may request comment deadline extensions to allow time to discuss draft letters or for resolution of issues prior to final submittal of state agency comments.

6. Although state agencies have different mandates and interests, state agencies will make every attempt to resolve conflicts prior to finalizing comments to local governments. State agencies should attempt to contact appropriate staff at other state agencies to coordinate comments. When local governments identify apparent discrepancies in agency interpretations or policies, these should be immediately communicated to the state agency GMA leads and to CTED so that they can be resolved.

7. State agency involvement in commenting on local government plans under the GMA is a technical assistance role and not a regulatory role. State agency written correspondence will not state that local plans are out of compliance with the GMA. State agencies may express concerns, but conclusory statements as to compliance will be avoided.

8. State agencies may provide guidance that urges local governments to exercise their discretion in ways that go beyond the minimum requirements of the law. State agencies may also point to a particular means of meeting the requirements of the GMA without the implication that this is the only way to meet those requirements.

9. State agencies will clearly distinguish in their correspondence between legal requirements, guidance regarding best practice, matters of fact and matters of professional opinion.

10. State agency comment letters are public records. State agencies and local governments are required by the Public Disclosure Act to provide a copy of state agency correspondence in its possession to any person who requests it. State agencies and local governments will make every effort to notify each other as soon as possible when they have complied with such a request.

11. State agencies and local governments will review these principles as needed to ensure that they are meeting their intended purpose.

APPENDIX B.
SAMPLE COMMENT LETTER

STATE OF WASHINGTON

DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT

128 - 10th Avenue SW • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000

February 22, 2006

Mr. James Weaver
Planner III
Kitsap County Department of Community Development
614 Division Street
MS:36
Port Orchard, Washington 98366

RE: Proposed Port Orchard/South Kitsap subarea plan and draft environmental impact statement

Dear Mr. Weaver:

Thank you for sending the Washington State Department of Community, Trade and Economic Development (CTED) the proposed Port Orchard/South Kitsap subarea plan and draft environmental impact statement (DEIS) that we received on December 27, 2005. We recognize the substantial investment of time, energy, and resources that this document represents.

The final subarea plan will shape the county's urban growth area (UGA) as development and redevelopment occurs. We especially like the following:

- Land use goals and policies establish a clear direction towards a compact, human-scale land use pattern. The policies promote multimodal transit and development of intensive mixed-use commercial "Centers," while preserving open space.

- The county's proposal to implement a transfer of development rights (TDR) program is timely. We appreciate that instituting a TDR program will not be easy, but it could be an important component of the county's overall effort to increase density in UGAs while preserving the existing rural character in the rural parts of Kitsap County.

- Housing goals and policies provide further definition to the Centers concept, emphasize the importance of urban design, and address other important goals such as affordable housing.

- The Environmental Protection Element includes a comprehensive series of goals and specific policies for protecting critical areas and air quality.

- The Transportation Element includes goals aimed at reducing auto-dependency through increasing transit service, improving bike and pedestrian access, and developing a transit oriented development (TOD) program.

- The Capital Facilities Element requires collaboration with the full range of urban service providers, including fire, water, and school districts. The stormwater facilities goal is supported by specific polices to limit impacts of impervious surfaces including development of low impact development strategies.

- The Economic Development Element includes goals and policies directed at reversing the bedroom community nature of the community and sets an employment target of one new living wage job per new household. The plan identifies five catalyst projects, including more detailed guidance on implementation of TOD pilot projects.

We would also like to offer the following comments and suggestions. We encourage you to consider the following as you develop a final EIS and subarea plan:

Our central recommendation is to encourage the county to adopt a final subarea plan that accommodates the allocated 2025 population within or as close as possible to the existing UGA boundary.

All of the action alternatives rely primarily on increasing the amount of developable land through expansion of the UGA. We appreciate the reasons that the county has taken this approach. As the plan states, it is not easy in Kitsap County to concentrate growth in cities and UGAs. County-wide planning policies allocate 76 percent of future growth to cities and UGAs. A large supply of small vacant lots in surrounding rural areas make this goal hard to achieve. In the Port Orchard UGA, the report states that "achieved densities within the major residential designations are below densities outlined in the comprehensive plan and zoning ordinance" (p. 3-6). The Development and Population Allocation Report (January 2005) states that 66 percent of growth in South Kitsap between 1990 and 2000 was outside existing UGAs, and the rate is even higher from 2000 to 2002. We interpret the county's proposals to expand the UGA into areas already designated urban reserve now as an attempt to help spare the rest of the surrounding countryside from such rapid conversion.

However, there are many good reasons to use the subarea planning process to focus population growth and business expansion within the existing UGA boundary or perhaps within focused expansion areas.

CONSISTENCY WITH SUBAREA PLANS AND GOALS

The subarea plan includes excellent goals, policies, and specific strategies for encouraging a compact urban form that will improve the livability of the subarea, as noted above. Zoning changes within the existing UGA, together with the adoption of other reasonable measures

identified by the Citizen Advisory Group, could achieve significant increases in density that would further these goals and policies. By contrast, the pattern of development in the expanded areas may conflict with these goals.

- In all action alternatives, 60 to 70 percent of the area proposed for expansion is Residential Urban Low designation, at least doubling existing acreage over Alternative 1 (p.6-18). This proposed pattern of development appears to conflict with many subarea plan goals, including: Goal LU-3 to promote a compact land use pattern; Goal LU-4 to encourage land use patterns that promote convenient multimodal access and reduce auto dependency; and Goal H-2 to promote a variety of housing types. The pattern of expansion of residential low may serve to cement rather than reverse the community's traditional bedroom community direction.

- Chapter 6 of the DEIS demonstrates clearly that, as *currently designated*, the capacity of developable lands both within the city and in the existing UGA cannot accommodate the new population allocations. However, Alternative 4 includes significant changes to zoning *within* the existing UGA that appear to support the central thrust of proposed subarea plan goals and policies, while significantly expanding residential capacity. For example:

    - The *Mile Hill Drive Corridor* is identified as a TOD catalyst project that will promote the plan's attempt at "place-making" through mixed-use centers (p 3-47). Alternative 4 would convert this corridor to mixed-use Neighborhood Commercial, expand Urban High Residential zoning adjacent to the existing Urban Village Center to the South, and expand Urban Medium Residential zoning to the West. The area is immediately adjacent to the city, includes schools, significant park amenities, and is ringed with existing Low Density development.

    - *Bethel Road* within the existing UGA is the other area identified as an opportunity for TOD. Alternative 4 would expand areas zoned mixed use Highway Tourist Commercial, and increase Urban Medium and Urban High Residential zoning. The subarea plan also provides direction to complete and expedite the Bethel Road Corridor Development Plan, which would support the transition of this area to a more people-friendly space.

- Alternatives 2 and 3 do not include any expansion of area designated Urban High and Urban Medium Residential within the existing or expanded area. The county's Development and Population Allocation Report projects that "the portion of the housing that will be multifamily is projected to increase to 15.5 percent by 2010 in the South Kitsap area." The lack of new areas designated High and Medium appears to conflict with Goal H-1 to encourage affordable housing, as well as Goal H-2 to promote a variety of housing types throughout the subarea, and supporting policies to develop tiers of allowable residential densities radiating out from neighborhood centers. The plan states that "a greater variety of housing types can be built under medium and high density residential land use designations…" so "designating an adequate supply of land to these use categories will therefore facilitate development of greater housing opportunities to meet the needs of various

segments of the population." Only Alternative 4 expands these designations within the existing UGA.

ATTRACTING DESIRED ECONOMIC DEVELOPMENT

Besides accommodating a significant new population allocation, the other major driver behind proposed expansion of the UGA is a projected shortfall in commercial/business park lands needed to meet the expanding community's needs and recapture leakage to other regional shopping centers.

The plan sets an employment target of 3,884 new jobs, and builds on the Population and Development Allocation Report projections and the Updated Land Capacity Analysis to calculate a net acreage of 207 net commercial acres and 152 net industrial or business park acres to balance the jobs-to-housing ratio, reduce dependence on federal employment and commuting. However, the report acknowledges that "these figures may be altered further by use and analysis of application of reasonable measures in providing incentives for more intense commercial and industrial development patterns and co-location of employment with residential in mixed-use developments (p. 3-65)."

Alternatives 2 and 3 provide this supply primarily by expanding Highway Commercial zoning on Bethel south to Highway 16 as well as an expanded area west of the Highway. This appears to further the auto-oriented direction of the area and may conflict with policies such as ED-5.3 to discourage strip commercial development patterns. We note that the Transportation and Economic Development elements emphasize the importance of implementing the Bethel Road Corridor Development Plan. This detailed plan only covers the corridor within the existing UGA.

We note that the plan emphasizes the need to plan for adequate increase in lands designated for broadly defined office-using sectors, but doesn't clearly target specific sectors. In several places the plan calls for a more specific strategy. For example, Policy ED-2 calls for an economic market analysis and a strategy to support the needs of employers. The section on TOD suggests that implementation could begin with a regional market analysis for potential development, followed by a collaboratively developed Corridor Market Analysis on Bethel Road or Mile Hill Drive (p. 3-65). The county should be able to attract more of the kinds of primary employment that are desired through a careful analysis of market demand and development of high intensity mixed use, TOD projects.

ENVIRONMENTAL IMPACTS

The report identifies significant environmental impacts to proposed expansion areas, including:

- Impacts on hydrology and ecology through expansion of impervious surfaces in sensitive basins, particularly Burley and Sacco basins that currently have low percentages of impervious surface (p. 5-28, Fig. 5.3-6).

- Wetlands and groundwater concerns with proposed expansion of Highway Tourist Commercial in the Blackjack Creek Basin (p. 5-29, 31); and

- Proposed expansion of industrial zoning within a wellhead protection zone that may preclude industrial activities (p. 5-31).

- The air quality section notes the increase in Total Vehicle Miles Traveled with expansion of Low Density Residential zoning and points to research showing beneficial impacts of "smart growth" alternative land use strategies (p. 6-65).

- Also, see comments on impacts to natural resources raised by Washington State Department of Fish and Wildlife in their letter of January 19, 2006.

- These impacts are an unavoidable consequence of converting existing rural lands into urban development. This is one reason why we encourage you to choose a final alternative that minimizes the amount of land brought into the UGA. The lower the amount of UGA expansion, especially expansion into predominantly rural basins, the lower will be the environmental impact.

CAPITAL FACILITIES

The report identifies significant infrastructure and service challenges to expansion of the UGA, including:

- Expanded or replaced sewer infrastructure. The plan states that existing treatment facilities have adequate capacity, but the most significant cost of sewage treatment is conveyance, which will be covered by connection fees and facility construction fees (p. 6-152). We note that the Updated Land Capacity Analysis (ULCA) includes a reduction factor for sewer availability. If we are reading the ULCA correctly, a significant number of acres within the existing Port Orchard UGA are identified as sewer-constrained. If this is true, will it be even more so for the expanded UGA area? It seems this would make it very difficult to achieve utility concurrency.

- We note that the Citizen Advisory Group recommended as a Reasonable Measure updating the capital facilities plan for sewers "such that plans and finances for an extension of the sewer lines would cover those remaining parcels that are inside the UGA, but not yet served" (Appendix B, Section 1.1.4.1, p. 7). Establishing a plan to serve existing areas identified as sewer constrained could significantly expand the capacity of your existing UGA, helping to reverse the trend of excessive growth in rural areas.

- Pedestrian and bicycle improvements. The DEIS states that the existing UGA "currently has an incomplete network of pedestrian and bicycle facilities with the majority of sidewalks constructed on major streets and large areas retaining the existing rural level of facilities."

- Parks. The DEIS notes that the most significant areas proposed for expansion (development west of Highway 16 and south of Sedgewick) "will require additional local neighborhood parks facilities since currently no facilities exist in these areas."

- Water distribution. The report identifies need for development of new water storage and distribution systems in undeveloped portions of the subarea (p. 6-139). Per capita usage is lower and delivery is far more efficient in more compact concentrated growth patterns.

The larger the UGA, the greater the financial costs, not only to build them, but also to maintain them. The needs in these new urban areas will compete with the need to maintain the infrastructure in the existing urban areas. This is another reason why the county's long-term financial sustainability is best served with a more compact development pattern.

OTHER PLANNING EFFORTS

The county is currently conducting a ten-year review of UGAs, and preparing to write a Buildable Lands report. These efforts will give the county a broader base of information on how planned densities are being achieved throughout the county, and will give the county the opportunity to further refine and adopt reasonable measures, other than adjusting UGAs, that will be taken to comply with the GMA requirement to plan for population growth.

Again, we appreciate the hard work and careful analysis that went into creating the draft subarea plan and DEIS. If you have any questions or concerns about our comments or any other growth management issues, please call me at (360) 725-3058.

Sincerely,

Tim Gates
Senior Planner
Growth Management Services

TG:lw

cc: David Greetham, SEPA Coordinator
Leonard Bauer, AICP, Managing Director, Growth Management Services, CTED
David Andersen, AICP, Plan Review and Technical Assistance Manager, Growth Management Services, CTED

APPENDIX C:
GMA APPEAL PROCESS FOR STATE AGENCIES

SH: 8/22/94/ CTED Updated 10/06

GMA Appeal Process For State Agencies

Introduction

Under the Growth Management Act (GMA), appeals by state agencies to the Growth Management Hearings Boards are limited. First, the subject is limited to GMA compliance of local county-wide planning policies, comprehensive plans, and development regulations. Second, the appeal may be made "only by the Governor, or with the Governor's consent the head of an agency, or by the Commissioner of Public Lands as relating to state trust lands." RCW 36.70A.310. Third, appeals must be filed within 60 days after the city has published an ordinance (or the county has published a notice) adopting a plan or regulation.

- A state agency may petition for review of county-wide planning policies, comprehensive plans, development regulations, shoreline master programs, and amendments thereto. RCW 36.70A.280(1), .310.
- The Boards may hear and determine only petitions alleging noncompliance with the GMA, noncompliance with the Shoreline Management Act (SMA), RCW 90.58, as it relates to the adoption of shoreline master programs or amendments thereto, or noncompliance with the State Environmental Policy Act (SEPA), RCW 43.21C, as it relates to the adoption of comprehensive plans, development regulations, shoreline master programs, and amendments thereto. RCW 36.70A.280(1). Failure to act claims also may be alleged. *See* RCW 36.70A.310(2).
- A petition for review may be filed only by the Governor, or with the Governor's consent the head of an agency, or by the Commissioner of Public Lands as relating to state trust lands. RCW 36.70A.310.
- A petition for review must be filed within 60 days after the date of publication by the city or county, as set forth in RCW 36.70A.290(2).

Given the tight timeframe and difficulties inherent in making a decision to appeal, a timely process is needed. Exercising its statutory role as coordinator for state government in the implementation of the GMA (*see* RCW 43.330.120(1)), the Department of Community, Trade, and Economic Development (CTED) has developed a process for cabinet agencies (which is recommended also for noncabinet agencies) for preparing a GMA appeal and obtaining the Governor's approval. This process works no matter which agency indicates interest in an appeal.

For example, consider the following four scenarios:

(1) Only CTED wants to appeal;
(2) CTED & another state agency or agencies want to appeal;
(3) Another state agency or agencies want to appeal and CTED agrees an appeal should proceed but does not want to be part of the appeal;
(4) Another state agency or agencies want to appeal and CTED believes there should be no appeal.

Each of these would result in agency coordination and an informed decision by the Governor whether to appeal. For all three scenarios, the basic steps and the criteria remain the same.

Steps in a GMA Appeal

1. (a) An agency identifies a potential GMA appeal issue, preferably within 10 days of receiving the plan or regulation, and immediately notifies CTED; CTED then immediately notifies the Governor's Office and all other agencies participating in the review process; OR

   (b) CTED identifies a potential GMA appeal issue and immediately notifies the Governor's Office and all other agencies participating in the review process.

2. Each agency considering an appeal notifies its AAG to discuss the legal merits of a potential appeal. For some agencies, this step may occur even before the first step. The AAG representing another agency may wish to consult with CTED's AAG assigned to GMA issues. Consultation with and among AAGs should, of course, continue throughout the appeal process.

3. Each state agency notifies CTED as soon as possible if it has an interest or position regarding the potential appeal. Each agency participating in the consideration of a state appeal develops a written summary of the issues related to the three criteria (see "Criteria for a GMA Appeal" below).

4. CTED coordinates discussion of the issue(s) among involved agencies and appropriate AAGs, attempts to reach consensus, and ultimately recommends to the Governor's Office whether or on what basis to appeal, using the identified criteria (see "Criteria for a GMA Appeal" below). For an appeal, the recommendation would include a written summary (about two pages) identifying the following:

   - The current GMA compliance status of the city or county;
   - Other probable petitioners, if any;
   - The timeline for a decision to file an appeal, including the deadline by which a petition for review must be filed; and
   - The rationale for appealing, based on the "Criteria for a GMA Appeal" below.

5. If an agency disagrees with the CTED recommendation, it may ask CTED for reconsideration and/or make a separate recommendation to the Governor's Office.

6. Based on the recommendation of CTED and, as appropriate, the recommendations of other agencies, the Governor decides whether to appeal.

7. If the Governor decides to authorize an appeal, he/she issues a written letter to the appealing state agency or agencies that sets forth the following:

    - Which state agency or agencies will be involved in the appeal;
    - Which state agency will be the lead agency;
    - Which issue or issues may be appealed.

    The Governor also may direct the state agency or agencies to attempt settlement negotiations with the city or county or take other action as the appeal proceeds. The Governor also may direct CTED to provide assistance even where CTED is not involved in an appeal.

8. As soon as it appears the Governor will authorize an appeal, the head of the lead agency should notify the appropriate local elected official or officials of the impending appeal. If there are specific actions a city or county could take that would make an appeal unnecessary, the agency head should suggest those actions to the local officials.

9. The lead agency files the appeal within 60 days from the date that adoption of a local GMA document was published.

10. CTED notifies Interagency Work Group members regarding the status of the appeal.

11. CTED coordinates and consults with all involved agencies as the appeal process continues to its conclusion.

Criteria for a GMA Appeal

1. An appeal must be based on <u>significant noncompliance with the GMA</u> (i.e., a conflict with GMA goals or other requirements such that effective growth management in a jurisdiction or region may be seriously weakened) or, as appropriate, the SMA or SEPA.

2. Issues raised on appeal must be consistent with <u>the state's record</u> on this issue (i.e., a state agency must have previously provided comments or recommendations to the jurisdiction on this issue). An exception may be allowed if the city or county has precluded a state agency from commenting on a plan or regulation prior to its adoption.

3. An appeal must be the <u>best available way</u> to resolve the problem (i.e., alternative actions have been considered and found less desirable than an appeal).

WSDOT
GMA Resources

Washington State Department of Transportation

WSDOT Requirements, Recommendations, and Resources for Local Planning

Purpose

This document details transportation-related requirements, recommendations, and resources for local planning. WSDOT subject matter experts provided the recommendations that do not cite a Washington Administrative Code. Cities and counties with further questions should contact their WSDOT Region Planning Office Growth Management Act Contact. The Department of Commerce's Transportation Guidebook (pdf 19 mb) is an additional source of information, as is the WSDOT Community Planning Portal that provides access to state transportation data for general planning purposes.

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Access Control

- ✓ **Requirement (Cities Only):** Adopt standards for access permitting on state managed access highways that meet or exceed WSDOT's standards (typically an ordinance). RCW 47.50.030(3).

Resources:

- WSDOT Standards for Access Permitting on State Managed Access Highways are codified in WAC 468-51 and 468-52.
- Map of Access Control Classifications. (Zoom in for Greater Detail) Click on "View WSDOT Access Control Data in ArcMap" on bottom right).
- List of Current and Planned Access Control Classifications. (In Excel—Listed by State Route and Milepost.) Click on "Access Control Tracking System Limited Access and Managed Access Master Plan." (xls document)
- WSDOT's Access and Hearings Home Website.

Contact:

Barb De Ste Croix, HQ Project Development Division, Access and Hearings Section, 360.705.7251, barb.destecroix@wsdot.wa.gov.
or
Managed Access, WSDOT Region Development Services Point of Contact.

ADA Compliance

- ✓ **Requirement:** New construction and altered facilities must be "accessible to and usable by" people with disabilities. ADA Title II and Rehabilitation Act Section 504 (pdf 12.11 kb)
- ✓ **Requirement:** Transportation providers must evaluate existing facilities, policies, and programs for discrimination and develop a modification or transition plan that includes methods and schedule for correction/retrofit and a curb ramp installation schedule. ADA Title II (28 CFR Part 35.149 and 35.150).
- ✓ **Requirement:** Individual pedestrians must be reasonably accommodated, where necessary (most common request is an audible pedestrian signal). ADA Title II and Rehabilitation Act Section 504. (pdf 12.11 kb)

Resources:

- WSDOT's Complying with Americans with Disabilities Act (ADA): Planning and Design Resources for Local Agencies.

Contact:

Ian Macek, ADA, HQ Highways and Local Programs, 360.705.7596, ian.macek@wsdot.wa.gov.

Aviation

- ✓ **Requirement:** Adopt policies and development regulations that discourage the encroachment of incompatible land use adjacent to public use general aviation facilities. RCW 36.70.547.
- ✓ **Requirement:** Adopt or amend such plans and regulations only after formal consultation with: airport owners and managers, private airport operators, general aviation pilots, ports, and WSDOT Aviation. RCW 36.70.547.
- ✓ **Requirement:** Describe all airport facilities and operations in the transportation inventory. (Required for airport sponsors.)
  - ➢ **Recommendation:** Include an airport layout plan map, a map of the identified airport influence area, and a map of the FAR Part 77 imaginary airspace surfaces.
  - ➢ **Recommendation:** Include goals and/or policies that discourage airspace obstructions and the development of wildlife attractants.
  - ➢ **Recommendation:** Recognize the airport as an essential public facility.
  - ➢ **Recommendation:** Include policies that recognize the significance and benefit of the airport as a mode of transportation, a partner in economic development, and a participant in emergency medical and disaster response within the community.

- **Recommendation:** Adopt airspace and land use development regulations to implement comprehensive plans. Development tools may include direct zoning, airspace overlays, and overlays for addressing specific activities in an underlying zone that may negatively impact compatibility and airport operations.
- **Recommendation:** Provide for adequate transportation connections to airport facilities by supporting and/or expanding intermodal connections to airport facilities where practical.

Resources:

- Airports are defined as "any area of land or water which is used, or intended for use, for the landing and take-off of aircraft…" RCW 47.68.020(3).
- Spreadsheet of Public Use Airports (Sortable by County). (xls document)
- Aviation Division's Land Use Compatibility.
- Interactive Map of all WSDOT State Airports. (Click on Region and then Airport to Access Airport Information.)
- Formal Consultation Folio. (pdf 196 kb)
- Airports and Compatible Land Use Guidebook and Video.
- Aviation Economic Impact Study.

Contact:

Carter Timmerman, Aviation Planning, 360.709.8019, carter.timmerman@wsdot.wa.gov.

Bicycle—Pedestrian

- ✓ **Requirement:** Wherever possible, the land use element should consider using urban planning approaches that promote physical activity. RCW 36.70A.070(1).
- ✓ **Requirement:** The transportation element must include a pedestrian and bicycle component that includes collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles. RCW 36.70A.070(6)(a)(vii).
  - **Recommendation:** Reference local, regional, and state pedestrian and bicycle planning documents, if any. WAC 365-196-430(2)(j)(i). Coordinate with local school districts to include school walk routes in transportation elements as focus areas for pedestrian improvements.
  - **Recommendation:** Include maps of bicycle facilities (bike lanes, shared use paths, and paved road shoulders) and pedestrian facilities (sidewalks, pedestrian connectors, and other designated facilities). This map should identify state and local designated bicycle routes, and describe how the facilities link to those in adjacent jurisdictions. WAC 365-196-430(2)(j)(ii-iii).
  - **Recommendation:** Adopt policies to improve travel demand models to include bicycling and walking and greenhouse gas estimation as part of transportation projects and transportation plans.
  - **Recommendation:** Adopt policies and development regulations that support the development of an interconnected network of bicycle and pedestrian facilities that connect residential and employment areas with community and regional destinations, schools, and public transportation services. WAC 365-196-430(2)(j)(iv).
  - **Recommendation:** Review existing pedestrian and bicycle collision data to plan facilities that improve safety. WAC 365-196-430(2)(j)(v). Adopt policies to prioritize known risk locations and consider adopting the state's goal to decrease collisions by five percent per year for the next 20 years, while doubling the amount of biking and walking.
  - **Recommendation:** Include in local plans project lists of priority bicycle and pedestrian improvements and programs: both standalone bicycle and pedestrian projects and bicycle and pedestrian projects associated with planned improvements for motor vehicles.
  - **Recommendation:** Monitor bicycling and walking activity by conducting counts and benchmark local efforts to connect bicycle and pedestrian facilities and improve safety using a community assessment survey.

Resources:

- Washington State Bicycle Facilities and Pedestrian Walkways Plan. (pdf 6.6 mb)
- WSDOT's Bikeable CommunitieWebsite.

- WSDOT's Walkable Communities Website.
- WSDOT's Active Communities Website.
- WSDOT's Complete Streets Website.

Contact:

Ian Macek, Bicycle and Pedestrian Program, HQ Highways and Local Programs, 360.705.7596, ian.macek@wsdot.wa.gov.

Clean Air Act

- **Recommendation:** If a city or county contains nonattainment and/or maintenance areas, compliance with the Clean Air Act and Transportation Conformity Rule may be required for some projects. The RTPO will demonstrate regional "conformity." The transportation element should include a map of the area or areas designated as nonattainment or maintenance, a discussion of the current status of the pollutant(s) of concern, the relationship to transportation-related sources, and a description of implementation measures consistent with the State Implementation Plan. Refer to WAC 365-196-430(2)(d).

Resources:

- Washington State Department of Ecology's (DOE) list of local clean air agencies.
- FHWA Air Quality Transportation Conformity: A Basic Guide for State and Local Officials.
- DOE air quality maps.

Contact:

Cliff Hall, HQ Transportation Planning Office, 360.705.7993, cliff.hall@wsdot.wa.gov.

Climate Change and Extreme Weather Event Preparedness

- **Recommendation:** Since Washington State is likely to experience climate changes over the next 50 years, cities or counties should consider adding an up-to-date summary of climate threats in the plan area. The Pacific NW climate projections are available from the Climate Impacts Group at the University of Washington. Some of the possible climate changes Washington State may experience:
  - Increased temperature (extreme heat events, changes in air quality, glacial melting).
  - Changes in volume and timing of precipitation (reduced snow pack, increased erosion, flooding.
  - Ecological effects of a changing climate (spread of disease, altered plant and animal habitats, negative impacts on human health and well-being).
  - Sea-level rise, coastal erosion, and salt water intrusion.

Resources:

- Climate Impacts Vulnerability Assessment.
- Climate Impacts (WSDOT's Intranet site).
- Climate Impacts Group, Climate Change Scenarios.
- WSDOT, Adapting to Climate Change.
- AASHTO, Transportation and Climate Change Resource Center.
- EPA's Climate Change.
- Georgetown Climate Center—Helping Communities Adapt to Climate Change.
- WSDOT's Climate Change Vulnerability Assessment—Intranet Website.

Contact:

Carol Roalkvam, HQ Environmental Services, 360.705.7126, carollee.roalkvam@wsdot.wa.gov.

Consistency with Neighboring Tribes

- **Recommendation:** Coordinate and invite the participation of Tribes in the development of local plans. It's important to note that your study area may include tribal transportation roads (roads on or providing access to a reservation or tribal community).

  Contact Tribal Leadership and planning staff early in plan development. Incorporate information from Tribal Transportation Plans. Meet with them in person, if possible, and invite Tribes to participate on policy or technical committees, if any.

Resources:

- Tribal Contacts for WSDOT Programs and Projects.
- See Tribal Liaison for consultation protocols, e.g., Centennial Accord, Communication, and Consultation Protocols for Statewide and Policy Issues.
- Tribal Transportation Planning Guide for Washington State. (pdf 3.2 mb)

Contact:

Megan Cotton, HQ, Government Relations Tribal Liaison, 360.705.7025, megan.cotton@wsdot.wa.gov.

Consistency with Regional Plans and Policies

- ✓ **Requirement:** Each regional transportation planning organization shall…certify by December 31, 1996, that the transportation elements of comprehensive plans adopted by counties, cities, and towns within the region reflect the guidelines and principles developed pursuant to RCW 47.80.026, are consistent with the adopted regional transportation plan, and, where appropriate, conform with the requirements of RCW 36.70A.070. RCW 47.80.023(3).
- ✓ **Requirement:** Local and regional transportation agencies shall adopt common transportation goals. RCW 47.01.340.
- ✓ **Requirement:** Identified needs on regional facilities or services must be consistent with the regional transportation plan and the adopted regional growth and transportation strategies. RCW 47.80.030(3).
  - **Recommendation:** Local, regional, and state level of service standards should be consistent to allow for a consistent regional evaluation of transportation facilities and corridors. WAC 365-196-430(2)(e).
  - **Recommendation:** A jurisdiction's plans and development regulations should consider existing regional regulatory and planning provisions. WAC 365-196-735.
  - **Recommendation:** Travel forecasts should be based on adopted regional growth strategies, the regional transportation plan, and comprehensive plans within the region to ensure consistency. WAC 365-196-430(2)(f).
  - **Recommendation:** Local and regional transportation plans should be based on consistent funding assumptions. WAC 365-196-430(2)(k)(i).

Resources:

- Directory of Regional Transportation and Metropolitan Planning Organizations. (Click on Name of Organization in Map for Direct Links)

Contact:

Elizabeth Robbins, HQ, Community Transportation Planning Office, 360.705.7371, elizabeth.robbins2@wsdot.wa.gov.

Consistency with State Plans—Inventory

- ✓ **Requirement:** The transportation element shall include…facilities and services needs, including, an inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory

must include state-owned transportation facilities within the city or county's jurisdictional boundaries. RCW 36.70A.070(6)(a)(ii).

- **Recommendation:** If any state highway classifications or designations affect future land use, this information should be included in the comprehensive plan along with reference to any relevant planning documents. WAC 365-196-430(2)(c)(iii)(A)(II).
- **Recommendation:** Counties, cities, and the state should cooperate in identifying and resolving any land use and transportation compatibility issues identified during the inventory process. WAC 365-196-430(2)(c).

Resources:

- Functional Classification.
- Access Classification. Access Control in ArcMap or Access Control Tracking Systems Database.
- Freight and Goods Transportation System Classification. (Town Maps or County Maps.)
- Highway of Statewide Significance Designation.
- Washington Scenic and Recreational Highways and Recreational Highways Corridor Management Plan.
- State Roadway Data.
- Ferry Facilities and Services.

Contact:

Elizabeth Robbins, HQ, Community Transportation Planning Office, 360.705.7371, elizabeth.robbins2@wsdot.wa.gov.

Consistency with State Plans—Needs Identification and Funding Assumptions

- ✓ **Requirement:** The transportation element shall include…facilities and services needs, including…identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 040 RCW. RCW 36.70A.070(6)(a)(iii)(F).
- ✓ **Requirement:** The transportation element shall include…a multiyear financing plan based on the needs identified in the comprehensive plan…The multiyear financing plan should be coordinated with the ten-year improvement program developed by WSDOT as required by RCW 36.70A.070(6)(a)(iv)(B).
- ✓ **Requirement:** The transportation element shall include…finance, including…if probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met. RCW 36.70A.070(6)(a)(iv)(C).

Resources:

- Washington Transportation Plan 2007-2026. (pdf 8.9 mb)
- Statewide Multimodal Plan including:
  - 2007-2026 Highway System Plan.
  - Washington State Ferries Division Final Long-Range Plan. (pdf 2 mb).
  - WSDOT Corridor Planning Studies.
  - Scenic Byways Corridor Management Plans.
  - Washington State Long-Term Air Transportation Study.
  - State Bicycle Facilities and Pedestrian Walkways Plan.
  - Washington Transportation Plan Freight Report. (pdf 3.2 mb)
  - Long Range Plan for Amtrak Cascades. (pdf 12 mb)
  - Amtrak Cascades Mid-Range Plan. (pdf 1.4 mb)
  - Statewide Rail Capacity and System Needs Study—Final Report. (pdf 1.3 mb)
- WSDOT's Capital Improvement and Preservation Program is WSDOT's proposed ten-year investment program. City and county comprehensive plans should be consistent with the legislatively approved investment program as reported in the Transportation Executive Information System Current Projects List.

Contact:

Elizabeth Robbins, HQ, Community Transportation Planning Office, 360.705.7371, elizabeth.robbins2@wsdot.wa.gov.

Consistency with State Policies

- **Recommendation:** Local goals and policies should be consistent with statewide goals and policies and should address:
  - Roadways and roadway design that provides safe access and travel for all users, including motorists, transit vehicles and riders, bicyclists, and pedestrians.
  - Public transportation, including public transit and passenger rail, intermodal transfers, and multimodal access.
  - Bicycle and pedestrian travel.
  - Transportation demand management, including education, encouragement, and law enforcement strategies.
  - Freight mobility including port facilities, truck, air, rail, and water-based freight.
  - Transportation finance including strategies for addressing impacts of development through concurrency, impact fees, and other mitigation.
  - Policies to preserve the functionality of state highways within the local jurisdiction such as policies to provide an adequate local network of streets, paths, and transit service so that local short-range trips do not require single-occupant vehicle travel on the state highway system; and policies to mitigate traffic and stormwater impacts on state-owned transportation facilities as development occurs. WAC 365-196-430(2)(b).
- **Recommendation:** A jurisdiction's plans and development regulations should consider existing state and regional regulatory and planning provisions. WAC 365-196-735.

Resources:

- Washington Transportation Plan 2007-2026. pdf 8.9 mb)
- 2007-2026 Highway System Plan.
- Washington State Ferries Division Final Long-Range Plan. (pdf 2 mb)
- WSDOT Corridor Planning Studies.
- Scenic Byways Corridor Management Plans.
- Washington State Long-Term Air Transportation Study.
- Washington's Bicycle and Pedestrian Plan. (pdf 6.7mb)
- Washington Transportation Plan Freight Report. (pdf 3.2 mb)
- Long Range Plan for Amtrak Cascades. (pdf 9.5 mb)
- Amtrak Cascades Mid-Range Plan. (pdf 1.4 mb)
- Rail System Capacity and Needs Study. (pdf 1.4 mb)
- Target Zero. (pdf 5.5 mb)

Contact:

Elizabeth Robbins, HQ, Community Transportation Planning Office, 360.705.7371, elizabeth.robbins2@wsdot.wa.gov.

Essential Public Facilities

- ✓ **Requirement:** Comprehensive plans must include a process for identifying and siting essential public facilities. RCW 36.70A.200(1).
- ✓ **Requirement:** No local comprehensive plan or development regulation may preclude the siting of essential public facilities. RCW 36.70A.200(5).

Resources:

- For a list of transportation-related essential public facilities see RCW 47.06.140(1).
- List of Highways of Statewide Significance by State Route Number and Milepost. (pdf 29 kb)

Contact:

Elizabeth Robbins, HQ, Community Transportation Planning Office, 360.705.7371, elizabeth.robbins2@wsdot.wa.gov.

Ferries

- **Recommendation:** Adopt policies in the Washington State Ferries Final Long-Range Plan (pdf 2 mb) that support WSDOT in the implementation of vehicle reservations to support shifts to less congested time periods.
- **Recommendation:** Adopt policies in the Washington State Ferries Final Long-Range Plan (pdf 2 mb) that support transit services connections at ferry terminals.
- **Recommendation:** Adopt policies and development regulations in the Washington State Ferries Final Long-Range Plan (pdf 2 mb) support pedestrian and bicycle connections to terminal areas and improve wayfinding.
- **Recommendation:** Adopt policies in the Washington State Ferries Final Long-Range Plan (pdf 2 mb) that support local promotion and marketing strategies to encourage mode shift.
- **Recommendation:** Adopt policies in the Washington State Ferries Final Long-Range Plan (pdf 2 mb) to collaborate with WSDOT on traffic management, including vehicle reservation systems, near ferry terminals to reduce queuing.
- **Recommendation:** Includet new methodology that's in the Washington State Ferries Final Long-Range Plan (pdf 2 mb) to determine WSDOT LOS Standards for Ferry Routes in the transportation element of local plans.

Resources:

- Additional information may be found in Puget Sound Regional Council's 2009 Passenger Ferry Study.

Contact:

Ray Deardorf, Washington State Ferries, 206.515.3492, ray.deardorf@wsdot.wa.gov.

Floodplains

- **Recommendation:** Floodplain ordinances with potential affect to state highway infrastructure should provide compensatory storage to offset or mitigate potential impacts to the state highway system. WSDOT Flood Management Initiative.
- **Recommendation:** Floodplain ordinances should distinguish between maintenance and development with regard to public road structures. Because maintenance actions conducted by WSDOT to protect and restore the highway to pre-existing conditions do not affect existing floodplain capacity, they should not be regulated by the same standards as new development in local floodplain ordinances.

Resources:

- Environmental Procedures Manual, Chapter 432. (pdf 803 kb)

Contact:

WSDOT Region Environmental Services Point of Contact.
or
Gregor Myhr, HQ Maintenance and Operations Office, 360.705.7853, gregor.myhr@wsdot.wa.gov.

Freight

- **Recommendation:** Include in the inventory the Freight and Goods Transportation System (FGTS) for state highways. Also include the FGTS classifications cities and counties have determined for their own roads. See WSDOT's Instructions for FGTS Truck Tonnage Estimation (pdf 3.4 mb) to help you understand how to make truck freight tonnage estimates. See WSDOT's Freight and Goods Transportation for more information about FGTS, including links to FGTS town and county maps.
- **Recommendation:** Using the FGTS classifications as a guide, designate and map specific truck freight corridors within the central business district, urban residential areas, urban manufacturing districts, and first-ring suburbs that connect to the state highway system and provide adequate:
  - Turning radii at intersections.

  - Horizontal and vertical clearances.
  - Bridge and pavement to withstand heavy loads.
  - Signal timing plans to accommodate trucks' slower acceleration speed.
- **Recommendation:** Base truck freight corridor designations on current and future truck trip demand and the need to maintain connectivity between land uses that generate and/or receive significant truck trips and the state's strategic freight corridors.
- **Recommendation:** Provide resilient truck freight routes, which allow you to restore service rapidly after disruptions.
- **Recommendation:** Designate truck freight routes for oversize/overweight truck loads and hazardous materials.
- **Recommendation:** Adopt policies to discourage development encroachment on lands near existing intermodal freight facilities and fuel distribution and storage locations.
- **Recommendation:** Adopt policies to preserve and enhance essential state freight infrastructure and zoned industrial/warehouse lands, marine ports, the Columbia/Snake River system, major freight airports, freight highways, and connectors to freight hubs.
- **Recommendation:** Adopt policies to preserve truck freight economic corridors within urban areas and ensure truck freight access to and from industrial lands and the state highway system.
- **Recommendation:** Adopt policies to establish an all-weather core county road system for goods delivery that is coordinated with neighboring jurisdictions.
- **Recommendation:** Adopt policies to improve intermodal connections and access to ports, truck terminals, distribution centers, and rail yards.
- **Recommendation:** Adopt development regulations and corridor management practices consistent with your identified truck terminals, distribution centers, and rail yards.
  - Reducing restrictive night delivery regulations and/or providing incentives to goods receivers for adopting night delivery practices, e.g., reduction or rebate of sales and/or property tax to offset increased staffing and security needs or the cost of erecting barriers to contain noise.
  - Incentivizing truck carriers to adopt quiet night delivery practices, e.g., provide subsidies for electric/hybrid truck deliveries and provide parking for trucks waiting to enter the urban area during authorized hours of delivery.
  - Managing curbside truck parking spaces and loading zones by strict enforcement of commercial vehicle parking for truck use only or peak hour pricing.
- **Recommendation:** Adopt development standards for truck facilities appropriate to adjacent land uses, including:
  - Requiring local streets connecting areas zoned for uses that require heavy truck freight with state highways to accommodate heavy trucks.
  - Requiring sufficient capacity in on-street commercial vehicle loading zones in new development based on an assessment of the demand of adjacent land uses.
  - Requiring building loading docks with sufficient turning bay radii; docking spaces that match the height, weight, and length of modern trucks; and enough capacity to meet truck trip demand in the building.
  - Requiring roundabouts on and leading to urban truck corridors to accommodate large tractor-trailer combinations with advance signing, truck apron/traversable island, and expanded lane width.
  - Ensuring signage standards:
    - Provide adequate advance notice for truck drivers to make safe decisions in traffic (reduce or eliminate merge weaves).
    - Give truck drivers enough roadway and proper signage to allow them to return to the major truck arterials if they make an incorrect decision at a major interchange.
    - Provide adequate notice for truck drivers where there are restricted or posted weight limits on bridges, left turn exits, prohibited routes, and minimum vertical clearances. When inadequate signage reduces reaction time, truck drivers may not be able to make a safe decision, or they may continue driving into areas that may not be "truck friendly."
  - Provide sufficient number and length of truck parking/loading zones in central business districts and urban corridors to match truck trip demand.

- Establish a process for benchmarking all transportation emissions, including freight, in order to measure progress towards air quality goals, particularly in non-attainment areas.

Resources:

- Washington State 2010-2030 Freight Rail Plan. (pdf 2.8 mb)
- Washington State Rail Plan.
- Washington State Freight Mobility Plan.
- Washington State Freight Plan (Draft Deliverables).
- Washington State Economic Freight Rail Corridors. (pdf 493 kb)
- WSDOT Interactive Freight Map Application.
- Freight Goods Transportation System (FGTS).
- The Impact of Truck Congestion on Washington State's Economy. (pdf 871 kb)

Contact:

Barb Ivanov, HQ Freight Office; 360.705.7931, barbara.ivanov@wsdot.wa.gov.

Habitat Connectivity

- **Recommendation:** Identify habitat connectivity priority areas at a local scale. They should include areas where roadways intersect important wildlife habitats, wildlife migration routes, lands under special management for the protection and enhancement of wildlife (like wildlife refuges), and areas with high animal vehicle collisions. 2007-2026 Highway System Plan, pg. 4, 93-98.
- **Recommendation:** Retrofit existing roadways for better habitat connectivity based on identified priority areas. 2007-2026 Highway System Plan, pg. 4, 93-98.
- **Recommendation:** As a means to monitor progress and success in meeting goals, collect and maintain data on large wild animal carcasses (deer, elk, bear, cougar, moose, bighorn sheep) removed by road crews and share data as requested.

Resources:

- "Washington Connected Landscapes Project: Statewide Analysis" identifies connectivity priorities at the statewide scale. Ecoregional analyses are underway. WSDOT recommends the approach used in these analyses be replicated at a local scale.
- WSDOT's Habitat Connectivity and Wildlife Crossings.
- WSDOT's Wildlife Habitat Connectivity Folio. (pdf 1.2 mb)
- Biodiversity Conservation Toolbox for Planners.

Contact:

WSDOT Region Environmental Services Point of Contact.

Level of Service Standards

✓ **Requirement:** The transportation element shall include…facilities and services needs, including…for state-owned transportation facilities, level of service standards for highways, as prescribed in chapter 47.06.140(2) and 47.80.030(c) RCW, to gauge the performance of the system.

The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six year street, road or transit program and the department of transportation ten-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection. RCW 36.70A.070(6)(a)(iii)(C).

Resources:

- State Highway Level of Service Standard for Washington State Highways. (pdf 21 kb) WSDOT sets LOS standards for state highways and ferry routes of statewide significance. RCW 47.06.140(2).
- RTPOs establish levels of service standards, jointly with WSDOT, for state highways and state ferry routes RCW 47.80.030(1)(c), with the exception of transportation facilities of statewide significance as defined in RCW 47.06.140.
- LOS standards for Highways of Statewide Significance (HSS) and non-HSS facilities identified in WSDOT's 2007-2026 Highway System Plan Appendix G. (pdf 20 mb)
- For descriptions of existing and proposed ferry route LOS standards, see the Washington State Ferries Final Long-Range Plan. (pdf 2 mb).

Contact:

Elizabeth Robbins, HQ, Community Transportation Planning Office, 360.705.7371, elizabeth.robbins2@wsdot.wa.gov.

Limited Areas of More Intensive Rural Development (LAMIRD) (Counties Only)

✓ **Requirement:** Counties shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary, the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries, such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl.

Resources:

- RCW 36.70A.070(5)(d)(iv).

Contact:

Elizabeth Robbins, HQ, Community Transportation Planning Office, 360.705.7371, elizabeth.robbins2@wsdot.wa.gov.

Local Street Network Improvements

✓ **Requirement:** If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met. RCW 36.70A.070(6)(a)(iv)(C).

✓ **Requirement:** Identify state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under RCW 47.06.040. RCW 36.70A.070(6)(a)(iii)(F).

- ➢ **Recommendation:** Provide an adequate local network of streets, paths, and transit service so that local short-range trips do not require single-occupant vehicle travel on the state highway system. WAC 365-196-430(2)(b)(vii).
- ➢ **Recommendation:** Given a fixed level of state transportation infrastructure, the remaining current and future demands should be satisfied by improvements to the local system.

Resources:

- WSDOT's 2007-2026 Highway System Plan—Starting on page 67 "Mobility Strategies." (pdf 20 mb)

Contact:

Elizabeth Robbins, HQ, Community Transportation Planning Office, 360.705.7371, elizabeth.robbins2@wsdot.wa.gov.

Mineral Resource Lands

- **Recommendation:** When designating mineral resource lands, consult with your WSDOT Region Planning Office to determine projected future mineral resource needs for large transportation project planned in your area. WAC 365-190-070(4)(d).
- **Recommendation:** Consider designating WSDOT's needed pits, quarries, and aggregate resource sites as mineral resource lands or allowing them as a nonconforming use in all zones to assure the future availability of these resources, and not to preclude their use due to incompatible development.

Resources:

- Consult with your WSDOT Region Planning Office to identify which of the pits, quarries, stockpiles, and waste sites may merit protection through the local land use process.

Contact:

WSDOT Region Materials Engineer Point of Contact.

Noise Compatibility

- Recommendation: Adopt policies and regulations to achieve noise compatible development along state highways. WSDOT'S Noise Web Page.
- Recommendation: Provide an opportunity in local noise ordinances for an exemption or variance provision for construction on state routes to allow construction work that exceeds the noise limitation and/or nighttime work to avoid peak travel periods.

Resources:

- WSDOT's 2011 Traffic Noise Policy requires local governments to incorporate noise compatible planning elements into their plans, codes, or other applicable ordinances to be eligible for Type II noise retrofit funding.
- Environmental Procedures Manual, Chapter 446.

Contact:

Tim Sexton, NW Region, Environmental Services, 206.440.4549, tim.sexton@wsdot.wa.gov.

Public Transportation – Cooperation and Consistency

- ✓ **Requirement:** Where applicable, local comprehensive plans shall address the relationship between urban growth and an effective high capacity transportation system plan, and provide for cooperation between local jurisdictions and transit agencies. RCW 81.104.080.
- ✓ **Requirement:** The transportation element described in subsection (6), and the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and RCW 47.05.030 for the state must be consistent. RCW 36.70A.070(6)(c).
- ✓ **Requirement:** The inventory of public transportation related facilities and services must include transit alignments, transit capital facilities, and transit travel levels as a basis for future planning. RCW 36.70A.070(6)(a)(iii)(A).
- ✓ **Requirement:** Transit route level of service or performance standards must be included in the transportation element. RCW 36.70A.070(6)(a)(iii)(B).
  - **Recommendation:** Refer to transit development plans to develop appropriate goals and policies addressing public transit and passenger rail, intermodal transfers, and multimodal access. WAC 365-196-430(2)(b)(ii).
  - **Recommendation:** The inventory of public transportation related facilities and services should contain a description of regional and intercity rail and local, regional, and intercity bus service, paratransit, or other

services. WAC 365-196-430(2)(c)(iii)(B)(I). A map of local transit routes, passenger rail stations, and major public transit transfer stations is a good tool for planning appropriate land use along transit corridors and around station areas.

- **Recommendation:** Consult with transit partners when establishing general level of service standards for your roadways—they will have a good perspective on whether mode-split goals for a corridor are realistic and may be able to help you develop methodologies and standards that better measure mobility access across modes. WAC 365-196-430(2)(e)(v).
- **Recommendation:** Coordinate with public transit providers to analyze projected transit service needs based on your land use assumptions and consistent with regional transportation plans. System needs may include considerations for repair, replacement, enhancement, or expansion of transit services and facilities. WAC 365-196-430(2)(g)(vi).
- **Recommendation:** Consider coordinating with public transit providers to identify mixed-use center and opportunities for intermodal integration and appropriate multimodal access within centers. WAC 365-196-430(2)(g)(iv).
- **Recommendation:** Consider including an implementation section related to public transportation in the transportation element addressing actions such as reflecting multimodal transportation standards in public work guidelines, revising transportation concurrency ordinances to reflect levels of performance across multiple modes, including transit considerations in maintenance procedures and pavement management systems, revising subdivision standards to reflect multimodal goals, amending development review procedures to incorporate review of transit access to sites. WAC 365-196-430(2)(m).
- **Recommendation:** Be sure the analysis of projected transit services and needs is consistent with regional land use and transportation planning. WAC 365-196-430 (2)(g)(iv).

Resources:

- List of Transit Providers by County and City. (With Links to Transit Provider Websites.)

Contact:

Don Chartock, HQ, Public Transportation, 360.705.7928, don.chartock@wsdot.wa.gov.

Public Transportation—Transportation Demand Management

- ✓ **Requirement:** Each county containing an urban growth area, designated pursuant to RCW 36.70A.110, and each city within an urban growth area with a state highway segment exceeding the one hundred person hours of delay threshold calculated by the department of transportation, as well as those counties and cities located in any contiguous urban growth areas, shall adopt a commute trip reduction plan and ordinance for major employers in the affected urban growth area by a date specified by the commute trip reduction board. RCW 70.94.527(1).
- ✓ **Requirement:** Counties, cities, or towns adopting a commute trip reduction plan shall review it annually and revise it as necessary to be consistent with applicable plans developed under RCW 36.70A.070. RCW 70.94.527(5).
- ✓ **Requirement:** A city, county or town may designate new or existing activity centers as growth and transportation efficiency centers (GTECs) and establish a transportation demand management program in the designated area. A city, county, or town that has establish a GTEC program shall support vehicle trip reduction activities in the designated area and adopt policies, ordinances and funding strategies that will lead to attainment of programs goals in those areas. RCW 70.94.528 (2) Transit agencies, local governments, and regional transportation planning organizations shall identify certified GTECs as priority areas for new service and facility investments. RCW 70.94.528.
  - **Recommendation:** Adopt policies that establish goals for transportation demand management based on local objectives for transportation, economic development, the environment, and financial sustainability. Setting measurable goals is a critical element in TDM planning.
  - **Recommendation:** Evaluate the extent to which existing and planned land use and transportation regulations and investments support your community's TDM goals and make changes if necessary to align those policies and investments with the TDM goals. Parking supply and pricing, zoning policies, transit service, and bicycle and pedestrian infrastructure are examples for consideration.

- **Recommendation:** Engage local partners and stakeholders to build understanding and agreement about local TDM and growth goals. Look for opportunities to align and leverage partner resources.
- **Recommendation:** Establish a program to monitor implementation and measure performance of TDM strategies. Each TDM strategy should be evaluated against an established target. Analysis of results leads to fine tuning and better implementation for future strategies.

Resources:

- More Information about the CTR Efficiency Act.
- List of Affected Jurisdictions.

Contact:

Kathy Johnston, HQ, Public Transportation-CTR, 360.705.7925, kathy.johnston@wsdot.wa.gov.

Safety

- **Recommendation:** Adopt goals and policies to achieve the Target Zero goal of zero traffic deaths and serious injuries by 2030 by using data to identify traffic safety priorities and implementing appropriate action strategies outlined in Target Zero—Washington State's Strategic Highway Safety Plan 2010. (pdf 5.5 mb)
- **Recommendation:** Require cell tower setbacks from state highways that are sufficient to prevent the towers from falling on the roadway if compromised.

Resources:

- Funding Information about Safe Routes to School. A program to improve safety and mobility for children by enabling and encouraging them to walk and bicycle to school.
- Funding Information about Pedestrian and Bicycle Safety. A program to improve the transportation system to enhance safety and mobility for people who chose to walk or bike.

Contact:

Mike Dornfeld, HQ, Traffic Operations, 360.705.7288, mike.dornfeld@wsdot.wa.gov.

Scenic Byways

- **Recommendation:** Adopt policies to partner with WSDOT to increase traveler safety through traveler services on scenic and recreational highways. Washington State Scenic and Recreational Highways Strategic Plan. (pdf 9 mb)
- **Recommendation:** Adopt policies and development regulations to protect, preserve, and enhance resources associated with scenic and recreational highways. Washington State Scenic and Recreational Highways Strategic Plan. (pdf 9 mb)
- **Recommendation:** Adopt policies to partner with WSDOT to enhance access to recreational areas associated with scenic and recreational highways in a way that is compatible with the features of the site. Washington State Scenic and Recreational Highways Strategic Plan. (pdf 9 mb)
- **Recommendation:** Incorporate existing scenic and recreational highway corridor management plans into comprehensive plans. Washington State Scenic and Recreational Highways Strategic Plan. (pdf 9 mb)

Resources:

- Development of a Resource Planning Index for Washington's Scenic and Recreational Highways. (pdf 1.7 mb)
- Scenic and Recreational Highways Corridor Management Plans.
- Interactive Map of All-American Roads, National Scenic Byways, and State Scenic Byways. (Includes Links to Detailed Byway Pages.)

Contact:

Ed Spilker, HQ, Highways and Local Programs, 360.705.7387, ed.spilker@wsdot.wa.gov.

Signs

- **Recommendation:** State and federal laws regulate billboards and other advertising signs in area visible from an interstate, primary, or scenic highway system and on state highway rights-of-way. Include language in sign ordinances acknowledging:
  - All signs visible from an interstate, primary, or scenic highway system must conform to the Scenic Vistas Act and are subject to WSDOT rules, regulations, and noncompliance penalties. RCW 47.42 and WAC 468-66.
  - Signs within any state highway rights-of-way are prohibited. RCW 47.42.080(5).

Resources:

- WSDOT's Highway Advertising Control Manual (pdf 3.1 mb) provides guidance for the controlling of signs in areas adjacent to state highways protecting the public in the interstate system and other state highways.
- WSDOT's Highway Advertising Control Website provides information on motorist information signs, advertising agricultural products along state highways, advertising at safety rest areas on state highways, advertising on Washington State Ferries, and political campaign signs.

Contact:

Pat O'Leary, HQ, Traffic Operations, 360.705.7296, pat.oleary@wsdot.wa.gov.

Stormwater

- **Recommendation:** Adopt policies to detect and eliminate illicit discharges and unpermitted connections to WSDOT stormwater facilities. Stormwater and Watersheds Website.
- **Recommendation:** Cities should adopt utility permitting standards that meet or exceed WSDOT's permitting standards, found in Section 120.05 of WSDOT's Utility Manual (pdf 17.03) and RCW 47.24.020.
- **Recommendation:** Cities adopt policies to maintain stormwater features on city streets that are state highways to the standard contained in the WSDOT's Highway Runoff Manual, NPDES Municipal Stormwater Permit Website, and RCW 47.24.020.

Resources:

- WSDOT Stormwater and Watersheds Program Web Page.
- City Streets As Part of State Highways Guidelines.
- WSDOT NPDES Stormwater Permit.

Contact:

WSDOT Region Environmental Services Point of Contact.

Sustainable Transportation

Energy Consumption:

- ✓ **Requirement:** All local governments adjacent to I-5, I-90, I-405, or SR 520 are required to allow electric vehicle infrastructure as a use in all areas, except those zoned for residential or resource use or critical areas. RCW 35.63.126.
- ✓ **Requirement:** All local governments are required to allow battery charging stations as a use in all areas, except those zoned for residential or resource use or critical areas. RCW 35.63.126.
  - **Recommendation:** Consider adopting goals, policies, and strategies to reduce energy consumption through the employment of electric or alternative fuel infrastructure.
  - **Recommendation:** Consider adopting goals, policies, and strategies to reduce energy consumption through transportation and land use linkages.

Adaptation and Preparation:

- **Recommendation:** Consider adopting goals, policies, and strategies to prepare for, address, and adapt to the impacts of extreme weather events and climate change.

Transportation Emissions:

- **Recommendation:** Consider adopting goals, policies, and strategies to help the state reduce transportation-related greenhouse emissions.
- **Recommendation:** Consider adopting goals, policies, and strategies to help the state reduce annual per capita vehicle miles.

Resources:

- Climate Impacts Vulnerability Assessment.
- Climate Impacts (WSDOT's Intranet site).
- State greenhouse gas emission reductions for Washington state: RCW70.235.020.
- Statewide goals to reduce annual per capita vehicle miles travel: RCW47.01.440.
- State integrated climate change response strategy to prepare for, address, and adapt to impacts of climate change. RCW43.21M.010.
- DOE's Climate Change.
- Washington State Department of Commerce's Planning for Electric Vehicle Infrastructure Page. (pdf 618.5 kb)
- American Association of State Highway Transportation Officials' Center for Environmental Excellence.
- Promising Practices in Low-Carbon Transportation Guide. (pdf 3.90 mb)
- Environmental Protection Agency; Climate Change.
- Federal Highway Administration, Climate Change.
- Yale Project on Climate Change Communication.
- Center for Climate and Energy Solutions.
- Georgetown Climate Center—Helping Communities Adapt to Climate Change.

Contact:

Seth Stark, HQ Sustainable Transportation, 360.705.7913, seth.stark@wsdot.wa.gov.

Traffic Impacts

- ✓ **Requirement:** The transportation element shall include…estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities. RCW 36.70A.070(6)(a)(ii). (Also see "Consistency with State Plans—Needs Identification and Funding Assumptions" in the Checklist for Related Requirements.)
  - **Recommendation:** Traffic impacts should include the number of peak hour motor vehicle trips, and, as information becomes available, bicycle, public transit, and pedestrian trips estimated to use the state highway and ferry systems throughout the planning period. WAC 365-196-430(2)(h).
  - **Recommendation:** When estimating trip generation at the planning level, you should clearly describe your estimation methodology, state your assumptions, and submit to WSDOT the methodology and assumptions for review and concurrence. Then identify potential impacts to state transportation facilities in terms of location and magnitude.

Contact:

WSDOT Region Traffic Offices Point of Contact.

WSDOT Road Projects – Applicability of Local Plans and Regulations

- ✓ **Requirement:** State law affords WSDOT plenary and exclusive power over the planning, locating, designing, constructing, improving, repairing, operating, and maintaining of state highway facilities RCW 47.01.260(1) and (3). This plenary authority preempts local regulations that would limit or usurp WSDOT's powers. Local authority otherwise provided under state law that does not so interfere with WSDOT's authority may apply to WSDOT and its highway facilities. WSDOT should review local regulations to ensure the language does not limit or usurp WSDOT's powers.

- **Recommendation:** Consider grandfathering existing cell towers impacted by right-of-way expansions under the rules in place when they were first permitted to reduce the costs to the public of relocation and to avoid project delays.

Resources:

- Following are links to explanations of when local permits and approvals may apply to WSDOT. These **permits and approvals include:**
  - Clearing, Grading and Building Permits Website.
  - Critical Area Ordinances Website.
  - Floodplain Development Permits Website.
  - Noise Variances. (pdf 47.10 kb)
  - Shoreline Permits Website.

Contact:

Elizabeth Robbins, HQ, Community Transportation Planning Office, 360.705.7371, elizabeth.robbins2@wsdot.wa.gov.

WSDOT Region Planning Office Growth Management Act Contacts

Need More Information? Contact the WSDOT Region Planning Office Growth Management Act Contacts for your city or county. Note that some counties span multiple WSDOT regions.

Counties & the Cities Within Them	WSDOT Regions	WSDOT GMA Contacts	Phone Number
Adams	Eastern Region North Central Region	Charlene Kay Greg Figg Cynthia McGlothern	509.324.6195 509.324.6199 509.667.2910
Asotin	South Central Region	Rick Holmstrom	509.577.1633
Benton	South Central Region	Rick Holmstrom	509.577.1633
Chelan	North Central Region	Cynthia McGlothern	509.667.2910
Clallam	Olympic Region	George Kovich	360.704.3207
Clark	Southwest Region	Ken Burgstahler	360.905.2052
Columbia	South Central Region	Rick Holmstrom	509.577.1633
Cowlitz	Southwest Region	Ken Burgstahler	360.905.2052
Douglas	North Central Region	Cynthia McGlothern	509.667.2910
Ferry	Eastern Region	Charlene Kay Greg Figg	509.324.6195 509.324.6199
Franklin	Eastern Region South Central Region	Charlene Kay Greg Figg Rick Holmstrom	509.324.6195 509.324.6199 509.577.1633
Garfield	South Central Region	Rick Holmstrom	509.577.1633
Grant	North Central Region	Cynthia McGlothern	509.667.2910
Grays Harbor	Olympic Region	George Kovich	360.704.3207
Island	Northwest Mount Baker	Elizabeth Sjostrom	360.757.5984
Jefferson	Olympic Region	George Kovich	360.704.3207
King	Urban Planning Office	Leah Bolotin	206.464.1264

Washington State Department of Transportation

Counties & the Cities Within Them	WSDOT Regions	WSDOT GMA Contacts	Phone Number
Kitsap	Olympic Region Urban Planning Office	George Kovich Leah Bolotin	360.704.3207 206.464.1264
Kittitas	South Central Region	Rick Holmstrom	509.577.1633
Klickitat	Southwest Region	Ken Burgstahler	360.905.2052
Lewis	Southwest Region	Ken Burgstahler	360.905.2052
Lincoln	Eastern Region	Charlene Kay Greg Figg	509.324.6195 509.324.6199
Mason	Olympic Region	George Kovich	360.704.3207
Okanogan	North Central Region	Cynthia McGlothern	509.667.2910
Pacific	Southwest Region	Ken Burgstahler	360.905.2052
Pend Oreille	Eastern Region	Charlene Kay Greg Figg	509.324.6195 509.324.6199
Pierce	Olympic Region	George Kovich	360.704.3207
San Juan	Northwest Mount Baker	Elizabeth Sjostrom	360.757.5984
Skagit	Northwest Mount Baker	Elizabeth Sjostrom	360.757.5984
Skamania	Southwest Region	Ken Burgstahler	360.905.2052
Snohomish	Urban Planning Office	Leah Bolotin	206.464.1264
Spokane	Eastern Region	Charlene Kay Greg Figg	509.324.6195 509.324.6199
Stevens	Eastern Region	Charlene Kay Greg Figg	509.324.6195 509.324.6199
Thurston	Olympic Region	George Kovich	360.704.3207
Wahkiakum	Southwest Region	Ken Burgstahler	360.905.2052
Walla Walla	South Central Region	Rick Holmstrom	509.577.1633
Whatcom	Northwest Mount Baker	Elizabeth Sjostrom	360.757.5984
Whitman	Eastern Region	Charlene Kay Greg Figg	509.324.6195 509.324.6199
Yakima	South Central Region	Rick Holmstrom	509.577.1633

Washington State
Department of Transportation

WSDOT Community Planning Portal - Quick Start Guide

February, 2014

What is the Community Planning Portal?

The WSDOT Community Planning Portal provides access to state transportation data for general planning purposes. The intent of the portal is help local and regional planners, decision-makers, and citizens better understand their state transportation system. We hope sharing this data will lead to more collaborative planning so that together, we can identify opportunities to operate our shared transportation system more efficiently, manage demand effectively, and where appropriate fund strategic capacity improvements.

How Do I Get Started?

Start by typing the following address in your web browser:

http://wsdot.maps.arcgis.com

Select the WSDOT Community Planning Portal from the featured content in the middle of the page by clicking the picture.

For the best performance, WSDOT recommends using Mozilla Firefox, Google Chrome or Internet Explorer 9 or higher as your browser.

Navigating the Portal

Zoom to a Location. To zoom to a specific location, type a city and state in the search bar, located in the upper right corner of the screen.

Show Contents. If you hover your mouse over the middle button under the Details tab in the upper left corner of your screen, the text Show Contents of Map appears. (If the text doesn't appear, try clicking in the browser window to make it active). Click this button to see a list of the state transportation data available in the portal.

Activate a Layer. Each data layer listed in the Contents has a checkbox to its left. Activate a layer by clicking the empty box. Some symbology may not appear until you zoom in closer.

View the Legend. Click on the data layer title to view a legend that will help you interpret the symbology. You can also click on the third button under the Details tab to see the legend. Hovering over this button will reveal the text Show Map Legend.

Activate a Popup. Click on a symbol in the map to activate a popup that contains more information about the highlighted symbol.

Scroll Between Popups. If more than one layer is active, you can scroll through all popups by clicking on the white triangle in the blue strip at the top of the popup.

Open a Planning Fact Sheet. The planning fact sheet summarizes state transportation data for a city or county. To open the planning fact sheet, activate the planning fact sheet layer in the Contents. Next click a city or county to open the popup and then click on the planning fact sheet link. Close the planning fact sheet window to return to the map.

Go Back and Forward. Use your browser's Back and Forward buttons to navigate between pages.

Show Table. Some layers give you the option of viewing the data table behind the map. If this option is available, you can access it by clicking on the black arrow that appears when you hover over the space to the right of the data layer title. Then select Show Table. Close the table by clicking on the blue X at the top right of the table.

Changing the Appearance of a Map

Change the Basemap. To select a different basemap, click on the Basemap tab located in the toolbar at the top left corner of the screen. Then click on the basemap of your choice.

Set Visibility. To adjust the scale at which the symbology appears in the map, click on the black arrow to the right of the data layer title in Show Contents of Map. Then select Set Visibility Range.

Change the Layer Order. The order of the data layers in the Show Contents of Map list determines their visibility. Adjust which layer is on top by clicking the black arrow to the right of the data layer title and selecting Move Up or Move Down.

Adjust the Transparency. Adjust the transparency of a layer by clicking on the black arrow to the right of the data layer title and selecting Transparency. Then adjust how opaque or transparent the symbology will appear using the slide bar.

Other Options. Some layers give you the option of changing the symbology, reconfiguring the popup, or applying filters to screen out a portion of the data. If these options are available, you will see them when you click on the black arrow to the right of the data layer title.

Understanding the Data

Learn More About the Portal. Hover your mouse over the far left button under the Details tab in the upper left corner of the screen and the text About this Map will appear. Click this button to view a short description of the Portal. Click More Details to see additional information.

Learn More About the Data. From Show Contents of Map, click the black arrow to the right of a data layer title. Click Show Item Details to see a description of the data layer and links to its metadata. This is a good place to learn details about the data such as when it was collected, limitations on its use, and explanations of abbreviations used.

Adding Data to the Map

Add ArcGIS Online Content. WSDOT is one of many agencies that publish data on ArcGIS Online. To do this, you must first sign in with an ArcGIS Online account or you can click the Modify Map button located in the upper right hand corner of the screen. To add data, click the Add tab located in the toolbar at the top left corner of the screen. Select Search for Layers from the drop down menu. Change My Organization to ArcGIS Online, and click Go to see all available layers. You can narrow the results by using the Find box. For example, type Census in the Find box and click the Go button again. Add one of the census layer provided by esri to the map by clicking the word Add to the right of the layer. View the legend by clicking the Details tab, and then clicking the Show Map Legend button.

Add Map Notes. You can also add notes to the map to mark specific locations. To do this, click on the Add tab at the top left corner of the screen and select Add Map Notes from the drop down menu. Enter a name for the layer. Click create. Click a shape or symbol in the left pane, then click the map where you would like to add the feature. A popup window appears where you can add information about the feature or change the symbol. Click the close button when done. You can edit your map notes later by clicking the Edit tab at the top left corner of the screen.

Add Tables or GIS Files. The Add tab also allows you to add your own data to the map including:

- Zipped shapefiles (.zip)
- Comma, semi-colon, or tab delimited text files (.csv or .txt)
- GPS data files (.gpx)

Printing and Sharing Maps

Print. Click the Print button in the middle of the toolbar at the top of the screen to print your map.

Save and Share. You must have an ArcGIS Online account to save your map online, share it, or embed it in a web page or document. You can **subscribe to ArcGIS Online** as an organization, or you can **open a free public account** for individuals.

Downloading Data Layers

You can download the individual data layers used to create the WSDOT Community Planning Portal to use with your own ArcGIS Desktop software. To do this, click the Show Contents of Map button under the Details tab and click on the black arrow to the right of the data layer you want to download. Select Show Item Details. Click the Open button and select Open in ArcGIS 10.1 for Desktop. Select save file to save the file to your computer.

Finding Help

Step by step guides to using the WSDOT Community Planning Portal and video tutorials are available at WSDOT's Community Planning Portal home page:

www.wsdot.wa.gov/planning/community/WSDOTCommunityPlanningPortal

You can also find additional help resources from esri by clicking on the Help button on the top right corner of the screen and selecting Help Topics from the drop down menu.

For More Information, Please Contact:

Kyle Miller
WSDOT Community Transportation Planning Office
kyle.miller@wsdot.wa.gov
360.705.7946

Americans with Disabilities Act Information: Materials can be provided in alternative formats: large print, Braille, cassette tape, or on computer disk for people with disabilities by calling the Office of Equal Opportunity (OEO) at (360) 705-7097. Persons who are deaf or hard of hearing may contact OEO through the Washington Relay Service at 7-1-1.

Title VI Statement to Public: It is the Washington State Department of Transportation's (WSDOT) policy to assure that no person shall, on the grounds of race, color, national origin and sex, as provided by Title VI of the Civil Rights Act of 1964, be excluded from participation in, be denied the benefits of, or be otherwise discriminated against under any of its federally funded programs and activities. Any person who believes his/her Title VI protection has been violated may file a complaint with WSDOT's Office of Equal Opportunity (OEO). For Title VI complaint forms and advice, please contact OEO's Title VI Coordinator at (360) 705-7098.

Washington State
Department of Community, Trade & Economic Development
Growth Management Services

PlanView

Growth Management Online Monitoring System

User Handbook

Version 2.0
March 2010

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Overview

The PlanView Data System is designed to provide you and other state agency staff with a one stop portal to track local government plan and development regulation amendments from across the state. Local governments are required under the GMA to notify CTED of amendments to their local plans and development regulations. This allows CTED to coordinate with other state agencies and help state agencies be more effective in their participation in local land use decisions. This manual will help you navigate the system.

Through an inter-agency agreement with the Department of Community, Trade and Economic Development (CTED), a number of state agencies can directly access the information local governments have sent to CTED. This system allows you to track proposals, get critical information about the proposal and to discuss this with staff from other agencies by posting and reading comments on individual proposals.

GMA planners and designated state agency review staff will be provided access to the PlanView website to access submitted materials on specific jurisdictions maintained within the CTED GMS tracking system database. PlanView users will be able to review submitted comprehensive plan and development regulation amendments, provide comment on these materials, review comment letters, and locate important contact information for local and state staff also working on these materials. The system will also provide targeted e-mail notification to participating agency users regarding submitted materials of interest as they are received from local governments.

This system is to be used for official state business only. It may not be used for private activities. You may not allow others to use your PlanView account. Although this system is not open to the public, information and records contained in PlanView, including the comments you post, are public information. If requested, the state is required to make these available to the public under the Public Disclosure Act.

What's New in Version 2.0

Version 2.0 contains two new features to help you better track the work you do when working on local land use issues, the materials workbench and the cases workbench.

The **materials workbench** allows your agency to use the PlanView Data System to assign items to you for review. Your agency's review coordinator will receive items and assign them to you. When you have review them, you can send them back to your coordinator with our results or draft a comment letter. Your workbench shows you want new items have been assigned to you for review.

The **cases workbench** allows you to create a case for you to track. You can associate one or more materials to a case so you can keep related items together and follow them as a

single project. It also allows you to start tracking a local government planning process before they have sent items in for 60-day review.

General User Guide

This User Handbook is intended to provide an overview of the new PlanView Online Monitoring System. It provides instructions and screenshots to assist with demonstrating the features available to new users.

As additional features are developed and become available, this manual will be updated to reflect these future modifications.

This handbook is divided into separate sections to guide new users through the initial sign-in screen, to develop user preferences, and finally to introduce the specific functions available and ability to access specific records, download documents, and comment on materials.

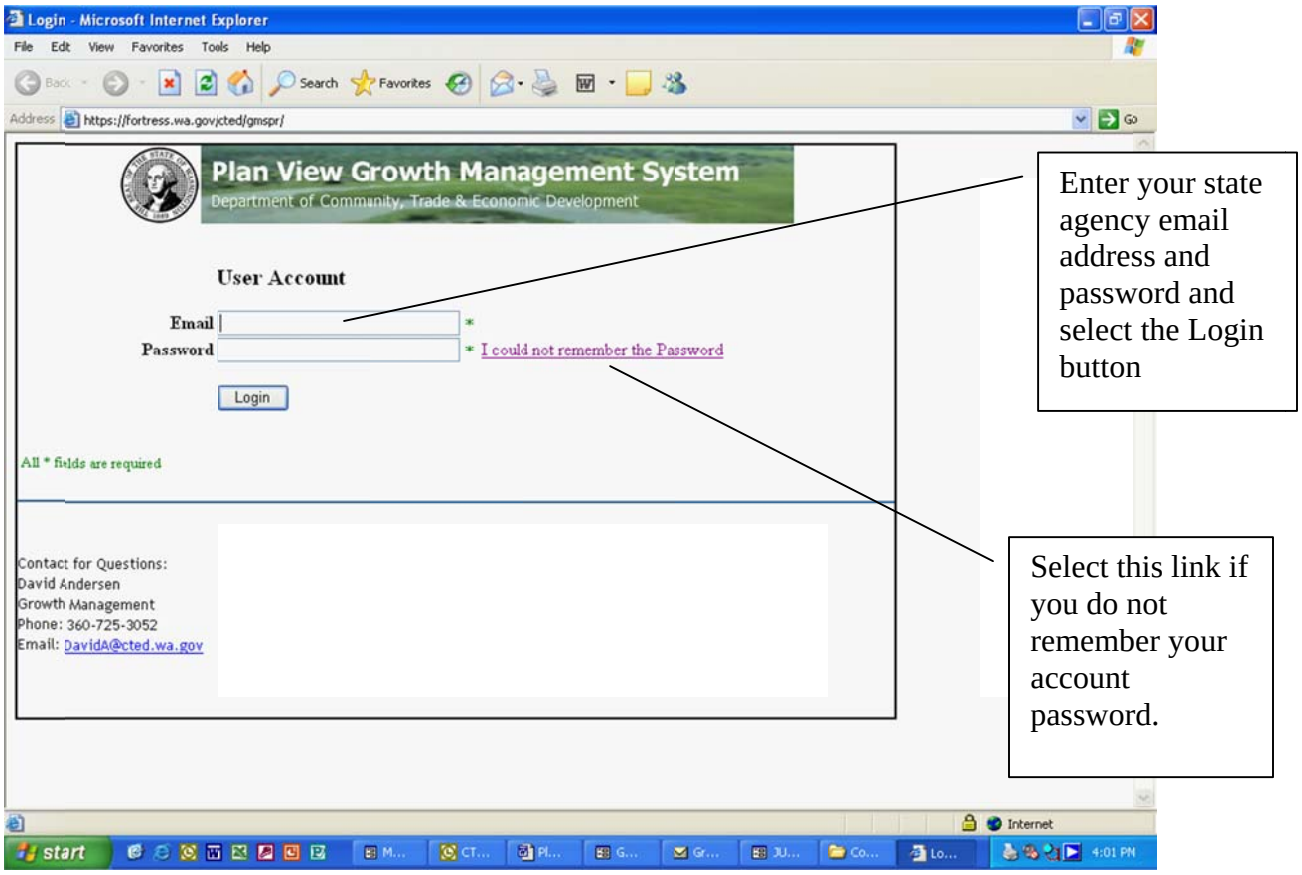
Entering the System

When you enter GMS, you are asked to identify yourself. Enter your designated state agency assigned email address followed by your password. Once you are in, you can change your password from the User Preferences screen.

Signing In

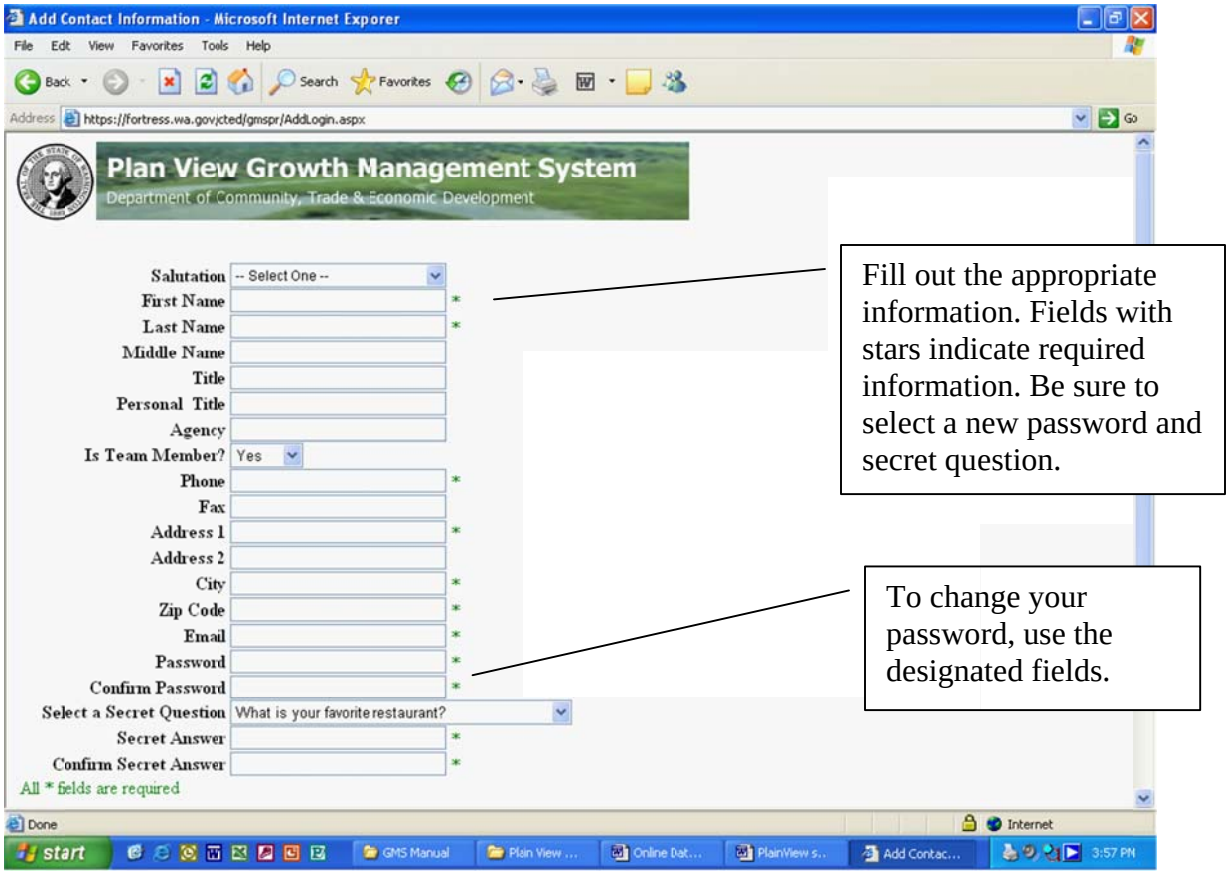
The first screen encountered is the Login screen. Enter your User Account information (Email address and Password) and select Login.

If you are a New User, your name should have already been submitted to CTED GMS by your agency. A default password will provide you with initial access. New users will then customize their account preferences as outlined below.

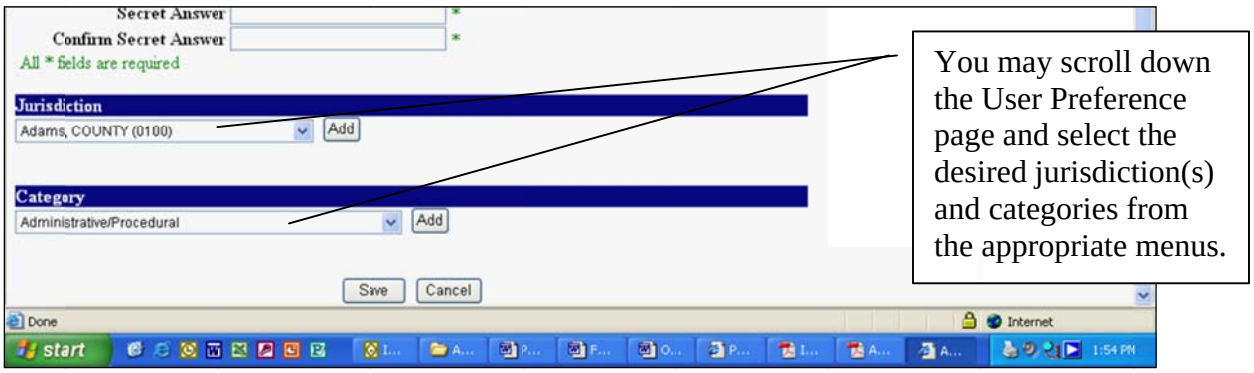


New User Preferences

Once logged-in, New Users will be taken to the User Preferences screen, and should enter the information requested in the appropriate boxes.



When you finish filling in the user preference fields, scroll down to select and add the desired Jurisdictions and Categories that you wish to monitor. Enhancements to these features will be made in the near future.



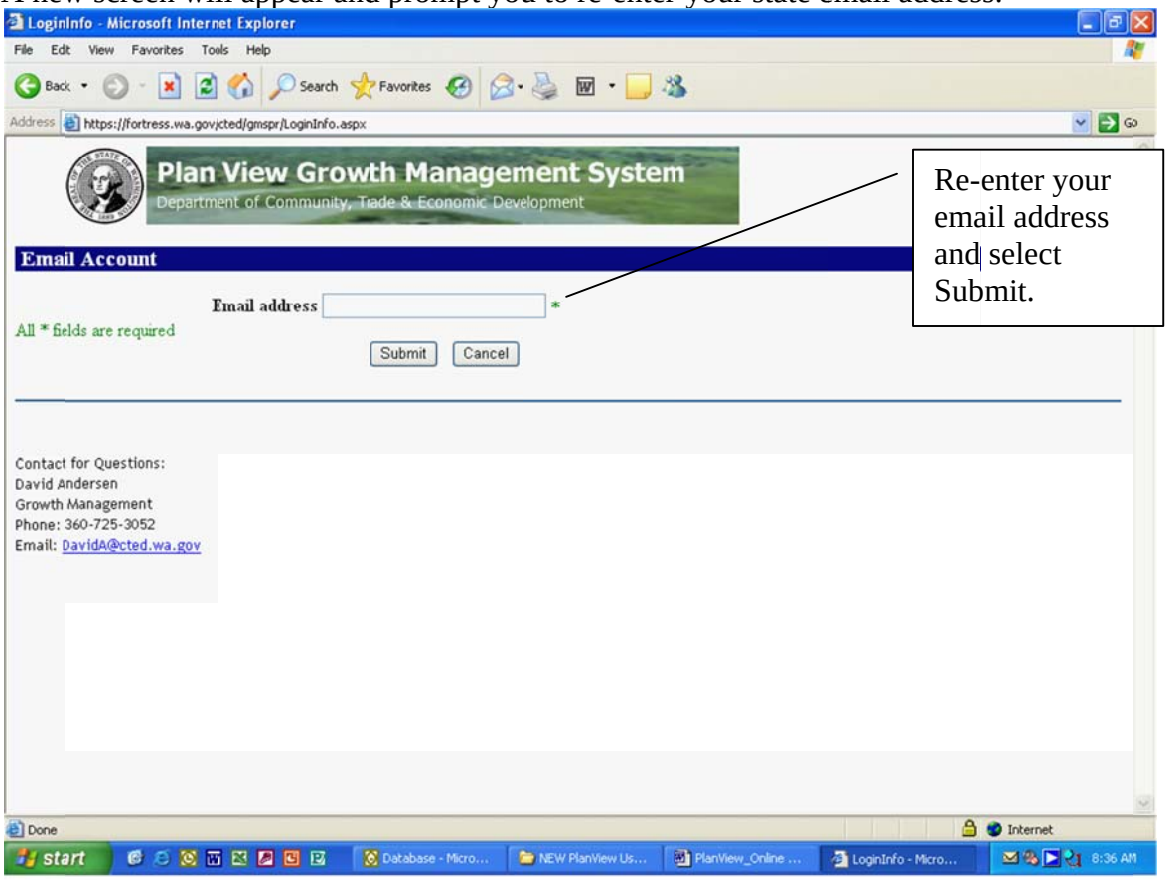
When you are finished entering preferences and wish to save your selections, you may click “Save”. To exit the User Preferences page, select “Cancel”.

Existing Users

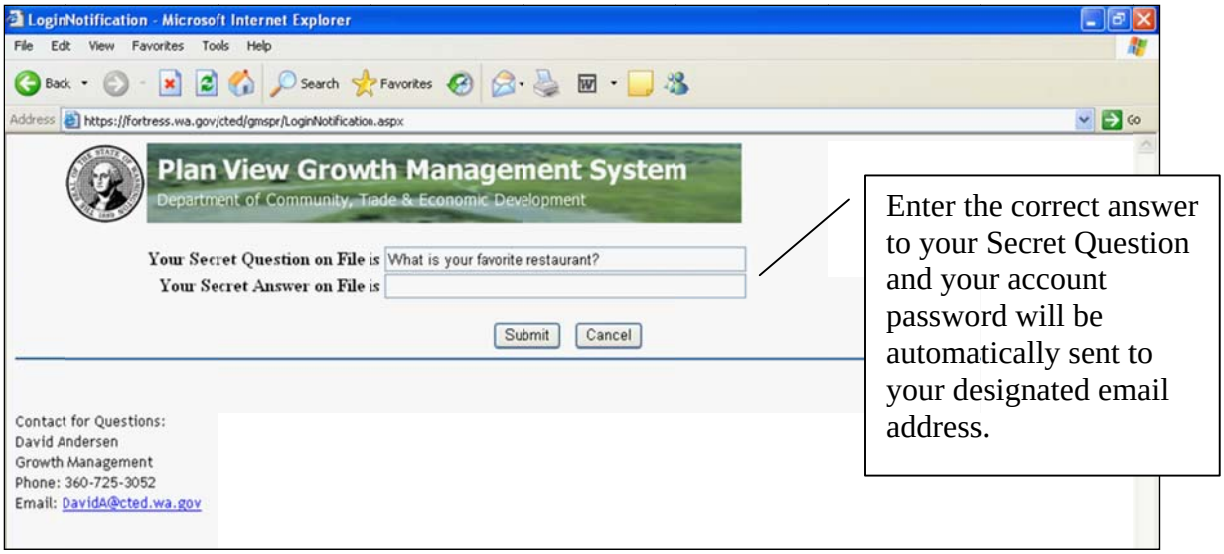
If you are an existing user with an email address and password already in the system, you may simply sign-in and the system will immediately take you to the Main Menu screen. Should you desire, you may select the User Preferences button in the upper left corner of the Main Menu and edit any account preferences as described under the New User Preferences section above.

Forget Password

If you are an Existing User and forget your login password, you may select the link entitled "I could not remember the Password".
A new screen will appear and prompt you to re-enter your state email address.

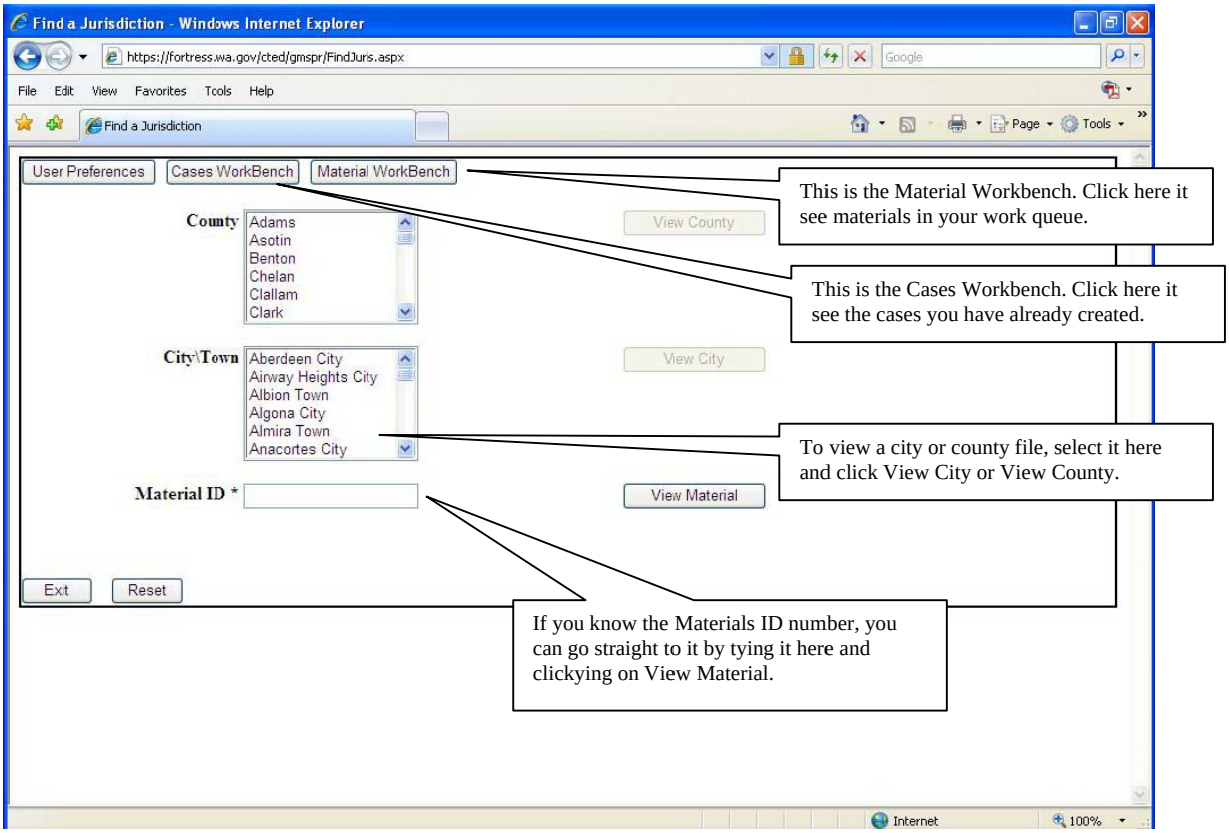


Next, you will be prompted to answer your pre-selected secret question for security purposes. If you provide the correct answer, your account password will be automatically emailed to you.
If you are unable to remember the answer to your secret question, and therefore unable to access you account, please contact the designated PlanView/GMA coordinator for your agency.



Main Menu and Find Jurisdiction Screen

After you sign-in, the Main Menu / Jurisdiction Search screen is displayed. From this opening screen, you can search for any material record by jurisdiction. In addition, you may search a specific record by its assigned material ID number. Locate the jurisdiction on the correct menu provided and select the corresponding View button. You may only view one jurisdiction at a time. Select the Reset button to clear all selections and begin a new search.



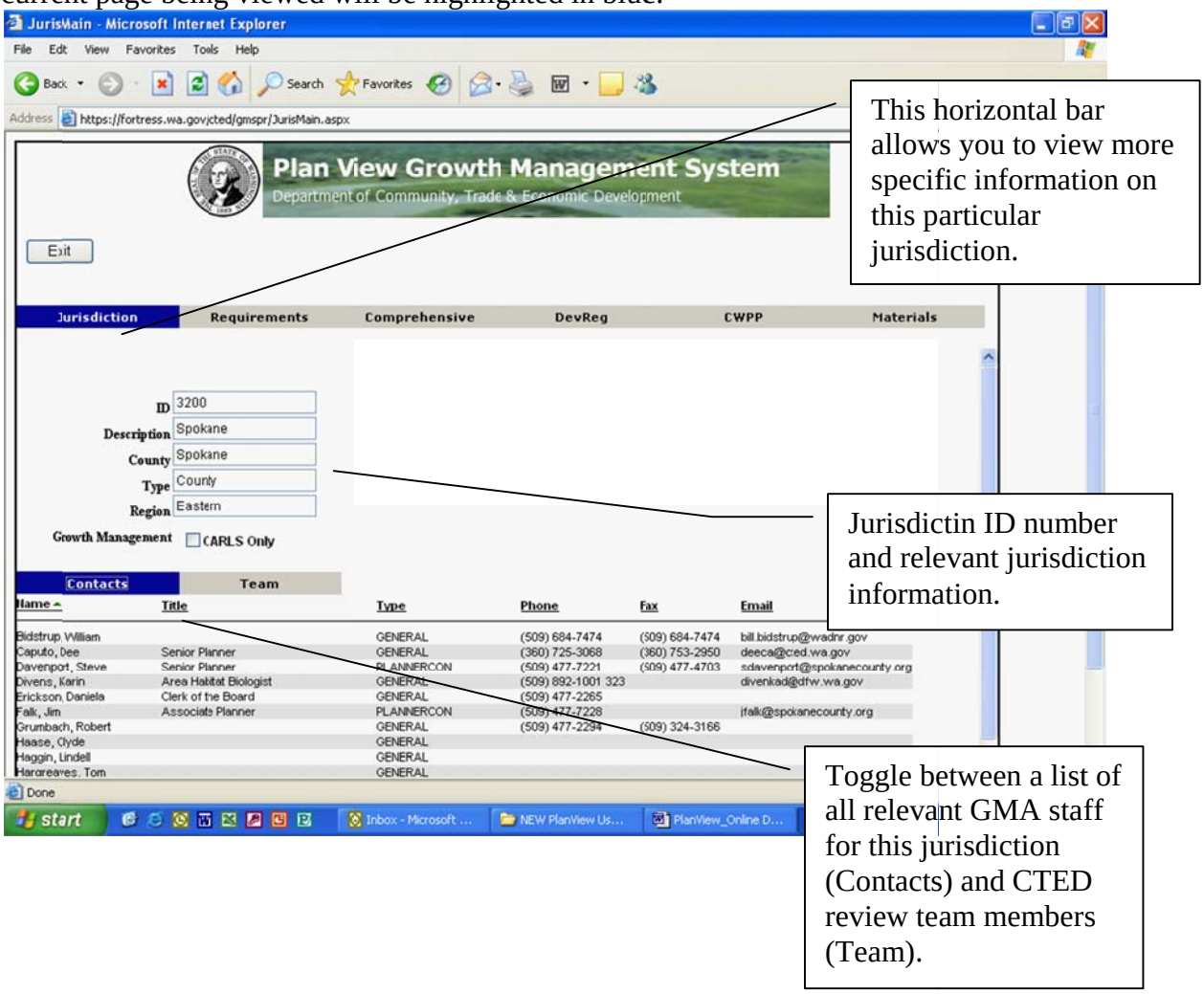
Jurisdiction Screen

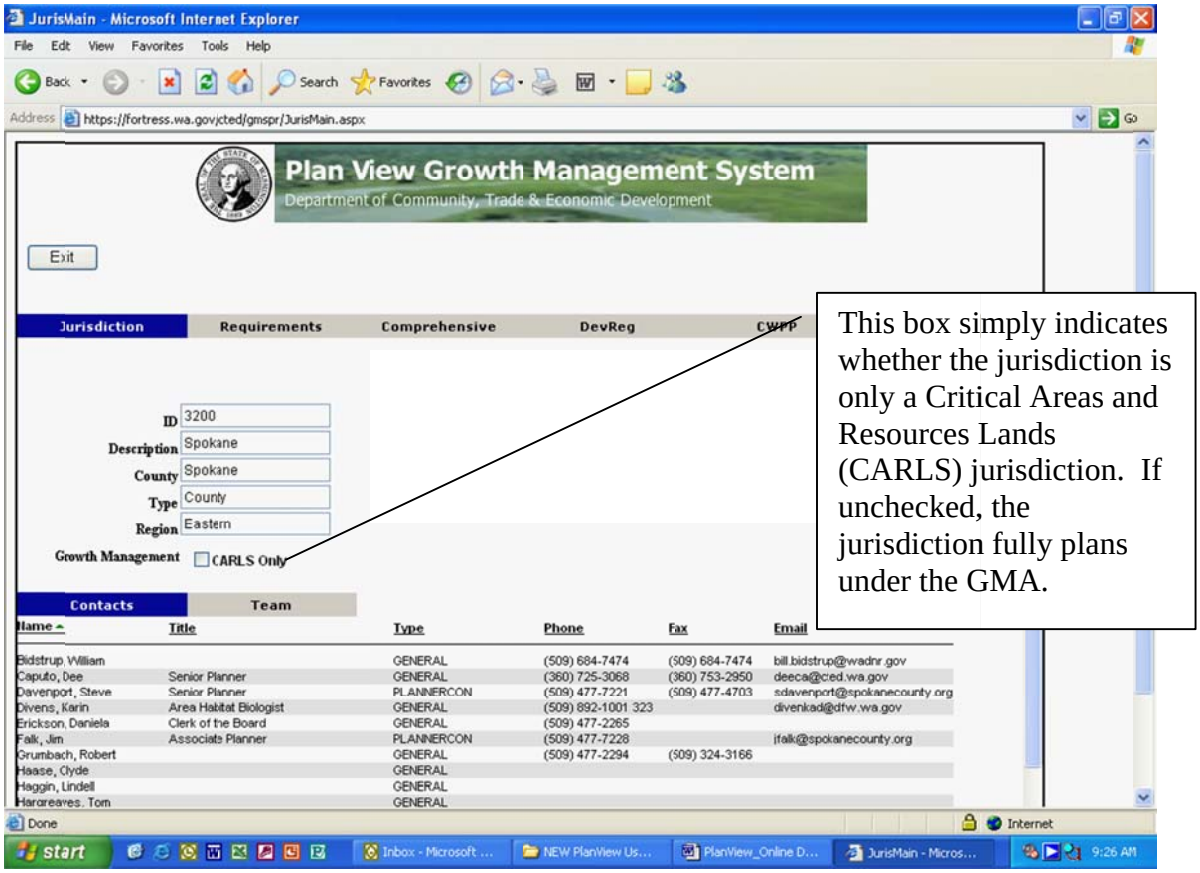
When you search by jurisdiction, either by county or city, you will be taken to the Jurisdiction Screen.

This opening page contains the jurisdiction's identification number (ID) assigned to the jurisdiction by OFM, the name of the jurisdiction, and the applicable county and region. The checked box designates whether the jurisdiction is a fully planning or partially planning and therefore only required to plan for "critical areas and resource lands" (CARLS Only).

Selecting the Team tab reveals the CTED staff assigned to the jurisdiction. Selecting the Contacts tab will show all contacts associated with the jurisdiction, including both state and local staff. Future versions will place agency contacts under the Team tab.

The horizontal bar across the top of the screen identifies the current page being viewed within the Jurisdiction Screen. Each page will be explained in greater detail below. The current page being viewed will be highlighted in blue.

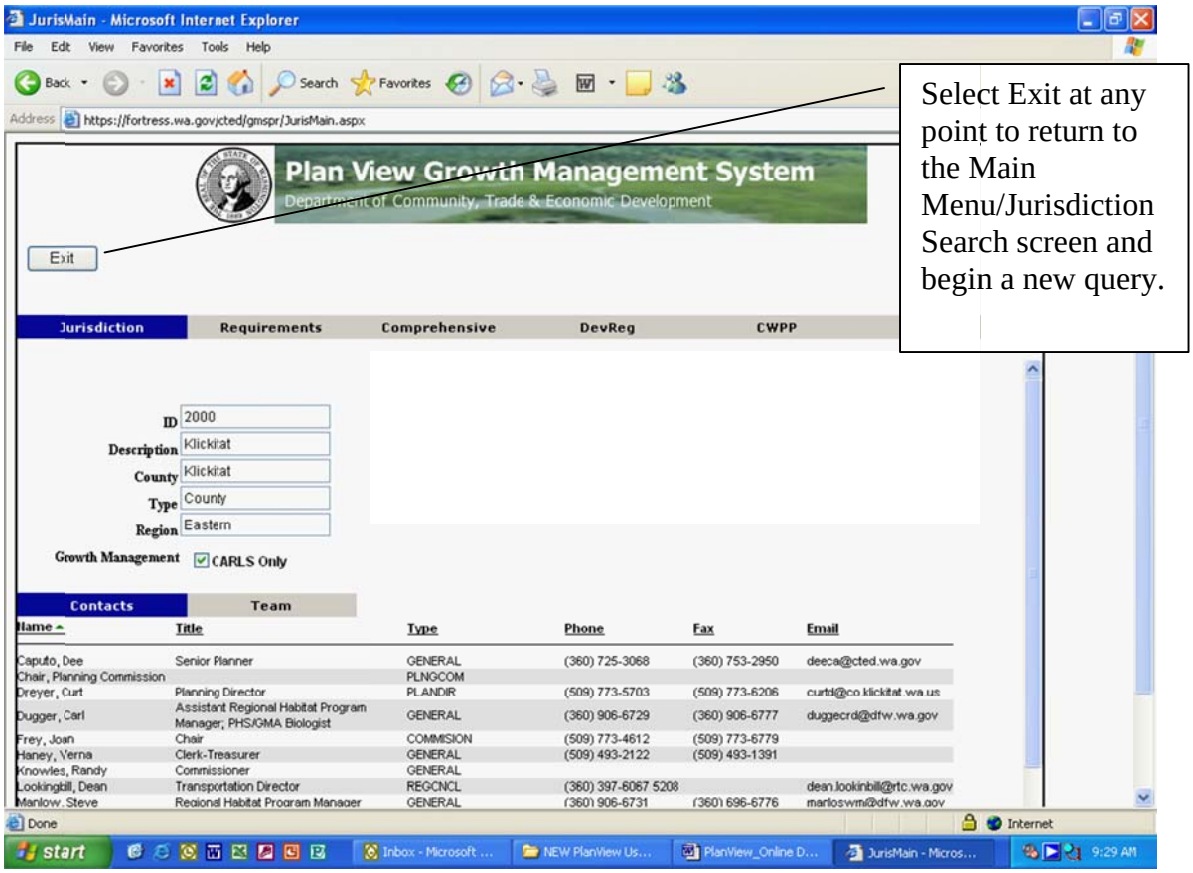




This box simply indicates whether the jurisdiction is only a Critical Areas and Resources Lands (CARLS) jurisdiction. If unchecked, the jurisdiction fully plans under the GMA.

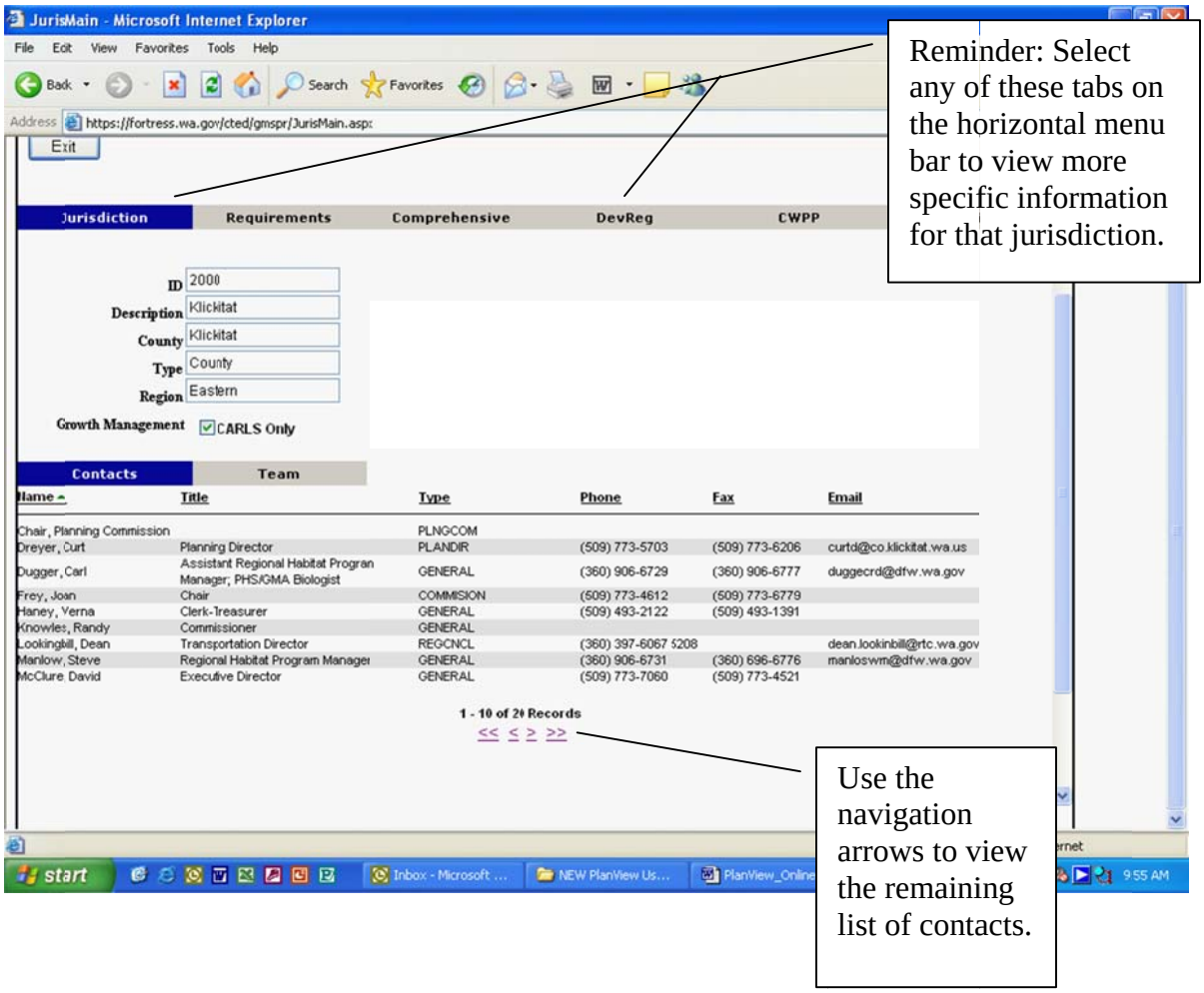
Navigation Tools

Throughout PlanView, the controls utilized to navigate through the records are consistent. The example below shows the Jurisdiction Screen for Klickitat County. You can return to previous Main Menu /Jurisdiction Search screen by selecting the Exit button in the upper left corner of the screen.



By scrolling down the Jurisdiction Screen, you will access the navigation arrows. These arrows, located at the bottom of the Jurisdiction and Materials screens, are useful for navigating through longer lists of material records or contact lists located on a particular webpage. Some jurisdictions may have ten or more contacts, but PlanView displays a limited number of contacts per screen. The navigation arrows are useful in browsing through additional records in a long list. For example, the King County screen below displays the first ten (10) of fifty (50) total staff contacts. Selecting the forward arrow will show the next ten contacts. Selecting the double arrow will immediately take you to the end of the list.

Within the Jurisdiction Screen, you can also navigate to more specific information and records by selecting the appropriate tab across the top of the screen.



Reminder: Select any of these tabs on the horizontal menu bar to view more specific information for that jurisdiction.

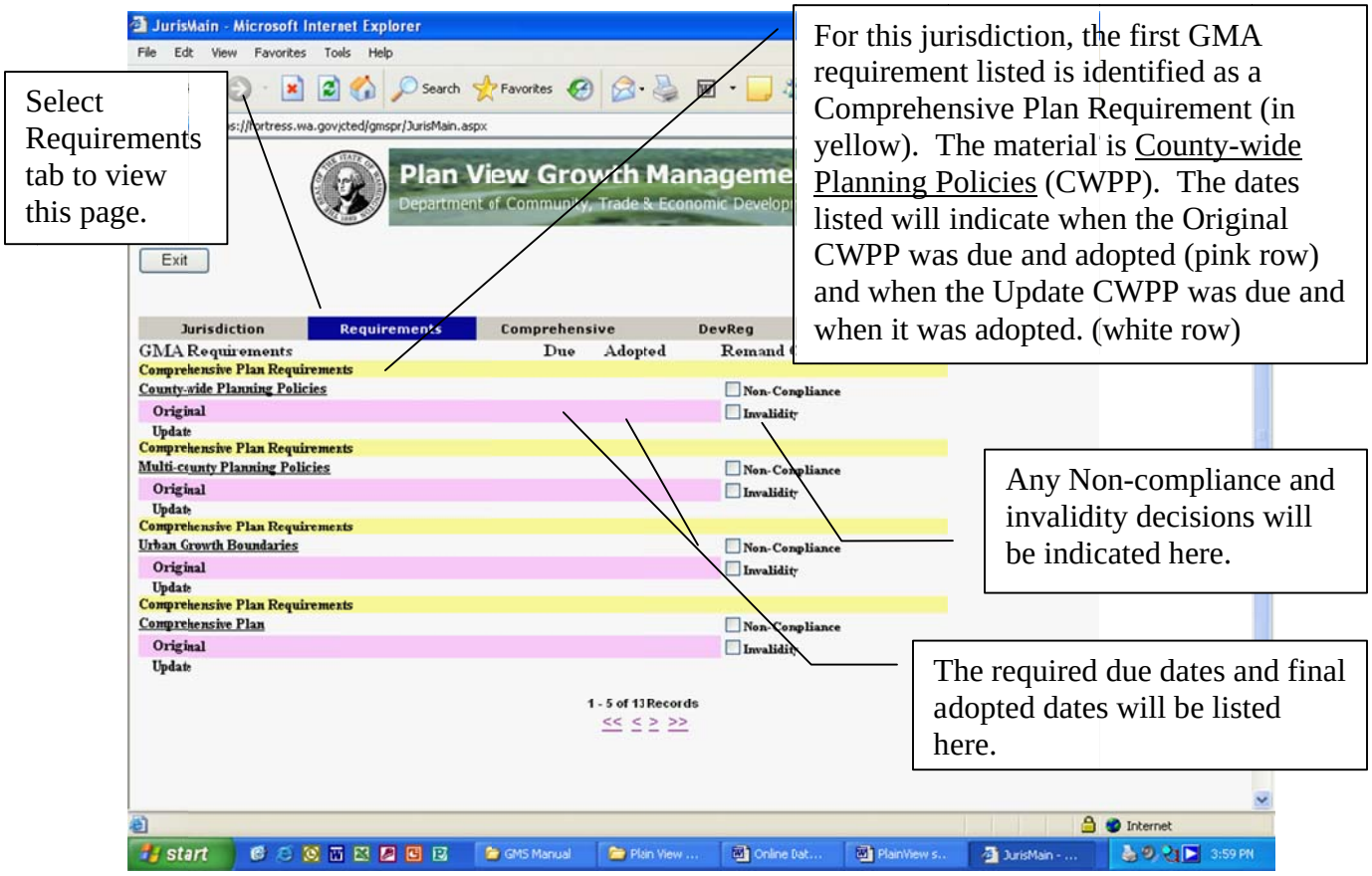
Use the navigation arrows to view the remaining list of contacts.

Requirements Page

Selecting the Requirements tab on the horizontal bar brings up the Requirements Page. This page provides an overall summary of the jurisdiction's Growth Management Act (GMA) compliance status. The page is color coded in rows for easier reading. [NOTE: this information will be blank as we start up. CTED will be migrating this information over during the Fall of 2006]

The yellow row designates the type of requirement listed immediately below it (i.e., a Comprehensive Plan requirement or Development Regulation requirement). The statutory requirement will be listed with the dates the Original requirement was due and the date it was finally Adopted (The pink row).

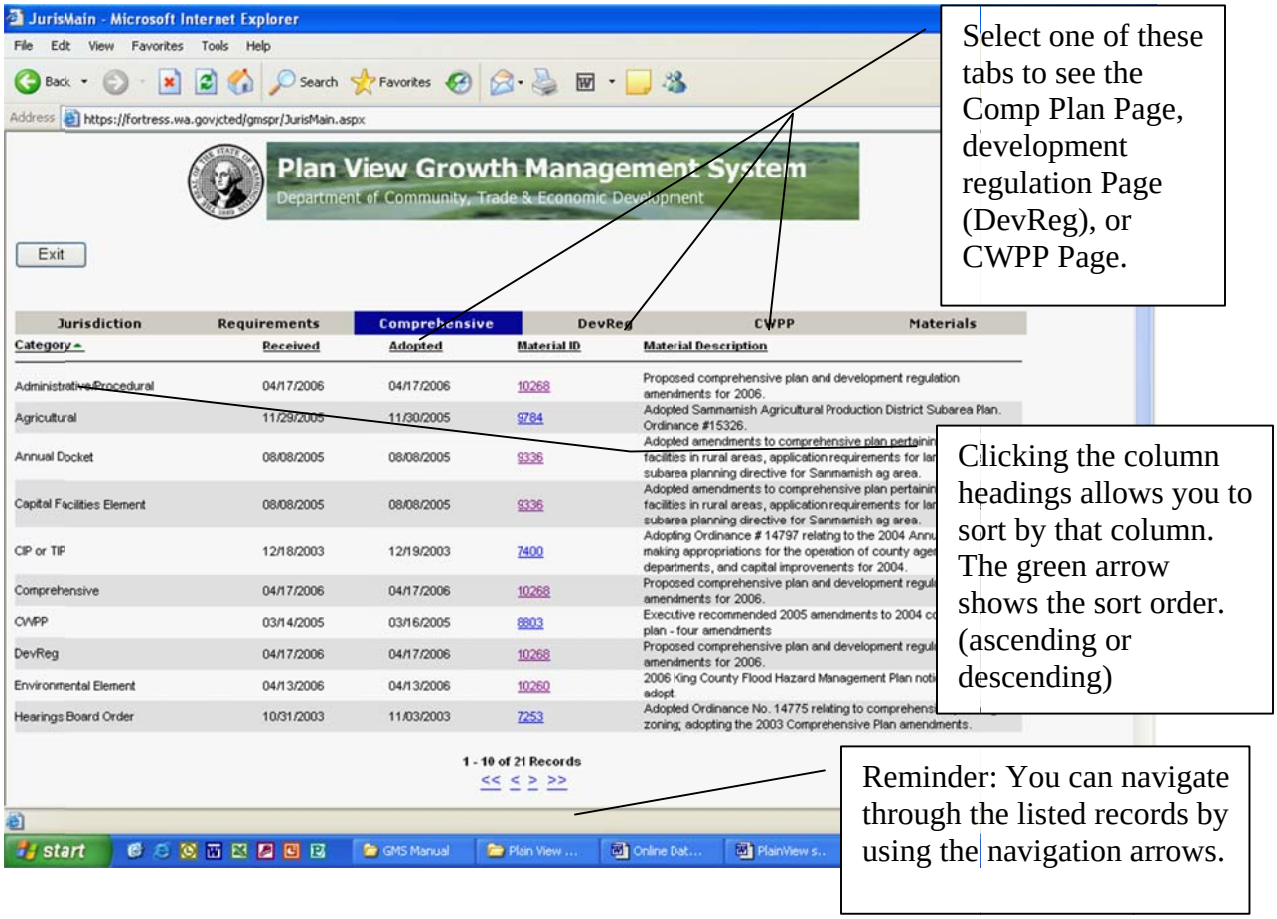
The next row repeats this information for any subsequent GMA Updates that are required (The white row). The checked boxes indicate whether any current Growth Management Hearings Board findings of non-compliance or invalidity for each type of review material.



Comprehensive Plan Page, development regulations Page, and CWPP Page

These pages are very much like a table of contents. It helps you find out when a particular part of a plan or regulation was last changed. There is one row for every ***Category*** for which we have received an adopted material (see Categorize Page section, below). It displays summary information for the *most recent adopted* comprehensive plan materials we have received from this jurisdiction in each category. Note that there can be many different categories for a single material. Also, all plan materials, regardless of category, are included in the top row, comprehensive, development regulations or CWPP. Double-clicking the row header displays a complete chronological list of all materials received within that category.

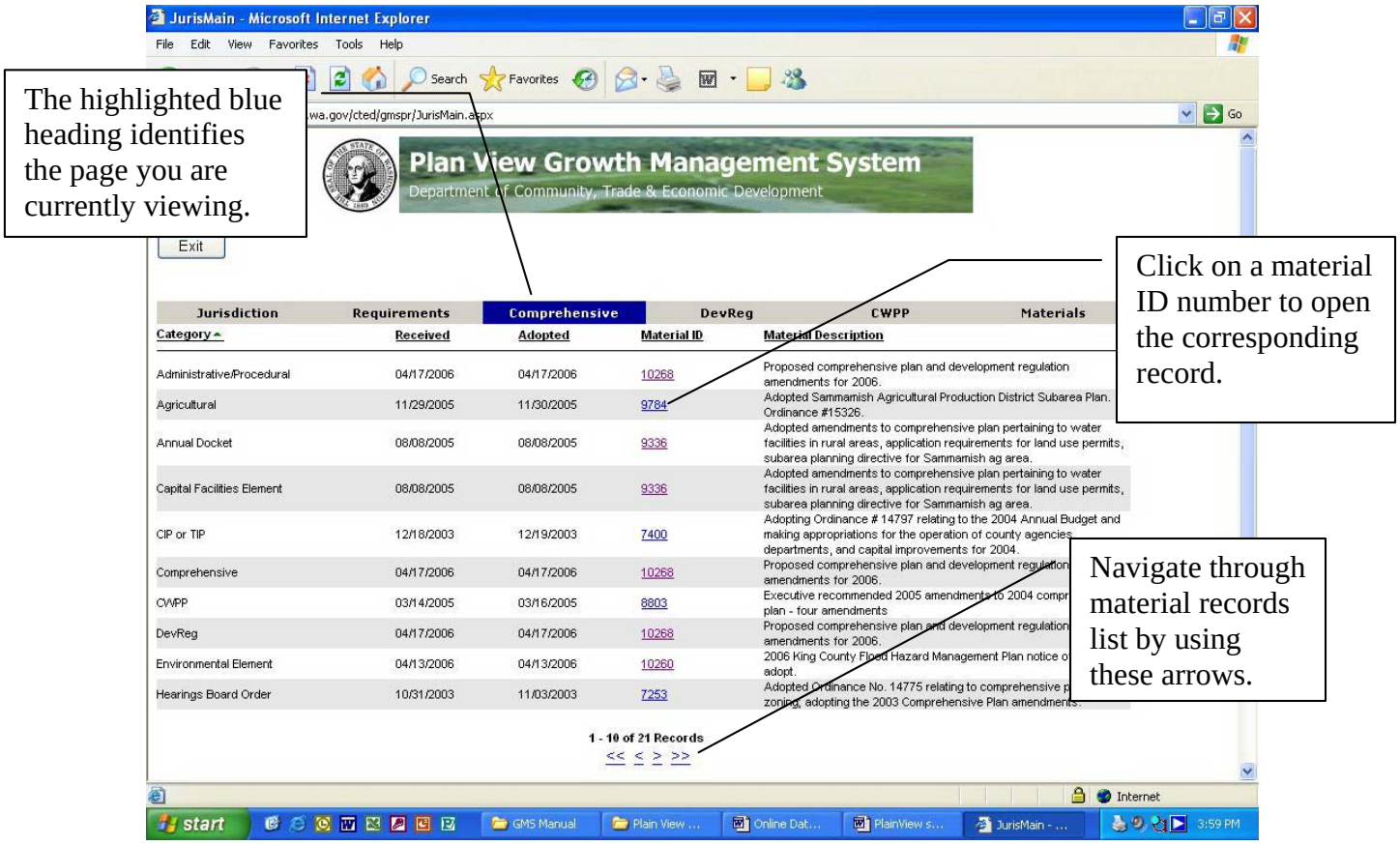
Each material is listed once. To open a specific record, click on the link within its row header.



Select one of these tabs to see the Comp Plan Page, development regulation Page (DevReg), or CWPP Page.

Clicking the column headings allows you to sort by that column. The green arrow shows the sort order. (ascending or descending)

Reminder: You can navigate through the listed records by using the navigation arrows.


The highlighted blue heading identifies the page you are currently viewing.
Click on a material ID number to open the corresponding record.
Navigate through material records list by using these arrows.
JurisMain - Microsoft Internet Explorer
Plan View Growth Management System
Department of Community, Trade & Economic Development
Exit
Jurisdiction
Requirements
Comprehensive
DevReg
CWPP
Materials
Category
Received
Adopted
Material ID
Material Description
Administrative/Procedural 04/17/2006 04/17/2006 10268 Proposed comprehensive plan and development regulation amendments for 2006.
Agricultural 11/29/2005 11/30/2005 9784 Adopted Sammamish Agricultural Production District Subarea Plan. Ordinance #15326.
Annual Docket 08/08/2005 08/08/2005 9336 Adopted amendments to comprehensive plan pertaining to water facilities in rural areas, application requirements for land use permits, subarea planning directive for Sammamish ag area.
Capital Facilities Element 08/08/2005 08/08/2005 9336 Adopted amendments to comprehensive plan pertaining to water facilities in rural areas, application requirements for land use permits, subarea planning directive for Sammamish ag area.
CIP or TIP 12/18/2003 12/19/2003 7400 Adopting Ordinance # 14797 relating to the 2004 Annual Budget and making appropriations for the operation of county agencies, departments, and capital improvements for 2004.
Comprehensive 04/17/2006 04/17/2006 10268 Proposed comprehensive plan and development regulation amendments for 2006.
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Hearings Board Order 10/31/2003 11/03/2003 7253 Adopted Ordinance No. 14775 relating to comprehensive p zoning, adopting the 2003 Comprehensive Plan amendments.
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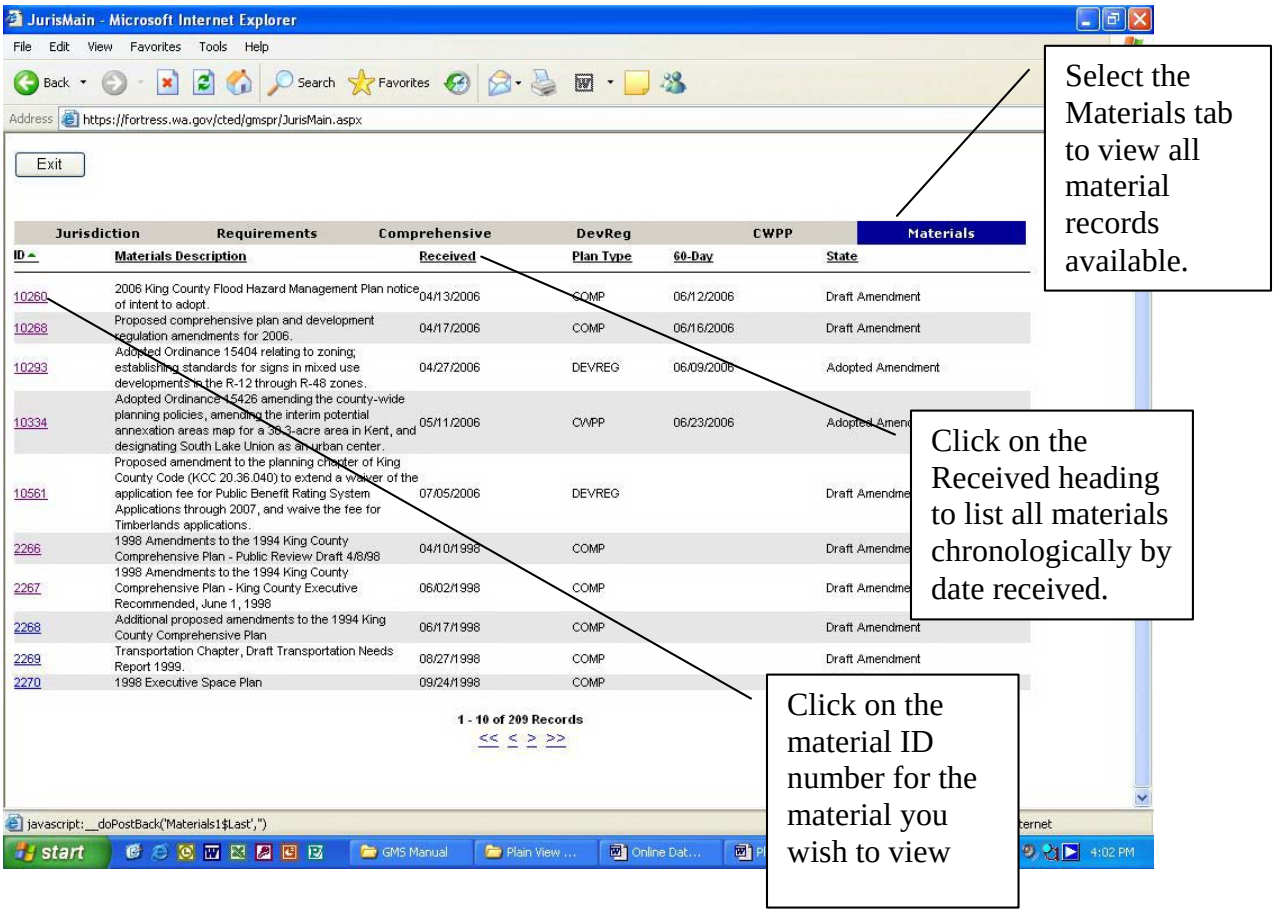
<< < > >>

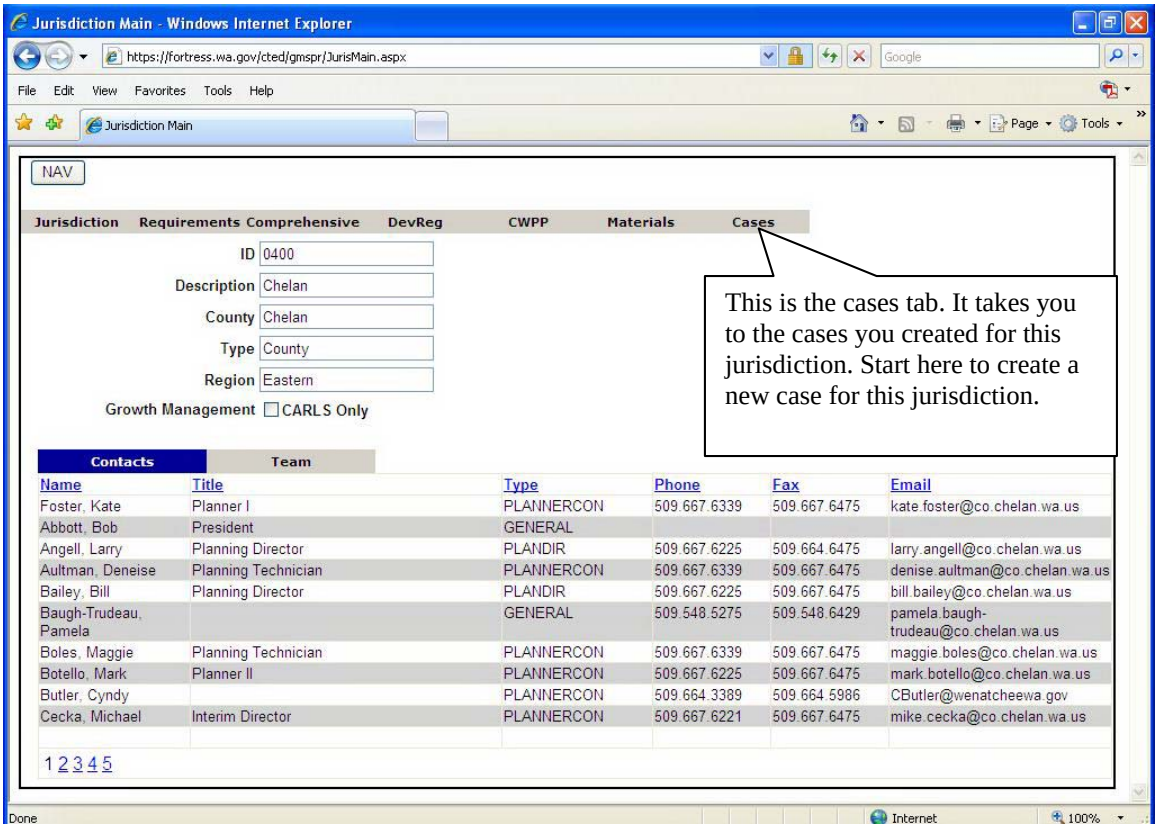
Materials Page

This contains all materials received from this a jurisdiction in chronological order.

This is where you will most commonly go to look for materials. It contains the same information as previous pages, including the Material ID number, material description, dates received, plan type, and review deadline. You can modify the list to assist with your search by clicking on the appropriate column heading. For example to view the list of materials in chronological order by date received, click the Received heading.

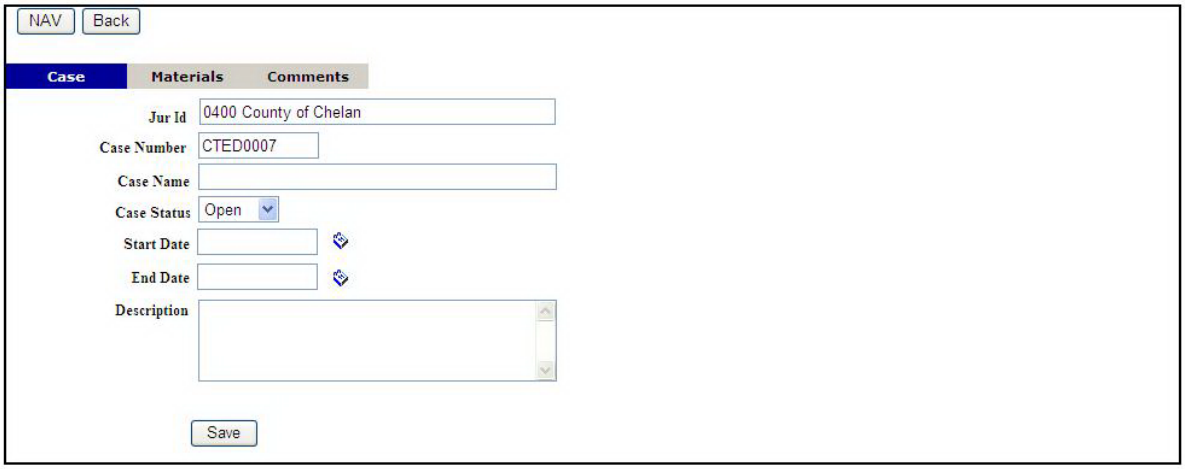


The Cases Tab



The Cases Page

Cases are records you create to help you track issues you are working on. You don't have to wait to be assigned a case. You can create them and you can delete them. You can attach materials to a case and you can make comments. It's also a useful way to keep track of your work load when working with local governments. You can use cases to keep related materials together is they are part of a single overall project. You can also use cases to track a project that has not come in for 60-day review, but you think will. You can also use it to keep track of a related project that won't come in for 60-day review, but is part of your planning work with that jurisdiction. This could be a subdivision project, or a local capital project for example.



This is the case management main page. It has three tabs, the case tab, the materials tab and the comments tab. The Case tab is the "top" tab and is where you will give your case a name, a description and track its start date, end date and current status.

Materials Tab

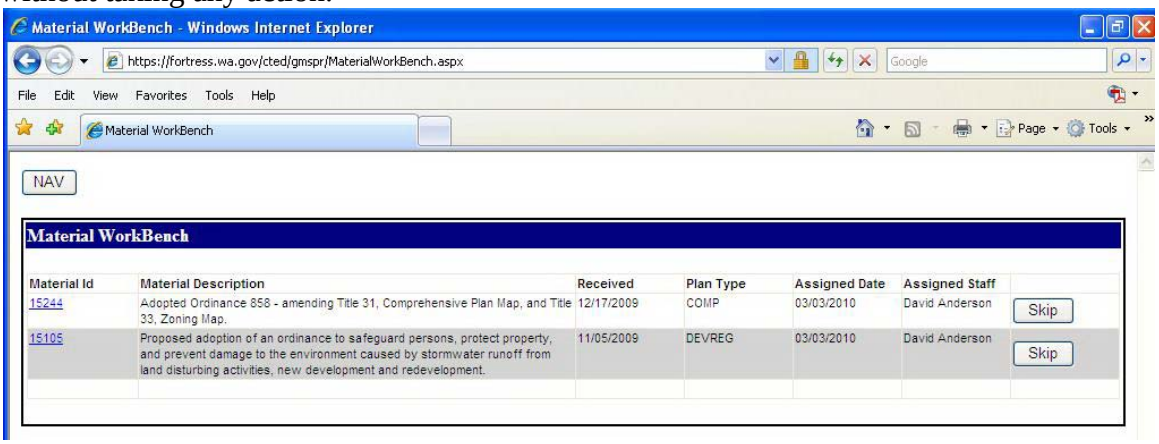
The Materials tab is where you attach materials in PlanView to the case you just created. Clicking on Find Material button takes you to the Materials tab on the Jurisdiction page. Pulls up a list of cases associated with that jurisdiction. You can select a material, click Add Material to Case and click the Select button with the case you want. You will see on the Material Main page that the case number is now showing at the top. Clicking on the case number takes you back to the Case page. The Materials tab now shows the material you selected added to the case.

Comments Tab

To add a comment to the case, go to the Comments tab from the Case page. Click on new comment. Type your comment in the text box and click Update. You can also edit or delete previous comments after they have been created.

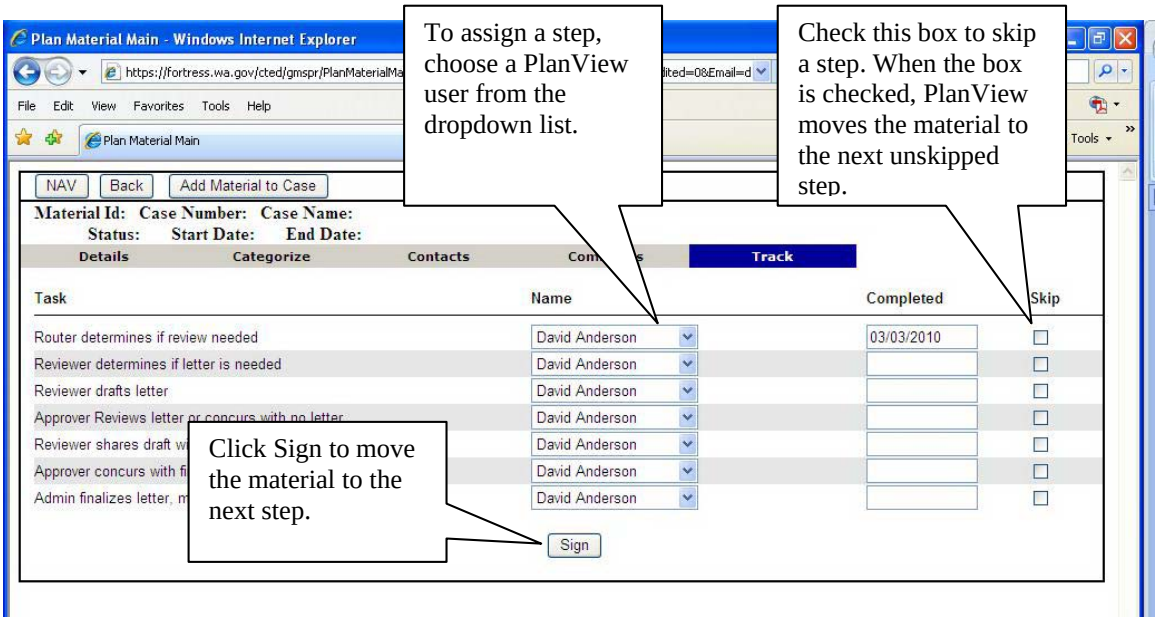
Materials Workbench

Each user as their own materials workbench. This allows your agency to manage the plan review workflow, assign items for review, track which review will require a letter and track the progress of a letter through the approval process. Your workbench shows the items you have been assigned that require action. Items are assigned to you by your review coordinator and are placed on your workbench. Clicking on the Materials ID number will open the item. Clicking the sign button will dismiss it form your work queue without taking any action.



The Tracking Tab

Each material has a tracking tab. This tab shows you where the item is in the review process and who is responsible for each step. Each item can only be on one workbench at a time. Each time you complete a step, click the sign button to move the material to the next step in the process. If you are not responsible for the next step, the material will leave your workbench. If you are responsible for the next stop, it will remain on your workbench. On the tracking tab, you can skip steps and reassign steps to other staff in your agency. PlanView does not manage who has privileges to take these steps. It is an open system. Please consult you agency's PlanView coordinator to determine when you should skip or reassign steps that have been assigned to you.

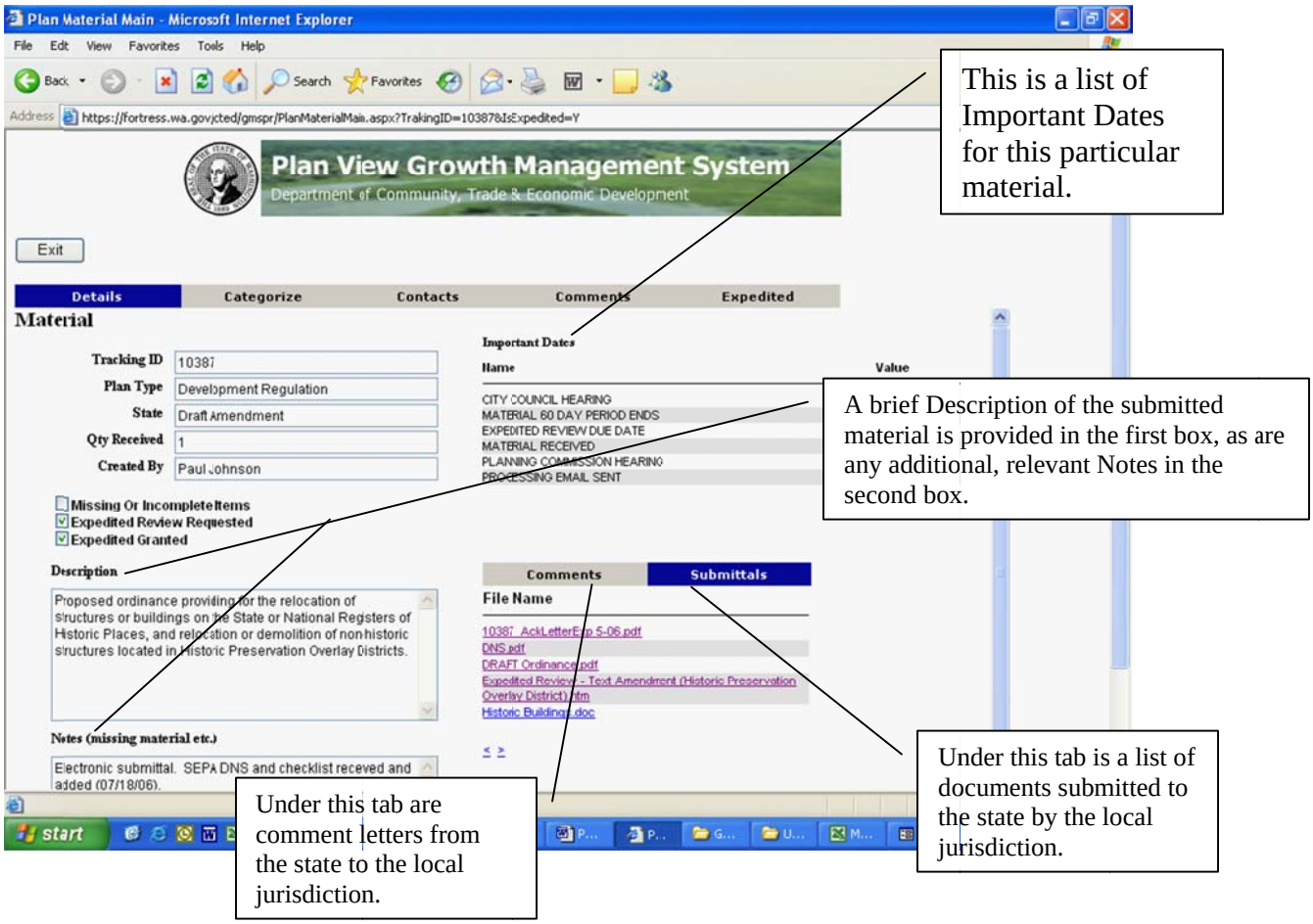


Material Record Screen

Once you select and open a material, you leave the Jurisdiction Screen and enter the Material Screen. Now you're looking at *materials* listings rather than *jurisdiction* listings. The jurisdiction information is still linked and available, but now you access it through the record for a material. Clicking Exit returns you to the Jurisdiction Main Page.

The Materials Screen is the first screen you see when you open a material. This is the most important page for accessing information on a particular material record. It contains all of the vital information needed for a reviewer, including Tracking ID, Plan Type, Description of the material, and Important Dates.

In addition, this page contains additional notes made by the CTED GMS processing staff and provides direct links to download the submitted materials and available comment letters. There are two tabs you can download from. The "comments" tab allows you to download comment letters and any documents going from state agencies to the local government. The Submittals tab is where you will find any documents submitted to CTED electronically from the jurisdiction.

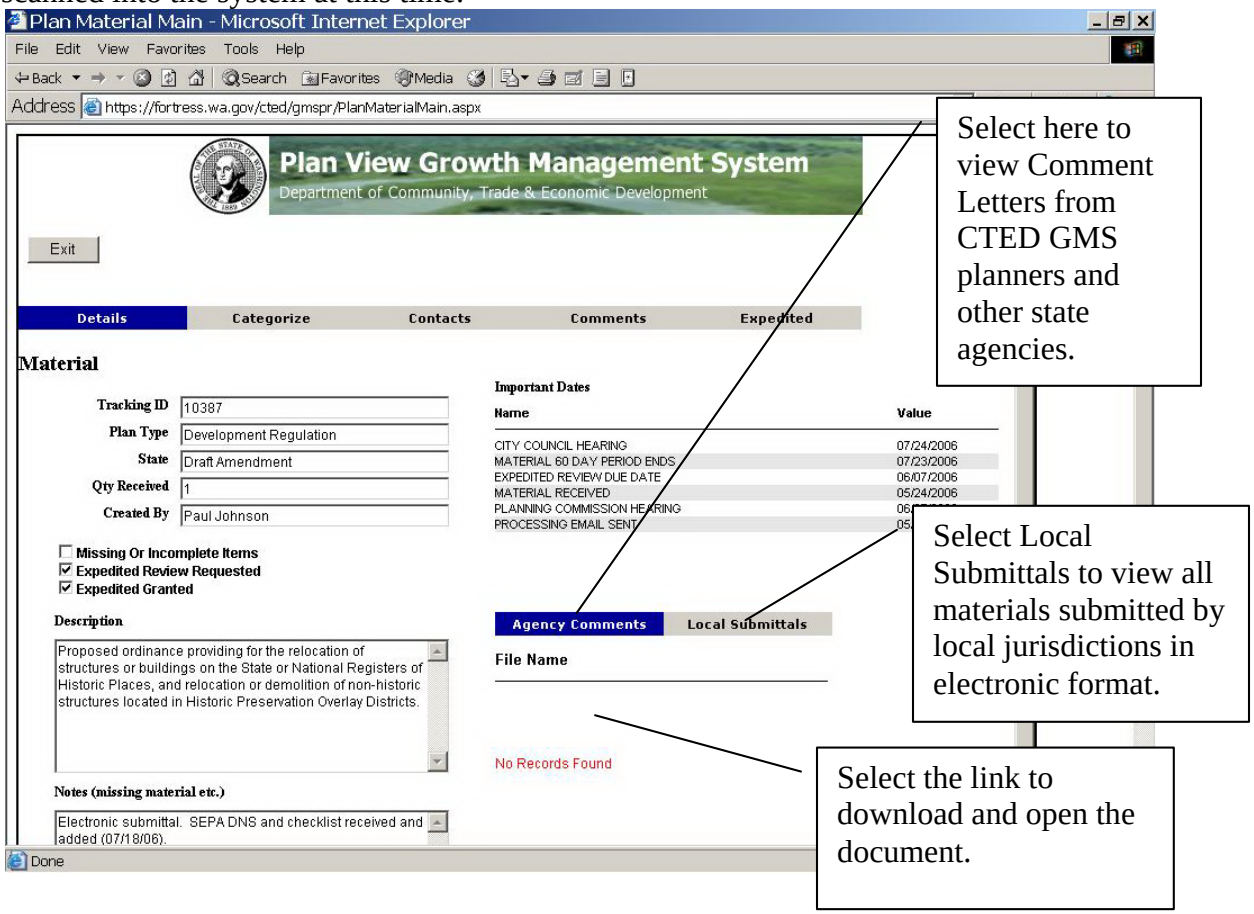


Viewing Documents

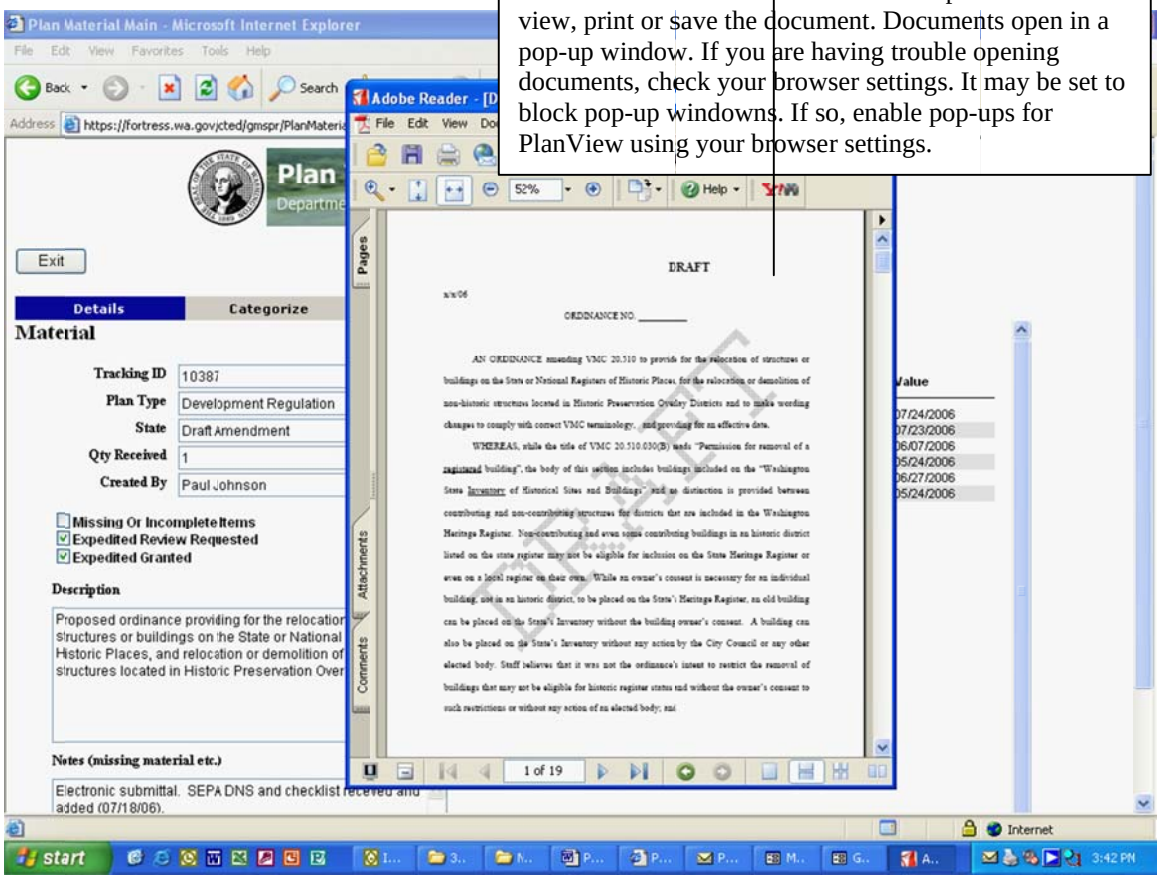
Materials submitted for review, and agency comment letters, can be viewed on the details page. The box on the lower right of the screen will display links to these documents depending upon which tab is selected.

Any GMA materials and related GMA documents received electronically for review under RCW 36.70A.106, will be downloaded to the GMS tracking database and available to under the Submittals tab. State comment letters, whether from CTED GMS or other state agencies will be available under the Comments tab. They are only viewable if they have been sent to CTED. When sending a comment letter to a local government, please CC CTED with an electronic copy of your letter so we can place it in the system for others to see.

The PlanView Data System contains materials sent to CTED electronically. If you do not see the document in this window, CTED received a hard copy; you can contact the jurisdiction and request a copy if you do not have one. While CTED encourages electronic submittals for review, hardcopies are still welcome. Hardcopies of any GMA review materials submitted by local jurisdictions are kept in physical files but not directly scanned into the system at this time.



The electronic document selected will open. You can view, print or save the document. Documents open in a pop-up window. If you are having trouble opening documents, check your browser settings. It may be set to block pop-up windows. If so, enable pop-ups for PlanView using your browser settings.



Department of Commerce
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Growth Management Act and Related Laws

2013 RCW Update

Chapters Included:

1. Annexation (35.13)
2. Boundary Review Board (36.93)
3. Growth Management–Judicial Review of Land Use Decisions (36.70C)
4. Growth Management–Local Project Review (36.70B)
5. Growth Management–Planning by Selected Counties and Cities (36.70A)
6. Infrastructure Financing/Policy/Programs
7. Planning Enabling Act (36.70)
8. Shoreline Management Act (90.58)
9. Subdivision (58.17)
10. Transfer of Development Rights – Regional (43.362)
11. Other separate sections as noted in the Table of Contents

Brian Bonlender, Director

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Recipient accepts the risk of any error or omission.

Please Note:

Sections have been arranged by subject matter in the table of contents for ease of reference. The compiled statutes remain in numerical order. In some instances just the chapter digest (list of sections) are printed in the compiled statutes to give users the list as a reference tool.

Users of this compilation should note that this is not a legal publication and does not substitute for an official publication of the Revised Code of Washington.

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http://www.leg.wa.gov/rcw/index.cfm

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Department of Commerce
Innovation is in our nature.

GROWTH MANAGEMENT ACT AND RELATED LAWS

December 2013 Update

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RCW 84.33.130	Forest land valuation—Application by owner that land be designated and valued as forest land—Hearing—Rules—Approval, denial of application—Appeal.

Fully Contained Communities

Chapter 36.70A	Growth management—Planning by selected counties and cities.
RCW 36.70A.110	Comprehensive plans—Urban growth areas.
RCW 36.70A.350	New fully contained communities.

GMA Data Collection

RCW 36.70A.215	Review and evaluation program. [Buildable lands]
RCW 43.63A.550	Growth management—Inventorying and collecting data.

Group Homes

RCW 36.70A.070	Comprehensive plans—Mandatory elements.
RCW 36.70A.200	Siting of essential public facilities—Limitation of liability.

Growth Management – CTED Central Coordinator

RCW 43.330.120	Growth management.

Growth Management – Planning by Selected Counties and Cities (36.70A, 36.70B, 36.70C)

RCW 35.22.695	Planning regulations—Copies provided to county assessor.
RCW 36.70A.010	Legislative findings.
RCW 36.70A.011	Findings—Rural lands.
RCW 36.70A.020	Planning goals.
RCW 36.70A.030	Definitions.
RCW 36.70A.035	Public participation—Notice provisions.
RCW 36.70A.040(4)	Who must plan. [Development regulations consistency with comprehensive plan.]
RCW 36.70A.045	Phasing of comprehensive plan submittal.
RCW 36.70A.050	Guidelines to classifying agriculture, forest, and mineral lands and critical areas.
RCW 36.70A.060	Natural resource lands and critical areas—Development regulations.
RCW 36.70A.070(6)	Comprehensive plans—Mandatory elements. [Transportation concurrency reqs.]
RCW 36.70A.080	Comprehensive plans—Optional elements.
RCW 36.70A.090	Comprehensive plans—Innovative techniques.
RCW 36.70A.100	Comprehensive plans—Must be coordinated.
RCW 36.70A.103	State agencies required to comply with comprehensive plans.

Growth Management – Planning by Selected Counties and Cities (36.70A, 36.70B, 36.70C)

RCW 36.70A.106 Comprehensive plans—Development regulations—Transmittal to state.
RCW 36.70A.108 Comprehensive plans—Transportation element—Multimodal transportation improvements and strategies.
RCW 36.70A.110 Comprehensive plans—Urban growth areas.
RCW 36.70A.115 Comprehensive plans and development regulations must provide sufficient land capacity for development.
RCW 36.70A.120 Planning activities and capital budget decisions—Implementation in conformity with comprehensive plan.
RCW 36.70A.130 Comprehensive plans—Review—Amendments.
RCW 36.70A.1301 Request to amend urban growth areas—Timing—Criteria
RCW 36.70A.131 Mineral resource lands—Review of related designations and development regulations.
RCW 36.70A.140 Comprehensive plans—Ensure public participation.
RCW 36.70A.150 Identification lands useful for public purposes.
RCW 36.70A.160 Identification of open space corridors—Purchase authorized.
RCW 36.70A.165 Property designated as greenbelt or open space—Not subject to adverse possession.
RCW 36.70A.170 Natural resource lands and critical areas—Designations.
RCW 36.70A.171 Playing fields—Compliance with this chapter.
RCW 36.70A.172 Critical areas—Designation and protection—Best available science to be used.
RCW 36.70A.175 Wetlands to be delineated in accordance with manual.
RCW 36.70A.177 Agricultural lands—Innovative zoning techniques.
RCW 36.70A.180 Report of planning progress.
RCW 36.70A.190 Technical assistance, procedural criteria, grants, and mediation services.
RCW 36.70A.200 Siting of essential public facilities—Limitation on liability.
RCW 36.70A.210 County-wide planning policies.
RCW 36.70A.215 Review and evaluation program. [Buildable lands]
RCW 36.70A.250 Growth management hearings board.
RCW 36.70A.252 Growth management hearings board—consolidation into environmental and land use hearings office.
RCW 36.70A.260 Growth management hearings board—Regional panel
RCW 36.70A.270 Growth management hearings board—Conduct, procedure, and compensation.
RCW 36.70A.280 Matters subject to board review.
RCW 36.70A.290 Petitions to growth management hearings board—Evidence.
RCW 36.70A.295 Direct judicial review.
RCW 36.70A.300 Final orders.
RCW 36.70A.302 Determination of invalidity—Vesting of development permits—Interim controls.
RCW 36.70A.305 Expedited review.
RCW 36.70A.310 Limitations on appeal by the state.
RCW 36.70A.320 Presumption of validity—Burden of proof—Plans and regulations.
RCW 36.70A.3201 Intent—Finding—. [Intent for changing standard of review]
RCW 36.70A.330 Noncompliance.
RCW 36.70A.335 Order of invalidity issued before July 27, 1997.
RCW 36.70A.340 Noncompliance and sanctions.
RCW 36.70A.345 Sanctions.
RCW 36.70A.350 New fully contained communities.
RCW 36.70A.360 Master planned resorts.
RCW 36.70A.362 Master planned resorts—Existing resort may be included.
RCW 36.70A.365 Major industrial developments.
RCW 36.70A.367 Major industrial developments—Master planned locations.
RCW 36.70A.368 Major industrial developments—Master planned locations—Reclaimed surface coal mine sites.
RCW 36.70A.370 Protection of private property.
RCW 36.70A.380 Extension of designation date.
RCW 36.70A.385 Environmental planning pilot projects.
RCW 36.70A.390 Moratoria, interim zoning controls—Public hearing—Limitation of length—Exceptions.
RCW 36.70A.400 Accessory apartments.
RCW 36.70A.410 Treatment of residential structures occupied by persons with handicaps.
RCW 36.70A.420 Transportation projects—Findings—Intent.
RCW 36.70A.430 Transportation projects—Collaborative review process.

Growth Management – Planning by Selected Counties and Cities (36.70A, 36.70B, 36.70C)

RCW 36.70A.450 Family day-care provider's home facility—City may not prohibit in residential or commercial area.
RCW 36.70A.460 Watershed restoration projects—Permit processing.
RCW 36.70A.470 Project review—Amendment suggestion procedure—Definitions.
RCW 36.70A.480 Shorelines of the state.
RCW 36.70A.481 Construction—Chapter 347, Laws of 1995.
RCW 36.70A.490 Growth management planning and environmental review fund—Established.
RCW 36.70A.500 Growth management planning and environmental review fund—Awarding of grants—Procedures.
RCW 36.70A.510 General aviation airports.
RCW 36.70A.520 National historic towns—Designation.
RCW 36.70A.530 Land use development incompatible with military installation not allowed—Revision of comprehensive plans and development regulations.
RCW 36.70A.540 Affordable housing incentive programs— low income housing
RCW 36.70A.550 Aquifer conservation zones
RCW 36.70A.560 Viability of agricultural lands-Deferral requirements – Definition.
RCW 36.70A.5601 Viability of agricultural lands-Ruckelshaus Center examination, report.
RCW 36.70A.570 Regulation of forest practices.
RCW 36.70A.695 Development regulations—jurisdictions specified—Electric vehicle infrastructure.
RCW 36.70A.700 Purpose -- Intent -- 2011 c 360.
RCW 36.70A.702 Construction.
RCW 36.70A.703 Definitions.
RCW 36.70A.705 Voluntary stewardship program established -- Administered by commission -- Agency participation.
RCW 36.70A.710 Critical areas protection -- Alternative to RCW 36.70A.060 -- County's responsibilities -- Procedures.
RCW 36.70A.715 Funding by commission -- County's duties -- Watershed group established.
RCW 36.70A.720 Watershed group's duties -- Work plan -- Conditional priority funding.
RCW 36.70A.725 Technical review of work plan -- Time frame for action by director.
RCW 36.70A.730 Report by watershed group -- Director consults with statewide advisory committee.
RCW 36.70A.735 When work plan is not approved, fails, or is unfunded -- County's duties -- Rules.
RCW 36.70A.740 Commission's duties -- Timelines.
RCW 36.70A.745 Statewide advisory committee -- Membership.
RCW 36.70A.750 Agricultural operators -- Individual stewardship plan.
RCW 36.70A.755 Implementing the work plan—stewardship practices—watershed group.
RCW 36.70A.760 Agricultural operators—withdrawal from program—voluntary stewardship
RCW 36.70A.800 Role of growth strategies commission.
RCW 36.70A.900 Severability -- 1990 1st ex.s. c 17.
RCW 36.70A.901 Part, section headings not law -- 1990 1st ex.s. c 17.
RCW 36.70A.902 Section headings not law -- 1991 sp.s. c 32.
RCW 36.70A.904 Conflict with federal requirements -- 2011 c 360
RCW 36.70B.010 Findings and declaration.
RCW 36.70B.020 Definitions.
RCW 36.70B.030 Project review —Required elements— limitations.
RCW 36.70B.040 Determination of consistency.
RCW 36.70B.050 Local government review of project permit applications required—Objectives.
RCW 36.70B.060 Local governments planning under the Growth Management Act to establish integrated and consolidated project permit process—Required elements.
RCW 36.70B.070 Project permit applications—Determination of completeness—Notice to applicant.
RCW 36.70B.080 Development regulations—Requirements.
RCW 36.70B.100 Designation of person or entity to receive determinations and notices.
RCW 36.70B.100 Notice of application—Required elements—Integration with other review procedures—Administrative appeals. (As amended by 1997 c 396)
RCW 36.70B.110 Notice of application—Required elements—Integration with other review procedures—Administrative appeals. (As amended by 1997 c 429)
RCW 36.70B.120 Permit review process.
RCW 36.70B.130 Notice of decision—Distribution.
RCW 36.70B.140 Project permits that may be excluded from review.
RCW 36.70B.150 Local governments not planning under the growth management act may use provisions.
RCW 36.70B.160 Additional project review encouraged—Construction.

Growth Management – Planning by Selected Counties and Cities (36.70A, 36.70B, 36.70C)

RCW 36.70B.170 Development agreements—Authorized.
RCW 36.70B.180 Development agreements—Effect.
RCW 36.70B.190 Development agreements—Recording—Parties and successors bound.
RCW 36.70B.200 Development agreements—Public hearing.
RCW 36.70B.210 Development agreements—Authority to impose fees not extended.
RCW 36.70B.220 Permit assistance staff.
RCW 36.70B.230 Planned regulations—Copies provided to county assessor.
RCW 36.70B.900 Finding—Severability—Part headings and table of contents not law—1995 c 347.
RCW 36.70C.005 Short title.
RCW 36.70C.010 Purpose.
RCW 36.70C.020 Definitions.
RCW 36.70C.030 Chapter exclusive means of judicial review of land use decisions—Exceptions.
RCW 36.70C.040 Commencement of review—Land use petition—Procedure.
RCW 36.70C.050 Joinder of parties.
RCW 36.70C.060 Standing.
RCW 36.70C.070 Land use petition—Required elements.
RCW 36.70C.080 Initial hearing.
RCW 36.70C.090 Expedited review.
RCW 36.70C.100 Stay of action pending review.
RCW 36.70C.110 Record for judicial review—Costs.
RCW 36.70C.120 Scope of review—Discovery.
RCW 36.70C.130 Standards for granting relief.
RCW 36.70C.140 Decision of the court.
RCW 36.70C.900 Finding—Severability—Part headings and table of contents not law—1995 c 347.
RCW 43.155.070 Eligibility, priority, limitations, and exceptions.
RCW 43.157.020 Expediting completion of industrial projects of state-wide significance—Planning requirements.
RCW 43.160.060 Loans and grants to political subdivisions for public facilities authorized—Application-Requirements for financial assistance.
RCW 43.160.200 Economic development account—Eligibility for assistance.
RCW 43.330.120 Growth Management central coordinator—CTED.
RCW 43.330.125 Assistance to counties and cities—training and technical assistance.

GMA Planning Goals

Chapter 36.70A Growth Management—Planning by selected counties and cities.
RCW 36.70A.020 Planning goals.
RCW 36.70A.215 Review and evaluation program. [Buildable lands]

Growth Management Hearings Boards

RCW 36.70A.250 Growth management hearings boards.
RCW 36.70A.260 Growth management hearings boards—Qualifications.
RCW 36.70A.270 Growth planning hearings boards—Conduct, procedure, and compensation.
RCW 36.70A.280 Matters subject to board review.
RCW 36.70A.290 Petitions to growth management hearings boards—Evidence.
RCW 36.70A.295 Direct judicial review.
RCW 36.70A.300 Final orders.
RCW 36.70A.302 Determination of invalidity—Vesting of development permits—Interim controls.
RCW 36.70A.305 Expedited review.
RCW 36.70A.310 Limitations on appeal by the state.
RCW 36.70A.320 Presumption of validity—Burden of proof—Plans and regulations.
RCW 36.70A.3201 Intent—Finding—1997 c 429 § 20(3). [Intent for changing standard of review]
RCW 36.70A.330 Noncompliance.
RCW 36.70A.335 Order of invalidity issued before July 27, 1997.
RCW 36.70A.340 Noncompliance and sanctions.
RCW 36.70A.345 Sanctions.

Hearing Examiner System

RCW 35.63.130 Hearing examiner system—Adoption authorized—Alternative—-Functions-Procedures.

Hearing Examiner System

RCW 58.17.330 Hearing examiner system—Adoption authorized—Procedures—Decisions.

Historic Preservation

RCW 36.70A.020 Planning goals.
RCW 36.70A.520 National historic towns—Designation.

Impact Fees

RCW 43.21C.065 Impact fees and fees for system improvements.
RCW 82.02.020 State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions.
RCW 82.02.050 Impact fees—Intent—Limitations.
RCW 82.02.060 Impact fees—Local ordinances—Required provisions.
RCW 82.02.070 Impact fees—Retained in special accounts—Limitations on use—Administrative appeals.
RCW 82.02.080 Impact fees—Refunds.
RCW 82.02.090 Impact fees—Definitions.
RCW 82.02.100 Impact fees—Exception, mitigation fees paid under chapter 43.21C RCW.

Industrial Land Banks

RCW 36.70A.367 Major industrial developments—Master planned locations.
RCW 43.157.020 Expediting completion of industrial projects of statewide significance-Requirements of agreements.

Infrastructure Financing

Chapter 39.102 Local Infrastructure Financing Tool Program (http://www1.leg.wa.gov/CodeReviser for all RCWs)
RCW 43.155.050 Public works assistance account (expires June 30, 2011)
RCW 43.160.010 Econ Development – Public Facilities Loans & Grants (effective until July 1, 2009)
RCW 43.160.060 Loans and grants to political subdivisions and federally recognized Indian tribes for public facilities authorized – Requirements for financial assistance (effective until July 1, 2009)
RCW 43.160.230 Job development fund program. (Effective until July 1, 2009.)
RCW 43.160.900 Community economic revitalization board. Report to the legislature. (Effective until July 1, 2009.)
RCW 43.330.005 Intent.
RCW 43.330.050 Community and economic development responsibilities.
RCW 43.330.060 Trade and business responsibilities.
RCW 43.330.070 Local development capacity – Training and technical assistance.
RCW 43.330.100 Local infrastructure and public facilities – Grants and loans.
RCW 43.88.0301 Capital budget instructions – Staff support from department of community, trade, and economic development.
RCW 43.88.110 Expenditure programs – maintenance summary reports-allotments-monitor capital appropriations-predesign review for major capital construction.
RCW 43.880.010 Capital budget projects – Objective analysis and scoring – prioritized lists
RCW 82.14.475 Sales and use tax for the local infrastructure financing tool program.
RCW 82.44.190 Transportation infrastructure account -- Deposits and distributions – Subaccounts
RCW 82.44.195 Transportation infrastructure account -- Highway infrastructure account -- Finding -- Intent -- Purpose -- 1996 c 262

Infrastructure Policy/Programs

RCW 43.21C State Environment Policy
RCW 43.330.250 Economic development strategic reserve account – transfer of excess funds to the education construction account.
RCW 43.330.270 Innovation partnership zones.
RCW 43.63A.550 Growth management – inventorying and collecting data.
RCW 44.28.801 State public infrastructure programs and funds – Inventory- report.
RCW 47.01.075 Transportation policy development. Regional funding every 5 yrs. To gather citizen input.
RCW 47.04.260 Latecomer fees for infrastructure improvements.
RCW 80.50.010 Energy facility siting – Legislative finding – Policy
RCW 82.14.370 Sales and use tax for public facilities in rural counties.

Infrastructure Policy/Programs

RCW 82.14.475	Sales and use tax for the local infrastructure financing tool program
RCW 89.10.010	Office of Farmland Preservation
RCW 90.46.005	Findings – Coordination of efforts – Development of facilities encourages development of facilities to provide reclaimed water. Intent: Global warming and Climate change
RCW 90.74.005	Mitigation proposals for infrastructure project.
RCW 90.74.010	Definitions – Aquatic Resources Mitigation.

Judicial Review of Land Use Decisions – [LUPA – Land Use Petition Act]

RCW 36.70C.005	Short title.
RCW 36.70C.010	Purpose.
RCW 36.70C.020	Definitions.
RCW 36.70C.030	Chapter exclusive means of judicial review of land use decisions—Exceptions.
RCW 36.70C.040	Commencement of review—Land use petition—Procedure.
RCW 36.70C.050	Joinder of parties.
RCW 36.70C.060	Standing.
RCW 36.70C.070	Land use petition—Required elements.
RCW 36.70C.080	Initial hearing.
RCW 36.70C.090	Expedited review.
RCW 36.70C.100	Stay of action pending review.
RCW 36.70C.110	Record for judicial review—Costs.
RCW 36.70C.120	Scope of review—Discovery.
RCW 36.70C.130	Standards for granting relief.
RCW 36.70C.140	Decision of the court.
RCW 36.70C.900	Finding—Severability—Part headings and table of contents not law—1995 c 347.

Land Use Element

RCW 36.70.330	Comprehensive plan—Required elements.
RCW 36.70.720	Prerequisite for zoning.
RCW 36.70A.011	Findings—Rural lands.
RCW 36.70A.030	Definitions.
RCW 36.70A.040	Who must plan—Summary of requirements—Development regulations must implement comprehensive plans.
RCW 36.70A.070	Comprehensive plans—Mandatory elements.
RCW 36.70A.130	Comprehensive plans—Review—Amendments.
RCW 36.70A.480	Shorelines of the state.
RCW 43.21C.240	Project review under the Growth Management Act.

Limited Areas of More Intensive Rural Development (LAMIRD)

RCW 36.70A.030	Definitions.
RCW 36.70A.070	Comprehensive plans—Mandatory elements.

Local Infrastructure Financing Tool (LIFT)

RCW 39.102.020	Definitions. Expires June 30, 2039.
RCW 39.102.030	Creation.
RCW 39.102.070	Local infrastructure financing.

Local Project Review

RCW 36.70A.500	Growth management planning and environmental review fund—Awarding of grants—Procedures.
RCW 36.70B	Local Project Review.

Major Industrial Developments

RCW 36.70A.	Growth Management—Planning by selected counties and cities.
RCW 36.70A.365	Major industrial developments.
RCW 36.70A.367	Major industrial developments—Master planned locations.

Manufactured Housing

RCW 35.21.684 Authority to regulate placement or use of homes—Regulation of manufactured homes.
RCW 35.63.160 Prohibitions on manufactured homes—Review required—"Designated manufactured home" defined.
RCW 35A.21.312 Authority to regulate placement or use of homes—Regulation of manufactured homes.
RCW 36.01.225 Authority to regulate placement or use of homes—Regulation of manufactured homes.

Master Planned Resorts

RCW 36.70A.360 Master planned resorts.

Natural Resource Lands

Chapter 36.70A Growth management—Planning by selected counties and cities.
RCW 36.70A.030 Definitions.
RCW 36.70A.060 Natural resource lands and critical areas—Development regulations.
RCW 36.70A.130 Comprehensive plans—Review—Amendments.
RCW 36.70A.170 Natural resource lands and critical areas—Designations.
RCW 36.70A.172 Critical areas—Designation and protection—Best available science to be used.

New and Rehabilitated Multiple Unit Dwellings in Urban Centers

RCW 84.14.005 Findings.
RCW 84.14.007 Purpose.
RCW 84.14.010 Definitions.
RCW 84.14.020 Exemption—Duration—Valuation—Exceptions.
RCW 84.14.030 Application—Requirements.
RCW 84.14.040 Designation of residential targeted area—Criteria—Local designation—Hearing—Standards, guidelines.
RCW 84.14.050 Application—Procedures.
RCW 84.14.060 Approval—Required findings.
RCW 84.14.070 Processing—Approval—Denial—Appeal.
RCW 84.14.080 Fees.
RCW 84.14.090 Filing requirements upon completion—Owner, city—Determination by city—Notice of intention of city not to file—Extension of deadline—Appeal.
RCW 84.14.100 Report—Filing.
RCW 84.14.110 Cancellation of exemption—Notice by owner of change in use—Additional tax—Penalty interest—Lien—Notice of cancellation—Appeal—Correction of tax rolls.
RCW 84.14.900 Severability—1995 c 375.

Open Space

RCW 36.70 Planning Enabling Act.
RCW 36.70A.011 Findings—Rural lands.
RCW 36.70A.020 Planning goals.
RCW 36.70A.110 Comprehensive plans—Urban growth areas.
RCW 36.70A.160 Identification of open space corridors—Purchase authorized.
RCW 36.70A.165 Property designated as greenbelt or open space—Not subject to adverse possession.
RCW 36.70A.177 Agricultural lands—Innovative zoning techniques.
RCW 36.70B.170 Development agreements—Authorized.
RCW 36.70A.500 Growth management planning and environmental review fund—Awarding of grants—Procedures.
RCW 76.09.040 Forest practices rules—Adoption—Review of proposed rules—Hearings—Riparian open space program.
RCW 84.34.220 Acquisition of open space, land, or rights to future development by certain entities—Developmental rights— "Conservation futures"—Acquisition—Restrictions.

Open Space Corridors

RCW 36.70A.160 Identification of open space corridors—Purchase authorized.

Parks and Recreation

RCW 36.70A.020 Planning goals.
RCW 36.70A.350 New fully contained communities.

Planning and Environmental Review Fund

RCW 36.70A.490 Growth management planning and environmental review fund—Established.
RCW 36.70A.500 Growth management planning and environmental review fund—Awarding of grants—Procedures.

Planning Enabling Act

RCW 70.010 Purpose and intent.
RCW 36.70.015 Expenditure of funds declared public purpose.
RCW 36.70.020 Definitions.
RCW 36.70.025 "Solar energy system" defined.
RCW 36.70.030 Commission—Creation.
RCW 36.70.040 Department—Creation—Creation of commission to assist department.
RCW 36.70.050 Authority for planning.
RCW 36.70.060 Regional planning commission—Appointment and powers.
RCW 36.70.070 Commission—Composition.
RCW 36.70.080 Commission—Appointment—County.
RCW 36.70.090 Commission—Membership—Terms—Existing commissions.
RCW 36.70.100 Commission—Vacancies.
RCW 36.70.110 Commission—Removal.
RCW 36.70.120 Commission—Officers.
RCW 36.70.130 Planning agency—Meetings.
RCW 36.70.140 Planning agency—Rules and records.
RCW 36.70.150 Planning agency—Joint meetings.
RCW 36.70.160 Director—Appointment.
RCW 36.70.170 Director—Employees.
RCW 36.70.180 Joint director.
RCW 36.70.190 Special services.
RCW 36.70.200 Board of adjustment—Creation—Zoning adjustor.
RCW 36.70.210 Board of adjustment—Membership—Quorum.
RCW 36.70.220 Board of adjustment—Appointment—Appointment of zoning adjustor.
RCW 36.70.230 Board of adjustment—Terms.
RCW 36.70.240 Board of adjustment—Vacancies.
RCW 36.70.250 Board of adjustment—Removal.
RCW 36.70.260 Board of adjustment—Organization.
RCW 36.70.270 Board of adjustment—Meetings.
RCW 36.70.280 Board of adjustment—Rules and records.
RCW 36.70.290 Appropriation for planning agency, board of adjustment.
RCW 36.70.300 Accept gifts.
RCW 36.70.310 Conference and travel expenses—Commission members and staff.
RCW 36.70.315 Public notice—Identification of affected property.
RCW 36.70.317 Statement of restrictions applicable to real property.
RCW 36.70.320 Comprehensive plan.
RCW 36.70.330 Comprehensive plan—Required elements.
RCW 36.70.340 Comprehensive plan—Amplification of required elements.
RCW 36.70.350 Comprehensive plan—Optional elements.
RCW 36.70.360 Comprehensive plan—Cooperation with affected agencies.
RCW 36.70.370 Comprehensive plan—Filing of copies.
RCW 36.70.380 Comprehensive plan—Public hearing required.
RCW 36.70.390 Comprehensive plan—Notice of hearing.
RCW 36.70.400 Comprehensive plan—Approval—Required vote—Record.
RCW 36.70.410 Comprehensive plan—Amendment.
RCW 36.70.420 Comprehensive plan—Referral to board.
RCW 36.70.430 Comprehensive plan—Board may initiate or change—Notice.
RCW 36.70.440 Comprehensive plan—Board may approve or change—Notice.
RCW 36.70.450 Planning agency—Relating projects to comprehensive plan.
RCW 36.70.460 Planning agency—Annual report.
RCW 36.70.470 Planning agency—Promotion of public interest in plan.
RCW 36.70.480 Planning agency—Cooperation with agencies.

Planning Enabling Act

RCW 36.70.490 Information to be furnished agency.
RCW 36.70.493 Manufactured housing communities – Prohibitions of county due to community status as a nonconforming use.
RCW 36.70.495 Planning regulations—Copies provided to county assessor.
RCW 36.70.500 Right of entry—Commission or planning staff.
RCW 36.70.510 Special referred matters—Reports.
RCW 36.70.520 Required submission of capital expenditure projects.
RCW 36.70.530 Relating capital expenditure projects to comprehensive plan.
RCW 36.70.540 Referral procedure—Reports.
RCW 36.70.545 Development regulations—Consistency with comprehensive plan.
RCW 36.70.547 General aviation airports—Siting of incompatible uses.
RCW 36.70.550 Official controls.
RCW 36.70.560 Official controls—Forms of controls.
RCW 36.70.570 Official controls—Adoption.
RCW 36.70.580 Official controls—Public hearing by commission.
RCW 36.70.590 Official controls—Notice of hearing.
RCW 36.70.600 Official controls—Recommendation to board—Required vote.
RCW 36.70.610 Official controls—Reference to board.
RCW 36.70.620 Official controls—Action by board.
RCW 36.70.630 Official controls—Board to conduct hearing, adopt findings prior to incorporating changes in recommended control.
RCW 36.70.640 Official controls—Board may initiate.
RCW 36.70.650 Board final authority.
RCW 36.70.660 Procedures for adoption of controls limited to planning matters.
RCW 36.70.670 Enforcement—Official controls.
RCW 36.70.675 Child care facilities—Review of need and demand—Adoption of ordinances.
RCW 36.70.677 Accessory apartments.
RCW 36.70.678 Conditional and special use permit applications by parties licensed or certified by the Department of Social and Health Services or the Department of Corrections—Mediation prior to appeal required.
RCW 36.70.680 Subdividing and platting.
RCW 36.70.690 County improvements.
RCW 36.70.700 Planning agency—Time limit for report.
RCW 36.70.710 Final authority.
RCW 36.70.720 Prerequisite for zoning.
RCW 36.70.730 Text without map.
RCW 36.70.740 Zoning map—Progressive adoption.
RCW 36.70.750 Zoning—Types of regulations.
RCW 36.70.755 Residential care facilities—Review of need and demand—Adoption of ordinances.
RCW 36.70.760 Establishing zones.
RCW 36.70.770 All regulations shall be uniform in each zone.
RCW 36.70.780 Classifying unmapped areas.
RCW 36.70.790 Interim zoning.
RCW 36.70.795 Moratoria, interim zoning controls—Public hearing—Limitation on length.
RCW 36.70.800 Procedural amendments—Zoning ordinance.
RCW 36.70.810 Board of adjustment—Authority.
RCW 36.70.820 Board of adjustment—Quasi judicial powers.
RCW 36.70.830 Board of adjustment—Appeals—Time limit.
RCW 36.70.840 Board of adjustment—Notice of time and place of hearing on conditional permit.
RCW 36.70.850 Board of adjustment—Appeal—Notice of time and place.
RCW 36.70.860 Board of adjustment—Scope of authority on appeal.
RCW 36.70.870 Zoning adjustor—Powers and duties.
RCW 36.70.880 Zoning adjustor—Action final unless appealed.
RCW 36.70.890 Board of adjustment—Action final—Writs.
RCW 36.70.900 Inclusion of findings of fact.
RCW 36.70.910 Short title.
RCW 36.70.920 Duties and responsibilities imposed by other acts.
RCW 36.70.930 Chapter alternative method.
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Salmon Recovery: Chapter 75.46 RCW; RCW 90.71.005, 020, and 050.

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Related Washington Administrative Codes

Procedures for management of growth management planning and environmental review fund– Chapter 365-185 WAC

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Interlocal Terms and Conditions for the Transfer of Development Rights – Chapter 365-198 WAC

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SEPA Handbook - (copies available from Department of Ecology's SEPA Unit, (360) 407-6924, or Website: *www.wa.gov/ecology*)

Shoreline Management Act Guidelines for Development of Master Programs– Chapter 173-16 WAC

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4.84.370 Appeal of land use decisions—Fees and costs. (1) Notwithstanding any other provisions of this chapter, reasonable attorneys' fees and costs shall be awarded to the prevailing party or substantially prevailing party on appeal before the court of appeals or the supreme court of a decision by a county, city, or town to issue, condition, or deny a development permit involving a site-specific rezone, zoning, plat, conditional use, variance, shoreline permit, building permit, site plan, or similar land use approval or decision. The court shall award and determine the amount of reasonable attorneys' fees and costs under this section if:

(a) The prevailing party on appeal was the prevailing or substantially prevailing party before the county, city, or town, or in a decision involving a substantial development permit under chapter 90.58 RCW, the prevailing party on appeal was the prevailing party or the substantially prevailing party before the shoreline[s] hearings board; and

(b) The prevailing party on appeal was the prevailing party or substantially prevailing party in all prior judicial proceedings.

(2) In addition to the prevailing party under subsection (1) of this section, the county, city, or town whose decision is on appeal is considered a prevailing party if its decision is upheld at superior court and on appeal. [1995 c 347 § 718.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

7.48.305 Agricultural activities and forest practices—Presumed reasonable and not a nuisance—Exception—Damages. (1) Notwithstanding any other provision of this chapter, agricultural activities conducted on farmland and forest practices, if consistent with good agricultural and forest practices and established prior to surrounding nonagricultural and nonforestry activities, are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity or practice has a substantial adverse effect on public health and safety.

(2) Agricultural activities and forest practices undertaken in conformity with all applicable laws and rules are presumed to be good agricultural and forest practices not adversely affecting the public health and safety for purposes of this section and RCW 7.48.300. An agricultural activity that is in conformity with such laws and rules shall not be restricted as to the hours of the day or day or days of the week during which it may be conducted.

(3) The act of owning land upon which a growing crop of trees is located, even if the tree growth is being managed passively and even if the owner does not indicate the land's status as a working forest, is considered to be a forest practice occurring on the land if the crop of trees is located on land that is capable of supporting a merchantable stand of timber that is not being actively used for a use that is incompatible with timber growing. If the growing of trees has been established prior to surrounding nonforestry activities, then the act of tree growth is considered a necessary part of any other subsequent stages of forest practices necessary to bring a crop of trees from its planting to final harvest and is included in the provisions of this section.

(4) Nothing in this section shall affect or impair any right to sue for damages. [2009 c 200 § 2; 2007 c 331 § 2. Prior: 1992 c 151 § 1; 1992 c 52 § 3; 1979 c 122 § 2.]

Intent—2009 c 200: "Commercial forestry produces jobs and revenue while also providing clean water and air, wildlife habitat, open space, and carbon storage. Maintaining a base of forest lands that can be utilized for commercial forestry is of utmost importance for the state.

As the population of the state increases, forest lands are converted to residential, suburban, and urban uses. The encroachment of these other uses into neighboring forest lands often makes it more difficult for forest landowners to continue practicing commercial forestry. It is the legislature's intent that a forest landowner's right to practice commercial forestry in a manner consistent with the state forest practices laws be protected and preserved." [2009 c 200 § 1.]

Findings—Intent—2007 c 331: "The legislature finds that agricultural activities are often subjected to nuisance lawsuits. The legislature also finds that such lawsuits hasten premature conversion of agricultural lands to other uses. The legislature further finds that agricultural activities must be able to adopt new technologies and diversify into new crops and products if the agricultural industry is to survive and agricultural lands are to be conserved. Therefore, the legislature intends to enhance the protection of agricultural activities from nuisance lawsuits, and to further the clear legislative directive of the state growth management act to maintain and enhance the agricultural industry and conserve productive agricultural lands." [2007 c 331 § 1.]

7.48.310 Agricultural activities and forest practices—Definitions. For the purposes of RCW 7.48.305 only:

(1) "Agricultural activity" means a condition or activity which occurs on a farm in connection with the commercial production of farm products and includes, but is not limited to, marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; movement, including, but not limited to, use of current county road ditches, streams, rivers, canals, and drains, and use of water for agricultural activities; ground and aerial application of seed, fertilizers, conditioners, and plant protection products; keeping of bees for production of agricultural or apicultural products; employment and use of labor; roadway movement of equipment and livestock; protection from damage by wildlife; prevention of trespass; construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, and similar features and maintenance of streambanks and watercourses; and conversion from one agricultural activity to another, including a change in the type of plant-related farm product being produced. The term includes use of new practices and equipment consistent with technological development within the agricultural industry.

(2) "Farm" means the land, buildings, freshwater ponds, freshwater culturing and growing facilities, and machinery used in the commercial production of farm products.

(3) "Farmland" means land or freshwater ponds devoted primarily to the production, for commercial purposes, of livestock, freshwater aquacultural, or other farm products.

(4) "Farm product" means those plants and animals useful to humans and includes, but is not limited to, forages and sod crops, dairy and dairy products, poultry and poultry products, livestock, including breeding, grazing, and recreational equine use, fruits, vegetables, flowers, seeds, grasses, trees, freshwater fish and fish products, apiaries and apiary products, equine and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur.

(5) "Forest practice" means any activity conducted on or directly pertaining to forest land, as that term is defined in RCW 76.09.020, and relating to growing, harvesting, or processing timber. The term "forest practices" includes, but is not limited to, road and trail construction, final and intermediate harvesting, precommercial thinning, reforestation, fer-

tilization, prevention and suppression of diseases and insects, salvage of trees, brush control, and owning land where trees may passively grow until one of the preceding activities is deemed timely by the owner. [2009 c 200 § 3; 2007 c 331 § 3; 1992 c 52 § 4; 1991 c 317 § 2; 1979 c 122 § 3.]

Intent—2009 c 200: See note following RCW 7.48.305.

Findings—Intent—2007 c 331: See note following RCW 7.48.305.

Chapter 14.12 RCW
AIRPORT ZONING

Sections

14.12.010 Definitions.
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14.12.030 Power to adopt airport zoning regulations.
14.12.050 Relation to comprehensive zoning regulations.
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14.12.910 Short title.

Municipal airports, subject to county's comprehensive plan and zoning ordinances: RCW 35.22.415.

Planning commissions: Chapter 35.63 RCW.

14.12.010 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Airport hazard" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at an airport or is otherwise hazardous to such landing or taking-off of aircraft.

(2) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter.

(3) "Airports" means any area of land or water designed and set aside for the landing and taking-off of aircraft and utilized or to be utilized in the interest of the public for such purposes.

(4) "Person" means any individual, firm, copartnership, corporation, company, association, joint stock association or body politic, including the state and its political subdivisions, and includes any trustee, receiver, assignee, or other similar representative thereof.

(5) "Political subdivision" means any county, city, town, port district or other municipal or quasi municipal corporation authorized by law to acquire, own or operate an airport.

(6) "Structure" means any object constructed or installed by a human being, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(7) "Tree" means any object of natural growth. [2009 c 549 § 1006; 1945 c 174 § 1; Rem. Supp. 1945 § 2722-15.]

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

14.12.020 Airport hazards contrary to public interest. It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of aircraft thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared: (1) That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; (2) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and (3) that this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation. It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein. [1945 c 174 § 2; Rem. Supp. 1945 § 2722-16.]

14.12.050 Relation to comprehensive zoning regulations. (1) Incorporation. In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof, may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection therewith.

(2) Conflict. In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail. [1945 c 174 § 4; Rem. Supp. 1945 § 2722-18. Formerly RCW 14.12.050 and 14.12.060.]

19.27.097 Building permit application—Evidence of adequate water supply—Applicability—Exemption. (1) Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. Evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply. In addition to other authorities, the county or city may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency. An application for a water right shall not be sufficient proof of an adequate water supply.

(2) Within counties not required or not choosing to plan pursuant to RCW 36.70A.040, the county and the state may mutually determine those areas in the county in which the requirements of subsection (1) of this section shall not apply. The departments of health and ecology shall coordinate on the implementation of this section. Should the county and the state fail to mutually determine those areas to be designated pursuant to this subsection, the county may petition the

*department of general administration to mediate or, if necessary, make the determination.

(3) Buildings that do not need potable water facilities are exempt from the provisions of this section. The department of ecology, after consultation with local governments, may adopt rules to implement this section, which may recognize differences between high-growth and low-growth counties. [2010 c 271 § 302; 1995 c 399 § 9; 1991 sp.s. c 32 § 28; 1990 1st ex.s. c 17 § 63.]

***Reviser's note:** The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

Purpose—Effective date—2010 c 271: See notes following RCW 43.330.005.

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

Chapter 27.34 RCW
STATE HISTORICAL SOCIETIES—HISTORIC PRESERVATION

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27.34.915 Severability—1993 c 101.
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Archaeological sites and resources: Chapter 27.53 RCW.

Historic preservation—Authority of county, city, or town to acquire property, borrow money, issue bonds, etc.: RCW 35.21.395, 36.32.435.

Chapter 27.44 RCW
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Chapter 27.53 RCW
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27.53.901 Severability—1988 c 124.

Department of archaeology and historic preservation: Chapter 43.334 RCW.

28A.315.105 Regional committees—Appointment and terms of members—New regional committees. (1) There is hereby created in each educational service district a committee which shall be known as the regional committee on school district organization, which committee shall be composed of not less than seven nor more than nine registered voters of the educational service district, the number to correspond with the number of board member districts established for the governance of the educational service district in which the regional committee is located.

(2) Members of each regional committee shall be appointed to serve a four-year term by the educational service district board of the district in which the regional committee is located. One member of the regional committee shall be appointed from each such educational service district board member district. Appointed members of regional committees must be registered voters and reside in the educational service district board member district from which they are appointed. Members of regional committees who were elected before June 12, 2008, may serve the remainder of their four-year terms. Vacancies occurring for any reason, including at the end of the term of any member of a regional committee who was elected before June 12, 2008, shall be filled by appointment by the educational service district board of directors as provided in this section.

(3) In the event of a change in the number of educational service districts or in the number of educational service district board members pursuant to chapter 28A.310 RCW, a new regional committee shall be appointed for each affected educational service district at the expiration of the terms of the majority of the members of the regional committee. Those persons who were serving on a regional committee within an educational service district affected by a change in the number of districts or board members shall continue to constitute the regional committee for the educational service district within which they are registered to vote until the majority of a new board has been appointed.

(4) No appointed member of a regional committee may continue to serve on the committee if he or she ceases to be a registered voter of the educational service district board member district or if he or she is absent from three consecutive meetings of the committee without an excuse acceptable to the committee. [2008 c 159 § 4; 1985 c 385 § 2; 1969 ex.s. c 223 § 28A.57.030. Prior: 1947 c 266 § 11, part; Rem. Supp. 1947 § 4693-30, part; prior: 1941 c 248 § 3, part; Rem. Supp. 1941 § 4709-3, part. Formerly RCW 28A.315.040, 28A.57.030, 28.57.030, part.]

Severability—1985 c 385: See note following RCW 28A.315.025.

Additional notes found at www.leg.wa.gov

28A.315.195 Transfer of territory by petition—Requirements—Rules. (1) A proposed change in school district organization by transfer of territory from one school district to another may be initiated by a petition in writing presented to the educational service district superintendent:

(a) Signed by at least fifty percent plus one of the active registered voters residing in the territory proposed to be transferred; or

(b) Signed by a majority of the members of the board of directors of one of the districts affected by a proposed transfer of territory and providing documentation that, before signing the petition, the board of directors took the following actions:

(i) Communicated the proposed transfer to the board of directors of the affected district or districts and provided an opportunity for the board of the affected district or districts to respond; and

(ii) Communicated the proposed transfer to the registered voters residing in the territory proposed to be transferred, provided notice of a public hearing regarding the proposal, and provided the voters an opportunity to comment on the proposal at the public hearing.

(2) The petition shall state the name and number of each district affected, describe the boundaries of the territory proposed to be transferred, and state the reasons for desiring the change and the number of children of school age, if any, residing in the territory.

(3) The educational service district superintendent shall not complete any transfer of territory under this section that involves ten percent or more of the common school student population of the entire district from which the transfer is proposed, unless the educational service district superintendent has first called and held a special election of the voters of the entire school district from which the transfer of territory is proposed. The purpose of the election is to afford those voters an opportunity to approve or reject the proposed transfer. A simple majority shall determine approval or rejection.

(4) The superintendent of public instruction may establish rules limiting the frequency of petitions that may be filed pertaining to territory included in whole or in part in a previous petition.

(5) A petition to transfer territory must be processed in accordance with RCW 28A.315.199 and 28A.315.205. [2012 c 186 § 4; 2008 c 159 § 1; 2006 c 263 § 502; 2003 c 413 § 2; 1999 c 315 § 401.]

Effective date—2012 c 186: See note following RCW 28A.315.025.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

28A.315.205 Transfer of territory or dissolution by petition—Regional committee responsibilities—Rules—Appeals. (1) The chair of the regional committee shall schedule a hearing on the proposed transfer of territory or dissolution petition at a location in the educational service district within sixty calendar days of being notified under RCW 28A.315.199 (3) or (4).

(2) Within thirty calendar days of the hearing under subsection (1) of this section, or final hearing if more than one is held by the committee, the committee shall issue its written findings and decision to approve or disapprove the proposed transfer of territory or the dissolution and annexation of a financially insolvent district. The educational service district superintendent shall transmit a copy of the committee's decision to the superintendents of the affected school districts within ten calendar days.

(3) In carrying out the purposes of RCW 28A.315.015 and in making decisions as authorized under RCW 28A.315.095(1), the regional committee shall base its judgment upon whether and to the extent the proposed change in school district organization complies with RCW 28A.315.015(2) and rules adopted by the superintendent of public instruction under chapter 34.05 RCW.

(4) The rules under subsection (3) of this section shall provide for giving consideration to all of the following:

(a) Student educational opportunities as measured by the percentage of students performing at each level of the statewide mandated assessments and data regarding student attendance, graduation, and dropout rates;

(b) The safety and welfare of pupils. For the purposes of this subsection, "safety" means freedom or protection from danger, injury, or damage and "welfare" means a positive condition or influence regarding health, character, and well-being;

(c) The history and relationship of the property affected to the students and communities affected, including, for example, the impact of the growth management act and current or proposed urban growth areas, city boundaries, and master planned communities;

(d) Whether or not geographic accessibility warrants a favorable consideration of a recommended change in school district organization, including remoteness or isolation of places of residence and time required to travel to and from school; and

(e) All funding sources of the affected districts, equalization among school districts of the tax burden for general fund and capital purposes through a reduction in disparities in per

pupil valuation when all funding sources are considered, improvement in the economies in the administration and operation of schools, and the extent the proposed change would potentially reduce or increase the individual and aggregate transportation costs of the affected school districts.

(5)(a)(i) A petitioner or school district may appeal a decision by the regional committee to the superintendent of public instruction based on the claim that the regional committee failed to follow the applicable statutory and regulatory procedures or acted in an arbitrary and capricious manner. Any such appeal shall be based on the record and the appeal must be filed within thirty days of the final decision of the regional committee. The appeal shall be heard and determined by an administrative law judge in the office of administrative hearings, based on the standards in (a)(ii) of this subsection.

(ii) If the administrative law judge finds that all applicable procedures were not followed or that the regional committee acted in an arbitrary and capricious manner, the administrative law judge shall refer the matter back to the regional committee with an explanation of his or her findings. The regional committee shall rehear the proposal.

(iii) If the administrative law judge finds that all applicable procedures were followed or that the regional committee did not act in an arbitrary and capricious manner, depending on the appeal, the educational service district shall be notified and directed to implement the changes.

(iv) The administrative law judge shall expedite review and issuance of a decision on an appeal of a decision approving the dissolution and annexation of a financially insolvent district.

(b) Any school district or citizen petitioner affected by a final decision of the regional committee may seek judicial review of the committee's decision in accordance with RCW 34.05.570. Judicial review of a regional committee decision approving dissolution and annexation of a financially insolvent district must be expedited. [2012 c 186 § 6; 2008 c 159 § 2; 2006 c 263 § 503; 2003 c 413 § 1; 1999 c 315 § 402.]

Effective date—2012 c 186: See note following RCW 28A.315.025.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

35.02.010 Authority for incorporation—Number of inhabitants required. Any contiguous area containing not less than one thousand five hundred inhabitants lying outside the limits of an incorporated city or town may become incorporated as a city or town operating under Title 35 or 35A RCW as provided in this chapter: PROVIDED, That no area which lies within five air miles of the boundary of any city having a population of fifteen thousand or more shall be incorporated which contains less than three thousand inhabitants. [1994 c 216 § 12; 1986 c 234 § 2; 1969 c 48 § 1; 1965 c 7 § 35.02.010. Prior: 1963 c 57 § 1; 1890 p 131 § 1; 1888 p 221 § 1; 1877 p 173 § 1; 1871 p 51 § 1; RRS § 8883.]

Reviser's note: The current definition of "town" under RCW 35.01.040 precludes the incorporation of a town under this section.

Effective date—1994 c 216: See note following RCW 35.02.015.

Validation—1961 ex.s. c 16: Validation of certain incorporations and annexations—Municipal corporations of the fourth class: See note following RCW 35.21.010.

Validating—1899 c 61: "Any municipal corporation which has been incorporated under the existing laws of this state shall be a valid municipal corporation notwithstanding a failure to publish the notice of the election held or to be held for the purpose of determining whether such city should or shall become incorporated, for the length of time required by law governing such incorporation: PROVIDED, A notice fulfilling in other respects the requirements of law shall have been published for one week prior to such election in a newspaper printed and published within the boundaries of the corporation." [1899 c 61 p 103 § 1.]

Validating—1893 c 80: "The incorporation of all cities and towns in this state heretofore had or attempted under sections one, two and three of an act entitled 'An act providing for the organization, classification, incorporation and government of municipal corporations, and declaring an emergency,' approved March 24, 1890, and the re-incorporation of all cities and towns in this state heretofore had or attempted under sections one, four and five of said act, under which attempted incorporation or re-incorporation an organized government has been maintained since the date thereof, is hereby for all purposes declared legal and valid, and such cities and towns are hereby declared duly incorporated. And all contracts and obligations heretofore made, entered into or incurred by any such city or town so incorporated or re-incorporated are hereby declared legal and valid and of full force and effect." [1893 c 80 p 183 § 1.]

Validating—1890 c 7: "When so incorporated, the debts due from such town, village or city to any person, firm or corporation may be assumed and paid by the municipal authorities of such town, village or city; and all debts due to such town, village or city from any person, firm or corporation shall be deemed ratified, and may be collected in the same manner and in all respects as though such original incorporation were valid." [1890 c 7 p 136 § 7.]

Additional notes found at www.leg.wa.gov

35.10.217 Methods for annexation. The following methods are available for the annexation of all or a part of a city or town to another city or town:

(1) A petition for an election to vote upon the annexation, which proposed annexation is approved by the legislative body of the city or town from which the territory will be taken, may be submitted to the legislative body of the city or town to which annexation is proposed. An annexation under this subsection shall otherwise conform with the requirements for and procedures of a petition and election method of annexing unincorporated territory under chapter 35.13 RCW, except for the requirement for the approval of the annexation by the city or town from which the territory would be taken.

(2) The legislative body of a city or town may on its own initiative by resolution indicate its desire to be annexed to a city or town either in whole or in part, or the legislative body of a city or town proposing to annex all or part of another city or town may initiate the annexation by adopting a resolution indicating that desire. In case such resolution is passed, such resolution shall be transmitted to the other affected city or town. The annexation is effective if the other city or town adopts a resolution concurring in the annexation, unless the owners of property in the area proposed to be annexed, equal in value to sixty percent or more of the assessed valuation of the property in the area, protest the proposed annexation in writing to the legislative body of the city or town proposing to annex the area, within thirty days of the adoption of the second resolution accepting the annexation. Notices of the public hearing at which the second resolution is adopted shall be mailed to the owners of the property within the area proposed to be annexed in the same manner that notices of a hearing on a proposed local improvement district are required to be mailed by a city or town as provided in chapter 35.43 RCW. An annexation under this subsection shall be potentially subject to review by a boundary review board or other

annexation review board after the adoption of the initial resolution, and the second resolution may not be adopted until the proposed annexation has been approved by the board.

(3) The owners of property located in a city or town may petition for annexation to another city or town. An annexation under this subsection shall conform with the requirements for and procedures of a direct petition method of annexing unincorporated territory, except that the legislative body of the city or town from which the territory would be taken must approve the annexation before it may proceed.

(4) All annexations under this section are subject to potential review by the local boundary review board or annexation review board. [1986 c 253 § 1; 1985 c 281 § 15; 1969 ex.s. c 89 § 4.]

Chapter 35.13 RCW
ANNEXATION OF UNINCORPORATED AREAS

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Annexation of fire protection district territory: RCW 35.02.190 through 35.02.205.

Consolidation and annexation of cities and towns: Chapter 35.10 RCW.

Local governmental organizations, actions affecting boundaries, review by boundary review board: Chapter 36.93 RCW.

Population determinations: Chapter 43.62 RCW.

Procedure to attack consolidation or annexation affecting a city of the second class: RCW 35.23.545.

Provisions relating to city annexation review boards not applicable where boundary review board created: RCW 36.93.220.

35.13.005 Annexations beyond urban growth areas prohibited. No city or town located in a county in which urban growth areas have been designated under RCW 36.70A.110 may annex territory beyond an urban growth area. [1990 1st ex.s. c 17 § 30.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

35.13.010 Authority for annexation. Any portion of a county not incorporated as part of a city or town but lying contiguous thereto may become a part of the city or town by annexation. An area proposed to be annexed to a city or town shall be deemed contiguous thereto even though separated by water or tide or shore lands on which no bona fide residence is maintained by any person. [2009 c 402 § 2; 1965 c 7 § 35.13.010. Prior: 1959 c 311 § 1; prior: (i) 1937 c 110 § 1; 1907 c 245 § 1; RRS § 8896. (ii) 1945 c 128 § 1; Rem. Supp. 1945 § 8909-10.]

Intent—2009 c 402: See note following RCW 35.13.490.

Validation—1961 ex.s. c 16: Validation of certain incorporations and annexations—Municipal corporations of the fourth class: See note following RCW 35.21.010.

Additional notes found at www.leg.wa.gov

35.13.174 Date for annexation election if review board's determination favorable. Upon receipt by the board of county commissioners of a determination by a majority of the review board favoring annexation of the proposed area that has been initiated by resolution pursuant to RCW 35.13.015 by the city or town legislative body, the board of county commissioners, or the city or town legislative body for any city or town within an urban growth area designated under RCW 36.70A.110, shall fix a date on which an annexation election shall be held, which date will be not less than thirty days nor more than sixty days thereafter. [1997 c 429 § 38; 1973 1st ex.s. c 164 § 17; 1965 c 7 § 35.13.174. Prior: 1961 c 282 § 5.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

Petition method—Fixing date of annexation election: RCW 35.13.060.

Times for holding elections: RCW 29A.04.311 through 29A.04.330.

Additional notes found at www.leg.wa.gov

35.13.177 Comprehensive land use plan for area to be annexed—Contents—Purpose. The legislative body of any city or town acting through a planning commission created pursuant to chapter 35.63 RCW, or pursuant to its granted powers, may prepare a comprehensive land use plan to become effective upon the annexation of any area which might reasonably be expected to be annexed by the city or town at any future time. Such comprehensive plan, to the extent deemed reasonably necessary by the legislative body to be in the interest of health, safety, morals and the general welfare may provide, among other things, for:

(1) The regulation and restriction within the area to be annexed of the location and the use of buildings, structures and land for residence, trade, industrial and other purposes; the height, number of stories, size, construction and design of buildings and other structures; the size of yards, courts and other open spaces on the lot or tract; the density of population; the set-back of buildings along highways, parks or public water frontages; and the subdivision and development of land;

(2) The division of the area to be annexed into districts or zones of any size or shape, and within such districts or zones regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land;

(3) The appointment of a board of adjustment, to make, in appropriate cases and subject to appropriate conditions and safeguards established by ordinance, special exceptions in harmony with the general purposes and intent of the comprehensive plan; and

(4) The time interval following an annexation during which the ordinance or resolution adopting any such plan or regulations, or any part thereof must remain in effect before it may be amended, supplemented or modified by subsequent ordinance or resolution adopted by the annexing city or town.

All such regulations and restrictions shall be designed, among other things, to encourage the most appropriate use of land throughout the area to be annexed; to lessen traffic congestion and accidents; to secure safety from fire; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to promote a coordinated development of the unbuilt areas; to encourage the formation of neighborhood or community units; to secure an appropriate allotment of land area in new developments for all the requirements of community life; to conserve and restore natural beauty and other natural resources; to facilitate the adequate provision of transportation, water, sewerage and other public uses and requirements. [1965 ex.s. c 88 § 1.]

35.13.182 Annexation of unincorporated island of territory—Resolution—Notice of hearing. (1) The legislative body of a city or town planning under chapter 36.70A RCW as of June 30, 1994, may resolve to annex territory to the city or town if there is, within the city or town, unincorporated territory containing residential property owners within the same county and within the same urban growth area designated under RCW 36.70A.110 as the city or town:

(a) Containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to the city or town; or

(b) Of any size and having at least eighty percent of the boundaries of the area contiguous to the city if the area existed before June 30, 1994.

(2) The resolution shall describe the boundaries of the area to be annexed, state the number of voters residing in the area as nearly as may be, and set a date for a public hearing on the resolution for annexation. Notice of the hearing shall be given by publication of the resolution at least once a week for two weeks before the date of the hearing in one or more newspapers of general circulation within the city or town and one or more newspapers of general circulation within the area to be annexed.

(3) For purposes of subsection (1)(b) of this section, territory bounded by a river, lake, or other body of water is considered contiguous to a city that is also bounded by the same

river, lake, or other body of water. [1998 c 286 § 1; 1997 c 429 § 37.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

Additional notes found at www.leg.wa.gov

35.13.1821 Annexation of unincorporated island of territory—Referendum—Election. The annexation ordinance provided for in RCW 35.13.182 is subject to referendum for forty-five days after its passage. Upon the filing of a timely and sufficient referendum petition with the legislative body, signed by qualified electors in number equal to not less than ten percent of the votes cast in the last general state election in the area to be annexed, the question of annexation shall be submitted to the voters of the area in a general election if one is to be held within ninety days or at a special election called for that purpose according to RCW 29A.04.330. Notice of the election shall be given as provided in RCW 35.13.080 and the election shall be conducted as provided in the general election law. The annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto.

After the expiration of the forty-fifth day from but excluding the date of passage of the annexation ordinance, if no timely and sufficient referendum petition has been filed, the area annexed shall become a part of the city or town upon the date fixed in the ordinance of annexation. [2006 c 344 § 22; 1998 c 286 § 2.]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

35.13.1822 Annexation of unincorporated island of territory—Notice, hearing. On the date set for hearing as provided in RCW 35.13.182(2), residents or property owners of the area included in the resolution for annexation shall be afforded an opportunity to be heard. The legislative body may provide by ordinance for annexation of the territory described in the resolution, but the effective date of the ordinance shall be not less than forty-five days after the passage thereof. The legislative body shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the ordinance, in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the area to be annexed. If the annexation ordinance provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice shall include a statement of such requirements. [1998 c 286 § 3.]

35.13.470 Annexation of territory within urban growth areas—Interlocal agreement—Public hearing—Ordinance providing for annexation. (1) The legislative body of a county, city, or town planning under chapter 36.70A RCW and subject to the requirements of RCW 36.70A.215 may initiate an annexation process for unincorporated territory by adopting a resolution commencing negotiations for an interlocal agreement as provided in chapter 39.34 RCW between a county and any city or town within the county. The territory proposed for annexation must meet the following criteria: (a) Be within the city or town urban growth area designated under RCW 36.70A.110, and (b) at least sixty percent of the boundaries of the territory proposed for annexation must be contiguous to the annexing city or town or one or more cities or towns.

(2) If the territory proposed for annexation has been designated in an adopted county comprehensive plan as part of an urban growth area, urban service area, or potential annexation area for a specific city or town, or if the urban growth area territory proposed for annexation has been designated in a written agreement between a city or town and a county for annexation to a specific city or town, the designation or designations shall receive full consideration before a city or county may initiate the annexation process provided for in RCW 35.13.480.

(3) The agreement shall describe the boundaries of the territory to be annexed. A public hearing shall be held by each legislative body, separately or jointly, before the agreement is executed. Each legislative body holding a public hearing shall, separately or jointly, publish the agreement at least once a week for two weeks before the date of the hearing in one or more newspapers of general circulation within the territory proposed for annexation.

(4) Following adoption and execution of the agreement by both legislative bodies, the city or town legislative body shall adopt an ordinance providing for the annexation of the territory described in the agreement. The legislative body shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the ordinance, in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the territory to be annexed. If the annexation ordinance provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice shall include a statement of the requirements. Any territory to be annexed through an ordinance adopted under this section is annexed and becomes a part of the city or town upon the date fixed in the ordinance of annexation, which date may not be fewer than forty-five days after adoption of the ordinance. [2003 c 299 § 1.]

35.13.490 Annexation of territory used for an agricultural fair. (1) Territory owned by a county and used for an agricultural fair as provided in chapter 15.76 RCW or chapter 36.37 RCW may only be annexed to a city or town through the method prescribed in this section.

(a) The legislative body of the city or town proposing the annexation must submit a request for annexation and a legal description of the subject territory to the legislative authority of the county within which the territory is located.

(b) Upon receipt of the request and description, the county legislative authority has thirty days to review the proposal and determine if the annexation proceedings will continue. As a condition of approval, the county legislative authority may modify the proposal, but it may not add territory that was not included in the request and description. Approval of the county legislative authority is a condition precedent to further proceedings upon the request and there is no appeal of the county legislative authority's decision.

(c) If the county legislative authority determines that the proceedings may continue, it must, within thirty days of the determination, fix a date for a public hearing on the proposal,

and cause notice of the hearing to be published at least once a week for two weeks prior to the hearing in one or more newspapers of general circulation in the territory proposed for annexation. The notice must also be posted in three public places within the subject territory, specify the time and place of the hearing, and invite interested persons to appear and voice approval or disapproval of the annexation. If the annexation proposal provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice must include a statement of these requirements.

(d) If, following the conclusion of the hearing, a majority of the county legislative authority deems the annexation proposal to be in the best interest of the county, it may adopt a resolution approving of the annexation.

(e) If, following the county legislative authority's adoption of the annexation approval resolution, the legislative body of the city or town proposing annexation determines to effect the annexation, it must do so by ordinance. The ordinance: (i) May only include territory approved for annexation in the resolution adopted under (d) of this subsection; and (ii) must not exclude territory approved for annexation in the resolution adopted under (d) of this subsection. Upon passage of the annexation ordinance, a certified copy must be filed with the applicable county legislative authority.

(2) Any territory annexed through an ordinance adopted under this section is annexed and becomes a part of the city or town upon the date fixed in the ordinance. [2009 c 402 § 3.]

Intent—2009 c 402: "The legislature recognizes that agricultural fairs serve valuable educational, vocational, and recreational purposes that promote the public good and serve as showcases for an important sector of Washington's economy. The legislature also recognizes that counties provide territory for agricultural fairs and supporting services, thereby creating locales for economic and other beneficial activities. Washington's increasing population can, however, create significant annexation pressures that impact fairgrounds and surrounding lands.

In recognition of the many benefits of agricultural fairs and the importance of promoting effective annexation laws, the legislature intends to establish clear and logical procedures for the annexation of county-owned fairgrounds that are consistent with the long-standing requirement that these grounds may only be annexed with the consent of a majority of the county legislative authority." [2009 c 402 § 1.]

35.13.900 Application of chapter to annexations involving water or sewer service. Nothing in this chapter precludes or otherwise applies to an annexation by a city or town of unincorporated territory as authorized by RCW 57.24.170, 57.24.190, and 57.24.210. [1996 c 230 § 1601; 1995 c 279 § 3.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Additional notes found at www.leg.wa.gov

35.14.040 Ordinances or resolutions of city applying to land, buildings or structures within corporation, effectiveness—Zoning ordinances, resolutions or land use controls to remain in effect upon annexation or consolidation—Comprehensive plan. The adoption, approval, enactment, amendment, granting or authorization by the city council or commission of any ordinance or resolution applying to land, buildings or structures within any community council corporation shall become effective within such community municipal corporation either on approval by the community council, or by failure of the community council to disapprove within sixty days of final enactment, with respect to the following:

(1) Comprehensive plan;

(2) Zoning ordinance;

(3) Conditional use permit, special exception or variance;

(4) Subdivision ordinance;

(5) Subdivision plat;

(6) Planned unit development.

Disapproval by the community council shall not affect the application of any ordinance or resolution affecting areas outside the community municipal corporation.

Upon annexation or consolidation, pending the effective enactment or amendment of a zoning or land use control ordinance, without disapproval of the community municipal corporation, affecting land, buildings, or structures within a community municipal corporation, the zoning ordinance, resolution or land use controls applicable to the annexed or consolidated area, prior to the annexation or consolidation, shall remain in effect within the community municipal corporation and be enforced by the city to which the area is annexed or consolidated.

Whenever the comprehensive plan of the city, insofar as it affects the area of the community municipal corporation has been submitted as part of an annexation proposition and approved by the voters of the area proposed for annexation pursuant to chapter 88, Laws of 1965 extraordinary session, such action shall have the same force and effect as approval by the community council of the comprehensive plan, zoning ordinance and subdivision ordinance. [1967 c 73 § 4.]

35.21.005 Sufficiency of petitions. Wherever in this title petitions are required to be signed and filed, the following rules shall govern the sufficiency thereof:

(1) A petition may include any page or group of pages containing an identical text or prayer intended by the circulators, signers or sponsors to be presented and considered as one petition and containing the following essential elements when applicable, except that the elements referred to in (d) and (e) of this subsection are essential for petitions referring or initiating legislative matters to the voters, but are directory as to other petitions:

(a) The text or prayer of the petition which shall be a concise statement of the action or relief sought by petitioners and shall include a reference to the applicable state statute or city ordinance, if any;

(b) If the petition initiates or refers an ordinance, a true copy thereof;

(c) If the petition seeks the annexation, incorporation, withdrawal, or reduction of an area for any purpose, an accurate legal description of the area proposed for such action and if practical, a map of the area;

(d) Numbered lines for signatures with space provided beside each signature for the name and address of the signer and the date of signing;

(e) The warning statement prescribed in subsection (2) of this section.

(2) Petitions shall be printed or typed on single sheets of white paper of good quality and each sheet of petition paper having a space thereon for signatures shall contain the text or prayer of the petition and the following warning:

WARNING

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each signature shall be executed in ink or indelible pencil and shall be followed by the name and address of the signer and the date of signing.

(3) The term "signer" means any person who signs his or her own name to the petition.

(4) To be sufficient a petition must contain valid signatures of qualified registered voters or property owners, as the case may be, in the number required by the applicable statute or ordinance. Within three working days after the filing of a petition, the officer with whom the petition is filed shall transmit the petition to the county auditor for petitions signed by registered voters, or to the county assessor for petitions signed by property owners for determination of sufficiency. The officer or officers whose duty it is to determine the sufficiency of the petition shall proceed to make such a determination with reasonable promptness and shall file with the officer receiving the petition for filing a certificate stating the date upon which such determination was begun, which date shall be referred to as the terminal date. Additional pages of one or more signatures may be added to the petition by filing the same with the appropriate filing officer prior to such terminal date. Any signer of a filed petition may withdraw his or her signature by a written request for withdrawal filed with the receiving officer prior to such terminal date. Such written request shall so sufficiently describe the petition as to make identification of the person and the petition certain. The name of any person seeking to withdraw shall be signed exactly the same as contained on the petition and, after the filing of such request for withdrawal, prior to the terminal date, the signature of any person seeking such withdrawal shall be deemed withdrawn.

(5) Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved.

(6) A variation on petitions between the signatures on the petition and that on the voter's permanent registration caused by the substitution of initials instead of the first or middle names, or both, shall not invalidate the signature on the petition if the surname and handwriting are the same.

(7) Signatures, including the original, of any person who has signed a petition two or more times shall be stricken.

(8) Signatures followed by a date of signing which is more than six months prior to the date of filing of the petition shall be stricken.

(9) When petitions are required to be signed by the owners of property, the determination shall be made by the county assessor. Where validation of signatures to the petition is required, the following shall apply:

(a) The signature of a record owner, as determined by the records of the county auditor, shall be sufficient without the signature of his or her spouse;

(b) In the case of mortgaged property, the signature of the mortgagor shall be sufficient, without the signature of his or her spouse;

(c) In the case of property purchased on contract, the signature of the contract purchaser, as shown by the records of the county auditor, shall be deemed sufficient, without the signature of his or her spouse;

(d) Any officer of a corporation owning land within the area involved who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign on behalf of such corporation, and shall attach to the petition a certified excerpt from the bylaws of such corporation showing such authority;

(e) When the petition seeks annexation, any officer of a corporation owning land within the area involved, who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign under oath on behalf of such corporation. If an officer signs the petition, he or she must attach an affidavit stating that he or she is duly authorized to sign the petition on behalf of such corporation;

(f) When property stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property; and

(g) When a parcel of property is owned by multiple owners, the signature of an owner designated by the multiple owners is sufficient.

(10) The officer or officers responsible for determining the sufficiency of the petition shall do so in writing and transmit the written certificate to the officer with whom the petition was originally filed. [2008 c 196 § 1; 2003 c 331 § 8; 1996 c 286 § 6.]

Intent—Severability—Effective date—2003 c 331: See notes following RCW 35.13.410.

35.21.684 Authority to regulate placement or use of homes—Regulation of manufactured homes—Issuance of permits—Restrictions on location of manufactured/mobile homes and entry or removal of recreational vehicles used as primary residences. (1) A city or town may not adopt an ordinance that has the effect, directly or indirectly, of discriminating against consumers' choices in the placement or use of a home in such a manner that is not equally applicable to all homes. Homes built to 42 U.S.C. Sec. 5401-5403 standards (as amended in 2000) must be regulated for the purposes of siting in the same manner as site built homes, factory built homes, or homes built to any other state construction or local design standard. However, except as provided in subsection (2) of this section, any city or town may require that:

(a) A manufactured home be a new manufactured home;

(b) The manufactured home be set upon a permanent foundation, as specified by the manufacturer, and that the space from the bottom of the home to the ground be enclosed by concrete or an approved concrete product which can be either load bearing or decorative;

(c) The manufactured home comply with all local design standards applicable to all other homes within the neighborhood in which the manufactured home is to be located;

(d) The home is thermally equivalent to the state energy code; and

(e) The manufactured home otherwise meets all other requirements for a designated manufactured home as defined in RCW 35.63.160.

A city with a population of one hundred thirty-five thousand or more may choose to designate its building official as the person responsible for issuing all permits, including department of labor and industries permits issued under chapter 43.22 RCW in accordance with an interlocal agreement under chapter 39.34 RCW, for alterations, remodeling, or expansion of manufactured housing located within the city limits under this section.

(2) A city or town may not adopt an ordinance that has the effect, directly or indirectly, of restricting the location of manufactured/mobile homes in manufactured/mobile home communities that were legally in existence before June 12, 2008, based exclusively on the age or dimensions of the manufactured/mobile home. This does not preclude a city or town from restricting the location of a manufactured/mobile home in manufactured/mobile home communities for any other reason including, but not limited to, failure to comply with fire, safety, or other local ordinances or state laws related to manufactured/mobile homes.

(3) Except as provided under subsection (4) of this section, a city or town may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a recreational vehicle used as a primary residence in manufactured/mobile home communities.

(4) Subsection (3) of this section does not apply to any local ordinance or state law that:

(a) Imposes fire, safety, or other regulations related to recreational vehicles;

(b) Requires utility hookups in manufactured/mobile home communities to meet state or federal building code standards for manufactured/mobile home communities; or

(c) Includes both of the following provisions:

(i) A recreational vehicle must contain at least one internal toilet and at least one internal shower; and

(ii) If the requirement in (c)(i) of this subsection is not met, a manufactured/mobile home community must provide toilets and showers.

(5) For the purposes of this section, "manufactured/mobile home community" has the same meaning as in RCW 59.20.030.

(6) This section does not override any legally recorded covenants or deed restrictions of record.

(7) This section does not affect the authority granted under chapter 43.22 RCW. [2009 c 79 § 1; 2008 c 117 § 1; 2004 c 256 § 2.]

Findings—Intent—2004 c 256: "The legislature finds that: Congress has preempted the regulation by the states of manufactured housing construction standards through adoption of construction standards for manufactured housing (42 U.S.C. Sec. 5401-5403); and this federal regulation is equivalent to the state's uniform building code. The legislature also finds that congress has declared that: (1) Manufactured housing plays a vital role in meeting the housing needs of the nation; and (2) manufactured homes provide a significant resource for affordable homeownership and rental housing accessible to all Americans (42 U.S.C. Sec. 5401-5403). The legislature intends to protect the consumers' rights to choose among a number of housing construction alternatives without restraint of trade or discrimination by local governments." [2004 c 256 § 1.]

Effective date—2004 c 256: "This act takes effect July 1, 2005." [2004 c 256 § 6.]

35.22.415 Municipal airport located in unincorporated area—Subject to county comprehensive plan and zoning ordinances. Whenever a first-class city owns and operates a municipal airport which is located in an unincorporated area of a county, the airport shall be subject to the county's comprehensive plan and zoning ordinances in the same manner as if the airport were privately owned and operated. [1979 ex.s. c 124 § 10.]

Severability—1979 ex.s. c 124: See note following RCW 35A.14.015.

Additional notes found at www.leg.wa.gov

35.22.695 Planning regulations—Copies provided to county assessor. By July 31, 1997, a first-class city planning under RCW 36.70A.040 shall provide to the county assessor a copy of the first-class city's comprehensive plan and development regulations in effect on July 1st of that year and shall thereafter provide any amendments to the plan and regulations that were adopted before July 31st of each following year. [1996 c 254 § 2.]

35.58.2795 Public transportation systems—Six-year transit plans. By September 1st of each year, the legislative authority of each municipality, as defined in RCW 35.58.272, and each regional transit authority shall prepare a six-year transit development plan for that calendar year and the ensuing five years. The program shall be consistent with the comprehensive plans adopted by counties, cities, and towns, pursuant to chapter 35.63, 35A.63, or 36.70 RCW, the inherent authority of a first-class city or charter county derived from its charter, or chapter 36.70A RCW. The program shall contain information as to how the municipality intends to meet state and local long-range priorities for public transportation, capital improvements, significant operating changes planned for the system, and how the municipality intends to fund program needs. The six-year plan for each municipality and regional transit authority shall specifically set forth those projects of regional significance for inclusion in the transportation improvement program within that region. Each municipality and regional transit authority shall file the six-year program with the state department of transportation, the transportation improvement board, and cities, counties, and regional planning councils within which the municipality is located.

In developing its program, the municipality and the regional transit authority shall consider those policy recommendations affecting public transportation contained in the state transportation policy plan approved by the state transportation commission and, where appropriate, adopted by the legislature. The municipality shall conduct one or more public hearings while developing its program and for each annual update. [2011 c 371 § 1; 1994 c 158 § 6; 1990 1st ex.s. c 17 § 60; 1989 c 396 § 1.]

Captions not law—Severability—Effective date—1994 c 158: See RCW 47.80.902 through 47.80.904.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

35.63.125 Development regulations—Consistency with comprehensive plan. Beginning July 1, 1992, the development regulations of each city and county that does not plan under RCW 36.70A.040 shall not be inconsistent with the city's or county's comprehensive plan. For the purposes of this section, "development regulations" has the same meaning as set forth in RCW 36.70A.030. [1990 1st ex.s. c 17 § 22.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

35.63.130 Hearing examiner system—Adoption authorized—Alternative—Functions—Procedures. (1) As an alternative to those provisions of this chapter relating to powers or duties of the planning commission to hear and report on any proposal to amend a zoning ordinance, the legislative body of a city or county may adopt a hearing examiner system under which a hearing examiner or hearing examiners may hear and decide applications for amending the zoning ordinance when the amendment which is applied for is not of general applicability. In addition, the legislative body may vest in a hearing examiner the power to hear and decide those issues it believes should be reviewed and decided by a hearing examiner, including but not limited to:

(a) Applications for conditional uses, variances, subdivisions, shoreline permits, or any other class of applications for or pertaining to development of land or land use;

(b) Appeals of administrative decisions or determinations; and

(c) Appeals of administrative decisions or determinations pursuant to chapter 43.21C RCW.

The legislative body shall prescribe procedures to be followed by the hearing examiner.

(2) Each city or county legislative body electing to use a hearing examiner pursuant to this section shall by ordinance specify the legal effect of the decisions made by the examiner. The legal effect of such decisions may vary for the different classes of applications decided by the examiner but shall include one of the following:

(a) The decision may be given the effect of a recommendation to the legislative body;

(b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body; or

(c) Except in the case of a rezone, the decision may be given the effect of a final decision of the legislative body.

(3) Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the city's or county's comprehensive plan and the city's or county's development regulations. Each final decision of a hearing examiner, unless a longer period is mutually agreed to in writing by the applicant and the hearing examiner, shall be rendered within ten working days following conclusion of all testimony and hearings. [1995 c 347 § 423; 1994 c 257 § 8; 1977 ex.s. c 213 § 1.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—1994 c 257: See note following RCW 36.70A.270.

Severability—1977 ex.s. c 213: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 213 § 5.]

Additional notes found at www.leg.wa.gov

35.63.160 Regulation of manufactured homes—Definitions. (1) A "designated manufactured home" is a manufactured home constructed after June 15, 1976, in accordance with state and federal requirements for manufactured homes, which:

(a) Is comprised of at least two fully enclosed parallel sections each of not less than twelve feet wide by thirty-six feet long;

(b) Was originally constructed with and now has a composition or wood shake or shingle, coated metal, or similar roof of nominal 3:12 pitch; and

(c) Has exterior siding similar in appearance to siding materials commonly used on conventional site-built uniform building code single-family residences.

(2) "New manufactured home" means any manufactured home required to be titled under Title 46 RCW, which has not been previously titled to a retail purchaser, and is not a "used mobile home" as defined in RCW 82.45.032(2).

(3) Nothing in this section precludes cities from allowing any manufactured home from being sited on individual lots through local standards which differ from the designated manufactured home or new manufactured home as described in this section, except that the term "designated manufactured home" and "new manufactured home" shall not be used except as defined in subsections (1) and (2) of this section. [2004 c 256 § 5; 1988 c 239 § 1.]

Findings—Intent—Effective date—2004 c 256: See notes following RCW 35.21.684.

35.63.240 Planning regulations—Copies provided to county assessor. By July 31, 1997, a city planning under RCW 36.70A.040 shall provide to the county assessor a copy of the city's comprehensive plan and development regulations in effect on July 1st of that year and shall thereafter provide any amendments to the plan and regulations that were adopted before July 31st of each following year. [1996 c 254 § 3.]

35.63.250 General aviation airports. Adoption and amendment of comprehensive plan provisions and development regulations under this chapter affecting a general aviation airport are subject to RCW 36.70.547. [1996 c 239 § 3.]

35.77.010 Perpetual advanced six-year plans for coordinated transportation program expenditures—Nonmotorized transportation—Railroad right-of-way. (1) The legislative body of each city and town, pursuant to one or more public hearings thereon, shall prepare and adopt a comprehensive transportation program for the ensuing six calendar years. If the city or town has adopted a comprehensive plan pursuant to chapter 35.63 or 35A.63 RCW, the inherent authority of a first-class city derived from its charter, or chapter 36.70A RCW, the program shall be consistent with this comprehensive plan. The program shall include any new or enhanced bicycle or pedestrian facilities identified pursuant

to RCW 36.70A.070(6) or other applicable changes that promote nonmotorized transit.

The program shall be filed with the secretary of transportation not more than thirty days after its adoption. Annually thereafter the legislative body of each city and town shall review the work accomplished under the program and determine current city transportation needs. Based on these findings each such legislative body shall prepare and after public hearings thereon adopt a revised and extended comprehensive transportation program before July 1st of each year, and each one-year extension and revision shall be filed with the secretary of transportation not more than thirty days after its adoption. The purpose of this section is to assure that each city and town shall perpetually have available advanced plans looking to the future for not less than six years as a guide in carrying out a coordinated transportation program. The program may at any time be revised by a majority of the legislative body of a city or town, but only after a public hearing.

The six-year plan for each city or town shall specifically set forth those projects and programs of regional significance for inclusion in the transportation improvement program within that region.

(2) Each six-year transportation program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a city or town will expend its moneys, including funds made available pursuant to chapter 47.30 RCW, for nonmotorized transportation purposes.

(3) Each six-year transportation program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a city or town shall act to preserve railroad right-of-way in the event the railroad ceases to operate in the city's or town's jurisdiction. [2005 c 360 § 4. Prior: 1994 c 179 § 1; 1994 c 158 § 7; 1990 1st ex.s. c 17 § 59; 1988 c 167 § 6; 1984 c 7 § 23; 1977 ex.s. c 317 § 7; 1975 1st ex.s. c 215 § 1; 1967 ex.s. c 83 § 27; 1965 c 7 § 35.77.010; prior: 1961 c 195 § 2.]

Findings—Intent—2005 c 360: See note following RCW 36.70A.070.

Captions not law—Severability—Effective date—1994 c 158: See RCW 47.80.902 through 47.80.904.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—1984 c 7: See note following RCW 47.01.141.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

Severability—Effective dates—1967 ex.s. c 83: See RCW 47.26.900 and 47.26.910.

Highways, roads, streets in urban areas, urban arterials, development: Chapter 47.26 RCW.

Long-range arterial construction planning, counties and cities to prepare data: RCW 47.26.170.

Perpetual advanced six-year plans for coordinated transportation program: RCW 36.81.121.

Transportation improvement board: Chapter 47.26 RCW.

Additional notes found at www.leg.wa.gov

35.79.030 Hearing—Ordinance of vacation. The hearing on such petition may be held before the legislative authority, before a committee thereof, or before a hearing examiner, upon the date fixed by resolution or at the time the hearing may be adjourned to. If the hearing is before a committee the same shall, following the hearing, report its recommendation on the petition to the legislative authority which may adopt or reject the recommendation. If the hearing is held before a committee it shall not be necessary to hold a hearing on the petition before the legislative authority. If the hearing is before a hearing examiner, the hearing examiner shall, following the hearing, report its recommendation on the petition to the legislative authority, which may adopt or reject the recommendation: PROVIDED, That the hearing examiner must include in its report to the legislative authority an explanation of the facts and reasoning underlying a recommendation to deny a petition. If a hearing is held before a hearing examiner, it shall not be necessary to hold a hearing on the petition before the legislative authority. If the legislative authority determines to grant the petition or any part thereof, such city or town shall be authorized and have authority by ordinance to vacate such street, or alley, or any part thereof, and the ordinance may provide that it shall not become effective until the owners of property abutting upon the street or alley, or part thereof so vacated, shall compensate such city or town in an amount which does not exceed one-half the appraised value of the area so vacated. If the street or alley has been part of a dedicated public right-of-way for twenty-five years or more, or if the subject property or portions thereof were acquired at public expense, the city or town may require the owners of the property abutting the street or alley to compensate the city or town in an amount that does not exceed the full appraised value of the area vacated. The ordinance may provide that the city retain an easement or the right to exercise and grant easements in respect to the vacated land for the construction, repair, and maintenance of public utilities and services. A certified copy of such ordinance shall be recorded by the clerk of the legislative authority and in the office of the auditor of the county in which the vacated land is located. One-half of the revenue received by the city or town as compensation for the area vacated must be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the city or town. [2011 c 130 § 1; 2002 c 55 § 1; 2001 c 202 § 1; 1987 c 228 § 1; 1985 c 254 § 1; 1969 c 28 § 4. Prior: 1967 ex.s. c 129 § 1; 1967 c 123 § 1; 1965 c 7 § 35.79.030; prior: 1957 c 156 § 4; 1949 c 14 § 1; 1901 c 84 § 2; Rem. Supp. 1949 § 9298.]

35.91.020 Contracts with owners of real estate for water or sewer facilities—Reimbursement of costs by subsequent users—Contract requirements. ***(Effective until July 1, 2014.)*** (1)(a) Except as provided under subsection (2) of this section, the governing body of any city, town, county, water-sewer district, or drainage district, hereinafter referred to as a "municipality" may contract with owners of real estate for the construction of storm, sanitary, or combination sewers, pumping stations, and disposal plants, water mains, hydrants, reservoirs, or appurtenances, hereinafter called "water or sewer facilities," within their boundaries or (except for counties) within ten miles from their corporate limits connecting with the public water or sewerage system to serve the area in which the real estate of such owners is located, and to provide for a period of not to exceed twenty years for the reimbursement of such owners and their assigns

by any owner of real estate who did not contribute to the original cost of such water or sewer facilities and who subsequently tap onto or use the same of a fair pro rata share of the cost of the construction of said water or sewer facilities, including not only those directly connected thereto, but also users connected to laterals or branches connecting thereto, subject to such reasonable rules and regulations as the governing body of such municipality may provide or contract, and notwithstanding the provisions of any other law.

(b) If authorized by ordinance or contract, a municipality may participate in financing the development of water or sewer facilities development projects authorized by, and in accordance with, (a) of this subsection. Unless otherwise provided by ordinance or contract:

(i) Municipalities that contribute to the financing of water or sewer facilities projects under this section have the same rights to reimbursement as owners of real estate who make contributions as authorized under this section; and

(ii) If the projects are jointly financed by a combination of municipal funding and private funding by real estate owners, the amount of reimbursement received by each participant in the financing must be a pro rata share.

(c) A municipality seeking reimbursement from an owner of real estate under this section is limited to the dollar amount authorized under this chapter and may not collect any additional reimbursement, assessment, charge, or fee for the infrastructure or facilities that were constructed under the applicable ordinance, contract, or agreement. This does not prevent the collection of amounts for services or infrastructure that are additional expenditures not subject to such ordinance, contract, or agreement.

(2)(a) The contract may provide for an extension of the twenty-year reimbursement period for a time not to exceed the duration of any moratorium, phasing ordinance, concurrency designation, or other governmental action that prevents making applications for, or the approval of, any new development within the benefit area for a period of six months or more.

(b) Upon the extension of the reimbursement period pursuant to (a) of this subsection, the contract must specify the duration of the contract extension and must be filed and recorded with the county auditor. Property owners who are subject to the reimbursement obligations under subsection (1) of this section shall be notified by the contracting municipality of the extension filed under this subsection.

(3) Each contract shall include a provision requiring that every two years from the date the contract is executed a property owner entitled to reimbursement under this section provide the contracting municipality with information regarding the current contract name, address, and telephone number of the person, company, or partnership that originally entered into the contract. If the property owner fails to comply with the notification requirements of this subsection within sixty days of the specified time, then the contracting municipality may collect any reimbursement funds owed to the property owner under the contract. Such funds must be deposited in the capital fund of the municipality.

(4) To the extent it may require in the performance of such contract, such municipality may install said water or sewer facilities in and along the county streets in the area to be served as hereinabove provided, subject to such reasonable requirements as to the manner of occupancy of such streets as the county may by resolution provide. The provisions of such contract shall not be effective as to any owner of real estate not a party thereto unless such contract has been recorded in the office of the county auditor of the county in which the real estate of such owner is located prior to the time such owner taps into or connects to said water or sewer facilities. [2009 c 344 § 1; 2009 c 230 § 1; 2006 c 88 § 2; 1999 c 153 § 38; 1981 c 313 § 11; 1967 c 113 § 1; 1965 c 7 § 35.91.020. Prior: 1959 c 261 § 2.]

Reviser's note: This section was amended by 2009 c 230 § 1 and by 2009 c 344 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Severability—1981 c 313: See note following RCW 36.94.020.

Additional notes found at www.leg.wa.gov

35.91.020 Contracts with owners of real estate for water or sewer facilities—Requirements—Financing—Reimbursement of costs. ***(Effective July 1, 2014.)*** (1)(a) At the owner's request, a municipality must contract with the owner of real estate for the construction or improvement of water or sewer facilities that the owner elects to install solely at the owner's expense. The owner must submit a request for a contract to the municipality prior to approval of the water or sewer facility by the municipality. The owner's request may only require a contract under this subsection (1)(a) in locations where a municipality's ordinances require the facilities to be improved or constructed as a prerequisite to further property development. Water or sewer facilities improved or constructed in accordance with this subsection (1)(a) must be located within the municipality's corporate limits or, except as provided otherwise by this subsection (1)(a), within ten miles of the municipality's corporate limits. Water or sewer facilities improved or constructed in accordance with this subsection (1)(a) may not be located outside of the county that is party to the contract. The contract must be filed and recorded with the county auditor and must contain conditions required by the municipality in accordance with its adopted policies and standards. Unless the municipality provides written notice to the owner of its intent to request a comprehensive plan approval, the owner must request a comprehensive plan approval for a water or sewer facility, if required, and connection of the water or sewer facility to the municipal system must be conditioned upon:

(i) Construction of the water or sewer facility according to plans and specifications approved by the municipality;

(ii) Inspection and approval of the water or sewer facility by the municipality;

(iii) Transfer to the municipality of the water or sewer facility, without cost to the municipality, upon acceptance by the municipality of the water or sewer facility;

(iv) Full compliance with the owner's obligations under the contract and with the municipality's rules and regulations;

(v) Provision of sufficient security to the municipality to ensure completion of the water or sewer facility and other performance under the contract;

(vi) Payment by the owner to the municipality of all of the municipality's costs associated with the water or sewer facility including, but not limited to, engineering, legal, and administrative costs; and

(vii) Verification and approval of all contracts and costs related to the water or sewer facility.

(b) If authorized by ordinance or contract, a municipality may participate in financing water or sewer facilities development projects authorized and improved or constructed in accordance with (a) of this subsection. Unless otherwise provided by ordinance or contract, municipalities that participate in the financing of water or sewer facilities improved or constructed in accordance with (a) of this subsection:

(i) Have the same rights to reimbursement as owners of real estate who make contributions as authorized under this section; and

(ii) Are entitled to a pro rata share of the reimbursement based on the respective contribution of the owner and the municipality.

(2) A contract entered into under this section must also provide, in accordance with the requirements of this section, for the pro rata reimbursement to the owner or the owner's assigns for twenty years, or for a longer period if extended in accordance with subsection (4) of this section. The reimbursements must be: (a) Within the period of time that the contract is effective; (b) for a portion of the costs of the water or sewer facilities improved or constructed in accordance with the contract; and (c) from latecomer fees received by the municipality from property owners who subsequently connect to or use the water or sewer facilities, but who did not contribute to the original cost of the facilities.

(3) Except as provided otherwise by this section, a municipality seeking reimbursement from an owner of real estate under this section is limited to the dollar amount authorized in accordance with subsection (7) of this section. This does not prevent the municipality from collecting amounts for services or infrastructure that are additional expenditures not subject to the ordinance, contract, or agreement, nor does it prevent the collection of fees that are reasonable and proportionate to the total expenses incurred by the municipality in complying with this section.

(4)(a) The contract may provide for an extension of the twenty-year reimbursement period for a time not to exceed the duration of any moratorium, phasing ordinance, concurrency designation, or other governmental action that prevents making applications for, or the approval of, any new development within the benefit area for a period of six months or more.

(b) Upon the extension of the reimbursement period pursuant to (a) of this subsection, the contract must specify the duration of the contract extension and must be filed and recorded with the county auditor. Property owners who are subject to the reimbursement obligations under subsection (1) of this section shall be notified by the contracting municipality of the extension filed under this subsection.

(5) The requirement for a municipality to contract with an owner of real estate for the construction or improvement of water or sewer facilities under this section is only applicable if the facilities are consistent with all applicable comprehensive plans and development regulations of the municipalities through which the facilities will be constructed or will serve.

(6) Each contract must include a provision requiring that every two years from the date the contract is executed a property owner entitled to reimbursement under this section provide the municipality with information regarding the current contract name, address, and telephone number of the person, company, or partnership that originally entered into the contract. If the property owner fails to comply with the notification requirements of this subsection within sixty days of the specified time, then the contracting municipality may collect any reimbursement funds owed to the property owner under the contract. The funds collected under this subsection must be deposited in the capital fund of the municipality.

(7) To the extent it may require in the performance of the contract, the municipality may install the water or sewer facilities in and along the county streets in the area to be served as hereinabove provided, subject to reasonable requirements as to the manner of occupancy of the streets as the county may by resolution provide. The provisions of the contract may not be effective as to any owner of real estate not a party thereto unless the contract has been recorded in the office of the county auditor of the county in which the real estate of the owner is located prior to the time the owner taps into or connects to the water or sewer facilities.

(8) Within one hundred twenty days of the completion of a water or sewer facility, the owners of the real estate must submit the total cost of the water or sewer facility to the applicable municipality. This information must be used by the municipality as the basis for determining reimbursements by future users who benefit from the water or sewer facility, but who did not contribute to the original cost of the water or sewer facility.

(9) Nothing in this section is intended to create a private right of action for damages against a municipality for failing to comply with the requirements of this section. A municipality, its officials, employees, or agents may not be held liable for failure to collect a latecomer fee unless the failure was willful or intentional. Failure of a municipality to comply with the requirements of this section does not relieve a municipality of any future requirement to comply with this section. [2013 c 243 § 3. Prior: 2009 c 344 § 1; 2009 c 230 § 1; 2006 c 88 § 2; 1999 c 153 § 38; 1981 c 313 § 11; 1967 c 113 § 1; 1965 c 7 § 35.91.020; prior: 1959 c 261 § 2.]

Effective date—2013 c 243 §§ 2 and 3: See note following RCW 35.91.015.

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Severability—1981 c 313: See note following RCW 36.94.020.

Additional notes found at www.leg.wa.gov

35.92.390 Municipal utilities encouraged to provide customers with landscaping information and to request voluntary donations for urban forestry. (1) Municipal utilities under this chapter are encouraged to provide information to their customers regarding landscaping that includes tree planting for energy conservation.

(2)(a) Municipal utilities under this chapter are encouraged to request voluntary donations from their customers for the purposes of urban forestry. The request may be in the

form of a check-off on the billing statement or other form of request for a voluntary donation.

(b) Voluntary donations collected by municipal utilities under this section may be used by the municipal utility to:

(i) Support the development and implementation of evergreen community ordinances, as that term is defined in RCW 35.105.010, for cities, towns, or counties within their service areas; or

(ii) Complete projects consistent with the model evergreen community management plans and ordinances developed under RCW 35.105.050.

(c) Donations received under this section do not contribute to the gross income of a light and power business or gas distribution business under chapter 82.16 RCW. [2008 c 299 § 19; 1993 c 204 § 2.]

Short title—2008 c 299: See note following RCW 35.105.010.

Findings—1993 c 204: "The legislature finds that large-scale reduction of tree cover increases the temperature of urban areas, known as the "heat island effect." Planting trees in urban areas for shading and cooling mitigates the urban heat island effect and reduces energy consumption. Tree planting also can benefit the environment by combating global climate change, reducing soil erosion, and improving air quality. Urban forestry programs can improve urban aesthetics that will improve public and private property values.

The legislature also finds that urban forestry programs should consider the relationship between urban forests and public service facilities such as water, sewer, natural gas, telephone, and electric power lines. Urban forestry programs should promote the use of appropriate tree species that will not interfere with or cause damage to such public service facilities." [1993 c 204 § 1.]

Chapter 35.100 RCW

DOWNTOWN AND NEIGHBORHOOD COMMERCIAL DISTRICTS

Sections

35.100.010 Findings—Intent.
35.100.020 Definitions.
35.100.030 Local retail sales and use tax increment revenue—Applications.
35.100.040 Local sales and use tax increment revenue—Authorization of use by legislative authority.
35.100.050 Determination of amount of revenue.
35.100.900 Severability—2002 c 79.

Chapter 35.105 RCW

URBAN FOREST MANAGEMENT

Sections

35.105.010 Definitions.
35.105.020 Coordination with department of natural resources.
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35.105.050 Development of model evergreen community management plans and ordinances.
35.105.060 Report to the legislature.
35.105.070 Model evergreen community management plans—Elements to consider.
35.105.080 Model evergreen community ordinances—Elements to consider.
35.105.090 Evergreen community management plans and ordinances—Local jurisdictions may adopt.
35.105.100 Submission and review of management plans and evergreen community ordinances.
35.105.110 Evergreen communities partnership task force.
35.105.120 Limitations of chapter.

35A.01.040 Sufficiency of petitions. Wherever in this title petitions are required to be signed and filed, the following rules shall govern the sufficiency thereof:

(1) A petition may include any page or group of pages containing an identical text or prayer intended by the circulators, signers or sponsors to be presented and considered as one petition and containing the following essential elements when applicable, except that the elements referred to in (d) and (e) of this subsection are essential for petitions referring or initiating legislative matters to the voters, but are directory as to other petitions:

(a) The text or prayer of the petition which shall be a concise statement of the action or relief sought by petitioners and shall include a reference to the applicable state statute or city ordinance, if any;

(b) If the petition initiates or refers an ordinance, a true copy thereof;

(c) If the petition seeks the annexation, incorporation, withdrawal, or reduction of an area for any purpose, an accurate legal description of the area proposed for such action and if practical, a map of the area;

(d) Numbered lines for signatures with space provided beside each signature for the name and address of the signer and the date of signing;

(e) The warning statement prescribed in subsection (2) of this section.

(2) Petitions shall be printed or typed on single sheets of white paper of good quality and each sheet of petition paper having a space thereon for signatures shall contain the text or prayer of the petition and the following warning:

WARNING

> Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each signature shall be executed in ink or indelible pencil and shall be followed by the name and address of the signer and the date of signing.

(3) The term "signer" means any person who signs his or her own name to the petition.

(4) To be sufficient a petition must contain valid signatures of qualified registered voters or property owners, as the case may be, in the number required by the applicable statute or ordinance. Within three working days after the filing of a petition, the officer with whom the petition is filed shall transmit the petition to the county auditor for petitions signed by registered voters, or to the county assessor for petitions signed by property owners for determination of sufficiency. The officer or officers whose duty it is to determine the sufficiency of the petition shall proceed to make such a determination with reasonable promptness and shall file with the officer receiving the petition for filing a certificate stating the date upon which such determination was begun, which date shall be referred to as the terminal date. Additional pages of one or more signatures may be added to the petition by filing the same with the appropriate filing officer prior to such ter-

minal date. Any signer of a filed petition may withdraw his or her signature by a written request for withdrawal filed with the receiving officer prior to such terminal date. Such written request shall so sufficiently describe the petition as to make identification of the person and the petition certain. The name of any person seeking to withdraw shall be signed exactly the same as contained on the petition and, after the filing of such request for withdrawal, prior to the terminal date, the signature of any person seeking such withdrawal shall be deemed withdrawn.

(5) Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved.

(6) A variation on petitions between the signatures on the petition and that on the voter's permanent registration caused by the substitution of initials instead of the first or middle names, or both, shall not invalidate the signature on the petition if the surname and handwriting are the same.

(7) Signatures, including the original, of any person who has signed a petition two or more times shall be stricken.

(8) Signatures followed by a date of signing which is more than six months prior to the date of filing of the petition shall be stricken.

(9) When petitions are required to be signed by the owners of property, the determination shall be made by the county assessor. Where validation of signatures to the petition is required, the following shall apply:

(a) The signature of a record owner, as determined by the records of the county auditor, shall be sufficient without the signature of his or her spouse;

(b) In the case of mortgaged property, the signature of the mortgagor shall be sufficient, without the signature of his or her spouse;

(c) In the case of property purchased on contract, the signature of the contract purchaser, as shown by the records of the county auditor, shall be deemed sufficient, without the signature of his or her spouse;

(d) Any officer of a corporation owning land within the area involved who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign on behalf of such corporation, and shall attach to the petition a certified excerpt from the bylaws of such corporation showing such authority;

(e) When the petition seeks annexation, any officer of a corporation owning land within the area involved, who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign under oath on behalf of such corporation. If an officer signs the petition, he or she must attach an affidavit stating that he or she is duly authorized to sign the petition on behalf of such corporation;

(f) When property stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property; and

(g) When a parcel of property is owned by multiple owners, the signature of an owner designated by the multiple owners is sufficient.

(10) The officer or officers responsible for determining the sufficiency of the petition shall do so in writing and transmit the written certificate to the officer with whom the petition was originally filed. [2008 c 196 § 2; 2003 c 331 § 9; 1996 c 286 § 7; 1985 c 281 § 26; 1967 ex.s. c 119 § 35A.01.040.]

Intent—Severability—Effective date—2003 c 331: See notes following RCW 35.13.410.

Severability—1985 c 281: See RCW 35.10.905.

Additional notes found at www.leg.wa.gov

Chapter 35A.14 RCW
ANNEXATION BY CODE CITIES

Sections

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35A.14.010 Authority for annexation.
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35A.14.090 Election method—Ordinance providing for annexation, assumption of indebtedness.
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35A.14.340 Notice and hearing—Filings and recordings.
35A.14.380 Ownership of assets of fire protection district—Assumption of responsibility of fire protection—When at least sixty percent of assessed valuation is annexed or incorporated in code city.
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35A.14.420 Alternative direct petition method—Notice to legislative body—Meeting—Assumption of indebtedness—Proposed zoning regulation—Contents of petition.
35A.14.430 Alternative direct petition method—Notice of hearing.
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35A.14.450 Alternative direct petition method—Effective date of annexation.
35A.14.460 Annexation of territory within urban growth areas—Interlocal agreement—Public hearing—Ordinance providing for annexation.
35A.14.470 Annexation of territory within urban growth areas—County may initiate process with other cities or towns—Interlocal agreement—Public hearing—Ordinance—Referendum—Election, when necessary.
35A.14.475 Annexation of territory within regional transit authorities.
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35A.14.901 Application of chapter to annexations involving water or sewer service.

Annexation of fire protection district territory: RCW 35.02.190 through 35.02.205.

Resolution initiating election may provide for inclusion of annexed area into community municipal corporation: RCW 35.13.015.

Water, sewer, or fire districts, annexation of: Chapter 35.13A RCW.

35A.14.005 Annexations beyond urban growth areas prohibited. No code city located in a county in which urban growth areas have been designated under RCW 36.70A.110 may annex territory beyond an urban growth area. [1990 1st ex.s. c 17 § 31.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

35A.14.010 Authority for annexation. Any portion of a county not incorporated as part of a city or town but lying contiguous to a code city may become a part of the charter code city or noncharter code city by annexation. An area proposed to be annexed to a charter code city or noncharter code city shall be deemed contiguous thereto even though separated by water or tide or shore lands and, upon annexation of such area, any such intervening water and/or tide or shore lands shall become a part of such annexing city. [2009 c 402 § 4; 1967 ex.s. c 119 § 35A.14.010.]

Intent—2009 c 402: See note following RCW 35.13.490.

35A.14.220 When review procedure may be dispensed with. Annexations under the provisions of RCW 35A.14.295, 35A.14.297, 35A.14.300, and 35A.14.310 shall not be subject to review by the annexation review board: PROVIDED, That in any county in which a boundary review board is established under chapter 36.93 RCW all annexations shall be subject to review except as provided for in RCW 36.93.110. When the area proposed for annexation in a petition or resolution, initiated and filed under any of the methods of initiating annexation authorized by this chapter, is less than fifty acres or less than two million dollars in assessed valuation, review procedures shall not be required as to such annexation proposal, except as provided in chapter 36.93 RCW in those counties with a review board established pursuant to chapter 36.93 RCW: PROVIDED, That when an annexation proposal is initiated by the direct petition method authorized by RCW 35A.14.120, review procedures shall not be required without regard to acreage or assessed valuation, except as provided in chapter 36.93 RCW in those counties with a boundary review board established pursuant to chapter 36.93 RCW. [1979 ex.s. c 18 § 27; 1973 1st ex.s. c 195 § 26; 1967 ex.s. c 119 § 35A.14.220.]

Severability—1979 ex.s. c 18: See note following RCW 35A.01.070.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Additional notes found at www.leg.wa.gov

35A.14.295 Annexation of unincorporated island of territory within code city—Resolution—Notice of hearing. (1) The legislative body of a code city may resolve to annex territory to the city if there is within the city, unincorporated territory:

(a) Containing less than one hundred seventy-five acres and having all of the boundaries of such area contiguous to the code city; or

(b) Of any size containing residential property owners and having at least eighty percent of the boundaries of such area contiguous to the city. Territory annexed under this subsection (1)(b) must be within the same county and within the same urban growth area designated under RCW 36.70A.110, and the city must plan under chapter 36.70A RCW.

(2) The resolution shall describe the boundaries of the area to be annexed, state the number of voters residing therein as nearly as may be, and set a date for a public hearing on such resolution for annexation. Notice of the hearing shall be given by publication of the resolution at least once a week for two weeks prior to the date of the hearing, in one or more newspapers of general circulation within the code city and one or more newspapers of general circulation within the area to be annexed.

(3) For purposes of subsection (1)(b) of this section, territory bounded by a river, lake, or other body of water is considered contiguous to a city that is also bounded by the same river, lake, or other body of water. [2013 2nd sp.s. c 27 § 1; 2013 c 333 § 1; 1997 c 429 § 36; 1967 ex.s. c 119 § 35A.14.295.]

Effective date—2013 2nd sp.s. c 27: "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 July 28, 2013." [2013 2nd sp.s. c 27 § 4.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

Additional notes found at www.leg.wa.gov

35A.14.460 Annexation of territory within urban growth areas—Interlocal agreement—Public hearing—Ordinance providing for annexation. (1) The legislative body of a county or code city planning under chapter 36.70A RCW and subject to the requirements of RCW 36.70A.215 may initiate an annexation process for unincorporated territory by adopting a resolution commencing negotiations for an interlocal agreement as provided in chapter 39.34 RCW

between a county and any code city within the county. The territory proposed for annexation must meet the following criteria: (a) Be within the code city urban growth area designated under RCW 36.70A.110, and (b) at least sixty percent of the boundaries of the territory proposed for annexation must be contiguous to the annexing code city or one or more cities or towns.

(2) If the territory proposed for annexation has been designated in an adopted county comprehensive plan as part of an urban growth area, urban service area, or potential annexation area for a specific city, or if the urban growth area territory proposed for annexation has been designated in a written agreement between a city and a county for annexation to a specific city or town, the designation or designations shall receive full consideration before a city or county may initiate the annexation process provided for in RCW 35A.14.470.

(3) The agreement shall describe the boundaries of the territory to be annexed. A public hearing shall be held by each legislative body, separately or jointly, before the agreement is executed. Each legislative body holding a public hearing shall, separately or jointly, publish the agreement at least once a week for two weeks before the date of the hearing in one or more newspapers of general circulation within the territory proposed for annexation.

(4) Following adoption and execution of the agreement by both legislative bodies, the city legislative body shall adopt an ordinance providing for the annexation of the territory described in the agreement. The legislative body shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the ordinance, in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the territory to be annexed. If the annexation ordinance provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice shall include a statement of the requirements. Any territory to be annexed through an ordinance adopted under this section is annexed and becomes a part of the city upon the date fixed in the ordinance of annexation, which date may not be fewer than forty-five days after adoption of the ordinance. [2003 c 299 § 3.]

35A.14.901 Application of chapter to annexations involving water or sewer service. Nothing in this chapter precludes or otherwise applies to an annexation by a code city of unincorporated territory as authorized by RCW 57.24.170, 57.24.190, and 57.24.210. [1996 c 230 § 1604; 1995 c 279 § 4.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Additional notes found at www.leg.wa.gov

35A.21.312 Authority to regulate placement or use of homes—Regulation of manufactured homes—Issuance of permits—Restrictions on location of manufactured/mobile homes and entry or removal of recreational vehicles used as primary residences. (1) A code city may not adopt an ordinance that has the effect, directly or indirectly, of discriminating against consumers' choices in the placement or use of a home in such a manner that is not equally applicable to all homes. Homes built to 42 U.S.C. Sec. 5401-5403 standards (as amended in 2000) must be regulated for the purposes of siting in the same manner as site built homes, factory built homes, or homes built to any other state construction or local design standard. However, except as provided in subsection (2) of this section, any code city may require that:

(a) A manufactured home be a new manufactured home;

(b) The manufactured home be set upon a permanent foundation, as specified by the manufacturer, and that the space from the bottom of the home to the ground be enclosed by concrete or an approved concrete product which can be either load bearing or decorative;

(c) The manufactured home comply with all local design standards applicable to all other homes within the neighborhood in which the manufactured home is to be located;

(d) The home is thermally equivalent to the state energy code; and

(e) The manufactured home otherwise meets all other requirements for a designated manufactured home as defined in RCW 35.63.160.

A code city with a population of one hundred thirty-five thousand or more may choose to designate its building official as the person responsible for issuing all permits, including department of labor and industries permits issued under chapter 43.22 RCW in accordance with an interlocal agreement under chapter 39.34 RCW, for alterations, remodeling, or expansion of manufactured housing located within the city limits under this section.

(2) A code city may not adopt an ordinance that has the effect, directly or indirectly, of restricting the location of manufactured/mobile homes in manufactured/mobile home communities that were legally in existence before June 12, 2008, based exclusively on the age or dimensions of the manufactured/mobile home. This does not preclude a code city from restricting the location of a manufactured/mobile home in manufactured/mobile home communities for any other reason including, but not limited to, failure to comply with fire, safety, or other local ordinances or state laws related to manufactured/mobile homes.

(3) Except as provided under subsection (4) of this section, a code city may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a recreational vehicle used as a primary residence in manufactured/mobile home communities.

(4) Subsection (3) of this section does not apply to any local ordinance or state law that:

(a) Imposes fire, safety, or other regulations related to recreational vehicles;

(b) Requires utility hookups in manufactured/mobile home communities to meet state or federal building code standards for manufactured/mobile home communities or recreational vehicle parks; or

(c) Includes both of the following provisions:

(i) A recreational vehicle must contain at least one internal toilet and at least one internal shower; and

(ii) If the requirement in (c)(i) of this subsection is not met, a manufactured/mobile home community must provide toilets and showers.

(5) For the purposes of this section, "manufactured/mobile home community" has the same meaning as in RCW 59.20.030.

(6) This section does not override any legally recorded covenants or deed restrictions of record.

(7) This section does not affect the authority granted under chapter 43.22 RCW. [2009 c 79 § 2; 2008 c 117 § 2; 2004 c 256 § 3.]

Findings—Intent—Effective date—2004 c 256: See notes following RCW 35.21.684.

35A.63.080 Comprehensive plan—Effect. From the date of approval by the legislative body the comprehensive plan, its parts and modifications thereof, shall serve as a basic source of reference for future legislative and administrative action: PROVIDED, That the comprehensive plan shall not be construed as a regulation of property rights or land uses: PROVIDED, FURTHER, That no procedural irregularity or informality in the consideration, hearing, and development of the comprehensive plan or a part thereof, or any of its elements, shall affect the validity of any zoning ordinance or amendment thereto enacted by the code city after the approval of the comprehensive plan.

The comprehensive plan shall be consulted as a preliminary to the establishment, improvement, abandonment, or vacation of any street, park, public way, public building, or public structure, and no dedication of any street or other area for public use shall be accepted by the legislative body until the location, character, extent, and effect thereof shall have been considered by the planning agency with reference to the comprehensive plan. The legislative body shall specify the time within which the planning agency shall report and make a recommendation with respect thereto. Recommendations of the planning agency shall be advisory only. [1967 ex.s. c 119 § 35A.63.080.]

35A.63.105 Development regulations—Consistency with comprehensive plan. Beginning July 1, 1992, the development regulations of each code city that does not plan under RCW 36.70A.040 shall not be inconsistent with the city's comprehensive plan. For the purposes of this section, "development regulations" has the same meaning as set forth in RCW 36.70A.030. [1990 1st ex.s. c 17 § 23.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

35A.63.220 Moratoria, interim zoning controls—Public hearing—Limitation on length. A legislative body that adopts a moratorium or interim zoning ordinance, without holding a public hearing on the proposed moratorium or interim zoning ordinance, shall hold a public hearing on the adopted moratorium or interim zoning ordinance within at least sixty days of its adoption, whether or not the legislative body received a recommendation on the matter from the planning agency. If the legislative body does not adopt findings of fact justifying its action before this hearing, then the legislative body shall do so immediately after this public hearing. A moratorium or interim zoning ordinance adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium of [or] interim zoning ordinance may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal. [1992 c 207 § 3.]

35A.63.240 Treatment of residential structures occupied by persons with handicaps. No city may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3602). [1993 c 478 § 21.]

35A.63.260 Planning regulations—Copies provided to county assessor. By July 31, 1997, a code city planning under RCW 36.70A.040 shall provide to the county assessor a copy of the code city's comprehensive plan and development regulations in effect on July 1st of that year and shall thereafter provide any amendments to the plan and regulations that were adopted before July 31st of each following year. [1996 c 254 § 4.]

35A.63.270 General aviation airports. Adoption and amendment of comprehensive plan provisions and development regulations under this chapter affecting a general aviation airport are subject to RCW 36.70.547. [1996 c 239 § 4.]

35A.80.040 Code cities encouraged to provide utility customers with landscaping information and to request voluntary donations for urban forestry. (1) Code cities providing utility services under this chapter are encouraged to provide information to their customers regarding landscaping that includes tree planting for energy conservation.

(2)(a) Code cities providing utility services under this chapter are encouraged to request voluntary donations from their customers for the purposes of urban forestry. The request may be in the form of a check-off on the billing statement or other form of a request for a voluntary donation.

(b) Voluntary donations collected by code cities under this section may be used by the code city to:

(i) Support the development and implementation of evergreen community ordinances, as that term is defined in RCW 35.105.010, for cities, towns, or counties within their service areas; or

(ii) Complete projects consistent with the model evergreen community management plans and ordinances developed under RCW 35.105.050.

(c) Donations received under this section do not contribute to the gross income of a light and power business or gas distribution business under chapter 82.16 RCW. [2008 c 299 § 20; 1993 c 204 § 3.]

Short title—2008 c 299: See note following RCW 35.105.010.

Findings—1993 c 204: See note following RCW 35.92.390.

36.01.225 Authority to regulate placement or use of homes—Regulation of manufactured homes—Restrictions on location of manufactured/mobile homes and

entry or removal of recreational vehicles used as primary residences. (1) A county may not adopt an ordinance that has the effect, directly or indirectly, of discriminating against consumers' choices in the placement or use of a home in such a manner that is not equally applicable to all homes. Homes built to 42 U.S.C. Sec. 5401-5403 standards (as amended in 2000) must be regulated for the purposes of siting in the same manner as site built homes, factory built homes, or homes built to any other state construction or local design standard. However, except as provided in subsection (2) of this section, any county may require that:

(a) A manufactured home be a new manufactured home;

(b) The manufactured home be set upon a permanent foundation, as specified by the manufacturer, and that the space from the bottom of the home to the ground be enclosed by concrete or an approved concrete product which can be either load bearing or decorative;

(c) The manufactured home comply with all local design standards applicable to all other homes within the neighborhood in which the manufactured home is to be located;

(d) The home is thermally equivalent to the state energy code; and

(e) The manufactured home otherwise meets all other requirements for a designated manufactured home as defined in RCW 35.63.160.

(2) A county may not adopt an ordinance that has the effect, directly or indirectly, of restricting the location of manufactured/mobile homes in manufactured/mobile home communities, as defined in RCW 59.20.030, which were legally in existence before June 12, 2008, based exclusively on the age or dimensions of the manufactured/mobile home. This does not preclude a county from restricting the location of a manufactured/mobile home in manufactured/mobile home communities for any other reason including, but not limited to, failure to comply with fire, safety, or other local ordinances or state laws related to manufactured/mobile homes.

(3) A county may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a recreational vehicle used as a primary residence in manufactured/mobile home communities, as defined in RCW 59.20.030, unless the recreational vehicle fails to comply with the fire, safety, or other local ordinances or state laws related to recreational vehicles.

(4) This section does not override any legally recorded covenants or deed restrictions of record.

(5) This section does not affect the authority granted under chapter 43.22 RCW. [2009 c 79 § 3; 2008 c 117 § 3; 2004 c 256 § 4.]

Findings—Intent—Effective date—2004 c 256: See notes following RCW 35.21.684.

36.22.178 Affordable housing for all surcharge—Permissible uses. The surcharge provided for in this section shall be named the affordable housing for all surcharge.

(1) Except as provided in subsection (3) of this section, a surcharge of ten dollars per instrument shall be charged by the county auditor for each document recorded, which will be in addition to any other charge authorized by law. The county may retain up to five percent of these funds collected solely for the collection, administration, and local distribution of these funds. Of the remaining funds, forty percent of the revenue generated through this surcharge will be transmitted monthly to the state treasurer who will deposit the funds into the affordable housing for all account created in RCW 43.185C.190. The department of commerce must use these funds to provide housing and shelter for extremely low-income households, including but not limited to housing for victims of human trafficking and their families and grants for building operation and maintenance costs of housing projects or units within housing projects that are affordable to extremely low-income households with incomes at or below thirty percent of the area median income, and that require a supplement to rent income to cover ongoing operating expenses.

(2) All of the remaining funds generated by this surcharge will be retained by the county and be deposited into a fund that must be used by the county and its cities and towns for eligible housing activities as described in this subsection that serve very low-income households with incomes at or below fifty percent of the area median income. The portion of the surcharge retained by a county shall be allocated to eligible housing activities that serve extremely low and very low-income households in the county and the cities within a county according to an interlocal agreement between the county and the cities within the county consistent with countywide and local housing needs and policies. A priority must be given to eligible housing activities that serve extremely low-income households with incomes at or below thirty percent of the area median income. Eligible housing activities to be funded by these county funds are limited to:

(a) Acquisition, construction, or rehabilitation of housing projects or units within housing projects that are affordable to very low-income households with incomes at or below fifty percent of the area median income, including units for homeownership, rental units, seasonal and permanent farmworker housing units, units reserved for victims of human trafficking and their families, and single room occupancy units;

(b) Supporting building operation and maintenance costs of housing projects or units within housing projects eligible to receive housing trust funds, that are affordable to very low-income households with incomes at or below fifty percent of the area median income, and that require a supplement to rent income to cover ongoing operating expenses;

(c) Rental assistance vouchers for housing units that are affordable to very low-income households with incomes at or below fifty percent of the area median income, including rental housing vouchers for victims of human trafficking and their families, to be administered by a local public housing authority or other local organization that has an existing rental assistance voucher program, consistent with or similar to the United States department of housing and urban development's section 8 rental assistance voucher program standards; and

(d) Operating costs for emergency shelters and licensed overnight youth shelters.

(3) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust. [2011 c 110 § 1; 2007 c 427 § 1; 2005 c 484 § 18; 2002 c 294 § 2.]

Findings—Conflict with federal requirements—Effective date—2005 c 484: See RCW 43.185C.005, 43.185C.901, and 43.185C.902.

Findings—2002 c 294: "The legislature recognizes housing affordability has become a significant problem for a large portion of society in many parts of Washington state in recent years. The state has traditionally focused its resources on housing for low-income populations. Additional funding resources are needed for building operation and maintenance activities for housing projects affordable to extremely low-income people, for example farmworkers or people with developmental disabilities. Affordable rents for extremely low-income people are not sufficient to cover the cost of building operations and maintenance. In addition resources are needed at the local level to assist in development and preservation of affordable low-income housing to address critical local housing needs." [2002 c 294 § 1.]

Chapter 36.70 RCW
PLANNING ENABLING ACT

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36.70.010 Purpose and intent. The purpose and intent of this chapter is to provide the authority for, and the procedures to be followed in, guiding and regulating the physical development of a county or region through correlating both public and private projects and coordinating their execution with respect to all subject matters utilized in developing and servicing land, all to the end of assuring the highest standards of environment for living, and the operation of commerce, industry, agriculture and recreation, and assuring maximum economies and conserving the highest degree of public health, safety, morals and welfare. [1963 c 4 § 36.70.010. Prior: 1959 c 201 § 1.]

36.70.015 Expenditure of funds declared public purpose. Regional planning under the provisions of this chapter is hereby declared to be a proper public purpose for the expenditure of the funds of counties, school districts, public utility districts, housing authorities, port districts, cities or towns or any other public organization interested in regional planning. [1963 c 4 § 36.70.015. Prior: 1961 c 232 § 6.]

36.70.020 Definitions. The following words or terms as used in this chapter shall have the following meaning unless a different meaning is clearly indicated by the context:

(1) "Approval by motion" is a means by which a board, through other than by ordinance, approves and records recognition of a comprehensive plan or amendments thereto.

(2) "Board" means the board of county commissioners.

(3) "Certification" means the affixing on any map or by adding to any document comprising all or any portion of a comprehensive plan a record of the dates of action thereon by the commission and by the board, together with the signatures of the officer or officers authorized by ordinance to so sign.

(4) "Commission" means a county or regional planning commission.

(5) "Commissioners" means members of a county or regional planning commission.

(6) "Comprehensive plan" means the policies and proposals approved and recommended by the planning agency or initiated by the board and approved by motion by the board (a) as a beginning step in planning for the physical development of the county; (b) as the means for coordinating county programs and services; (c) as a source of reference to aid in developing, correlating, and coordinating official regulations and controls; and (d) as a means for promoting the general welfare. Such plan shall consist of the required elements set forth in RCW 36.70.330 and may also include the optional elements set forth in RCW 36.70.350 which shall serve as a policy guide for the subsequent public and private development and official controls so as to present all proposed developments in a balanced and orderly relationship to existing physical features and governmental functions.

(7) "Conditional use" means a use listed among those classified in any given zone but permitted to locate only after review by the board of adjustment, or zoning adjustor if there be such, and the granting of a conditional use permit imposing such performance standards as will make the use compatible with other permitted uses in the same vicinity and zone and assure against imposing excessive demands upon public utilities, provided the county ordinances specify the standards and criteria that shall be applied.

(8) "Department" means a planning department organized and functioning as any other department in any county.

(9) "Element" means one of the various categories of subjects, each of which constitutes a component part of the comprehensive plan.

(10) "Ex officio member" means a member of the commission who serves by virtue of his or her official position as head of a department specified in the ordinance creating the commission.

(11) "Official controls" means legislatively defined and enacted policies, standards, precise detailed maps and other criteria, all of which control the physical development of a county or any part thereof or any detail thereof, and are the means of translating into regulations and ordinances all or any part of the general objectives of the comprehensive plan. Such official controls may include, but are not limited to, ordinances establishing zoning, subdivision control, platting, and adoption of detailed maps.

(12) "Ordinance" means a legislative enactment by a board; in this chapter the word, "ordinance", is synonymous with the term "resolution", as representing a legislative enactment by a board of county commissioners.

(13) "Planning agency" means (a) a planning commission, together with its staff members, employees and consultants, or (b) a department organized and functioning as any other department in any county government together with its planning commission.

(14) "Variance." A variance is the means by which an adjustment is made in the application of the specific regulations of a zoning ordinance to a particular piece of property, which property, because of special circumstances applicable to it, is deprived of privileges commonly enjoyed by other properties in the same vicinity and zone and which adjustment remedies disparity in privileges. [2009 c 549 § 4106; 1963 c 4 § 36.70.020. Prior: 1959 c 201 § 2.]

36.70.025 "Solar energy system" defined. As used in this chapter, "solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

(1) The heating or cooling of a structure or building;

(2) The heating or pumping of water;

(3) Industrial, commercial, or agricultural processes; or

(4) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall. [1979 ex.s. c 170 § 9.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

Local governments authorized to encourage and protect solar energy systems: RCW 64.04.140.

Additional notes found at www.leg.wa.gov

36.70.030 Commission—Creation. By ordinance a board may create a planning commission and provide for the appointment by the commission of a director of planning. [1963 c 4 § 36.70.030. Prior: 1959 c 201 § 3.]

36.70.040 Department—Creation—Creation of commission to assist department. By ordinance a board may, as an alternative to and in lieu of the creation of a planning commission as provided in RCW 36.70.030, create a planning department which shall be organized and function as any other department of the county. When such department is created, the board shall also create a planning commission which shall assist the planning department in carrying out its duties, including assistance in the preparation and execution of the comprehensive plan and recommendations to the department for the adoption of official controls and/or amendments thereto. To this end, the planning commission shall conduct such hearings as are required by this chapter and shall make findings and conclusions therefrom which shall be transmitted to the department which shall transmit the same on to the board with such comments and recommendations it deems necessary. [1963 c 4 § 36.70.040. Prior: 1959 c 201 § 4.]

36.70.050 Authority for planning. Upon the creation of a planning agency as authorized in RCW 36.70.030 and 36.70.040, a county may engage in a planning program as defined by this chapter. Two or more counties may jointly engage in a planning program as defined herein for their combined areas. [1963 c 4 § 36.70.050. Prior: 1959 c 201 § 5.]

36.70.060 Regional planning commission—Appointment and powers. A county or a city may join with one or more other counties, cities and towns, and/or with one or more school districts, public utility districts, private utilities, housing authorities, port districts, or any other private or public organizations interested in regional planning to form and organize a regional planning commission and provide for the administration of its affairs. Such regional planning commission may carry on a planning program involving the same subjects and procedures provided by this chapter for planning by counties, provided this authority shall not include enacting official controls other than by the individual participating municipal corporations. The authority to initiate a regional planning program, define the boundaries of the regional planning district, specify the number, method of appointment and terms of office of members of the regional planning commission and provide for allocating the cost of financing the work shall be vested individually in the governing bodies of the participating municipal corporations.

Any regional planning commission or municipal corporation participating in any regional planning district is authorized to receive grants-in-aid from, or enter into reasonable agreement with any department or agency of the government of the United States or of the state of Washington to arrange for the receipt of federal funds and state funds for planning in the interests of furthering the planning program. [1963 c 4 § 36.70.060. Prior: 1961 c 232 § 1; 1959 c 201 § 6.]

Commission as employer for retirement system purposes: RCW 41.40.010.

36.70.070 Commission—Composition. Whenever a commission is created by a county, it shall consist of five, seven, or nine members as may be provided by ordinance: PROVIDED, That where a commission, on June 10, 1959, is operating with more than nine members, no further appointments shall be made to fill vacancies for whatever cause until the membership of the commission is reduced to five, seven or nine, whichever is the number specified by the county ordinance under this chapter. Departments of a county may be represented on the commission by the head of such departments as are designated in the ordinance creating the commission, who shall serve in an ex officio capacity, but such ex officio members shall not exceed one of a five-member commission, two of a seven-member commission, or three of a nine-member commission. At no time shall there be more than three ex officio members serving on a commission: PROVIDED FURTHER, That in lieu of one ex officio member, only, one employee of the county other than a department head may be appointed to serve as a member of the commission. [1963 c 4 § 36.70.070. Prior: 1959 c 201 § 7.]

36.70.080 Commission—Appointment—County. The members of a commission shall be appointed by the chair of the board with the approval of a majority of the board: PROVIDED, That each member of the board shall submit to the chair a list of nominees residing in his or her commissioner district, and the chair shall make his or her appointments from such lists so that as nearly as mathematically possible, each commissioner district shall be equally represented on the commission. [2009 c 549 § 4107; 1963 c 4 § 36.70.080. Prior: 1959 c 201 § 8.]

36.70.090 Commission—Membership—Terms—Existing commissions. When a commission is created after June 10, 1959, the first terms of the members of the commission consisting of five, seven, and nine members, respectively, other than ex officio members, shall be as follows:

(1) For a five-member commission—one, shall be appointed for one year; one, for two years; one, for three years; and two, for four years.

(2) For a seven-member commission—one, shall be appointed for one year; two, for two years; two, for three years; and two, for four years.

(3) For a nine-member commission—two, shall be appointed for one year; two, for two years; two, for three years; and three, for four years.

Thereafter, the successors to the first member shall be appointed for four year terms: PROVIDED, That where the commission includes one ex officio member, the number of appointive members first appointed for a four year term shall be reduced by one; if there are to be two ex officio members, the number of appointive members for the three year and four year terms shall each be reduced by one; if there are to be three ex officio members, the number of appointive members for the four year term, the three year term, and the two year term shall each be reduced by one. The term of an ex officio member shall correspond to his or her official tenure: PROVIDED FURTHER, That where a commission, on the effective date of this chapter, is operating with members appointed for longer than four year terms, such members shall serve out the full term for which they were appointed, but their successors, if any, shall be appointed for four year terms. [2009 c 549 § 4108; 1963 c 4 § 36.70.090. Prior: 1959 c 201 § 9.]

36.70.100 Commission—Vacancies. Vacancies occurring for any reason other than the expiration of the term shall be filled by appointment for the unexpired portion of the term except if, on June 10, 1959, the unexpired portion of a term is for more than four years the vacancy shall be filled for a period of time that will obtain the maximum staggered terms, but shall not exceed four years. Vacancies shall be filled from the same commissioner district as that of the vacating member. [1963 c 4 § 36.70.100. Prior: 1959 c 201 § 10.]

36.70.110 Commission—Removal. After public hearing, any appointee member of a commission may be removed by the chair of the board, with the approval of the board, for inefficiency, neglect of duty, or malfeasance in office. [2009 c 549 § 4109; 1963 c 4 § 36.70.110. Prior: 1959 c 201 § 11.]

36.70.120 Commission—Officers. Each commission shall elect its chair and vice chair from among the appointed members. The commission shall appoint a secretary who need not be a member of the commission. [2009 c 549 § 4110; 1963 c 4 § 36.70.120. Prior: 1959 c 201 § 12.]

36.70.130 Planning agency—Meetings. Each planning agency shall hold not less than one regular meeting in each month: PROVIDED, That if no matters over which the planning agency has jurisdiction are pending upon its calendar, a meeting may be canceled. [1963 c 4 § 36.70.130. Prior: 1959 c 201 § 13.]

36.70.140 Planning agency—Rules and records. Each planning agency shall adopt rules for the transaction of its business and shall keep a public record of its transactions, findings, and determinations. [1963 c 4 § 36.70.140. Prior: 1959 c 201 § 14.]

36.70.150 Planning agency—Joint meetings. Two or more county planning agencies in any combination may hold joint meetings and by approval of their respective boards may have the same chair. [2009 c 549 § 4111; 1963 c 4 § 36.70.150. Prior: 1959 c 201 § 15.]

36.70.160 Director—Appointment. If a director of planning is provided for, he or she shall be appointed:

(1) By the commission when a commission is created under RCW 36.70.030;

(2) If a planning department is established as provided in RCW 36.70.040, then he or she shall be appointed by the board. [2009 c 549 § 4112; 1963 c 4 § 36.70.160. Prior: 1959 c 201 § 16.]

36.70.170 Director—Employees. The director of planning shall be authorized to appoint such employees as are necessary to perform the duties assigned to him or her within the budget allowed. [2009 c 549 § 4113; 1963 c 4 § 36.70.170. Prior: 1959 c 201 § 17.]

36.70.180 Joint director. The boards of two or more counties or the legislative bodies of other political subdivisions or special districts may jointly engage a single director of planning and may authorize him or her to employ such other personnel as may be necessary to carry out the joint planning program. [2009 c 549 § 4114; 1963 c 4 § 36.70.180. Prior: 1959 c 201 § 18.]

36.70.190 Special services. Each planning agency, subject to the approval of the board, may employ or contract with the planning consultants or other specialists for such services as it requires. [1963 c 4 § 36.70.190. Prior: 1959 c 201 § 19.]

36.70.200 Board of adjustment—Creation—Zoning adjustor. Whenever a board shall have created a planning agency, it shall also by ordinance, coincident with the enactment of a zoning ordinance, create a board of adjustment, and may establish the office of zoning adjustor: PROVIDED, That any county that has prior to June 10, 1959, enacted a zoning ordinance, shall, within ninety days thereof, create a board of adjustment. [1963 c 4 § 36.70.200. Prior: 1959 c 201 § 20.]

36.70.210 Board of adjustment—Membership—Quorum. A board of adjustment shall consist of five or seven members as may be provided by ordinance, and a majority of the members shall constitute a quorum for the transaction of all business. [1965 ex.s. c 24 § 1; 1963 c 4 § 36.70.210. Prior: 1959 c 201 § 21.]

36.70.220 Board of adjustment—Appointment—Appointment of zoning adjustor. The members of a board of adjustment and the zoning adjustor shall be appointed in the same manner as provided for the appointment of commissioners in RCW 36.70.080. One member of the board of adjustment may be an appointee member of the commission. [1963 c 4 § 36.70.220. Prior: 1959 c 201 § 22.]

36.70.230 Board of adjustment—Terms. If the board of adjustment is to consist of three members, when it is first appointed after June 10, 1959, the first terms shall be as follows: One shall be appointed for one year; one, for two years; and one, for three years. If it consists of five members, when it is first appointed after June 10, 1959, the first terms shall be as follows: One shall be appointed for one year; one, for two years; one, for three years; one, for four years; and one, for six years. Thereafter the terms shall be for six years and until their successors are appointed and qualified. [1963 c 4 § 36.70.230. Prior: 1959 c 201 § 23.]

36.70.240 Board of adjustment—Vacancies. Vacancies in the board of adjustment shall be filled by appointment in the same manner in which the commissioners are appointed in RCW 36.70.080. Appointment shall be for the unexpired portion of the term. [1963 c 4 § 36.70.240. Prior: 1959 c 201 § 24.]

36.70.250 Board of adjustment—Removal. Any member of the board of adjustment may be removed by the chair of the board with the approval of the board for inefficiency, neglect of duty or malfeasance in office. [2009 c 549 § 4115; 1963 c 4 § 36.70.250. Prior: 1959 c 201 § 25.]

36.70.260 Board of adjustment—Organization. The board of adjustment shall elect a chair and vice chair from among its members. The board of adjustment shall appoint a

secretary who need not be a member of the board. [2009 c 549 § 4116; 1963 c 4 § 36.70.260. Prior: 1959 c 201 § 26.]

36.70.270 Board of adjustment—Meetings. The board of adjustment shall hold not less than one regular meeting in each month of each year: PROVIDED, That if no issues over which the board has jurisdiction are pending upon its calendar, a meeting may be canceled. [1963 c 4 § 36.70.270. Prior: 1959 c 201 § 27.]

36.70.280 Board of adjustment—Rules and records. The board of adjustment shall adopt rules for the transaction of its business and shall keep a public record of its transactions, findings and determinations. [1963 c 4 § 36.70.280. Prior: 1959 c 201 § 28.]

36.70.290 Appropriation for planning agency, board of adjustment. The board shall provide the funds, equipment and accommodations necessary for the work of the planning agency. Such appropriations may include funds for joint ventures as set forth in RCW 36.70.180. The expenditures of the planning agency, exclusive of gifts, shall be within the amounts appropriated for the respective purposes. The provisions herein for financing the work of the planning agencies shall also apply to the board of adjustment and the zoning adjustor. [1963 c 4 § 36.70.290. Prior: 1959 c 201 § 29.]

36.70.300 Accept gifts. The planning agency of a county may accept gifts in behalf of the county to finance any planning work authorized by law. [1963 c 4 § 36.70.300. Prior: 1959 c 201 § 30.]

36.70.310 Conference and travel expenses—Commission members and staff. Members of planning agencies shall inform themselves on matter affecting the functions and duties of planning agencies. For that purpose, and when authorized, such members may attend planning conferences, meetings of planning executives or of technical bodies; hearings on planning legislation or matters relating to the work of the planning agency. The reasonable travel expenses, registration fees and other costs incident to such attendance at such meetings and conferences shall be charges upon the funds allocated to the planning agency. In addition, members of a commission may also receive reasonable travel expenses to and from their usual place of business to the place of a regular meeting of the commission. The planning agency may, when authorized, pay dues for membership in organizations specializing in the subject of planning. The planning agency may, when authorized, subscribe to technical publications pertaining to planning. [1963 c 4 § 36.70.310. Prior: 1959 c 201 § 31.]

36.70.315 Public notice—Identification of affected property. Any notice made under chapter 36.70 RCW that identifies affected property may identify this affected property without using a legal description of the property including, but not limited to, identification by an address, written description, vicinity sketch, or other reasonable means. [1988 c 168 § 11.]

36.70.317 Statement of restrictions applicable to real property. (1) A property owner may make a written request for a statement of restrictions applicable to a single parcel, tract, lot, or block of real property located in an unincorporated portion of a county to the county in which the real property is located.

(2) Within thirty days of the receipt of the request, the county shall provide the owner, by registered mail, with a statement of restrictions as described in subsection (3) of this section.

(3) The statement of restrictions shall include the following:

(a) The zoning currently applicable to the real property;

(b) Pending zoning changes currently advertised for public hearing that would be applicable to the real property;

(c) Any designations made by the county pursuant to chapter 36.70A RCW of any portion of the real property as agricultural land, forest land, mineral resource land, wetland, an area with a critical recharging effect on aquifers used for potable water, a fish and wildlife habitat conservation area, a frequently flooded area, and as a geological hazardous area; and

(d) If information regarding the designations listed in (c) of this subsection are not readily available, inform the owner of the procedure by which the owner can obtain that site-specific information from the county.

(4) If a county fails to provide the statement of restrictions within thirty days after receipt of the written request, the owner shall be awarded recovery of all attorneys' fees and costs incurred in any successful application for a writ of mandamus to compel production of a statement.

(5) For purposes of this section:

(a) "Owner" means any vested owner or any person holding the buyer's interest under a recorded real estate contract in which the seller is the vested owner; and

(b) "Real property" means a parcel, tract, lot or block: (i) Containing a single-family residence that is occupied by the owner or a member of his or her family, or rented to another by the owner; or (ii) five acres or less in size.

(6) This section does not affect the vesting of permits or development rights.

Nothing in this section shall be deemed to create any liability on the part of a county. [1996 c 206 § 8.]

Effective date—1996 c 206 §§ 6-8: See note following RCW 35.21.475.

Findings—1996 c 206: See note following RCW 43.05.030.

Additional notes found at www.leg.wa.gov

36.70.320 Comprehensive plan. Each planning agency shall prepare a comprehensive plan for the orderly physical development of the county, or any portion thereof, and may include any land outside its boundaries which, in the judgment of the planning agency, relates to planning for the county. The plan shall be referred to as the comprehensive plan, and, after hearings by the commission and approval by motion of the board, shall be certified as the comprehensive plan. Amendments or additions to the comprehensive plan shall be similarly processed and certified.

Any comprehensive plan adopted for a portion of a county shall not be deemed invalid on the ground that the remainder of the county is not yet covered by a comprehen-

sive plan. *This 1973 amendatory act shall also apply to comprehensive plans adopted for portions of a county prior to April 24, 1973. [1973 1st ex.s. c 172 § 1; 1963 c 4 § 36.70.320. Prior: 1959 c 201 § 32.]

***Reviser's note:** "This 1973 amendatory act" refers to 1973 1st ex.s. c 172 § 1.

36.70.330 Comprehensive plan—Required elements. The comprehensive plan shall consist of a map or maps, and descriptive text covering objectives, principles and standards used to develop it, and shall include each of the following elements:

(1) A land use element which designates the proposed general distribution and general location and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land, including a statement of the standards of population density and building intensity recommended for the various areas in the jurisdiction and estimates of future population growth in the area covered by the comprehensive plan, all correlated with the land use element of the comprehensive plan. The land use element shall also provide for protection of the quality and quantity of groundwater used for public water supplies and shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute Puget Sound or waters entering Puget Sound;

(2) A circulation element consisting of the general location, alignment and extent of major thoroughfares, major transportation routes, trunk utility lines, and major terminal facilities, all of which shall be correlated with the land use element of the comprehensive plan;

(3) Any supporting maps, diagrams, charts, descriptive material and reports necessary to explain and supplement the above elements. [1985 c 126 § 3; 1984 c 253 § 3; 1963 c 4 § 36.70.330. Prior: 1959 c 201 § 33.]

36.70.340 Comprehensive plan—Amplification of required elements. When the comprehensive plan containing the mandatory subjects as set forth in RCW 36.70.330 shall have been approved by motion by the board and certified, it may thereafter be progressively amplified and augmented in scope by expanding and increasing the general provisions and proposals for all or any one of the required elements set forth in RCW 36.70.330 and by adding provisions and proposals for the optional elements set forth in RCW 36.70.350. The comprehensive plan may also be amplified and augmented in scope by progressively including more completely planned areas consisting of natural homogeneous communities, distinctive geographic areas, or other types of districts having unified interests within the total area of the county. In no case shall the comprehensive plan, whether in its entirety or area by area or subject by subject be considered to be other than in such form as to serve as a guide to the later development and adoption of official controls. [1963 c 4 § 36.70.340. Prior: 1959 c 201 § 34.]

36.70.350 Comprehensive plan—Optional elements. A comprehensive plan may include—

(1) a conservation element for the conservation, development and utilization of natural resources, including water and its hydraulic force, forests, water sheds, soils, rivers and other waters, harbors, fisheries, wild life, minerals and other natural resources,

(2) a solar energy element for encouragement and protection of access to direct sunlight for solar energy systems,

(3) a recreation element showing a comprehensive system of areas and public sites for recreation, natural reservations, parks, parkways, beaches, playgrounds and other recreational areas, including their locations and proposed development,

(4) a transportation element showing a comprehensive system of transportation, including general locations of rights-of-way, terminals, viaducts and grade separations. This element of the plan may also include port, harbor, aviation and related facilities,

(5) a transit element as a special phase of transportation, showing proposed systems of rail transit lines, including rapid transit in any form, and related facilities,

(6) a public services and facilities element showing general plans for sewerage, refuse disposal, drainage and local utilities, and rights-of-way, easements and facilities for such services,

(7) a public buildings element, showing general locations, design and arrangements of civic and community centers, and showing locations of public schools, libraries, police and fire stations and all other public buildings,

(8) a housing element, consisting of surveys and reports upon housing conditions and needs as a means of establishing housing standards to be used as a guide in dealings with official controls related to land subdivision, zoning, traffic, and other related matters,

(9) a renewal and/or redevelopment element comprising surveys, locations, and reports for the elimination of slums and other blighted areas and for community renewal and/or redevelopment, including housing sites, business and industrial sites, public building sites and for other purposes authorized by law,

(10) a plan for financing a capital improvement program,

(11) as a part of a comprehensive plan the commission may prepare, receive and approve additional elements and studies dealing with other subjects which, in its judgment, relate to the physical development of the county. [1979 ex.s. c 170 § 10; 1963 c 4 § 36.70.350. Prior: 1959 c 201 § 35.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

"Solar energy system" defined: RCW 36.70.025.

Additional notes found at www.leg.wa.gov

36.70.360 Comprehensive plan—Cooperation with affected agencies. During the formulation of the comprehensive plan, and especially in developing a specialized element of such comprehensive plan, the planning agency may cooperate to the extent it deems necessary with such authorities, departments or agencies as may have jurisdiction over the territory or facilities for which plans are being made, to the end that maximum correlation and coordination of plans may be secured and properly located sites for all public purposes may be indicated on the comprehensive plan. [1963 c 4 § 36.70.360. Prior: 1959 c 201 § 36.]

36.70.370 Comprehensive plan—Filing of copies. Whenever a planning agency has developed a comprehensive plan, or any addition or amendment thereto, covering any land outside of the boundaries of the county as provided in RCW 36.70.320, copies of any features of the comprehensive plan extending into an adjoining jurisdiction shall for purposes of information be filed with such adjoining jurisdiction. [1963 c 4 § 36.70.370. Prior: 1959 c 201 § 37.]

36.70.380 Comprehensive plan—Public hearing required. Before approving all or any part of the comprehensive plan or any amendment, extension or addition thereto, the commission shall hold at least one public hearing and may hold additional hearings at the discretion of the commission. [1963 c 4 § 36.70.380. Prior: 1959 c 201 § 38.]

36.70.390 Comprehensive plan—Notice of hearing. Notice of the time, place and purpose of any public hearing shall be given by one publication in a newspaper of general circulation in the county and in the official gazette, if any, of the county, at least ten days before the hearing. [1963 c 4 § 36.70.390. Prior: 1959 c 201 § 39.]

36.70.400 Comprehensive plan—Approval—Required vote—Record. The approval of the comprehensive plan, or of any amendment, extension or addition thereto, shall be by the affirmative vote of not less than a majority of the total members of the commission. Such approval shall be by a recorded motion which shall incorporate the findings of fact of the commission and the reasons for its action and the motion shall refer expressly to the maps, descriptive, and other matters intended by the commission to constitute the plan or amendment, addition or extension thereto. The indication of approval by the commission shall be recorded on the map and descriptive matter by the signatures of the chair and the secretary of the commission and of such others as the commission in its rules may designate. [2009 c 549 § 4117; 1963 c 4 § 36.70.400. Prior: 1961 c 232 § 2; 1959 c 201 § 40.]

36.70.410 Comprehensive plan—Amendment. When changed conditions or further studies by the planning agency indicate a need, the commission may amend, extend or add to all or part of the comprehensive plan in the manner provided herein for approval in the first instance. [1963 c 4 § 36.70.410. Prior: 1959 c 201 § 41.]

36.70.420 Comprehensive plan—Referral to board. A copy of a comprehensive plan or any part, amendment, extension of or addition thereto, together with the motion of the planning agency approving the same, shall be transmitted to the board for the purpose of being approved by motion and certified as provided in this chapter. [1963 c 4 § 36.70.420. Prior: 1959 c 201 § 42.]

36.70.430 Comprehensive plan—Board may initiate or change—Notice. When it deems it to be for the public interest, or when it considers a change in the recommendations of the planning agency to be necessary, the board may initiate consideration of a comprehensive plan, or any element or part thereof, or any change in or addition to such plan or recommendation. The board shall first refer the proposed plan, change or addition to the planning agency for a report and recommendation. Before making a report and recommendation, the commission shall hold at least one public hearing on the proposed plan, change or addition. Notice of the time and place and purpose of the hearing shall be given by one publication in a newspaper of general circulation in the county and in the official gazette, if any, of the county, at least ten days before the hearing. [1963 c 4 § 36.70.430. Prior: 1959 c 201 § 43.]

36.70.440 Comprehensive plan—Board may approve or change—Notice. After the receipt of the report and recommendations of the planning agency on the matters referred to in RCW 36.70.430, or after the lapse of the prescribed time for the rendering of such report and recommendation by the commission, the board may approve by motion and certify such plan, change or addition without further reference to the commission: PROVIDED, That the plan, change or addition conforms either to the proposal as initiated by the county or the recommendation thereon by the commission: PROVIDED FURTHER, That if the planning agency has failed to report within a ninety day period, the board shall hold at least one public hearing on the proposed plan, change or addition. Notice of the time, place and purpose of the hearing shall be given by one publication in a newspaper of general circulation in the county and in the official gazette, if any, of the county, at least ten days before the hearing. Thereafter, the board may proceed to approve by motion and certify the proposed comprehensive plan or any part, amendment or addition thereto. [1963 c 4 § 36.70.440. Prior: 1959 c 201 § 44.]

36.70.450 Planning agency—Relating projects to comprehensive plan. After a board has approved by motion and certified all or parts of a comprehensive plan for a county or for any part of a county, the planning agency shall use such plan as the basic source of reference and as a guide in reporting upon or recommending any proposed project, public or private, as to its purpose, location, form, alignment and timing. The report of the planning agency on any project shall indicate wherein the proposed project does or does not conform to the purpose of the comprehensive plan and may include proposals which, if effected, would make the project conform. If the planning agency finds that a proposed project reveals the justification or necessity for amending the comprehensive plan or any part of it, it may institute proceedings to accomplish such amendment, and in its report to the board on the project shall note that appropriate amendments to the comprehensive plan, or part thereof, are being initiated. [1963 c 4 § 36.70.450. Prior: 1959 c 201 § 45.]

36.70.460 Planning agency—Annual report. After all or part of the comprehensive plan of a county has been approved by motion and certified, the planning agency shall render an annual report to the board on the status of the plan and accomplishments thereunder. [1963 c 4 § 36.70.460. Prior: 1959 c 201 § 46.]

36.70.470 Planning agency—Promotion of public interest in plan. Each planning agency shall endeavor to

promote public interest in, and understanding of, the comprehensive plan and its purpose, and of the official controls related to it. [1963 c 4 § 36.70.470. Prior: 1959 c 201 § 47.]

36.70.480 Planning agency—Cooperation with agencies. Each planning agency shall, to the extent it deems necessary, cooperate with officials and agencies, public utility companies, civic, educational, professional and other organizations and citizens generally with relation to carrying out the purpose of the comprehensive plan. [1963 c 4 § 36.70.480. Prior: 1959 c 201 § 48.]

36.70.490 Information to be furnished agency. Upon request, all public officials or agencies shall furnish to the planning agency within a reasonable time such available information as is required for the work of the planning agency. [1963 c 4 § 36.70.490. Prior: 1959 c 201 § 49.]

36.70.493 Manufactured housing communities—Prohibitions of county due to community status as a nonconforming use. (1) After June 10, 2004, a county may designate a manufactured housing community as a nonconforming use, but may not order the removal or phased elimination of an existing manufactured housing community because of its status as a nonconforming use.

(2) A county may not prohibit the entry or require the removal of a manufactured/mobile home, park model, or recreational vehicle authorized in a manufactured housing community under chapter 59.20 RCW on the basis of the community's status as a nonconforming use. [2011 c 158 § 11; 2004 c 210 § 3.]

Transfer of residual funds to manufactured home installation training account—2011 c 158: See note following RCW 43.22A.100.

36.70.495 Planning regulations—Copies provided to county assessor. By July 31, 1997, a county planning under RCW 36.70A.040 shall provide to the county assessor a copy of the county's comprehensive plan and development regulations in effect on July 1st of that year and shall thereafter provide any amendments to the plan and regulations that were adopted before July 31st of each following year. [1996 c 254 § 5.]

36.70.500 Right of entry—Commission or planning staff. In the performance of their functions and duties, duly authorized members of a commission or planning staff may enter upon any land and make examinations and surveys: PROVIDED, That such entries, examinations and surveys do not damage or interfere with the use of the land by those persons lawfully entitled to the possession thereof. [1963 c 4 § 36.70.500. Prior: 1959 c 201 § 50.]

36.70.510 Special referred matters—Reports. By general or special rule the board creating a planning agency may provide that other matters shall be referred to the planning agency before final action is taken thereupon by the board or officer having final authority on the matter, and final action thereon shall not be taken upon the matter so referred until the planning agency has submitted its report within such period of time as the board shall designate. In reporting upon the matters referred to in this section the planning agency may make such investigations, maps, reports and recommendations as it deems desirable. [1963 c 4 § 36.70.510. Prior: 1959 c 201 § 51.]

36.70.520 Required submission of capital expenditure projects. At least five months before the end of each fiscal year each county officer, department, board or commission and each governmental body whose jurisdiction lies entirely within the county, except incorporated cities and towns, whose functions include preparing and recommending plans for, or constructing major public works, shall submit to the respective planning agency a list of the proposed public works being recommended for initiation or construction during the ensuing fiscal year. [1963 c 4 § 36.70.520. Prior: 1959 c 201 § 52.]

36.70.530 Relating capital expenditure projects to comprehensive plan. The planning agency shall list all such matters referred to in RCW 36.70.520 and shall prepare for and submit a report to the board which report shall set forth how each proposed project relates to all other proposed projects on the list and to all features in the comprehensive plan both as to location and timing. The planning agency shall report to the board through the planning director if there be such. [1963 c 4 § 36.70.530. Prior: 1959 c 201 § 53.]

36.70.540 Referral procedure—Reports. Whenever a county legislative authority has approved by motion and certified all or part of a comprehensive plan, no road, square, park or other public ground or open space shall be acquired by dedication or otherwise and no public building or structure shall be constructed or authorized to be constructed in the area to which the comprehensive plan applies until its location, purpose and extent has been submitted to and reported upon by the planning agency. The report by the planning agency shall set forth the manner and the degree to which the proposed project does or does not conform to the objectives of the comprehensive plan. If final authority is vested by law in some governmental officer or body other than the county legislative authority, such officer or governmental body shall report the project to the planning agency and the planning agency shall render its report to such officer or governmental body. In both cases the report of the planning agency shall be advisory only. Failure of the planning agency to report on such matter so referred to it within forty days or such longer time as the county legislative authority or other governmental officer or body may indicate, shall be deemed to be approval. [1991 c 363 § 80; 1963 c 4 § 36.70.540. Prior: 1959 c 201 § 54.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

36.70.545 Development regulations—Consistency with comprehensive plan. Beginning July 1, 1992, the development regulations of each county that does not plan under RCW 36.70A.040 shall not be inconsistent with the county's comprehensive plan. For the purposes of this section, "development regulations" has the same meaning as set forth in RCW 36.70A.030. [1990 1st ex.s. c 17 § 24.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

36.70.547 General aviation airports—Siting of incompatible uses. Every county, city, and town in which there is located a general aviation airport that is operated for the benefit of the general public, whether publicly owned or privately owned public use, shall, through its comprehensive plan and development regulations, discourage the siting of incompatible uses adjacent to such general aviation airport. Such plans and regulations may only be adopted or amended after formal consultation with: Airport owners and managers, private airport operators, general aviation pilots, ports, and the aviation division of the department of transportation. All proposed and adopted plans and regulations shall be filed with the aviation division of the department of transportation within a reasonable time after release for public consideration and comment. Each county, city, and town may obtain technical assistance from the aviation division of the department of transportation to develop plans and regulations consistent with this section.

Any additions or amendments to comprehensive plans or development regulations required by this section may be adopted during the normal course of land-use proceedings.

This section applies to every county, city, and town, whether operating under chapter 35.63, 35A.63, 36.70, [or] 36.70A RCW, or under a charter. [1996 c 239 § 2.]

36.70.550 Official controls. From time to time, the planning agency may, or if so requested by the board shall, cause to be prepared official controls which, when adopted by ordinance by the board, will further the objectives and goals of the comprehensive plan. The planning agency may also draft such regulations, programs and legislation as may, in its judgment, be required to preserve the integrity of the comprehensive plan and assure its systematic execution, and the planning agency may recommend such plans, regulations, programs and legislation to the board for adoption. [1963 c 4 § 36.70.550. Prior: 1959 c 201 § 55.]

36.70.560 Official controls—Forms of controls. Official controls may include:

(1) Maps showing the exact boundaries of zones within each of which separate controls over the type and degree of permissible land uses are defined;

(2) Maps for streets showing the exact alignment, gradients, dimensions and other pertinent features, and including specific controls with reference to protecting such accurately defined future rights-of-way against encroachment by buildings, other physical structures or facilities;

(3) Maps for other public facilities, such as parks, playgrounds, civic centers, etc., showing exact location, size, boundaries and other related features, including appropriate regulations protecting such future sites against encroachment by buildings and other physical structures or facilities;

(4) Specific regulations and controls pertaining to other subjects incorporated in the comprehensive plan or establishing standards and procedures to be employed in land development including, but not limited to, subdividing of land and the approval of land plats and the preservation of streets and lands for other public purposes requiring future dedication or acquisition and general design of physical improvements, and the encouragement and protection of access to direct sunlight for solar energy systems. [1979 ex.s. c 170 § 11; 1963 c 4 § 36.70.560. Prior: 1959 c 201 § 56.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

"Solar energy system" defined: RCW 36.70.025.

Additional notes found at www.leg.wa.gov

36.70.570 Official controls—Adoption. Official controls shall be adopted by ordinance and shall further the purpose and objectives of a comprehensive plan and parts thereof. [1963 c 4 § 36.70.570. Prior: 1959 c 201 § 57.]

36.70.580 Official controls—Public hearing by commission. Before recommending an official control or amendment to the board for adoption, the commission shall hold at least one public hearing. [1963 c 4 § 36.70.580. Prior: 1959 c 201 § 58.]

36.70.590 Official controls—Notice of hearing. Notice of the time, place and purpose of the hearing shall be given by one publication in a newspaper of general circulation in the county and in the official gazette, if any, of the county at least ten days before the hearing. The board may prescribe additional methods for providing notice. [1963 c 4 § 36.70.590. Prior: 1959 c 201 § 59.]

36.70.600 Official controls—Recommendation to board—Required vote. The recommendation to the board of any official control or amendments thereto by the planning agency shall be by the affirmative vote of not less than a majority of the total members of the commission. Such approval shall be by a recorded motion which shall incorporate the findings of fact of the commission and the reasons for its action and the motion shall refer expressly to the maps, descriptive and other matters intended by the commission to constitute the plan, or amendment, addition or extension thereto. The indication of approval by the commission shall be recorded on the map and descriptive matter by the signatures of the chair and the secretary of the commission and of such others as the commission in its rules may designate. [2009 c 549 § 4118; 1963 c 4 § 36.70.600. Prior: 1961 c 232 § 3; 1959 c 201 § 60.]

36.70.610 Official controls—Reference to board. A copy of any official control or amendment recommended pursuant to RCW 36.70.550, 36.70.560, 36.70.570 and 36.70.580 shall be submitted to the board not later than fourteen days following the action by the commission and shall be accompanied by the motion of the planning agency approving the same, together with a statement setting forth the factors considered at the hearing, and analysis of findings considered by the commission to be controlling. [1963 c 4 § 36.70.610. Prior: 1961 c 232 § 4; 1959 c 201 § 61.]

36.70.620 Official controls—Action by board. Upon receipt of any recommended official control or amendment thereto, the board shall at its next regular public meeting set the date for a public meeting where it may, by ordinance, adopt or reject the official control or amendment. [1963 c 4 § 36.70.620. Prior: 1959 c 201 § 62.]

36.70.630 Official controls—Board to conduct hearing, adopt findings prior to incorporating changes in recommended control. If after considering the matter at a public meeting as provided in RCW 36.70.620 the board deems a change in the recommendations of the planning agency to be necessary, the change shall not be incorporated in the recommended control until the board shall conduct its own public hearing, giving notice thereof as provided in RCW 36.70.590, and it shall adopt its own findings of fact and statement setting forth the factors considered at the hearing and its own analysis of findings considered by it to be controlling. [1963 c 4 § 36.70.630. Prior: 1961 c 232 § 5; 1959 c 201 § 63.]

36.70.640 Official controls—Board may initiate. When it deems it to be for the public interest, the board may initiate consideration of an ordinance establishing an official control, or amendments to an existing official control, including those specified in RCW 36.70.560. The board shall first refer the proposed official control or amendment to the planning agency for report which shall, thereafter, be considered and processed in the same manner as that set forth in RCW 36.70.630 regarding a change in the recommendation of the planning agency. [1963 c 4 § 36.70.640. Prior: 1959 c 201 § 64.]

36.70.650 Board final authority. The report and recommendation by the planning agency, whether on a proposed control initiated by it, whether on a matter referred back to it by the board for further report, or whether on a matter initiated by the board, shall be advisory only and the final determination shall rest with the board. [1963 c 4 § 36.70.650. Prior: 1959 c 201 § 65.]

36.70.660 Procedures for adoption of controls limited to planning matters. The provisions of this chapter with references to the procedures to be followed in the adoption of official controls shall apply only to establishing official controls pertaining to subjects set forth in RCW 36.70.560. [1963 c 4 § 36.70.660. Prior: 1959 c 201 § 66.]

36.70.670 Enforcement—Official controls. The board may determine and establish administrative rules and procedures for the application and enforcement of official controls, and may assign or delegate such administrative functions, powers and duties to such department or official as may be appropriate. [1963 c 4 § 36.70.670. Prior: 1959 c 201 § 67.]

36.70.675 Child care facilities—Review of need and demand—Adoption of ordinances. Each county that does not provide for the siting of family day care homes in zones that are designated for single-family or other residential uses, and for the siting of mini-day care centers and day care centers in zones that are designated for any residential or commercial uses, shall conduct a review of the need and demand for child care facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 30, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the *department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the *department of community development as to why such implementing ordinances were not adopted. [1989 c 335 § 6.]

***Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994. The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Findings—Purpose—Severability—1989 c 335: See notes following RCW 35.63.170.

Definitions for RCW 36.70.675: See RCW 35.63.170.

36.70.677 Accessory apartments. Any local government, as defined in RCW 43.63A.215, that is planning under this chapter shall comply with RCW 43.63A.215(3). [1993 c 478 § 10.]

36.70.678 Conditional and special use permit applications by parties licensed or certified by the department of social and health services or the department of corrections—Mediation prior to appeal required. A final decision by a hearing examiner involving a conditional or special use permit application under this chapter that is requested by a party that is licensed or certified by the department of social and health services or the department of corrections is subject to mediation under RCW 35.63.260 before an appeal may be filed. [1998 c 119 § 3.]

36.70.680 Subdividing and platting. The planning agency shall review all proposed land plats and subdivisions and make recommendations to the board thereon with reference to approving, or recommending any modifications necessary to assure conformance to the general purposes of the comprehensive plan and to standards and specifications established by state law or local controls. [1963 c 4 § 36.70.680. Prior: 1959 c 201 § 68.]

36.70.690 County improvements. No county shall improve any street or lay or authorize the laying of sewers or connections or other improvements to be laid in any street within any territory for which the board has adopted an official control in the form of precise street map or maps, until the matter has been referred to the planning agency by the department or official having jurisdiction for a report thereon and a copy of the report has been filed with the department or official making the reference unless one of the following conditions apply:

(1) The street has been accepted, opened, or has otherwise received legal status of a public street;

(2) It corresponds with and conforms to streets shown on the official controls applicable to the subject;

(3) It corresponds with and conforms to streets shown on a subdivision (land plat) approved by the board. [1963 c 4 § 36.70.690. Prior: 1959 c 201 § 69.]

36.70.695 Development regulations—Jurisdictions specified—Electric vehicle infrastructure. (1) By July 1,

2010, the development regulations of any jurisdiction with a population over six hundred thousand or with a state capitol within its borders planning under this chapter must allow electric vehicle infrastructure as a use in all areas within one mile of Interstate 5, Interstate 90, Interstate 405, or state route number 520, except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(2) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction planning under this chapter must allow electric vehicle infrastructure as a use in all areas within one mile of Interstate 5, Interstate 90, Interstate 405, or state route number 520, except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(3) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction planning under this chapter must allow battery charging stations as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(4) Counties are authorized to adopt incentive programs to encourage the retrofitting of existing structures with the electrical outlets capable of charging electric vehicles. Incentives may include bonus height, site coverage, floor area ratio, and transferable development rights for use in urban growth areas.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(6) If federal funding for public investment in electric vehicles, electric vehicle infrastructure, or alternative fuel distribution infrastructure is not provided by February 1, 2010, subsection (1) of this section is null and void. [2009 c 459 § 11.]

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.

Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

36.70.700 Planning agency—Time limit for report. Failure of the planning agency to report on the matters referred to in RCW 36.70.690 within forty days after the reference, or such longer period as may be designated by the board, department or official making the reference, shall be deemed to be approval of such matter. [1963 c 4 § 36.70.700. Prior: 1959 c 201 § 70.]

36.70.710 Final authority. Reports and recommendations by the planning agency on all matters shall be advisory only, and final determination shall rest with the administrative body, official, or the board whichever has authority to decide under applicable law. [1963 c 4 § 36.70.710. Prior: 1959 c 201 § 71.]

36.70.720 Prerequisite for zoning. Zoning maps as an official control may be adopted only for areas covered by a comprehensive plan containing not less than a land use element and a circulation element. Zoning ordinances and maps adopted prior to June 10, 1959, are hereby validated, provided only that at the time of their enactment the comprehensive plan for the county existed according to law applicable at that time. [1963 c 4 § 36.70.720. Prior: 1959 c 201 § 72.]

36.70.730 Text without map. The text of a zoning ordinance may be prepared and adopted in the absence of a comprehensive plan providing no zoning map or portion of a zoning map may be adopted thereunder until there has been compliance with the provisions of RCW 36.70.720. [1963 c 4 § 36.70.730. Prior: 1959 c 201 § 73.]

36.70.740 Zoning map—Progressive adoption. Because of practical considerations, the total area of a county to be brought under the control of zoning may be divided into areas possessing geographical, topographical or urban identity and such divisions may be progressively and separately officially mapped. [1963 c 4 § 36.70.740. Prior: 1959 c 201 § 74.]

36.70.750 Zoning—Types of regulations. Any board, by ordinance, may establish classifications, within each of which, specific controls are identified, and which will:

(1) Regulate the use of buildings, structures, and land as between agriculture, industry, business, residence, and other purposes;

(2) Regulate location, height, bulk, number of stories and size of buildings and structures; the size of yards, courts, and other open spaces; the density of population; the percentage of a lot which may be occupied by buildings and structures; and the area required to provide off-street facilities for the parking of motor vehicles. [1963 c 4 § 36.70.750. Prior: 1959 c 201 § 75.]

36.70.755 Residential care facilities—Review of need and demand—Adoption of ordinances. Each county that does not provide for the siting of residential care facilities in zones that are designated for single-family or other residential uses, shall conduct a review of the need and demand for the facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 30, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the *department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the *department of community development as to why such implementing ordinances were not adopted. [1989 c 427 § 38.]

***Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994. The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Severability—1989 c 427: See RCW 74.39.900.

Additional notes found at www.leg.wa.gov

36.70.757 Family day-care provider's home facility—County may not prohibit in residential or commercial area—Conditions. (1) Except as provided in subsections (2) and (3) of this section, no county may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's facility serving twelve or fewer children.

(2) A county may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the department of early learning licensor as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care who work a nonstandard work shift.

(3) A county may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute.

(4) This section may not be construed to prohibit a county from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home serving twelve or fewer children in an area zoned for residential or commercial use, if the conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 43.215.010. [2007 c 17 § 12; 2003 c 286 § 2.]

36.70.760 Establishing zones. For the purpose set forth in RCW 36.70.750 the county may divide a county, or portions thereof, into zones which, by number, shape, area and classification are deemed to be best suited to carry out the purposes of this chapter. [1963 c 4 § 36.70.760. Prior: 1959 c 201 § 76.]

36.70.770 All regulations shall be uniform in each zone. All regulations shall be uniform in each zone, but the regulations in one zone may differ from those in other zones. [1963 c 4 § 36.70.770. Prior: 1959 c 201 § 77.]

36.70.780 Classifying unmapped areas. After the adoption of the first map provided for in RCW 36.70.740, and pending the time that all property within a county can be precisely zoned through the medium of a zoning map, all properties not so precisely zoned by map shall be given a classification affording said properties such broad protective controls as may be deemed appropriate and necessary to serve public and private interests. Such controls shall be clearly set forth in the zoning ordinance in the form of a zone classification, and such classification shall apply to such areas until they shall have been included in the detailed zoning map in the manner provided for the adoption of a zoning map. [1963 c 4 § 36.70.780. Prior: 1959 c 201 § 78.]

36.70.790 Interim zoning. If the planning agency in good faith, is conducting or intends to conduct studies within a reasonable time for the purpose of, or is holding a hearing for the purpose of, or has held a hearing and has recommended to the board the adoption of any zoning map or amendment or addition thereto, or in the event that new territory for which no zoning may have been adopted as set forth in RCW 36.70.800 may be annexed to a county, the board, in order to protect the public safety, health and general welfare may, after report from the commission, adopt as an emergency measure a temporary interim zoning map the purpose of which shall be to so classify or regulate uses and related matters as constitute the emergency. [1963 c 4 § 36.70.790. Prior: 1959 c 201 § 79.]

36.70.795 Moratoria, interim zoning controls—Public hearing—Limitation on length. A board that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the board received a recommendation on the matter from the commission or department. If the board does not adopt findings of fact justifying its action before this hearing, then the board shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective

for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal. [1992 c 207 § 4.]

36.70.800 Procedural amendments—Zoning ordinance. An amendment to the text of a zoning ordinance which does not impose, remove or modify any regulation theretofore existing and affecting the zoning status of land shall be processed in the same manner prescribed by this chapter for the adoption of an official control except that no public hearing shall be required either by the commission or the board. [1963 c 4 § 36.70.800. Prior: 1959 c 201 § 80.]

36.70.810 Board of adjustment—Authority. The board of adjustment, subject to appropriate conditions and safeguards as provided by the zoning ordinance or the ordinance establishing the board of adjustment, if there be such, shall hear and decide:

(1) Applications for conditional uses or other permits when the zoning ordinance sets forth the specific uses to be made subject to conditional use permits and establishes criteria for determining the conditions to be imposed;

(2) Application for variances from the terms of the zoning ordinance: PROVIDED, That any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which subject property is situated, and that the following circumstances are found to apply;

(a) because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive subject property of rights and privileges enjoyed by other properties in the vicinity and under identical zone classification;

(b) that the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated.

(3) Appeals, where it is alleged by the applicant that there is error in any order, requirement, permit, decision, or determination made by an administrative official in the administration or enforcement of this chapter or any ordinance adopted pursuant to it. [1963 c 4 § 36.70.810. Prior: 1959 c 201 § 81.]

36.70.820 Board of adjustment—Quasi-judicial powers. The board of adjustment may also exercise such other quasi-judicial powers as may be granted by county ordinance. [1963 c 4 § 36.70.820. Prior: 1959 c 201 § 82.]

36.70.830 Board of adjustment—Appeals—Time limit. Appeals may be taken to the board of adjustment by any person aggrieved, or by any officer, department, board or bureau of the county affected by any decision of an administrative official. Such appeals shall be filed in writing in duplicate with the board of adjustment within twenty days of the date of the action being appealed. [1963 c 4 § 36.70.830. Prior: 1959 c 201 § 83.]

36.70.840 Board of adjustment—Notice of time and place of hearing on conditional permit. Upon the filing of an application for a conditional use permit or a variance as set forth in RCW 36.70.810, the board of adjustment shall set the time and place for a public hearing on such matter, and written notice thereof shall be addressed through the United States mail to all property owners of record within a radius of three hundred feet of the exterior boundaries of subject property. The written notice shall be mailed not less than twelve days prior to the hearing. [1963 c 4 § 36.70.840. Prior: 1959 c 201 § 84.]

36.70.850 Board of adjustment—Appeal—Notice of time and place. Upon the filing of an appeal from an administrative determination, or from the action of the zoning adjustor, the board of adjustment shall set the time and place at which the matter will be considered. At least a ten day notice of such time and place together with one copy of the written appeal, shall be given to the official whose decision is being appealed. At least ten days notice of the time and place shall also be given to the adverse parties of record in the case. The officer from whom the appeal is being taken shall forthwith transmit to the board of adjustment all of the records pertaining to the decision being appealed from, together with such additional written report as he or she deems pertinent. [2009 c 549 § 4119; 1963 c 4 § 36.70.850. Prior: 1959 c 201 § 85.]

36.70.860 Board of adjustment—Scope of authority on appeal. In exercising the powers granted by RCW 36.70.810 and 36.70.820, the board of adjustment may, in conformity with this chapter, reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as should be made and, to that end, shall have all the powers of the officer from whom the appeal is taken, insofar as the decision on the particular issue is concerned. [1963 c 4 § 36.70.860. Prior: 1959 c 201 § 86.]

36.70.870 Zoning adjustor—Powers and duties. If the office of zoning adjustor is established as provided in this chapter, all of the provisions of this chapter defining the powers, duties, and procedures of the board of adjustment shall also apply to the zoning adjustor. [1963 c 4 § 36.70.870. Prior: 1959 c 201 § 87.]

36.70.880 Zoning adjustor—Action final unless appealed. The action by the zoning adjustor on all matters coming before him or her shall be final and conclusive unless within ten days after the zoning adjustor has made his or her order, requirement, decision or determination, an appeal in writing is filed with the board of adjustment. Such an appeal may be taken by the original applicant, or by opponents of record in the case. [2009 c 549 § 4120; 1963 c 4 § 36.70.880. Prior: 1959 c 201 § 88.]

36.70.890 Board of adjustment—Action final—Writs. The action by the board of adjustment on an application for a conditional use permit or a variance, or on an appeal from the decision of the zoning adjustor or an administrative officer shall be final and conclusive unless within ten days from the date of said action the original applicant or an adverse party makes application to a court of competent jurisdiction for a writ of certiorari, a writ of prohibition or a writ of mandamus. [1963 c 4 § 36.70.890. Prior: 1959 c 201 § 89.]

36.70.900 Inclusion of findings of fact. Both the board of adjustment and the zoning adjustor shall, in making an order, requirement, decision or determination, include in a written record of the case the findings of fact upon which the action is based. [1963 c 4 § 36.70.900. Prior: 1959 c 201 § 90.]

36.70.910 Short title. This chapter shall be known as the "Planning Enabling Act of the State of Washington". [1963 c 4 § 36.70.910. Prior: 1959 c 201 § 91.]

36.70.920 Duties and responsibilities imposed by other acts. Any duties and responsibilities which by other acts are imposed upon a planning commission shall, after June 10, 1959, be performed by a planning agency however constituted. [1963 c 4 § 36.70.920. Prior: 1959 c 201 § 92.]

36.70.930 Chapter alternative method. This chapter shall not repeal, amend, or modify any other law providing for planning methods but shall be deemed an alternative method providing for such purpose. [1963 c 4 § 36.70.930. Prior: 1959 c 201 § 93.]

36.70.940 Elective adoption. Any county or counties presently operating under the provisions of chapter 35.63 RCW may elect to operate henceforth under the provisions of this chapter. Such election shall be effected by the adoption of an ordinance under the procedure prescribed by RCW 36.32.120(7), and by compliance with the provisions of this chapter. [1963 c 4 § 36.70.940. Prior: 1959 c 201 § 94.]

36.70.970 Hearing examiner system—Adoption authorized—Alternative—Functions—Procedures. (1) As an alternative to those provisions of this chapter relating to powers or duties of the planning commission to hear and issue recommendations on applications for plat approval and applications for amendments to the zoning ordinance, the county legislative authority may adopt a hearing examiner system under which a hearing examiner or hearing examiners may hear and issue decisions on proposals for plat approval and for amendments to the zoning ordinance when the amendment which is applied for is not of general applicability. In addition, the legislative authority may vest in a hearing examiner the power to hear and decide those issues it believes should be reviewed and decided by a hearing examiner, including but not limited to:

(a) Applications for conditional uses, variances, shoreline permits, or any other class of applications for or pertaining to development of land or land use;

(b) Appeals of administrative decisions or determinations; and

(c) Appeals of administrative decisions or determinations pursuant to chapter 43.21C RCW.

The legislative authority shall prescribe procedures to be followed by a hearing examiner.

Any county which vests in a hearing examiner the authority to hear and decide conditional uses and variances shall not be required to have a zoning adjuster or board of adjustment.

(2) Each county legislative authority electing to use a hearing examiner pursuant to this section shall by ordinance specify the legal effect of the decisions made by the examiner. Such legal effect may vary for the different classes of applications decided by the examiner but shall include one of the following:

(a) The decision may be given the effect of a recommendation to the legislative authority;

(b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative authority; or

(c) Except in the case of a rezone, the decision may be given the effect of a final decision of the legislative authority.

(3) Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the county's comprehensive plan and the county's development regulations. Each final decision of a hearing examiner, unless a longer period is mutually agreed to in writing by the applicant and the hearing examiner, shall be rendered within ten working days following conclusion of all testimony and hearings. [1995 c 347 § 425; 1994 c 257 § 9; 1977 ex.s. c 213 § 3.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—1994 c 257: See note following RCW 36.70A.270.

Severability—1977 ex.s. c 213: See note following RCW 35.63.130.

Additional notes found at www.leg.wa.gov

36.70.980 Conformance with chapter 43.97 RCW required. With respect to the National Scenic Area, as defined in the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the exercise of any power or authority by a county or city pursuant to this chapter shall be subject to and in conformity with the requirements of chapter 43.97 RCW, including the Interstate Compact adopted by RCW 43.97.015, and with the management plan regulations and ordinances adopted by the Columbia River Gorge commission pursuant to the Compact. [1987 c 499 § 9.]

36.70.982 Fish enhancement projects—County's liability. A county is not liable for adverse impacts resulting from a fish enhancement project that meets the criteria of *RCW 77.55.290 and has been permitted by the department of fish and wildlife. [2003 c 39 § 19; 1998 c 249 § 8.]

***Reviser's note:** RCW 77.55.290 was recodified as RCW 77.55.181 pursuant to 2005 c 146 § 1001.

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.181.

36.70.990 Treatment of residential structures occupied by persons with handicaps. No county may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3602). [1993 c 478 § 22.]

36.70.992 Watershed restoration projects—Permit processing—Fish habitat enhancement project. A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat enhancement project meeting the criteria of *RCW 77.55.290(1) shall be reviewed and approved according to the provisions of *RCW 77.55.290. [2003 c 39 § 20; 1998 c 249 § 7; 1995 c 378 § 10.]

***Reviser's note:** RCW 77.55.290 was recodified as RCW 77.55.181 pursuant to 2005 c 146 § 1001.

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.181.

Chapter 36.70A RCW
GROWTH MANAGEMENT—PLANNING BY SELECTED COUNTIES AND CITIES

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36.70A.010 Legislative findings. The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning. Further, the legislature finds that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth. [1990 1st ex.s. c 17 § 1.]

36.70A.011 Findings—Rural lands. The legislature finds that this chapter is intended to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.

The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. The legislature recognizes that not all business developments in rural counties require an urban level of services; and that many businesses in rural areas fit within the definition of rural character identified by the local planning unit.

Finally, the legislature finds that in defining its rural element under RCW 36.70A.070(5), a county should foster land use patterns and develop a local vision of rural character that will: Help preserve rural-based economies and traditional rural lifestyles; encourage the economic prosperity of rural residents; foster opportunities for small-scale, rural-based employment and self-employment; permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; be compatible with the use of the land by wildlife and for fish and wildlife habitat; foster the private stewardship of the land and preservation of open space; and enhance the rural sense of community and quality of life. [2002 c 212 § 1.]

36.70A.020 Planning goals. The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

(4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

(5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

(6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

(9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

(13) Historic preservation. Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance. [2002 c 154 § 1; 1990 1st ex.s. c 17 § 2.]

36.70A.030 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

(3) "City" means any city or town, including a code city.

(4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(5) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

(6) "Department" means the department of commerce.

(7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(8) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses.

(9) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(10) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

(11) "Minerals" include gravel, sand, and valuable metallic substances.

(12) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(13) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(14) "Recreational land" means land so designated under **RCW 36.70A.1701 and that, immediately prior to this designation, was designated as agricultural land of long-term commercial significance under RCW 36.70A.170. Recreational land must have playing fields and supporting facilities existing before July 1, 2004, for sports played on grass playing fields.

(15) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

(16) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(17) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

(18) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

(19) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(20) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

(21) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands. [2012 c 21 § 1. Prior: 2009 c 565 § 22; 2005 c 423 § 2; 1997 c 429 § 3; 1995 c 382 § 9; prior: 1994 c 307 § 2; 1994 c 257 § 5; 1990 1st ex.s. c 17 § 3.]

Reviser's note: *(1) RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

**(2) RCW 36.70A.1701 expired June 30, 2006.

Intent—2005 c 423: "The legislature recognizes the need for playing fields and supporting facilities for sports played on grass as well as the need to preserve agricultural land of long-term commercial significance. With thoughtful and deliberate planning, and adherence to the goals and requirements of the growth management act, both needs can be met.

The legislature acknowledges the state's interest in preserving the agricultural industry and family farms, and recognizes that the state's rich and productive lands enable agricultural production. Because of its unique qualities and limited quantities, designated agricultural land of long-term commercial significance is best suited for agricultural and farm uses, not recreational uses.

The legislature acknowledges also that certain local governments have either failed or neglected to properly plan for population growth and the sufficient number of playing fields and supporting facilities needed to accommodate this growth. The legislature recognizes that citizens responded to this lack of planning, fields, and supporting facilities by constructing nonconforming fields and facilities on agricultural lands of long-term commercial significance. It is the intent of the legislature to permit the continued existence and use of these fields and facilities in very limited circumstances if specific criteria are satisfied within a limited time frame. It is also the intent of the legislature to grant this authorization without diminishing the designation and preservation requirements of the growth management act pertaining to Washington's invaluable farmland." [2005 c 423 § 1.]

Effective date—2005 c 423: "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 immediately [May 12, 2005]." [2005 c 423 § 7.]

Prospective application—1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Finding—Intent—1994 c 307: "The legislature finds that it is in the public interest to identify and provide long-term conservation of those productive natural resource lands that are critical to and can be managed economically and practically for long-term commercial production of food, fiber, and minerals. Successful achievement of the natural resource industries' goal set forth in RCW 36.70A.020 requires the conservation of a land base sufficient in size and quality to maintain and enhance those industries and the development and use of land use techniques that discourage uses incompatible to the management of designated lands. The 1994 amendment to RCW 36.70A.030(8) (section 2(8), chapter 307, Laws of 1994) is intended to clarify legislative intent regarding the designation of forest lands and is not intended to require every county that has already complied with the interim forest land designation requirement of RCW 36.70A.170 to review its actions until the adoption of its comprehensive plans and development regulations as provided in RCW 36.70A.060(3)." [1994 c 307 § 1.]

Effective date—1994 c 257 § 5: "Section 5 of this act shall take effect July 1, 1994." [1994 c 257 § 25.]

Severability—1994 c 257: See note following RCW 36.70A.270.

Additional notes found at www.leg.wa.gov

36.70A.035 Public participation—Notice provisions. (1) The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations of proposed amendments to comprehensive plans and development regulation. Examples of reasonable notice provisions include:

(a) Posting the property for site-specific proposals;

(b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located or that will be affected by the proposal;

(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(d) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and

(e) Publishing notice in agency newsletters or sending notice to agency mailing lists, including general lists or lists for specific proposals or subject areas.

(2)(a) Except as otherwise provided in (b) of this subsection, if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change.

(b) An additional opportunity for public review and comment is not required under (a) of this subsection if:

(i) An environmental impact statement has been prepared under chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement;

(ii) The proposed change is within the scope of the alternatives available for public comment;

(iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;

(iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or

(v) The proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390.

(3) This section is prospective in effect and does not apply to a comprehensive plan, development regulation, or amendment adopted before July 27, 1997. [1999 c 315 § 708; 1997 c 429 § 9.]

Part headings and captions not law—1999 c 315: See RCW 28A.315.901.

Prospective application—1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Additional notes found at www.leg.wa.gov

36.70A.040 Who must plan—Summary of requirements—Development regulations must implement comprehensive plans. (1) Each county that has both a population of fifty thousand or more and, until May 16, 1995, has had its population increase by more than ten percent in the previous ten years or, on or after May 16, 1995, has had its population increase by more than seventeen percent in the previous ten years, and the cities located within such county, and any other county regardless of its population that has had its population increase by more than twenty percent in the previous ten years, and the cities located within such county, shall conform with all of the requirements of this chapter. However, the county legislative authority of such a county with a population of less than fifty thousand population may adopt a resolution removing the county, and the cities located within the county, from the requirements of adopting comprehensive land use plans and development regulations under this chapter if this resolution is adopted and filed with the department by December 31, 1990, for counties initially meeting this set of criteria, or within sixty days of the date the office of financial management certifies that a county meets this set of criteria under subsection (5) of this section. For the purposes of this subsection, a county not currently planning under this chapter is not required to include in its population count those persons confined in a correctional facility under the jurisdiction of the department of corrections that is located in the county.

Once a county meets either of these sets of criteria, the requirement to conform with all of the requirements of this chapter remains in effect, even if the county no longer meets one of these sets of criteria.

(2) The county legislative authority of any county that does not meet either of the sets of criteria established under subsection (1) of this section may adopt a resolution indicating its intention to have subsection (1) of this section apply to the county. Each city, located in a county that chooses to plan under this subsection, shall conform with all of the requirements of this chapter. Once such a resolution has been adopted, the county and the cities located within the county remain subject to all of the requirements of this chapter.

(3) Any county or city that is initially required to conform with all of the requirements of this chapter under subsection (1) of this section shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a countywide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall designate critical areas, agricultural lands, forest lands, and mineral resource lands, and adopt development regulations conserving these designated agricultural lands, forest lands, and mineral resource lands and protecting these designated critical areas, under RCW 36.70A.170 and 36.70A.060; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; (d) if the county has a population of fifty thousand or more, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan on or before July 1, 1994, and if the county has a population of less than fifty thousand, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan by January 1, 1995, but if the governor makes written findings that a county with a population of less than fifty thousand or a city located within such a county is not making reasonable progress toward adopting a comprehensive plan and development regulations the governor may reduce this deadline for such actions to be taken by no more than one hundred eighty days. Any county or city subject to this subsection may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the *department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(4) Any county or city that is required to conform with all the requirements of this chapter, as a result of the county legislative authority adopting its resolution of intention under subsection (2) of this section, shall take actions under this chapter as follows: (a) The county legislative authority shall

adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city that is located within the county shall adopt development regulations conserving agricultural lands, forest lands, and mineral resource lands it designated under RCW 36.70A.060 within one year of the date the county legislative authority adopts its resolution of intention; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city that is located within the county shall adopt a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan not later than four years from the date the county legislative authority adopts its resolution of intention, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the *department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(5) If the office of financial management certifies that the population of a county that previously had not been required to plan under subsection (1) or (2) of this section has changed sufficiently to meet either of the sets of criteria specified under subsection (1) of this section, and where applicable, the county legislative authority has not adopted a resolution removing the county from these requirements as provided in subsection (1) of this section, the county and each city within such county shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a countywide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall adopt development regulations under RCW 36.70A.060 conserving agricultural lands, forest lands, and mineral resource lands it designated within one year of the certification by the office of financial management; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city located within the county shall adopt a comprehensive land use plan and development regulations that are consistent with and implement the comprehensive plan within four years of the certification by the office of financial management, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the *department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(6) A copy of each document that is required under this section shall be submitted to the department at the time of its adoption.

(7) Cities and counties planning under this chapter must amend the transportation element of the comprehensive plan to be in compliance with this chapter and chapter 47.80 RCW no later than December 31, 2000. [2000 c 36 § 1; 1998 c 171 § 1; 1995 c 400 § 1; 1993 sp.s. c 6 § 1; 1990 1st ex.s. c 17 § 4.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Effective date—1995 c 400: "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 [May 16, 1995]." [1995 c 400 § 6.]

Effective date—1993 sp.s. c 6: "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 June 1, 1993." [1993 sp.s. c 6 § 7.]

Additional notes found at www.leg.wa.gov

36.70A.045 Phasing of comprehensive plan submittal. The department may adopt a schedule to permit phasing of comprehensive plan submittal for counties and cities planning under RCW 36.70A.040. This schedule shall not permit a comprehensive plan to be submitted greater than one hundred eighty days past the date that the plan was required to be submitted and shall be used to facilitate expeditious review and interjurisdictional coordination of comprehensive plans and development regulations. [1991 sp.s. c 32 § 15.]

36.70A.050 Guidelines to classify agriculture, forest, and mineral lands and critical areas. (1) Subject to the definitions provided in RCW 36.70A.030, the department shall adopt guidelines, under chapter 34.05 RCW, no later than September 1, 1990, to guide the classification of: (a) Agricultural lands; (b) forest lands; (c) mineral resource lands; and (d) critical areas. The department shall consult with the department of agriculture regarding guidelines for agricultural lands, the department of natural resources regarding forest lands and mineral resource lands, and the department of ecology regarding critical areas.

(2) In carrying out its duties under this section, the department shall consult with interested parties, including but not limited to: (a) Representatives of cities; (b) representatives of counties; (c) representatives of developers; (d) representatives of builders; (e) representatives of owners of agricultural lands, forest lands, and mining lands; (f) representatives of local economic development officials; (g) representatives of environmental organizations; (h) representatives of special districts; (i) representatives of the governor's office and federal and state agencies; and (j) representatives of Indian tribes. In addition to the consultation required under this subsection, the department shall conduct public hearings in the various regions of the state. The department shall consider the public input obtained at such public hearings when adopting the guidelines.

(3) The guidelines under subsection (1) of this section shall be minimum guidelines that apply to all jurisdictions, but also shall allow for regional differences that exist in Washington state. The intent of these guidelines is to assist counties and cities in designating the classification of agricultural lands, forest lands, mineral resource lands, and critical areas under RCW 36.70A.170.

(4) The guidelines established by the department under this section regarding classification of forest lands shall not be inconsistent with guidelines adopted by the department of natural resources. [1990 1st ex.s. c 17 § 5.]

36.70A.060 Natural resource lands and critical areas—Development regulations. (1)(a) Except as provided in *RCW 36.70A.1701, each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsec-

tion may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(b) Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for mineral resource lands shall also inform that an application might be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170. For counties and cities that are required or choose to plan under RCW 36.70A.040, such development regulations shall be adopted on or before September 1, 1991. For the remainder of the counties and cities, such development regulations shall be adopted on or before March 1, 1992.

(3) Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may alter such designations and development regulations to insure consistency.

(4) Forest land and agricultural land located within urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights. [2005 c 423 § 3; 1998 c 286 § 5; 1991 sp.s. c 32 § 21; 1990 1st ex.s. c 17 § 6.]

***Reviser's note:** RCW 36.70A.1701 expired June 30, 2006.

Intent—Effective date—2005 c 423: See notes following RCW 36.70A.030.

36.70A.070 Comprehensive plans—Mandatory elements. The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.

Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of groundwater used for public water supplies. Wherever possible, the land use element should consider utilizing urban planning approaches that promote physical activity. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection.

(B) Any development or redevelopment other than an industrial area or an industrial use within a mixed-use area or an industrial area under this subsection (5)(d)(i) must be principally designed to serve the existing and projected rural population.

(C) Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of this subsection (5);

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(15). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030(15). Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary, the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries, such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county's jurisdictional boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the office of financial management's ten-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection;

(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(E) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the ten-year investment program developed by the office of financial management as required by RCW 47.05.030;

(C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies;

(vii) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6), "concurrent with the development" means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

(c) The transportation element described in this subsection (6), the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems, and the ten-year investment program required by RCW 47.05.030 for the state, must be consistent.

(7) An economic development element establishing local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. The element shall include: (a) A summary of the local economy such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate; (b) a summary of the strengths and weaknesses of the local economy defined as the commercial and industrial sectors and supporting factors such as land use, transportation, utilities, education, workforce, housing, and natural/cultural resources; and (c) an identification of policies, programs, and projects to foster economic growth and development and to address future needs. A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(9) It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local gov-

ernment costs are appropriated and distributed by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130. [2010 1st sp.s. c 26 § 6; 2005 c 360 § 2; (2005 c 477 § 1 expired August 31, 2005); 2004 c 196 § 1; 2003 c 152 § 1. Prior: 2002 c 212 § 2; 2002 c 154 § 2; 1998 c 171 § 2; 1997 c 429 § 7; 1996 c 239 § 1; prior: 1995 c 400 § 3; 1995 c 377 § 1; 1990 1st ex.s. c 17 § 7.]

Expiration date—2005 c 477 § 1: "Section 1 of this act expires August 31, 2005." [2005 c 477 § 3.]

Effective date—2005 c 477: "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 immediately [May 13, 2005]." [2005 c 477 § 2.]

Findings—Intent—2005 c 360: "The legislature finds that regular physical activity is essential to maintaining good health and reducing the rates of chronic disease. The legislature further finds that providing opportunities for walking, biking, horseback riding, and other regular forms of exercise is best accomplished through collaboration between the private sector and local, state, and institutional policymakers. This collaboration can build communities where people find it easy and safe to be physically active. It is the intent of the legislature to promote policy and planning efforts that increase access to inexpensive or free opportunities for regular exercise in all communities around the state." [2005 c 360 § 1.]

Prospective application—1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Construction—Application—1995 c 400: "A comprehensive plan adopted or amended before May 16, 1995, shall be considered to be in compliance with RCW 36.70A.070 or 36.70A.110, as in effect before their amendment by this act, if the comprehensive plan is in compliance with RCW 36.70A.070 and 36.70A.110 as amended by this act. This section shall not be construed to alter the relationship between a countywide planning policy and comprehensive plans as specified under RCW 36.70A.210.

As to any appeal relating to compliance with RCW 36.70A.070 or 36.70A.110 pending before a growth management hearings board on May 16, 1995, the board may take up to an additional ninety days to resolve such appeal. By mutual agreement of all parties to the appeal, this additional ninety-day period may be extended." [1995 c 400 § 4.]

Effective date—1995 c 400: See note following RCW 36.70A.040.

Additional notes found at www.leg.wa.gov

36.70A.080 Comprehensive plans—Optional elements. (1) A comprehensive plan may include additional elements, items, or studies dealing with other subjects relating to the physical development within its jurisdiction, including, but not limited to:

(a) Conservation;

(b) Solar energy; and

(c) Recreation.

(2) A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan.

(3)(a) Cities that qualify as a receiving city may adopt a comprehensive plan element and associated development regulations that apply within receiving areas under chapter 39.108 RCW.

(b) For purposes of this subsection, the terms "receiving city" and "receiving area" have the same meanings as provided in RCW 39.108.010. [2011 c 318 § 801; 1990 1st ex.s. c 17 § 8.]

Rules—2011 c 318: See note following RCW 39.108.005.

36.70A.085 Comprehensive plans—Port elements. (1) Comprehensive plans of cities that have a marine container port with annual operating revenues in excess of sixty million dollars within their jurisdiction must include a container port element.

(2) Comprehensive plans of cities that include all or part of a port district with annual operating revenues in excess of twenty million dollars may include a marine industrial port element. Prior to adopting a marine industrial port element under this subsection (2), the commission of the applicable port district must adopt a resolution in support of the proposed element.

(3) Port elements adopted under subsections (1) and (2) of this section must be developed collaboratively between the city and the applicable port, and must establish policies and programs that:

(a) Define and protect the core areas of port and port-related industrial uses within the city;

(b) Provide reasonably efficient access to the core area through freight corridors within the city limits; and

(c) Identify and resolve key land use conflicts along the edge of the core area, and minimize and mitigate, to the extent practicable, incompatible uses along the edge of the core area.

(4) Port elements adopted under subsections (1) and (2) of this section must be:

(a) Completed and approved by the city according to the schedule specified in RCW 36.70A.130; and

(b) Consistent with the economic development, transportation, and land use elements of the city's comprehensive plan, and consistent with the city's capital facilities plan.

(5) In adopting port elements under subsections (1) and (2) of this section, cities and ports must: Ensure that there is consistency between the port elements and the port comprehensive scheme required under chapters 53.20 and 53.25 RCW; and retain sufficient planning flexibility to secure emerging economic opportunities.

(6) In developing port elements under subsections (1) and (2) of this section, a city may utilize one or more of the following approaches:

(a) Creation of a port overlay district that protects container port uses;

(b) Use of industrial land banks;

(c) Use of buffers and transition zones between incompatible uses;

(d) Use of joint transportation funding agreements;

(e) Use of policies to encourage the retention of valuable warehouse and storage facilities;

(f) Use of limitations on the location or size, or both, of nonindustrial uses in the core area and surrounding areas; and

(g) Use of other approaches by agreement between the city and the port.

(7) The *department of community, trade, and economic development must provide matching grant funds to cities meeting the requirements of subsection (1) of this section to support development of the required container port element.

(8) Any planned improvements identified in port elements adopted under subsections (1) and (2) of this section must be transmitted by the city to the transportation commission for consideration of inclusion in the statewide transportation plan required under RCW 47.01.071. [2009 c 514 § 2.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Findings—Intent—2009 c 514: "(1) The legislature finds that Washington's marine container ports operate within a complex system of marine terminal operations, truck and train transportation corridors, and industrial services that together support a critical amount of our state and national economy, including key parts of our state's manufacturing and agricultural sectors, and directly create thousands of high-wage jobs throughout our region.

(2) The legislature further finds that the container port services are increasingly challenged by the conversion of industrial properties to nonindustrial uses, leading to competing and incompatible uses that can hinder port operations, restrict efficient movement of freight, and limit the opportunity for improvements to existing port-related facilities.

(3) It is the intent of the legislature to ensure that local land use decisions are made in consideration of the long-term and widespread economic contribution of our international container ports and related industrial lands and transportation systems, and to ensure that container ports continue to function effectively alongside vibrant city waterfronts." [2009 c 514 § 1.]

36.70A.090 Comprehensive plans—Innovative techniques. A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights. [1990 1st ex.s. c 17 § 9.]

36.70A.100 Comprehensive plans—Must be coordinated. The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues. [1990 1st ex.s. c 17 § 10.]

36.70A.103 State agencies required to comply with comprehensive plans. State agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter except as otherwise provided in RCW 71.09.250 (1) through (3), 71.09.342, and 72.09.333.

The provisions of chapter 12, Laws of 2001 2nd sp. sess. do not affect the state's authority to site any other essential public facility under RCW 36.70A.200 in conformance with local comprehensive plans and development regulations adopted pursuant to chapter 36.70A RCW. [2002 c 68 § 15; 2001 2nd sp.s. c 12 § 203; 1991 sp.s. c 32 § 4.]

Purpose—Severability—Effective date—2002 c 68: See notes following RCW 36.70A.200.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

36.70A.106 Comprehensive plans—Development regulations—Transmittal to state—Amendments—Expedited review. (1) Each county and city proposing adoption of a comprehensive plan or development regulations under this chapter shall notify the department of its intent to adopt such plan or regulations at least sixty days prior to final adoption. State agencies including the department may provide comments to the county or city on the proposed comprehensive plan, or proposed development regulations, during the public review process prior to adoption.

(2) Each county and city planning under this chapter shall transmit a complete and accurate copy of its comprehensive plan or development regulations to the department within ten days after final adoption.

(3)(a) Any amendments for permanent changes to a comprehensive plan or development regulation that are proposed by a county or city to its adopted plan or regulations shall be submitted to the department in the same manner as initial plans and development regulations under this section. Any amendments to a comprehensive plan or development regulations that are adopted by a county or city shall be transmitted to the department in the same manner as the initial plans and regulations under this section.

(b) Each county and city planning under this chapter may request expedited review for any amendments for permanent changes to a development regulation. Upon receiving a request for expedited review, and after consultation with other state agencies, the department may grant expedited review if the department determines that expedited review does not compromise the state's ability to provide timely comments related to compliance with the goals and requirements of this chapter or on other matters of state interest. Cities and counties may adopt amendments for permanent changes to a development regulation immediately following the granting of the request for expedited review by the department. [2004 c 197 § 1; 1991 sp.s. c 32 § 8.]

36.70A.108 Comprehensive plans—Transportation element—Multimodal transportation improvements and strategies. (1) The transportation element required by RCW 36.70A.070 may include, in addition to improvements or strategies to accommodate the impacts of development authorized under RCW 36.70A.070(6)(b), multimodal transportation improvements or strategies that are made concurrent with the development. These transportation improvements or strategies may include, but are not limited to, measures implementing or evaluating:

(a) Multiple modes of transportation with peak and nonpeak hour capacity performance standards for locally owned transportation facilities; and

(b) Modal performance standards meeting the peak and nonpeak hour capacity performance standards.

(2) Nothing in this section or RCW 36.70A.070(6)(b) shall be construed as prohibiting a county or city planning under RCW 36.70A.040 from exercising existing authority to develop multimodal improvements or strategies to satisfy the concurrency requirements of this chapter.

(3) Nothing in this section is intended to affect or otherwise modify the authority of jurisdictions planning under RCW 36.70A.040. [2005 c 328 § 1.]

36.70A.110 Comprehensive plans—Urban growth areas. (1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.

(2) Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, except for those urban growth areas contained totally within a national historical reserve. As part of this planning process, each city within the county must include areas sufficient to accommodate the broad range of needs and uses that will accompany the projected urban growth including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.

Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. In the case of urban growth areas contained totally within a national historical reserve, the city may restrict densities, intensities, and forms of urban growth as determined to be necessary and appropriate to protect the physical, cultural, or historic integrity of the reserve. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

Within one year of July 1, 1990, each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040, shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area. Within sixty days of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall begin this consultation with each city located within its boundaries. The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area. A city may object formally with the department over the designation of the urban growth area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services.

(3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.

(4) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

(5) On or before October 1, 1993, each county that was initially required to plan under RCW 36.70A.040(1) shall adopt development regulations designating interim urban growth areas under this chapter. Within three years and three months of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall adopt development regulations designating interim urban growth areas under this chapter. Adoption of the interim urban growth areas may only occur after public notice; public hearing; and compliance with the state environmental policy act, chapter 43.21C RCW, and under this section. Such action may be appealed to the growth management hearings board under RCW 36.70A.280. Final urban growth areas shall be adopted at the time of comprehensive plan adoption under this chapter.

(6) Each county shall include designations of urban growth areas in its comprehensive plan.

(7) An urban growth area designated in accordance with this section may include within its boundaries urban service areas or potential annexation areas designated for specific cities or towns within the county.

(8)(a) Except as provided in (b) of this subsection, the expansion of an urban growth area is prohibited into the one hundred year floodplain of any river or river segment that: (i) Is located west of the crest of the Cascade mountains; and (ii) has a mean annual flow of one thousand or more cubic feet per second as determined by the department of ecology.

(b) Subsection (8)(a) of this section does not apply to:

(i) Urban growth areas that are fully contained within a floodplain and lack adjacent buildable areas outside the floodplain;

(ii) Urban growth areas where expansions are precluded outside floodplains because:

(A) Urban governmental services cannot be physically provided to serve areas outside the floodplain; or

(B) Expansions outside the floodplain would require a river or estuary crossing to access the expansion; or

(iii) Urban growth area expansions where:

(A) Public facilities already exist within the floodplain and the expansion of an existing public facility is only possible on the land to be included in the urban growth area and located within the floodplain; or

(B) Urban development already exists within a floodplain as of July 26, 2009, and is adjacent to, but outside of, the urban growth area, and the expansion of the urban growth area is necessary to include such urban development within the urban growth area; or

(C) The land is owned by a jurisdiction planning under this chapter or the rights to the development of the land have been permanently extinguished, and the following criteria are met:

(I) The permissible use of the land is limited to one of the following: Outdoor recreation; environmentally beneficial projects, including but not limited to habitat enhancement or environmental restoration; storm water facilities; flood control facilities; or underground conveyances; and

(II) The development and use of such facilities or projects will not decrease flood storage, increase storm water runoff, discharge pollutants to fresh or salt waters during normal operations or floods, or increase hazards to people and property.

(c) For the purposes of this subsection (8), "one hundred year floodplain" means the same as "special flood hazard area" as set forth in WAC 173-158-040 as it exists on July 26, 2009. [2010 c 211 § 1. Prior: 2009 c 342 § 1; 2009 c 121 § 1; 2004 c 206 § 1; 2003 c 299 § 5; 1997 c 429 § 24; 1995 c 400 § 2; 1994 c 249 § 27; 1993 sp.s. c 6 § 2; 1991 sp.s. c 32 § 29; 1990 1st ex.s. c 17 § 11.]

Effective date--Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Construction—Application—1995 c 400: See note following RCW 36.70A.070.

Effective date—1995 c 400: See note following RCW 36.70A.040.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—1993 sp.s. c 6: See note following RCW 36.70A.040.

Additional notes found at www.leg.wa.gov

36.70A.115 Comprehensive plans and development regulations must provide sufficient land capacity for development. Counties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, including the accommodation of, as appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related to such growth, as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the office of financial management. [2009 c 121 § 3; 2003 c 333 § 1.]

36.70A.120 Planning activities and capital budget decisions—Implementation in conformity with comprehensive plan. Each county and city that is required or chooses to plan under RCW 36.70A.040 shall perform its activities and make capital budget decisions in conformity with its comprehensive plan. [1993 sp.s. c 6 § 3; 1990 1st ex.s. c 17 § 12.]

Effective date—1993 sp.s. c 6: See note following RCW 36.70A.040.

Additional notes found at www.leg.wa.gov

36.70A.130 Comprehensive plans—Review procedures and schedules—Amendments. (1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section.

(b) Except as otherwise provided, a county or city not planning under RCW 36.70A.040 shall take action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor.

(c) The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under RCW 36.70A.040, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

(d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year, except that, until December 31, 2015, the program shall provide for consideration of amendments of an urban growth area in accordance with RCW 36.70A.1301 once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the deadlines in subsections (4) and (5) of this section or in accordance with the provisions of subsection (6) of this section. Amendments may be considered more frequently than once per year under the following circumstances:

(i) The initial adoption of a subarea plan. Subarea plans adopted under this subsection (2)(a)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter 43.21C RCW;

(ii) The development of an initial subarea plan for economic development located outside of the one hundred year floodplain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;

(iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;

(iv) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget; or

(v) The adoption of comprehensive plan amendments necessary to enact a planned action under *RCW 43.21C.031(2), provided that amendments are considered in accordance with the public participation program established by the county or city under this subsection (2)(a) and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment.

(b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with the growth management hearings board or with the court.

(3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, according to the schedules established in subsection (5) of this section, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215.

(4) Except as provided in subsection (6) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

(a) On or before December 1, 2004, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(b) On or before December 1, 2005, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(c) On or before December 1, 2006, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before December 1, 2007, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(5) Except as otherwise provided in subsections (6) and (8) of this section, following the review of comprehensive plans and development regulations required by subsection (4) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

(a) On or before June 30, 2015, and every eight years thereafter, for King, Pierce, and Snohomish counties and the cities within those counties;

(b) On or before June 30, 2016, and every eight years thereafter, for Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;

(c) On or before June 30, 2017, and every eight years thereafter, for Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before June 30, 2018, and every eight years thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(6)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the deadlines established in subsections (4) and (5) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.

(b) A county that is subject to a deadline established in subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the deadline established in subsection (4) of this section: The county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (4) of this section as of that date.

(c) A city that is subject to a deadline established in subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the deadline established in subsection (4) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (4) of this section as of that date.

(d) A county or city that is subject to a deadline established in subsection (4)(d) of this section and that meets the criteria established in (b) or (c) of this subsection may comply with the requirements of subsection (4)(d) of this section at any time within the thirty-six months after the extension provided in (b) or (c) of this subsection.

(e) A county that is subject to a deadline established in subsection (5)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.

(f) A city that is subject to a deadline established in subsection (5)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.

(g) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical

area ordinances, comprehensive plans, and development regulations.

(7)(a) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW 36.70A.040(1). Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter 43.155 or 70.146 RCW:

(i) Complying with the deadlines in this section;

(ii) Demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas; or

(iii) Complying with the extension provisions of subsection (6)(b), (c), or (d) of this section.

(b) A county or city that is fewer than twelve months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW 43.17.250.

(8)(a) Except as otherwise provided in (c) of this subsection, if a participating watershed is achieving benchmarks and goals for the protection of critical areas functions and values, the county is not required to update development regulations to protect critical areas as they specifically apply to agricultural activities in that watershed.

(b) A county that has made the election under RCW 36.70A.710(1) may only adopt or amend development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed if:

(i) A work plan has been approved for that watershed in accordance with RCW 36.70A.725;

(ii) The local watershed group for that watershed has requested the county to adopt or amend development regulations as part of a work plan developed under RCW 36.70A.720;

(iii) The adoption or amendment of the development regulations is necessary to enable the county to respond to an order of the growth management hearings board or court;

(iv) The adoption or amendment of development regulations is necessary to address a threat to human health or safety; or

(v) Three or more years have elapsed since the receipt of funding.

(c) Beginning ten years from the date of receipt of funding, a county that has made the election under RCW 36.70A.710(1) must review and, if necessary, revise development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed in accordance with the review and revision requirements and timeline in subsection (5) of this section. This subsection (8)(c) does not apply to a participating watershed that has determined under RCW 36.70A.720(2)(c)(ii) that the watershed's goals and benchmarks for protection have been met. [2012 c 191 § 1. Prior: 2011 c 360 § 16; 2011 c 353 § 2; prior: 2010 c 216 § 1; 2010 c 211 § 2; 2009 c 479 § 23; 2006 c 285 § 2; prior: 2005 c 423 § 6; 2005 c 294 § 2; 2002 c 320 § 1; 1997 c 429 § 10; 1995 c 347 § 106; 1990 1st ex.s. c 17 § 13.]

***Reviser's note:** The requirements for a planned action were moved by 2012 1st sp.s. c 1 from RCW 43.21C.031 to RCW 43.21C.440.

Intent—2011 c 353: "It is the legislature's intent to provide local governments with more time to meet certain statutory requirements. Many cities and counties in Washington are facing revenue shortfalls, higher expenses, and more difficulty with borrowing money as a result of the economic downturn. The effects of the economic downturn on the budgets of local governments will be felt most deeply from 2010 to 2012. Local governments are facing the combined impact of decreased tax revenues, a falloff in state and federal aid, and increased demand for social services. With the loss of tax revenue and state and federal aid, local governments are being forced to make significant cuts that will eliminate jobs, curtail essential services, and increase the number of people in need. Additionally, local governments are struggling to comply with certain statutory requirements. Local governments want to comply with these statutory requirements, but with budget constraints, they need more time to do so. The legislature does not intend to remove any existing statutory requirement, but rather modify the time under which a local government must meet certain statutory requirements." [2011 c 353 § 1.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Effective date—2009 c 479: See note following RCW 2.56.030.

Intent—2006 c 285: "There is a statewide interest in maintaining coordinated planning as called for in the legislative findings of the growth management act, RCW 36.70A.010. It is the intent of the legislature that smaller, slower-growing counties and cities be provided with flexibility in meeting the requirements to review local plans and development regulations in RCW 36.70A.130, while ensuring coordination and consistency with the plans of neighboring cities and counties." [2006 c 285 § 1.]

Intent—Effective date—2005 c 423: See notes following RCW 36.70A.030.

Intent—2005 c 294: "The legislature recognizes the importance of appropriate and meaningful land use measures and that such measures are critical to preserving and fostering the quality of life enjoyed by Washingtonians. The legislature recognizes also that the growth management act requires counties and cities to review and, if needed, revise their comprehensive plans and development regulations on a cyclical basis. These requirements, which often require significant compliance efforts by local governments are, in part, an acknowledgment of the continual changes that occur within the state, and the need to ensure that land use measures reflect the collective wishes of its citizenry.

The legislature acknowledges that only those jurisdictions in compliance with the review and revision schedules of the growth management act are eligible to receive funds from the public works assistance and water quality accounts in the state treasury. The legislature further recognizes that some jurisdictions that are not yet in compliance with these review and revision schedules have demonstrated substantial progress towards compliance.

The legislature, therefore, intends to grant jurisdictions that are not in compliance with requirements for development regulations that protect critical areas, but are demonstrating substantial progress towards compliance with these requirements, twelve months of additional eligibility to receive grants, loans, pledges, or financial guarantees from the public works assistance and water quality accounts in the state treasury. The legislature intends to specify, however, that only counties and cities in compliance with the review and revision schedules of the growth management act may receive preference for financial assistance from these accounts." [2005 c 294 § 1.]

Effective date—2005 c 294: "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 immediately [May 5, 2005]." [2005 c 294 § 3.]

Prospective application—1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Definitions: See RCW 36.70A.703.

RCW 36.70A.130(2) does not apply to master planned locations in industrial land banks: RCW 36.70A.367(2)(c).

Additional notes found at www.leg.wa.gov

36.70A.1301 Request to amend urban growth area—Timing—Criteria. ***(Expires December 31, 2015.)*** (1) The legislative authority of a city planning under RCW 36.70A.040 may request, as part of the county's annual comprehensive plan amendment process, that the applicable county legislative authority amend the urban growth area within which the city is located. A request must meet the county's application deadline for that year's comprehensive plan amendment process. A determination to honor, modify, or reject a request under this section must be issued by the county, as part of the county's annual comprehensive plan amendment process.

(2) Urban growth area amendment requests under this subsection:

(a) May only occur in counties located east of the crest of the Cascade mountain range that have more than one hundred thousand and fewer than two hundred thousand residents;

(b) Must be for the purpose of increasing the amount of territory within the amended urban growth area that is zoned for industrial purposes and the additional land is needed to meet the city's and county's documented needs for additional industrial land to serve their planned population growth;

(c) May not increase the amount of territory within the amended urban growth area by an amount exceeding seven percent of the total area within the requesting city. Land area determinations under this subsection (2)(c) must be made on a per occurrence, noncumulative basis;

(d) Must be preceded by a completed development proposal and phased master plan for the area to which the amendment applies and a capital facilities plan with identified funding sources to provide the public facilities and services needed to serve the area; and

(e) Are null and void if the applicable development proposal has not been wholly or partially implemented within five years of the amendment, or if the area to which the amendment applies has not been annexed within five years of the amendment.

(3) Nothing in this section limits or otherwise modifies the authority of counties and cities to enter into interlocal agreements under chapter 39.34 RCW for planning costs incurred by a county in accordance with a request under this section.

(4) This section expires December 31, 2015. [2012 c 191 § 2.]

36.70A.131 Mineral resource lands—Review of related designations and development regulations. As part of the review required by RCW 36.70A.130(1), a county or city shall review its mineral resource lands designations adopted pursuant to RCW 36.70A.170 and mineral resource lands development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060. In its review, the county or city shall take into consideration:

(1) New information made available since the adoption or last review of its designations or development regulations, including data available from the department of natural resources relating to mineral resource deposits; and

(2) New or modified model development regulations for mineral resource lands prepared by the department of natural resources, the *department of community, trade, and economic development, or the Washington state association of counties. [1998 c 286 § 7.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

36.70A.140 Comprehensive plans—Ensure public participation. Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. In enacting legislation in response to the board's decision pursuant to RCW 36.70A.300 declaring part or all of a comprehensive plan or development regulation invalid, the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board's order. Errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed. [1995 c 347 § 107; 1990 1st ex.s. c 17 § 14.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

36.70A.150 Identification of lands useful for public purposes. Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify lands useful for public purposes such as utility corridors, transportation corridors, landfills, sewage treatment facilities, storm water management facilities, recreation, schools, and other public uses. The county shall work with the state and the cities within its borders to identify areas of shared need for public facilities. The jurisdictions within the county shall prepare a prioritized list of lands necessary for the identified public uses including an estimated date by which the acquisition will be needed.

The respective capital acquisition budgets for each jurisdiction shall reflect the jointly agreed upon priorities and time schedule. [1991 c 322 § 23; 1990 1st ex.s. c 17 § 15.]

Findings—Intent—1991 c 322: See notes following RCW 86.12.200.

36.70A.160 Identification of open space corridors—Purchase authorized. Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify open space corridors within and between urban growth areas. They shall include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Identification of a corridor under this section by a county or city shall not restrict the use or management of lands within the corridor for agricultural or forest purposes. Restrictions on the use or management of such lands for agricultural or forest purposes imposed after identification solely to maintain or enhance the value of such lands as a corridor may occur only

if the county or city acquires sufficient interest to prevent development of the lands or to control the resource development of the lands. The requirement for acquisition of sufficient interest does not include those corridors regulated by the interstate commerce commission, under provisions of 16 U.S.C. Sec. 1247(d), 16 U.S.C. Sec. 1248, or 43 U.S.C. Sec. 912. Nothing in this section shall be interpreted to alter the authority of the state, or a county or city, to regulate land use activities.

The city or county may acquire by donation or purchase the fee simple or lesser interests in these open space corridors using funds authorized by RCW 84.34.230 or other sources. [1992 c 227 § 1; 1990 1st ex.s. c 17 § 16.]

36.70A.165 Property designated as greenbelt or open space—Not subject to adverse possession. The legislature recognizes that the preservation of urban greenbelts is an integral part of comprehensive growth management in Washington. The legislature further recognizes that certain greenbelts are subject to adverse possession action which, if carried out, threaten the comprehensive nature of this chapter. Therefore, a party shall not acquire by adverse possession property that is designated as a plat greenbelt or open space area or that is dedicated as open space to a public agency or to a bona fide homeowner's association. [1997 c 429 § 41.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

Additional notes found at www.leg.wa.gov

36.70A.170 Natural resource lands and critical areas—Designations. (1) On or before September 1, 1991, each county, and each city, shall designate where appropriate:

(a) Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products;

(b) Forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber;

(c) Mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals; and

(d) Critical areas.

(2) In making the designations required by this section, counties and cities shall consider the guidelines established pursuant to RCW 36.70A.050. [1990 1st ex.s. c 17 § 17.]

36.70A.171 Playing fields—Compliance with this chapter. In accordance with RCW 36.70A.030, 36.70A.060, *36.70A.1701, and 36.70A.130, playing fields and supporting facilities existing before July 1, 2004, on designated recreational lands shall be considered in compliance with the requirements of this chapter. [2005 c 423 § 5.]

***Reviser's note:** RCW 36.70A.1701 expired June 30, 2006.

Intent—Effective date—2005 c 423: See notes following RCW 36.70A.030.

36.70A.172 Critical areas—Designation and protection—Best available science to be used. (1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

(2) If it determines that advice from scientific or other experts is necessary or will be of substantial assistance in reaching its decision, the growth management hearings board may retain scientific or other expert advice to assist in reviewing a petition under RCW 36.70A.290 that involves critical areas. [2010 c 211 § 3; 1995 c 347 § 105.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

36.70A.175 Wetlands to be delineated in accordance with manual. Wetlands regulated under development regulations adopted pursuant to this chapter shall be delineated in accordance with the manual adopted by the department pursuant to RCW 90.58.380. [1995 c 382 § 12.]

36.70A.177 Agricultural lands—Innovative zoning techniques—Accessory uses. (1) A county or a city may use a variety of innovative zoning techniques in areas designated as agricultural lands of long-term commercial significance under RCW 36.70A.170. The innovative zoning techniques should be designed to conserve agricultural lands and encourage the agricultural economy. Except as provided in subsection (3) of this section, a county or city should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.

(2) Innovative zoning techniques a county or city may consider include, but are not limited to:

(a) Agricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land and may allow accessory uses, including nonagricultural accessory uses and activities, that support, promote, or sustain agricultural operations and production, as provided in subsection (3) of this section;

(b) Cluster zoning, which allows new development on one portion of the land, leaving the remainder in agricultural or open space uses;

(c) Large lot zoning, which establishes as a minimum lot size the amount of land necessary to achieve a successful farming practice;

(d) Quarter/quarter zoning, which permits one residential dwelling on a one-acre minimum lot for each one-sixteenth of a section of land; and

(e) Sliding scale zoning, which allows the number of lots for single-family residential purposes with a minimum lot size of one acre to increase inversely as the size of the total acreage increases.

(3) Accessory uses allowed under subsection (2)(a) of this section shall comply with the following:

(a) Accessory uses shall be located, designed, and operated so as to not interfere with, and to support the continuation of, the overall agricultural use of the property and neighboring properties, and shall comply with the requirements of this chapter;

(b) Accessory uses may include:

(i) Agricultural accessory uses and activities, including but not limited to the storage, distribution, and marketing of regional agricultural products from one or more producers, agriculturally related experiences, or the production, marketing, and distribution of value-added agricultural products, including support services that facilitate these activities; and

(ii) Nonagricultural accessory uses and activities as long as they are consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site. Nonagricultural accessory uses and activities, including new buildings, parking, or supportive uses, shall not be located outside the general area already developed for buildings and residential uses and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses; and

(c) Counties and cities have the authority to limit or exclude accessory uses otherwise authorized in this subsection (3) in areas designated as agricultural lands of long-term commercial significance.

(4) This section shall not be interpreted to limit agricultural production on designated agricultural lands. [2006 c 147 § 1; 2004 c 207 § 1; 1997 c 429 § 23.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

Additional notes found at www.leg.wa.gov

36.70A.180 Chapter implementation—Intent. It is the intent of the legislature that counties and cities required to adopt a comprehensive plan under RCW 36.70A.040(1) begin implementing this chapter on or before July 1, 1990, including but not limited to: (1) Inventorying, designating, and conserving agricultural, forest, and mineral resource lands, and critical areas; and (2) considering the modification or adoption of comprehensive land use plans and development regulations implementing the comprehensive land use plans. It is also the intent of the legislature that funds be made available to counties and cities beginning July 1, 1990, to assist them in meeting the requirements of this chapter. [2012 1st sp.s. c 5 § 3; 1990 1st ex.s. c 17 § 19.]

36.70A.190 Technical assistance, procedural criteria, grants, and mediation services. (1) The department shall establish a program of technical and financial assistance and incentives to counties and cities to encourage and facilitate the adoption and implementation of comprehensive plans and development regulations throughout the state.

(2) The department shall develop a priority list and establish funding levels for planning and technical assistance grants both for counties and cities that plan under RCW 36.70A.040. Priority for assistance shall be based on a county's or city's population growth rates, commercial and industrial development rates, the existence and quality of a comprehensive plan and development regulations, and other relevant factors.

(3) The department shall develop and administer a grant program to provide direct financial assistance to counties and cities for the preparation of comprehensive plans under this chapter. The department may establish provisions for county and city matching funds to conduct activities under this subsection. Grants may be expended for any purpose directly related to the preparation of a county or city comprehensive plan as the county or city and the department may agree, including, without limitation, the conducting of surveys, inventories and other data gathering and management activities, the retention of planning consultants, contracts with regional councils for planning and related services, and other related purposes.

(4) The department shall establish a program of technical assistance:

(a) Utilizing department staff, the staff of other state agencies, and the technical resources of counties and cities to help in the development of comprehensive plans required under this chapter. The technical assistance may include, but not be limited to, model land use ordinances, regional education and training programs, and information for local and regional inventories; and

(b) Adopting by rule procedural criteria to assist counties and cities in adopting comprehensive plans and development regulations that meet the goals and requirements of this chapter. These criteria shall reflect regional and local variations and the diversity that exists among different counties and cities that plan under this chapter.

(5) The department shall provide mediation services to resolve disputes between counties and cities regarding, among other things, coordination of regional issues and designation of urban growth areas.

(6) The department shall provide planning grants to enhance citizen participation under RCW 36.70A.140. [1991 sp.s. c 32 § 3; 1990 1st ex.s. c 17 § 20.]

36.70A.200 Siting of essential public facilities—Limitation on liability. (1) The comprehensive plan of each county and city that is planning under RCW 36.70A.040 shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

(2) Each county and city planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process, or amend its existing process, for identifying and siting essential public facilities and adopt or amend its development regulations as necessary to provide for the siting of secure community transition facilities consistent with statutory requirements applicable to these facilities.

(3) Any city or county not planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process for siting secure community transition facilities and adopt or amend its development regulations as necessary to provide for the siting of such facilities consistent with statutory requirements applicable to these facilities.

(4) The office of financial management shall maintain a list of those essential state public facilities that are required or likely to be built within the next six years. The office of financial management may at any time add facilities to the list.

(5) No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

(6) No person may bring a cause of action for civil damages based on the good faith actions of any county or city to provide for the siting of secure community transition facilities in accordance with this section and with the requirements of chapter 12, Laws of 2001 2nd sp. sess. For purposes of this subsection, "person" includes, but is not limited to, any individual, agency as defined in RCW 42.17A.005, corporation, partnership, association, and limited liability entity.

(7) Counties or cities siting facilities pursuant to subsection (2) or (3) of this section shall comply with RCW 71.09.341.

(8) The failure of a county or city to act by the deadlines established in subsections (2) and (3) of this section is not:

(a) A condition that would disqualify the county or city for grants, loans, or pledges under RCW 43.155.070 or 70.146.070;

(b) A consideration for grants or loans provided under RCW 43.17.250(3); or

(c) A basis for any petition under RCW 36.70A.280 or for any private cause of action. [2013 c 275 § 5; 2011 c 60 § 17; 2010 c 62 § 1; 2002 c 68 § 2; 2001 2nd sp.s. c 12 § 205; 1998 c 171 § 3; 1991 sp.s. c 32 § 1.]

Effective date—2011 c 60: See RCW 42.17A.919.

Purpose—2002 c 68: "The purpose of this act is to:

(1) Enable the legislature to act upon the recommendations of the joint select committee on the equitable distribution of secure community transition facilities established in section 225, chapter 12, Laws of 2001 2nd sp. sess.; and

(2) Harmonize the preemption provisions in RCW 71.09.250 with the preemption provisions applying to future secure community transition facilities to reflect the joint select committee's recommendation that the preemption granted for future secure community transition facilities be the same throughout the state." [2002 c 68 § 1.]

Severability—2002 c 68: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 68 § 19.]

Effective date—2002 c 68: "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 immediately [March 21, 2002]." [2002 c 68 § 20.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

36.70A.210 Countywide planning policies. (1) The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas. For the purposes of this section, a "countywide planning policy" is a written policy statement or statements used solely for establishing a countywide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100. Nothing in this section shall be construed to alter the land-use powers of cities.

(2) The legislative authority of a county that plans under RCW 36.70A.040 shall adopt a countywide planning policy in cooperation with the cities located in whole or in part within the county as follows:

(a) No later than sixty calendar days from July 16, 1991, the legislative authority of each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040 shall convene a meeting with representatives of each city located within the county for the purpose of establishing a collaborative process that will provide a framework for the adoption of a countywide planning policy. In other counties that are required or choose to plan under RCW 36.70A.040, this meeting shall be convened no later than sixty days after the date the county adopts its resolution of intention or was certified by the office of financial management.

(b) The process and framework for adoption of a countywide planning policy specified in (a) of this subsection shall determine the manner in which the county and the cities agree to all procedures and provisions including but not limited to desired planning policies, deadlines, ratification of final agreements and demonstration thereof, and financing, if any, of all activities associated therewith.

(c) If a county fails for any reason to convene a meeting with representatives of cities as required in (a) of this subsection, the governor may immediately impose any appropriate sanction or sanctions on the county from those specified under RCW 36.70A.340.

(d) If there is no agreement by October 1, 1991, in a county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or if there is no agreement within one hundred twenty days of the date the county adopted its resolution of intention or was certified by the office of financial management in any other county that is required or chooses to plan under RCW 36.70A.040, the governor shall first inquire of the jurisdictions as to the reason or reasons for failure to reach an agreement. If the governor deems it appropriate, the governor may immediately request the assistance of the *department of community, trade, and economic development to mediate any disputes that preclude agreement. If mediation is unsuccessful in resolving all disputes that will lead to agreement, the governor may impose appropriate sanctions from those specified under RCW 36.70A.340 on the county, city, or cities for failure to reach an agreement as provided in this section. The governor shall specify the reason or reasons for the imposition of any sanction.

(e) No later than July 1, 1992, the legislative authority of each county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or no later than fourteen months after the date the county adopted its resolution of intention or was certified by the office of financial management the county legislative authority of any other county that is required or chooses to plan under RCW 36.70A.040, shall adopt a countywide planning policy according to the process provided under this section and that is consistent with the agreement pursuant to (b) of this subsection, and after holding a public hearing or hearings on the proposed countywide planning policy.

(3) A countywide planning policy shall at a minimum, address the following:

(a) Policies to implement RCW 36.70A.110;

(b) Policies for promotion of contiguous and orderly development and provision of urban services to such development;

(c) Policies for siting public capital facilities of a countywide or statewide nature, including transportation facilities of statewide significance as defined in RCW 47.06.140;

(d) Policies for countywide transportation facilities and strategies;

(e) Policies that consider the need for affordable housing, such as housing for all economic segments of the population and parameters for its distribution;

(f) Policies for joint county and city planning within urban growth areas;

(g) Policies for countywide economic development and employment, which must include consideration of the future development of commercial and industrial facilities; and

(h) An analysis of the fiscal impact.

(4) Federal agencies and Indian tribes may participate in and cooperate with the countywide planning policy adoption process. Adopted countywide planning policies shall be adhered to by state agencies.

(5) Failure to adopt a countywide planning policy that meets the requirements of this section may result in the imposition of a sanction or sanctions on a county or city within the county, as specified in RCW 36.70A.340. In imposing a sanction or sanctions, the governor shall specify the reasons for failure to adopt a countywide planning policy in order that any imposed sanction or sanctions are fairly and equitably related to the failure to adopt a countywide planning policy.

(6) Cities and the governor may appeal an adopted countywide planning policy to the growth management hearings board within sixty days of the adoption of the countywide planning policy.

(7) Multicounty planning policies shall be adopted by two or more counties, each with a population of four hundred fifty thousand or more, with contiguous urban areas and may be adopted by other counties, according to the process established under this section or other processes agreed to among the counties and cities within the affected counties throughout the multicounty region. [2009 c 121 § 2; 1998 c 171 § 4; 1994 c 249 § 28; 1993 sp.s. c 6 § 4; 1991 sp.s. c 32 § 2.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—1993 sp.s. c 6: See note following RCW 36.70A.040.

Additional notes found at www.leg.wa.gov

36.70A.215 Review and evaluation program. (1) Subject to the limitations in subsection (7) of this section, a county shall adopt, in consultation with its cities, countywide planning policies to establish a review and evaluation program. This program shall be in addition to the requirements of RCW 36.70A.110, 36.70A.130, and 36.70A.210. In developing and implementing the review and evaluation program required by this section, the county and its cities shall consider information from other appropriate jurisdictions and sources. The purpose of the review and evaluation program shall be to:

(a) Determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions, targets, and objectives contained in the countywide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and

(b) Identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter.

(2) The review and evaluation program shall:

(a) Encompass land uses and activities both within and outside of urban growth areas and provide for annual collection of data on urban and rural land uses, development, critical areas, and capital facilities to the extent necessary to determine the quantity and type of land suitable for development, both for residential and employment-based activities;

(b) Provide for evaluation of the data collected under (a) of this subsection as provided in subsection (3) of this section. The evaluation shall be completed no later than one year prior to the deadline for review and, if necessary, update of comprehensive plans and development regulations as required by RCW 36.70A.130. The county and its cities may establish in the countywide planning policies indicators, benchmarks, and other similar criteria to use in conducting the evaluation;

(c) Provide for methods to resolve disputes among jurisdictions relating to the countywide planning policies required by this section and procedures to resolve inconsistencies in collection and analysis of data; and

(d) Provide for the amendment of the countywide policies and county and city comprehensive plans as needed to remedy an inconsistency identified through the evaluation required by this section, or to bring these policies into compliance with the requirements of this chapter.

(3) At a minimum, the evaluation component of the program required by subsection (1) of this section shall:

(a) Determine whether there is sufficient suitable land to accommodate the countywide population projection established for the county pursuant to RCW 43.62.035 and the subsequent population allocations within the county and between the county and its cities and the requirements of RCW 36.70A.110;

(b) Determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses within the urban growth area since the adoption of a comprehensive plan under this chapter or since the last periodic evaluation as required by subsection (1) of this section; and

(c) Based on the actual density of development as determined under (b) of this subsection, review commercial, industrial, and housing needs by type and density range to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the twenty-year planning period used in the most recently adopted comprehensive plan.

(4) If the evaluation required by subsection (3) of this section demonstrates an inconsistency between what has occurred since the adoption of the countywide planning policies and the county and city comprehensive plans and development regulations and what was envisioned in those policies and plans and the planning goals and the requirements of this chapter, as the inconsistency relates to the evaluation factors specified in subsection (3) of this section, the county and its cities shall adopt and implement measures that are reasonably likely to increase consistency during the subsequent five-year period. If necessary, a county, in consultation with its cities as required by RCW 36.70A.210, shall adopt amendments to

countywide planning policies to increase consistency. The county and its cities shall annually monitor the measures adopted under this subsection to determine their effect and may revise or rescind them as appropriate.

(5)(a) Not later than July 1, 1998, the department shall prepare a list of methods used by counties and cities in carrying out the types of activities required by this section. The department shall provide this information and appropriate technical assistance to counties and cities required to or choosing to comply with the provisions of this section.

(b) By December 31, 2007, the department shall submit to the appropriate committees of the legislature a report analyzing the effectiveness of the activities described in this section in achieving the goals envisioned by the countywide planning policies and the comprehensive plans and development regulations of the counties and cities.

(6) From funds appropriated by the legislature for this purpose, the department shall provide grants to counties, cities, and regional planning organizations required under subsection (7) of this section to conduct the review and perform the evaluation required by this section.

(7) The provisions of this section shall apply to counties, and the cities within those counties, that were greater than one hundred fifty thousand in population in 1995 as determined by office of financial management population estimates and that are located west of the crest of the Cascade mountain range. Any other county planning under RCW 36.70A.040 may carry out the review, evaluation, and amendment programs and procedures as provided in this section. [2011 c 353 § 3; 1997 c 429 § 25.]

Intent—2011 c 353: See note following RCW 36.70A.130.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Additional notes found at www.leg.wa.gov

36.70A.250 Growth management hearings board—Creation—Members. (1) A growth management hearings board for the state of Washington is created. The board shall consist of seven members qualified by experience or training in matters pertaining to land use law or land use planning and who have experience in the practical application of those matters. All seven board members shall be appointed by the governor, two each residing respectively in the central Puget Sound, eastern Washington, and western Washington regions, plus one board member residing within the state of Washington. At least three members of the board shall be admitted to practice law in this state, one each residing respectively in the central Puget Sound, eastern Washington, and western Washington regions. At least three members of the board shall have been a city or county elected official, one each residing respectively in the central Puget Sound, eastern Washington, and western Washington regions. After expiration of the terms of board members on the previously existing three growth management hearings boards, no more than four members of the seven-member board may be members of the same major political party. No more than two members at the time of their appointment or during their term may reside in the same county.

(2) Each member of the board shall be appointed for a term of six years. A vacancy shall be filled by appointment by the governor for the unexpired portion of the term in which the vacancy occurs. Members of the previously existing three growth management hearings boards appointed before July 1, 2010, shall complete their staggered, six-year terms as members of the growth management hearings board created under subsection (1) of this section. The reduction from nine board members on the previously existing three growth management hearings boards to seven total members on the growth management hearings board shall be made through attrition, voluntary resignation, or retirement. [2010 c 211 § 4; 1994 c 249 § 29; 1991 sp.s. c 32 § 5.]

Effective date—2010 c 211: "This act takes effect July 1, 2010." [2010 c 211 § 18.]

Transfer of power, duties, and functions—2010 c 211: "(1) The three growth management hearings boards are abolished and their powers, duties, and functions are transferred to the growth management hearings board.

(2) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the three growth management hearings boards must be delivered to the custody of the growth management hearings board. All office furnishings, office equipment, motor vehicles, and other tangible property in the possession of the three growth management hearings boards must be made available to the growth management hearings board.

(3) All funds, credits, or other assets held by the three growth management hearings boards must, on July 1, 2010, be transferred to the growth management hearings board. Any appropriations made to the three growth management hearings boards must, on July 1, 2010, be transferred and credited to the growth management hearings board. If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(4) All employees of the three growth management hearings boards are transferred to the growth management hearings board. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the growth management hearings board to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(5) This section may not be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the public employment relations commission as provided by law.

(6) All rules and pending business before the three growth management hearings boards must be continued and acted upon by the growth management hearings board. All existing contracts and obligations remain in full force and must be performed by the growth management hearings board.

(7) The transfer of the powers, duties, functions, and personnel of the three growth management hearings boards to the growth management hearings board does not affect the validity of any act performed before July 1, 2010.

(8) All cases decided and all orders previously issued by the three growth management hearings boards remain in full force and effect and are not affected by this act." [2010 c 211 § 17.]

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Additional notes found at www.leg.wa.gov

36.70A.252 Growth management hearings board—Consolidation into environmental and land use hearings office. (1) On July 1, 2011, the growth management hearings board is administratively consolidated into the environmental and land use hearings office created in RCW 43.21B.005.

(2) Not later than July 1, 2012, the growth management hearings board consists of seven members qualified by experience or training in matters pertaining to land use law or land use planning, except that the governor may reduce the board to six members if warranted by the board's caseload. All board members must be appointed by the governor, two each residing respectively in the central Puget Sound, eastern

Washington, and western Washington regions and shall continue to meet the qualifications set out in *RCW 36.70A.260. The reduction from seven board members to six board members must be made through attrition, voluntary resignation, or retirement. [2010 c 210 § 15.]

***Reviser's note:** RCW 36.70A.260 was amended by 2010 c 211 § 5, eliminating the reference to board member qualifications. 2010 c 211 § 4 added board member qualifications to RCW 36.70A.250.

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

36.70A.260 Growth management hearings board—Regional panels. (1) Each petition for review that is filed with the growth management hearings board shall be heard and decided by a regional panel of growth management hearings board members. Regional panels shall be constituted as follows:

(a) Central Puget Sound region. A three-member central Puget Sound panel shall be selected to hear matters pertaining to cities and counties located within the region comprised of King, Pierce, Snohomish, and Kitsap counties.

(b) Eastern Washington region. A three-member eastern Washington panel shall be selected to hear matters pertaining to cities and counties that are required or choose to plan under RCW 36.70A.040 and are located east of the crest of the Cascade mountains.

(c) Western Washington region. A three-member western Washington panel shall be selected to hear matters pertaining to cities and counties that are required or choose to plan under RCW 36.70A.040, are located west of the crest of the Cascade mountains, and are not included in the central Puget Sound region. Skamania county, if it is required or chooses to plan under RCW 36.70A.040, may elect to be included within either the western Washington region or the eastern Washington region.

(2)(a) Each regional panel selected to hear and decide cases shall consist of three board members, at least a majority of whom shall reside within the region in which the case arose, unless such members cannot sit on a particular case because of recusal or disqualification, or unless the board administrative officer determines that there is an emergency including, but not limited to, the unavailability of a board member due to illness, absence, vacancy, or significant workload imbalance. The presiding officer of each case shall reside within the region in which the case arose, unless the board administrative officer determines that there is an emergency.

(b) Except as provided otherwise in this subsection (2)(b), each regional panel must: (i) Include one member admitted to practice law in this state; (ii) include one member who has been a city or county elected official; and (iii) reflect the political composition of the board. The requirements of this subsection (2)(b) may be waived by the board administrative officer due to member unavailability, significant workload imbalances, or other reasons. [2010 c 211 § 5; 1994 c 249 § 30; 1991 sp.s. c 32 § 6.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Additional notes found at www.leg.wa.gov

36.70A.270 Growth management hearings board—Conduct, procedure, and compensation. The growth management hearings board shall be governed by the following rules on conduct and procedure:

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

(2) Each board member shall receive reimbursement for travel expenses incurred in the discharge of his or her duties in accordance with RCW 43.03.050 and 43.03.060. Each member shall receive an annual salary to be determined by the governor pursuant to RCW 43.03.040. The principal office of the board shall be located in Olympia.

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

(4) A majority of the board shall constitute a quorum for adopting rules necessary for the conduct of its powers and duties or transacting other official business, and may act even though one position of the board is vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The board shall perform all the powers and duties specified in this chapter or as otherwise provided by law.

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

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

(7) All proceedings before the board, any of its members, or a hearing examiner appointed by the board shall be conducted in accordance with such administrative rules of practice and procedure as the board prescribes. The board shall

develop and adopt rules of practice and procedure, including rules regarding expeditious and summary disposition of appeals and the assignment of cases to regional panels. The board shall publish such rules and decisions it renders and arrange for the reasonable distribution of the rules and decisions. Except as it conflicts with specific provisions of this chapter, the administrative procedure act, chapter 34.05 RCW, and specifically including the provisions of RCW 34.05.455 governing ex parte communications, shall govern the practice and procedure of the board.

(8) A board member or hearing examiner is subject to disqualification under chapter 34.05 RCW. The rules of practice of the board shall establish procedures by which a party to a hearing conducted before the board may file with the board a motion to disqualify, with supporting affidavit, against a board member or hearing examiner assigned to preside at the hearing.

(9) All members of the board shall meet on at least an annual basis with the objective of sharing information that promotes the goals and purposes of this chapter.

(10) The board shall annually elect one of its members to be the board administrative officer. The duties and responsibilities of the administrative officer include handling day-to-day administrative, budget, and personnel matters on behalf of the board, together with making case assignments to board members in accordance with the board's rules of procedure in order to achieve a fair and balanced workload among all board members. The administrative officer of the board may carry a reduced caseload to allow time for performing the administrative work functions. [2010 c 211 § 6; 2010 c 210 § 16; 1997 c 429 § 11; 1996 c 325 § 1; 1994 c 257 § 1; 1991 sp.s. c 32 § 7.]

Reviser's note: This section was amended by 2010 c 210 § 16 and by 2010 c 211 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Prospective application—1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Severability—1996 c 325: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 325 § 6.]

Effective date—1996 c 325: "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 [March 30, 1996]." [1996 c 325 § 7.]

Severability—1994 c 257: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 257 § 26.]

Additional notes found at www.leg.wa.gov

36.70A.280 Growth management hearings board—Matters subject to review. (1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance with *RCW 36.70A.5801;

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted;

(c) That the approval of a work plan adopted under RCW 36.70A.735(1)(a) is not in compliance with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction; or

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

(5) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, the board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by the board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by the board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as the "board adjusted population projection." None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes. [2011 c 360 § 17; 2010 c 211 § 7; 2008 c 289 § 5; 2003 c 332 § 2; 1996 c 325 § 2; 1995 c 347 § 108; 1994 c 249 § 31; 1991 sp.s. c 32 § 9.]

***Reviser's note:** RCW 36.70A.5801 expired January 1, 2011.

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Findings—2008 c 289: "(1) The legislature recognizes that the implications of a changed climate will affect the people, institutions, and economies of Washington. The legislature also recognizes that it is in the public interest to reduce the state's dependence upon foreign sources of carbon fuels that do not promote energy independence or the economic strength of the state. The legislature finds that the state, including its counties, cities, and residents, must engage in activities that reduce greenhouse gas emissions

and dependence upon foreign oil.

(2) The legislature further recognizes that: (a) Patterns of land use development influence transportation-related greenhouse gas emissions and the need for foreign oil; (b) fossil fuel-based transportation is the largest source of greenhouse gas emissions in Washington; and (c) the state and its residents will not achieve emission reductions established in *RCW 80.80.020 without a significant decrease in transportation emissions.

(3) The legislature, therefore, finds that it is in the public interest of the state to provide appropriate legal authority, where required, and to aid in the development of policies, practices, and methodologies that may assist counties and cities in addressing challenges associated with greenhouse gas emissions and our state's dependence upon foreign oil." [2008 c 289 § 1.]

***Reviser's note:** RCW 80.80.020 was repealed by 2008 c 14 § 13.

Application—2008 c 289: "This act is not intended to amend or affect chapter 353, Laws of 2007." [2008 c 289 § 6.]

Intent—2003 c 332: "This act is intended to codify the Washington State Court of Appeals holding in *Wells v. Western Washington Growth Management Hearings Board*, 100 Wn. App. 657 (2000), by mandating that to establish participation standing under the growth management act, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the growth management hearings board." [2003 c 332 § 1.]

Severability—Effective date—1996 c 325: See notes following RCW 36.70A.270.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Definitions: See RCW 36.70A.703.

Additional notes found at www.leg.wa.gov

36.70A.290 Growth management hearings board—Petitions—Evidence. (1) All requests for review to the growth management hearings board shall be initiated by filing a petition that includes a detailed statement of issues presented for resolution by the board. The board shall render written decisions articulating the basis for its holdings. The board shall not issue advisory opinions on issues not presented to the board in the statement of issues, as modified by any prehearing order.

(2) All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days after publication as provided in (a) through (c) of this subsection.

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

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

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

(c) For local governments planning under RCW 36.70A.040, promptly after approval or disapproval of a local government's shoreline master program or amendment thereto by the department of ecology as provided in RCW 90.58.090, the department of ecology shall publish a notice that the shoreline master program or amendment thereto has been approved or disapproved. For purposes of this section, the date of publication for the adoption or amendment of a shoreline master program is the date the department of ecology publishes notice that the shoreline master program or amendment thereto has been approved or disapproved.

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

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

(5) The board, shall consolidate, when appropriate, all petitions involving the review of the same comprehensive plan or the same development regulation or regulations. [2011 c 277 § 1; 2010 c 211 § 8; 1997 c 429 § 12; 1995 c 347 § 109. Prior: 1994 c 257 § 2; 1994 c 249 § 26; 1991 sp.s. c 32 § 10.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Prospective application—1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—1994 c 257: See note following RCW 36.70A.270.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Additional notes found at www.leg.wa.gov

36.70A.295 Growth management hearings board—Direct judicial review. (1) The superior court may directly review a petition for review filed under RCW 36.70A.290 if all parties to the proceeding before the board have agreed to direct review in the superior court. The agreement of the parties shall be in writing and signed by all of the parties to the proceeding or their designated representatives. The agreement shall include the parties' agreement to proper venue as provided in RCW 36.70A.300(5). The parties shall file their agreement with the board within ten days after the date the petition is filed, or if multiple petitions have been filed and the board has consolidated the petitions pursuant to RCW 36.70A.300, within ten days after the board serves its order of consolidation.

(2) Within ten days of receiving the timely and complete agreement of the parties, the board shall file a certificate of agreement with the designated superior court and shall serve the parties with copies of the certificate. The superior court shall obtain exclusive jurisdiction over a petition when it receives the certificate of agreement. With the certificate of agreement the board shall also file the petition for review, any orders entered by the board, all other documents in the board's files regarding the action, and the written agreement of the parties.

(3) For purposes of a petition that is subject to direct review, the superior court's subject matter jurisdiction shall be equivalent to that of the board. Consistent with the

requirements of the superior court civil rules, the superior court may consolidate a petition subject to direct review under this section with a separate action filed in the superior court.

(4)(a) Except as otherwise provided in (b) and (c) of this subsection, the provisions of RCW 36.70A.280 through 36.70A.330, which specify the nature and extent of board review, shall apply to the superior court's review.

(b) The superior court:

(i) Shall not have jurisdiction to directly review or modify an office of financial management population projection;

(ii) Except as otherwise provided in RCW 36.70A.300(2)(b), shall render its decision on the petition within one hundred eighty days of receiving the certification of agreement; and

(iii) Shall give a compliance hearing under RCW 36.70A.330(2) the highest priority of all civil matters before the court.

(c) An aggrieved party may secure appellate review of a final judgment of the superior court under this section by the supreme court or the court of appeals. The review shall be secured in the manner provided by law for review of superior court decisions in other civil cases.

(5) If, following a compliance hearing, the court finds that the state agency, county, or city is not in compliance with the court's prior order, the court may use its remedial and contempt powers to enforce compliance.

(6) The superior court shall transmit a copy of its decision and order on direct review to the board, the department, and the governor. If the court has determined that a county or city is not in compliance with the provisions of this chapter, the governor may impose sanctions against the county or city in the same manner as if the board had recommended the imposition of sanctions as provided in RCW 36.70A.330.

(7) After the court has assumed jurisdiction over a petition for review under this section, the superior court civil rules shall govern a request for intervention and all other procedural matters not specifically provided for in this section. [2010 c 211 § 9; 1997 c 429 § 13.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Prospective application—1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Additional notes found at www.leg.wa.gov

36.70A.300 Final orders. (1) The board shall issue a final order that shall be based exclusively on whether or not a state agency, county, or city is in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW.

(2)(a) Except as provided in (b) of this subsection, the final order shall be issued within one hundred eighty days of receipt of the petition for review, or, if multiple petitions are filed, within one hundred eighty days of receipt of the last petition that is consolidated.

(b) The board may extend the period of time for issuing a decision to enable the parties to settle the dispute if additional time is necessary to achieve a settlement, and (i) an extension is requested by all parties, or (ii) an extension is requested by the petitioner and respondent and the board determines that a negotiated settlement between the remaining parties could resolve significant issues in dispute. The request must be filed with the board not later than seven days before the date scheduled for the hearing on the merits of the petition. The board may authorize one or more extensions for up to ninety days each, subject to the requirements of this section.

(3) In the final order, the board shall either:

(a) Find that the state agency, county, or city is in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) Find that the state agency, county, or city is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW, in which case the board shall remand the matter to the affected state agency, county, or city. The board shall specify a reasonable time not in excess of one hundred eighty days, or such longer period as determined by the board in cases of unusual scope or complexity, within which the state agency, county, or city shall comply with the requirements of this chapter. The board may require periodic reports to the board on the progress the jurisdiction is making towards compliance.

(4)(a) Unless the board makes a determination of invalidity under RCW 36.70A.302, a finding of noncompliance and an order of remand shall not affect the validity of comprehensive plans and development regulations during the period of remand.

(b) Unless the board makes a determination of invalidity, state agencies, commissions, and governing boards may not determine a county, city, or town to be ineligible or otherwise penalized in the acceptance of applications or the awarding of state agency grants or loans during the period of remand. This subsection (4)(b) applies only to counties, cities, and towns that have: (i) Delayed the initial effective date of the action subject to the petition before the board until after the board issues a final determination; or (ii) within thirty days of receiving notice of a petition for review by the board, delayed or suspended the effective date of the action subject to the petition before the board until after the board issues a final determination.

(5) Any party aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in RCW 34.05.514 or 36.01.050 within thirty days of the final order of the board. Unless the board makes a determination of invalidity under RCW 36.70A.302, state agencies, commissions, or governing boards shall not penalize counties, cities, or towns during the pendency of an appeal as provided in RCW 43.17.250. [2013 c 275 § 1; 1997 c 429 § 14; 1995 c 347 § 110; 1991 sp.s. c 32 § 11.]

Prospective application—1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

36.70A.302 Growth management hearings board—Determination of invalidity—Vesting of development permits—Interim controls. (1) The board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:

(a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;

(b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and

(c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

(2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the county or city or to related construction permits for that project.

(3)(a) Except as otherwise provided in subsection (2) of this section and (b) of this subsection, a development permit application not vested under state or local law before receipt of the board's order by the county or city vests to the local ordinance or resolution that is determined by the board not to substantially interfere with the fulfillment of the goals of this chapter.

(b) Even though the application is not vested under state or local law before receipt by the county or city of the board's order, a determination of invalidity does not apply to a development permit application for:

(i) A permit for construction by any owner, lessee, or contract purchaser of a single-family residence for his or her own use or for the use of his or her family on a lot existing before receipt by the county or city of the board's order, except as otherwise specifically provided in the board's order to protect the public health and safety;

(ii) A building permit and related construction permits for remodeling, tenant improvements, or expansion of an existing structure on a lot existing before receipt of the board's order by the county or city; and

(iii) A boundary line adjustment or a division of land that does not increase the number of buildable lots existing before receipt of the board's order by the county or city.

(4) If the ordinance that adopts a plan or development regulation under this chapter includes a savings clause intended to revive prior policies or regulations in the event the new plan or regulations are determined to be invalid, the board shall determine under subsection (1) of this section whether the prior policies or regulations are valid during the period of remand.

(5) A county or city subject to a determination of invalidity may adopt interim controls and other measures to be in effect until it adopts a comprehensive plan and development regulations that comply with the requirements of this chapter. A development permit application may vest under an interim control or measure upon determination by the board that the interim controls and other measures do not substantially interfere with the fulfillment of the goals of this chapter.

(6) A county or city subject to a determination of invalidity may file a motion requesting that the board clarify, modify, or rescind the order. The board shall expeditiously schedule a hearing on the motion. At the hearing on the motion, the parties may present information to the board to clarify the part or parts of the comprehensive plan or development regulations to which the final order applies. The board shall issue any supplemental order based on the information provided at the hearing not later than thirty days after the date of the hearing.

(7)(a) If a determination of invalidity has been made and the county or city has enacted an ordinance or resolution amending the invalidated part or parts of the plan or regulation or establishing interim controls on development affected by the order of invalidity, after a compliance hearing, the board shall modify or rescind the determination of invalidity if it determines under the standard in subsection (1) of this section that the plan or regulation, as amended or made subject to such interim controls, will no longer substantially interfere with the fulfillment of the goals of this chapter.

(b) If the board determines that part or parts of the plan or regulation are no longer invalid as provided in this subsection, but does not find that the plan or regulation is in compliance with all of the requirements of this chapter, the board, in its order, may require periodic reports to the board on the progress the jurisdiction is making towards compliance. [2010 c 211 § 10; 1997 c 429 § 16.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Prospective application—1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Additional notes found at www.leg.wa.gov

36.70A.305 Expedited review. The court shall provide expedited review of a determination of invalidity or an order effectuating a determination of invalidity made or issued under *RCW 36.70A.300. The matter must be set for hearing within sixty days of the date set for submitting the board's record, absent a showing of good cause for a different date or a stipulation of the parties. [1996 c 325 § 4.]

***Reviser's note:** The reference to RCW 36.70A.300 appears to refer to the amendments made by 1996 c 325 § 3, which was vetoed by the governor.

Severability—Effective date—1996 c 325: See notes following RCW 36.70A.270.

Additional notes found at www.leg.wa.gov

36.70A.310 Growth management hearings board—Limitations on appeal by the state. A request for review by the state to the growth management hearings board may be made only by the governor, or with the governor's consent the head of an agency, or by the commissioner of public lands as relating to state trust lands, for the review of whether: (1) A county or city that is required or chooses to plan under RCW 36.70A.040 has failed to adopt a comprehensive plan

or development regulations, or countywide planning policies within the time limits established by this chapter; or (2) a county or city that is required or chooses to plan under this chapter has adopted a comprehensive plan, development regulations, or countywide planning policies, that are not in compliance with the requirements of this chapter. [2010 c 211 § 11; 1994 c 249 § 32; 1991 sp.s. c 32 § 12.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Additional notes found at www.leg.wa.gov

36.70A.320 Presumption of validity—Burden of proof—Plans and regulations. (1) Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

(2) Except as otherwise provided in subsection (4) of this section, the burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter.

(3) In any petition under this chapter, the board, after full consideration of the petition, shall determine whether there is compliance with the requirements of this chapter. In making its determination, the board shall consider the criteria adopted by the department under RCW 36.70A.190(4). The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.

(4) A county or city subject to a determination of invalidity made under RCW 36.70A.300 or 36.70A.302 has the burden of demonstrating that the ordinance or resolution it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of this chapter under the standard in RCW 36.70A.302(1).

(5) The shoreline element of a comprehensive plan and the applicable development regulations adopted by a county or city shall take effect as provided in chapter 90.58 RCW. [1997 c 429 § 20; 1995 c 347 § 111; 1991 sp.s. c 32 § 13.]

Prospective application—1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

36.70A.3201 Growth management hearings board—Legislative intent and finding. The legislature intends that the board applies a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the board to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community. [2010 c 211 § 12; 1997 c 429 § 2.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Prospective application—1997 c 429 §§ 1-21: "Except as otherwise specifically provided in RCW 36.70A.335, sections 1 through 21, chapter 429, Laws of 1997 are prospective in effect and shall not affect the validity of actions taken or decisions made before July 27, 1997." [1997 c 429 § 53.]

Severability—1997 c 429: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 429 § 54.]

Additional notes found at www.leg.wa.gov

36.70A.330 Noncompliance. (1) After the time set for complying with the requirements of this chapter under RCW 36.70A.300(3)(b) has expired, or at an earlier time upon the motion of a county or city subject to a determination of invalidity under RCW 36.70A.300, the board shall set a hearing for the purpose of determining whether the state agency, county, or city is in compliance with the requirements of this chapter.

(2) The board shall conduct a hearing and issue a finding of compliance or noncompliance with the requirements of this chapter and with any compliance schedule established by the board in its final order. A person with standing to challenge the legislation enacted in response to the board's final order may participate in the hearing along with the petitioner and the state agency, county, or city. A hearing under this subsection shall be given the highest priority of business to be conducted by the board, and a finding shall be issued within forty-five days of the filing of the motion under subsection (1) of this section with the board. The board shall issue any order necessary to make adjustments to the compliance schedule and set additional hearings as provided in subsection (5) of this section.

(3) If the board after a compliance hearing finds that the state agency, county, or city is not in compliance, the board shall transmit its finding to the governor. The board may recommend to the governor that the sanctions authorized by this chapter be imposed. The board shall take into consideration the county's or city's efforts to meet its compliance schedule in making the decision to recommend sanctions to the governor.

(4) In a compliance hearing upon petition of a party, the board shall also reconsider its final order and decide, if no determination of invalidity has been made, whether one now should be made under RCW 36.70A.302.

(5) The board shall schedule additional hearings as appropriate pursuant to subsections (1) and (2) of this section. [1997 c 429 § 21; 1995 c 347 § 112; 1991 sp.s. c 32 § 14.]

Prospective application—1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

36.70A.335 Order of invalidity issued before July 27, 1997. A county or city subject to an order of invalidity issued before July 27, 1997, by motion may request the board to review the order of invalidity in light of the section 14, chapter 429, Laws of 1997 amendments to RCW 36.70A.300, the section 21, chapter 429, Laws of 1997 amendments to RCW 36.70A.330, and RCW 36.70A.302. If a request is made, the board shall rescind or modify the order of invalidity as necessary to make it consistent with the section 14, chapter 429, Laws of 1997 amendments to RCW 36.70A.300, and to the section 21, chapter 429, Laws of 1997 amendments to RCW 36.70A.330, and RCW 36.70A.302. [1997 c 429 § 22.]

Prospective application—1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Additional notes found at www.leg.wa.gov

36.70A.340 Noncompliance and sanctions. ***(Effective until July 1, 2015.)*** Upon receipt from the board of a finding that a state agency, county, or city is in noncompliance under RCW 36.70A.330, or as a result of failure to meet the requirements of RCW 36.70A.210, the governor may either:

(1) Notify and direct the director of the office of financial management to revise allotments in appropriation levels;

(2) Notify and direct the state treasurer to withhold the portion of revenues to which the county or city is entitled under one or more of the following: The motor vehicle fuel tax, as provided in chapter 82.36 RCW; the transportation improvement account, as provided in RCW 47.26.084; the rural arterial trust account, as provided in RCW 36.79.150; the sales and use tax, as provided in chapter 82.14 RCW; the liquor profit tax, as provided in RCW 66.08.190; and the liquor excise tax, as provided in RCW 82.08.170; or

(3) File a notice of noncompliance with the secretary of state and the county or city, which shall temporarily rescind the county or city's authority to collect the real estate excise tax under RCW 82.46.030 until the governor files a notice rescinding the notice of noncompliance. [2011 c 120 § 2; 1991 sp.s. c 32 § 26.]

36.70A.340 Noncompliance and sanctions. ***(Effective July 1, 2015.)*** Upon receipt from the board of a finding that a state agency, county, or city is in noncompliance under RCW 36.70A.330, or as a result of failure to meet the requirements of RCW 36.70A.210, the governor may either:

(1) Notify and direct the director of the office of financial management to revise allotments in appropriation levels;

(2) Notify and direct the state treasurer to withhold the portion of revenues to which the county or city is entitled under one or more of the following: The motor vehicle fuel tax, as provided in chapter 82.38 RCW; the transportation improvement account, as provided in RCW 47.26.084; the rural arterial trust account, as provided in RCW 36.79.150; the sales and use tax, as provided in chapter 82.14 RCW; the liquor profit tax, as provided in RCW 66.08.190; and the liquor excise tax, as provided in RCW 82.08.170; or

(3) File a notice of noncompliance with the secretary of state and the county or city, which temporarily rescinds the county or city's authority to collect the real estate excise tax under RCW 82.46.030 until the governor files a notice rescinding the notice of noncompliance. [2013 c 225 § 604; 2011 c 120 § 2; 1991 sp.s. c 32 § 26.]

Effective date—2013 c 225: See note following RCW 82.38.010.

36.70A.345 Sanctions. The governor may impose a sanction or sanctions specified under RCW 36.70A.340 on: (1) A county or city that fails to designate critical areas, agricultural lands, forest lands, or mineral resource lands under RCW 36.70A.170 by the date such action was required to have been taken; (2) a county or city that fails to adopt development regulations under RCW 36.70A.060 protecting critical areas or conserving agricultural lands, forest lands, or mineral resource lands by the date such action was required to have been taken; (3) a county that fails to designate urban growth areas under RCW 36.70A.110 by the date such action was required to have been taken; and (4) a county or city that fails to adopt its comprehensive plan or development regulations when such actions are required to be taken.

Imposition of a sanction or sanctions under this section shall be preceded by written findings by the governor, that either the county or city is not proceeding in good faith to meet the requirements of the act; or that the county or city has unreasonably delayed taking the required action. The governor shall consult with and communicate his or her findings to the growth management hearings board prior to imposing the sanction or sanctions. For those counties or cities that are not required to plan or have not opted in, the governor in imposing sanctions shall consider the size of the jurisdiction relative to the requirements of this chapter and the degree of technical and financial assistance provided. [2010 c 211 § 13; 1994 c 249 § 33; 1993 sp.s. c 6 § 5.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—1993 sp.s. c 6: See note following RCW 36.70A.040.

Additional notes found at www.leg.wa.gov

36.70A.350 New fully contained communities. A county required or choosing to plan under RCW 36.70A.040 may establish a process as part of its urban growth areas, that are designated under RCW 36.70A.110, for reviewing proposals to authorize new fully contained communities located outside of the initially designated urban growth areas.

(1) A new fully contained community may be approved in a county planning under this chapter if criteria including but not limited to the following are met:

(a) New infrastructure is provided for and impact fees are established consistent with the requirements of RCW 82.02.050;

(b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the new fully contained communities and adjacent urban development;

(d) A mix of uses is provided to offer jobs, housing, and services to the residents of the new community;

(e) Affordable housing is provided within the new community for a broad range of income levels;

(f) Environmental protection has been addressed and provided for;

(g) Development regulations are established to ensure urban growth will not occur in adjacent nonurban areas;

(h) Provision is made to mitigate impacts on designated agricultural lands, forest lands, and mineral resource lands;

(i) The plan for the new fully contained community is consistent with the development regulations established for the protection of critical areas by the county pursuant to RCW 36.70A.170.

(2) New fully contained communities may be approved outside established urban growth areas only if a county reserves a portion of the twenty-year population projection and offsets the urban growth area accordingly for allocation to new fully contained communities that meet the requirements of this chapter. Any county electing to establish a new community reserve shall do so no more often than once every five years as a part of the designation or review of urban growth areas required by this chapter. The new community reserve shall be allocated on a project-by-project basis, only after specific project approval procedures have been adopted pursuant to this chapter as a development regulation. When a new community reserve is established, urban growth areas designated pursuant to this chapter shall accommodate the unreserved portion of the twenty-year population projection.

Final approval of an application for a new fully contained community shall be considered an adopted amendment to the comprehensive plan prepared pursuant to RCW 36.70A.070 designating the new fully contained community as an urban growth area. [1991 sp.s. c 32 § 16.]

36.70A.360 Master planned resorts. (1) Counties that are required or choose to plan under RCW 36.70A.040 may permit master planned resorts which may constitute urban growth outside of urban growth areas as limited by this section. A master planned resort means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.

(2) Capital facilities, utilities, and services, including those related to sewer, water, storm water, security, fire suppression, and emergency medical, provided on-site shall be limited to meeting the needs of the master planned resort. Such facilities, utilities, and services may be provided to a master planned resort by outside service providers, including municipalities and special purpose districts, provided that all costs associated with service extensions and capacity increases directly attributable to the master planned resort are fully borne by the resort. A master planned resort and service providers may enter into agreements for shared capital facilities and utilities, provided that such facilities and utilities serve only the master planned resort or urban growth areas.

Nothing in this subsection may be construed as: Establishing an order of priority for processing applications for water right permits, for granting such permits, or for issuing certificates of water right; altering or authorizing in any manner the alteration of the place of use for a water right; or affecting or impairing in any manner whatsoever an existing water right.

All waters or the use of waters shall be regulated and controlled as provided in chapters 90.03 and 90.44 RCW and not otherwise.

(3) A master planned resort may include other residential uses within its boundaries, but only if the residential uses are integrated into and support the on-site recreational nature of the resort.

(4) A master planned resort may be authorized by a county only if:

(a) The comprehensive plan specifically identifies policies to guide the development of master planned resorts;

(b) The comprehensive plan and development regulations include restrictions that preclude new urban or suburban land uses in the vicinity of the master planned resort, except in areas otherwise designated for urban growth under RCW 36.70A.110;

(c) The county includes a finding as a part of the approval process that the land is better suited, and has more long-term importance, for the master planned resort than for the commercial harvesting of timber or agricultural production, if located on land that otherwise would be designated as forest land or agricultural land under RCW 36.70A.170;

(d) The county ensures that the resort plan is consistent with the development regulations established for critical areas; and

(e) On-site and off-site infrastructure and service impacts are fully considered and mitigated. [1998 c 112 § 2; 1991 sp.s. c 32 § 17.]

Intent—1998 c 112: "The primary intent of this act is to give effect to recommendations by the 1994 department of community, trade, and economic development's master planned resort task force by clarifying that master planned resorts may make use of capital facilities, utilities, and services provided by outside service providers, and may enter into agreements for shared facilities with such providers, when all costs directly attributable to the resort, including capacity increases, are fully borne by the resort." [1998 c 112 § 1.]

36.70A.362 Master planned resorts—Existing resort may be included. Counties that are required or choose to plan under RCW 36.70A.040 may include existing resorts as master planned resorts which may constitute urban growth outside of urban growth areas as limited by this section. An existing resort means a resort in existence on July 1, 1990, and developed, in whole or in part, as a significantly self-contained and integrated development that includes short-term visitor accommodations associated with a range of indoor and outdoor recreational facilities within the property boundaries in a setting of significant natural amenities. An existing resort may include other permanent residential uses, conference facilities, and commercial activities supporting the resort, but only if these other uses are integrated into and consistent with the on-site recreational nature of the resort.

An existing resort may be authorized by a county only if:

(1) The comprehensive plan specifically identifies policies to guide the development of the existing resort;

(2) The comprehensive plan and development regulations include restrictions that preclude new urban or suburban land uses in the vicinity of the existing resort, except in areas otherwise designated for urban growth under RCW 36.70A.110 and *36.70A.360(1);

(3) The county includes a finding as a part of the approval process that the land is better suited, and has more

long-term importance, for the existing resort than for the commercial harvesting of timber or agricultural production, if located on land that otherwise would be designated as forest land or agricultural land under RCW 36.70A.170;

(4) The county finds that the resort plan is consistent with the development regulations established for critical areas; and

(5) On-site and off-site infrastructure impacts are fully considered and mitigated.

A county may allocate a portion of its twenty-year population projection, prepared by the office of financial management, to the master planned resort corresponding to the projected number of permanent residents within the master planned resort. [1997 c 382 § 1.]

***Reviser's note:** RCW 36.70A.360 was amended by 1998 c 112 § 2, changing subsection (1) to subsection (4)(a).

36.70A.365 Major industrial developments. A county required or choosing to plan under RCW 36.70A.040 may establish, in consultation with cities consistent with provisions of RCW 36.70A.210, a process for reviewing and approving proposals to authorize siting of specific major industrial developments outside urban growth areas.

(1) "Major industrial development" means a master planned location for a specific manufacturing, industrial, or commercial business that: (a) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; or (b) is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent. The major industrial development shall not be for the purpose of retail commercial development or multitenant office parks.

(2) A major industrial development may be approved outside an urban growth area in a county planning under this chapter if criteria including, but not limited to the following, are met:

(a) New infrastructure is provided for and/or applicable impact fees are paid;

(b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the major industrial development and adjacent nonurban areas;

(d) Environmental protection including air and water quality has been addressed and provided for;

(e) Development regulations are established to ensure that urban growth will not occur in adjacent nonurban areas;

(f) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands;

(g) The plan for the major industrial development is consistent with the county's development regulations established for protection of critical areas; and

(h) An inventory of developable land has been conducted and the county has determined and entered findings that land suitable to site the major industrial development is unavailable within the urban growth area. Priority shall be given to applications for sites that are adjacent to or in close proximity to the urban growth area.

(3) Final approval of an application for a major industrial development shall be considered an adopted amendment to the comprehensive plan adopted pursuant to RCW 36.70A.070 designating the major industrial development site on the land use map as an urban growth area. Final approval of an application for a major industrial development shall not be considered an amendment to the comprehensive plan for the purposes of RCW 36.70A.130(2) and may be considered at any time. [1995 c 190 § 1.]

36.70A.367 Major industrial developments—Master planned locations. (1) In addition to the major industrial development allowed under RCW 36.70A.365, a county planning under RCW 36.70A.040 that meets the criteria in subsection (5) of this section may establish, in consultation with cities consistent with provisions of RCW 36.70A.210, a process for designating a bank of no more than two master planned locations for major industrial activity outside urban growth areas.

(2) A master planned location for major industrial developments may be approved through a two-step process: Designation of an industrial land bank area in the comprehensive plan; and subsequent approval of specific major industrial developments through a local master plan process described under subsection (3) of this section.

(a) The comprehensive plan must identify locations suited to major industrial development due to proximity to transportation or resource assets. The plan must identify the maximum size of the industrial land bank area and any limitations on major industrial developments based on local limiting factors, but does not need to specify a particular parcel or parcels of property or identify any specific use or user except as limited by this section. In selecting locations for the industrial land bank area, priority must be given to locations that are adjacent to, or in close proximity to, an urban growth area.

(b) The environmental review for amendment of the comprehensive plan must be at the programmatic level and, in addition to a threshold determination, must include:

(i) An inventory of developable land as provided in RCW 36.70A.365; and

(ii) An analysis of the availability of alternative sites within urban growth areas and the long-term annexation feasibility of sites outside of urban growth areas.

(c) Final approval of an industrial land bank area under this section must be by amendment to the comprehensive plan adopted under RCW 36.70A.070, and the amendment is exempt from the limitation of RCW 36.70A.130(2) and may be considered at any time. Approval of a specific major industrial development within the industrial land bank area requires no further amendment of the comprehensive plan.

(3) In concert with the designation of an industrial land bank area, a county shall also adopt development regulations for review and approval of specific major industrial developments through a master plan process. The regulations governing the master plan process shall ensure, at a minimum, that:

(a) Urban growth will not occur in adjacent nonurban areas;

(b) Development is consistent with the county's development regulations adopted for protection of critical areas;

(c) Required infrastructure is identified and provided concurrent with development. Such infrastructure, however, may be phased in with development;

(d) Transit-oriented site planning and demand management programs are specifically addressed as part of the master plan approval;

(e) Provision is made for addressing environmental protection, including air and water quality, as part of the master plan approval;

(f) The master plan approval includes a requirement that interlocal agreements between the county and service providers, including cities and special purpose districts providing facilities or services to the approved master plan, be in place at the time of master plan approval;

(g) A major industrial development is used primarily by industrial and manufacturing businesses, and that the gross floor area of all commercial and service buildings or facilities locating within the major industrial development does not exceed ten percent of the total gross floor area of buildings or facilities in the development. The intent of this provision for commercial or service use is to meet the needs of employees, clients, customers, vendors, and others having business at the industrial site, to attract and retain a quality workforce, and to further other public objectives, such as trip reduction. These uses may not be promoted to attract additional clientele from the surrounding area. Commercial and service businesses must be established concurrently with or subsequent to the industrial or manufacturing businesses;

(h) New infrastructure is provided for and/or applicable impact fees are paid to assure that adequate facilities are provided concurrently with the development. Infrastructure may be achieved in phases as development proceeds;

(i) Buffers are provided between the major industrial development and adjacent rural areas;

(j) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands; and

(k) An open record public hearing is held before either the planning commission or hearing examiner with notice published at least thirty days before the hearing date and mailed to all property owners within one mile of the site.

(4) For the purposes of this section:

(a) "Major industrial development" means a master planned location suitable for manufacturing or industrial businesses that: (i) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; (ii) is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent; or (iii) requires a location with characteristics such as proximity to transportation facilities or related industries such that there is no suitable location in an urban growth area. The major industrial development may not be for the purpose of retail commercial development or multitenant office parks.

(b) "Industrial land bank" means up to two master planned locations, each consisting of a parcel or parcels of contiguous land, sufficiently large so as not to be readily available within the urban growth area of a city, or otherwise meeting the criteria contained in (a) of this subsection, suitable for manufacturing, industrial, or commercial businesses and designated by the county through the comprehensive planning process specifically for major industrial use.

(5) This section and the termination provisions specified in subsection (6) of this section apply to a county that at the time the process is established under subsection (1) of this section:

(a) Has a population greater than two hundred fifty thousand and is part of a metropolitan area that includes a city in another state with a population greater than two hundred fifty thousand;

(b) Has a population greater than one hundred forty thousand and is adjacent to another country;

(c) Has a population greater than forty thousand but less than seventy-five thousand and has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent; and

(i) Is bordered by the Pacific Ocean;

(ii) Is located in the Interstate 5 or Interstate 90 corridor; or

(iii) Is bordered by Hood Canal;

(d) Is east of the Cascade divide; and

(i) Borders another state to the south; or

(ii) Is located wholly south of Interstate 90 and borders the Columbia river to the east;

(e) Has an average population density of less than one hundred persons per square mile as determined by the office of financial management, and is bordered by the Pacific Ocean and by Hood Canal; or

(f) Meets all of the following criteria:

(i) Has a population greater than forty thousand but fewer than eighty thousand;

(ii) Has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent; and

(iii) Is located in the Interstate 5 or Interstate 90 corridor.

(6) In order to identify and approve locations for industrial land banks, the county shall take action to designate one or more industrial land banks and adopt conforming regulations as provided by RCW 36.70A.367(2) on or before the last date to complete that county's next periodic review under RCW 36.70A.130(4) that occurs prior to December 31, 2014. The authority to take action to designate a land bank area in the comprehensive plan expires if not acted upon by the county within the time frame provided in this section. Once a land bank area has been identified in the county's comprehensive plan, the authority of the county to process a master plan or site projects within an approved master plan does not expire.

(7) Any county seeking to designate an industrial land bank under this section must:

(a) Provide countywide notice, in conformity with RCW 36.70A.035, of the intent to designate an industrial land bank. Notice must be published in a newspaper or newspapers of general circulation reasonably likely to reach subscribers in all geographic areas of the county. Notice must be provided not less than thirty days prior to commencement of consideration by the county legislative body; and

(b) Make a written determination of the criteria and rationale used by the legislative body as the basis for siting an industrial land bank under this chapter.

(8) Any location included in an industrial land bank pursuant to section 2, chapter 289, Laws of 1998, section 1, chapter 402, Laws of 1997, and section 2, chapter 167, Laws of 1996 shall remain available for major industrial develop-

ment according to this section as long as the requirements of this section continue to be satisfied. [2007 c 433 § 1; 2004 c 208 § 1; 2003 c 88 § 1; 2002 c 306 § 1; 2001 c 326 § 1; 1998 c 289 § 2; 1997 c 402 § 1; 1996 c 167 § 2.]

Findings—Purpose—1998 c 289: "The legislature finds that to fulfill the economic development goal of this chapter, it is beneficial to expand the limited authorization for pilot projects for identifying locations for major industrial activity in advance of specific proposals by an applicant. The legislature further finds that land bank availability may provide economically disadvantaged counties the opportunity to attract new industrial activity by offering expeditious siting and therefore promote a community's economic health and vitality. The purpose of this act is to authorize and evaluate additional pilot projects for major industrial activity in economically disadvantaged counties." [1998 c 289 § 1.]

Findings—Purpose—1996 c 167: "In 1995 the legislature addressed the demand for siting of major industrial facilities by passage of Engrossed Senate Bill No. 5019, implementing a process for siting such activities outside urban growth areas. The legislature recognizes that the 1995 act requires consideration of numerous factors necessary to ensure that the community can reasonably accommodate a major industrial development outside an urban growth area.

The legislature finds that the existing case-by-case procedure for evaluating and approving such a site under the 1995 act may operate to a community's economic disadvantage when a firm, for business reasons, must make a business location decision expeditiously. The legislature therefore finds that it would be useful to authorize, on a limited basis, and evaluate a process for identifying locations for major industrial activity in advance of specific proposals by an applicant.

It is the purpose of this act (1) to authorize a pilot project under which a bank of major industrial development locations outside urban growth areas is created for use in expeditiously siting such a development; (2) to evaluate the impact of this process on the county's compliance with chapter 36.70A RCW; and (3) to encourage consolidation and planning, and environmental review procedures under chapter 36.70B RCW." [1996 c 167 § 1.]

Effective date—1996 c 167: "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 [March 28, 1996]." [1996 c 167 § 3.]

Additional notes found at www.leg.wa.gov

36.70A.368 Major industrial developments—Master planned locations—Reclaimed surface coal mine sites. (1) In addition to the major industrial development allowed under RCW 36.70A.365 and 36.70A.367, a county planning under RCW 36.70A.040 that meets the criteria in subsection (2) of this section may establish, in consultation with cities consistent with RCW 36.70A.210, a process for designating a master planned location for major industrial activity outside urban growth areas on lands formerly used or designated for surface coal mining and supporting uses. Once a master planned location is designated, it shall be considered an urban growth area retained for purposes of promoting major industrial activity.

(2) This section applies to a county that, at the time the process is established in subsection (1) of this section, had a surface coal mining operation in excess of three thousand acres that ceased operation after July 1, 2006, and that is located within fifteen miles of the Interstate 5 corridor.

(3) Designation of a master planned location for major industrial activities is an amendment to the comprehensive plan adopted under RCW 36.70A.070, except that RCW 36.70A.130(2) does not apply so that designation of master planned locations may be considered at any time. The process established under subsection (1) of this section for designating a master planned location for one or more major industrial activities must include, but is not limited to, the following comprehensive plan policy criteria:

(a) The master planned location must be located on lands: Formerly used or designated for surface coal mining and supporting uses; that consist of an aggregation of land of one thousand or more acres, which is not required to be contiguous; and that are suitable for manufacturing, industrial, or commercial businesses;

(b) New infrastructure is provided for; and

(c) Environmental review of a proposed designation of a master planned location must be at the programmatic level, as long as the environmental review of a proposed designation that is being reviewed concurrent with a proposed major industrial activity is at the project level.

(4) Approval of a specific major industrial activity proposed for a master planned location designated under this section is through a local master plan process and does not require further comprehensive plan amendment. The process for reviewing and approving a specific major industrial activity proposed for a master planned location designated under this section must include the following criteria in adopted development regulations:

(a) The site consists of one hundred or more acres of land formerly used or designated for surface coal mining and supporting uses that has been or will be reclaimed as land suitable for industrial development;

(b) Urban growth will not occur in adjacent nonurban areas;

(c) Environmental review of a specific proposed major industrial activity must be conducted as required in chapter 43.21C RCW. Environmental review may be processed as a planned action, as long as it meets the requirements of *RCW 43.21C.031; and

(d) Commercial development within a master planned location must be directly related to manufacturing or industrial uses. Commercial uses shall not exceed ten percent of the total gross floor area of buildings or facilities in the development.

(5) Final approval of the designation of a master planned location designated under subsection (3) of this section is subject to appeal under this chapter. Approval of a specific major industrial activity under subsection (4) of this section is subject to appeal under chapter 36.70C RCW.

(6) RCW 36.70A.365 and 36.70A.367 do not apply to the designation of master planned locations or the review and approval of specific major industrial activities under this section. [2007 c 194 § 1.]

***Reviser's note:** The requirements for a planned action were moved by 2012 1st sp.s. c 1 from RCW 43.21C.031 to RCW 43.21C.440.

36.70A.370 Protection of private property. (1) The state attorney general shall establish by October 1, 1991, an orderly, consistent process, including a checklist if appropriate, that better enables state agencies and local governments to evaluate proposed regulatory or administrative actions to assure that such actions do not result in an unconstitutional taking of private property. It is not the purpose of this section to expand or reduce the scope of private property protections provided in the state and federal Constitutions. The attorney general shall review and update the process at least on an annual basis to maintain consistency with changes in case law.

(2) Local governments that are required or choose to plan under RCW 36.70A.040 and state agencies shall utilize the process established by subsection (1) of this section to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property.

(3) The attorney general, in consultation with the Washington state bar association, shall develop a continuing education course to implement this section.

(4) The process used by government agencies shall be protected by attorney client privilege. Nothing in this section grants a private party the right to seek judicial relief requiring compliance with the provisions of this section. [1991 sp.s. c 32 § 18.]

36.70A.380 Extension of designation date. The department may extend the date by which a county or city is required to designate agricultural lands, forest lands, mineral resource lands, and critical areas under RCW 36.70A.170, or the date by which a county or city is required to protect such lands and critical areas under RCW 36.70A.060, if the county or city demonstrates that it is proceeding in an orderly fashion, and is making a good faith effort, to meet these requirements. An extension may be for up to an additional one hundred eighty days. The length of an extension shall be based on the difficulty of the effort to conform with these requirements. [1991 sp.s. c 32 § 39.]

36.70A.385 Environmental planning pilot projects. (1) The legislature intends to determine whether the environmental review process mandated under chapter 43.21C RCW may be enhanced and simplified, and coordination improved, when applied to comprehensive plans mandated by this chapter. The department shall undertake pilot projects on environmental review to determine if the review process can be improved by fostering more coordination and eliminating duplicative environmental analysis which is made to assist decision makers approving comprehensive plans pursuant to this chapter. Such pilot projects should be designed and scoped to consider cumulative impacts resulting from plan decisions, plan impacts on environmental quality, impacts on adjacent jurisdictions, and similar factors in sufficient depth to simplify the analysis of subsequent specific projects being carried out pursuant to the approved plan.

(2) The legislature hereby authorizes the department to establish, in cooperation with business, industry, cities, counties, and other interested parties, at least two but not more than four pilot projects, one of which shall be with a county, on enhanced draft and final nonproject environmental analysis of comprehensive plans prepared pursuant to this chapter, for the purposes outlined in subsection (1) of this section. The department may select appropriate geographic subareas within a comprehensive plan if that will best serve the purposes of this section and meet the requirements of chapter 43.21C RCW.

(3) An enhanced draft and final nonproject environmental analysis prepared pursuant to this section shall follow the rules adopted pursuant to chapter 43.21C RCW.

(4) Not later than December 31, 1993, the department shall evaluate the overall effectiveness of the pilot projects under this section regarding preparing enhanced nonproject environmental analysis for the approval process of comprehensive plans and shall:

(a) Provide an interim report of its findings to the legislature with such recommendations as may be appropriate, including the need, if any, for further legislation;

(b) Consider adoption of any further rules or guidelines as may be appropriate to assist counties and cities in meeting requirements of chapter 43.21C RCW when considering comprehensive plans; and

(c) Prepare and circulate to counties and cities such instructional manuals or other information derived from the pilot projects as will assist all counties and cities in meeting the requirements and objectives of chapter 43.21C RCW in the most expeditious and efficient manner in the process of considering comprehensive plans pursuant to this chapter. [1998 c 245 § 30; 1995 c 399 § 43; 1991 sp.s. c 32 § 20.]

36.70A.390 Moratoria, interim zoning controls—Public hearing—Limitation on length—Exceptions. A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

This section does not apply to the designation of critical areas, agricultural lands, forest lands, and mineral resource lands, under RCW 36.70A.170, and the conservation of these lands and protection of these areas under RCW 36.70A.060, prior to such actions being taken in a comprehensive plan adopted under RCW 36.70A.070 and implementing development regulations adopted under RCW 36.70A.120, if a public hearing is held on such proposed actions. [1992 c 207 § 6.]

36.70A.400 Accessory apartments. Any local government, as defined in RCW 43.63A.215, that is planning under this chapter shall comply with RCW 43.63A.215(3). [1993 c 478 § 11.]

36.70A.410 Treatment of residential structures occupied by persons with handicaps. No county or city that plans or elects to plan under this chapter may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied

by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3602). [1993 c 478 § 23.]

36.70A.420 Transportation projects—Findings—Intent. The legislature recognizes that there are major transportation projects that affect multiple jurisdictions as to economic development, fiscal influence, environmental consequences, land use implications, and mobility of people and goods. The legislature further recognizes that affected jurisdictions have important interests that must be addressed, and that these jurisdictions' present environmental planning and permitting authority may result in multiple local permits and other requirements being specified for the projects.

The legislature finds that the present permitting system may result in segmented and sequential decisions by local governments that do not optimally serve all the parties with an interest in the decisions. The present system may also make more difficult achieving the consistency among plans and actions that is an important aspect of this chapter.

It is the intent of the legislature to provide for more efficiency and equity in the decisions of local governments regarding major transportation projects by encouraging coordination or consolidation of the processes for reviewing environmental planning and permitting requirements for those projects. The legislature intends that local governments coordinate their regulatory decisions by considering together the range of local, state, and federal requirements for major transportation projects. Nothing in RCW 36.70A.420 or 36.70A.430 alters the authority of cities or counties under any other planning or permitting statute. [1994 c 258 § 1.]

Captions not law—1994 c 258: "Section captions used in this act constitute no part of the law." [1994 c 258 § 6.]

Additional notes found at www.leg.wa.gov

36.70A.430 Transportation projects—Collaborative review process. For counties engaged in planning under this chapter, there shall be established by December 31, 1994, a collaborative process to review and coordinate state and local permits for all transportation projects that cross more than one city or county boundary. This process shall at a minimum, establish a mechanism among affected cities and counties to designate a permit coordinating agency to facilitate multijurisdictional review and approval of such transportation projects. [1994 c 258 § 2.]

Captions not law—1994 c 258: See note following RCW 36.70A.420.

Additional notes found at www.leg.wa.gov

36.70A.450 Family day-care provider's home facility—County or city may not prohibit in residential or commercial area—Conditions. (1) Except as provided in subsections (2) and (3) of this section, no county or city may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's home facility.

(2) A county or city may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the department of early learning licensor as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

(3) A county or city may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the family day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute.

(4) Nothing in this section shall be construed to prohibit a county or city from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home in an area zoned for residential or commercial use, so long as such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 43.215.010. [2007 c 17 § 13; 2003 c 286 § 5; 1995 c 49 § 3; 1994 c 273 § 17.]

36.70A.460 Watershed restoration projects—Permit processing—Fish habitat enhancement project. A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat enhancement project meeting the criteria of *RCW 77.55.290(1) shall be reviewed and approved according to the provisions of *RCW 77.55.290. [2003 c 39 § 21; 1998 c 249 § 11; 1995 c 378 § 11.]

***Reviser's note:** RCW 77.55.290 was recodified as RCW 77.55.181 pursuant to 2005 c 146 § 1001.

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.181.

36.70A.470 Project review—Amendment suggestion procedure—Definitions. (1) Project review, which shall be conducted pursuant to the provisions of chapter 36.70B RCW, shall be used to make individual project decisions, not land use planning decisions. If, during project review, a county or city planning under RCW 36.70A.040 identifies deficiencies in plans or regulations:

(a) The permitting process shall not be used as a comprehensive planning process;

(b) Project review shall continue; and

(c) The identified deficiencies shall be docketed for possible future plan or development regulation amendments.

(2) Each county and city planning under RCW 36.70A.040 shall include in its development regulations a procedure for any interested person, including applicants, citizens, hearing examiners, and staff of other agencies, to suggest plan or development regulation amendments. The suggested amendments shall be docketed and considered on at

least an annual basis, consistent with the provisions of RCW 36.70A.130.

(3) For purposes of this section, a deficiency in a comprehensive plan or development regulation refers to the absence of required or potentially desirable contents of a comprehensive plan or development regulation. It does not refer to whether a development regulation addresses a project's probable specific adverse environmental impacts which the permitting agency could mitigate in the normal project review process.

(4) For purposes of this section, docketing refers to compiling and maintaining a list of suggested changes to the comprehensive plan or development regulations in a manner that will ensure such suggested changes will be considered by the county or city and will be available for review by the public. [1995 c 347 § 102.]

Findings—Intent—1995 c 347 § 102: "The legislature finds that during project review, a county or city planning under RCW 36.70A.040 is likely to discover the need to make various improvements in comprehensive plans and development regulations. There is no current requirement or process for applicants, citizens, or agency staff to ensure that these improvements are considered in the plan review process. The legislature also finds that in the past environmental review and permitting of proposed projects have been used to reopen and make land use planning decisions that should have been made through the comprehensive planning process, in part because agency staff and hearing examiners have not been able to ensure consideration of all issues in the local planning process. The legislature further finds that, while plans and regulations should be improved and refined over time, it is unfair to penalize applicants that have submitted permit applications that meet current requirements. It is the intent of the legislature in enacting RCW 36.70A.470 to establish a means by which cities and counties will docket suggested plan or development regulation amendments and ensure their consideration during the planning process." [1995 c 347 § 101.]

Finding—1995 c 347: "The legislature recognizes by this act that the growth management act is a fundamental building block of regulatory reform. The state and local governments have invested considerable resources in an act that should serve as the integrating framework for all other land-use related laws. The growth management act provides the means to effectively combine certainty for development decisions, reasonable environmental protection, long-range planning for cost-effective infrastructure, and orderly growth and development." [1995 c 347 § 1.]

Severability—1995 c 347: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 347 § 901.]

Part headings and table of contents not law—1995 c 347: "Part headings and the table of contents as used in this act do not constitute any part of the law." [1995 c 347 § 902.]

Additional notes found at www.leg.wa.gov

36.70A.480 Shorelines of the state. (1) For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW 90.58.020 are added as one of the goals of this chapter as set forth in RCW 36.70A.020 without creating an order of priority among the fourteen goals. The goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations.

(2) The shoreline master program shall be adopted pursuant to the procedures of chapter 90.58 RCW rather than the goals, policies, and procedures set forth in this chapter for the adoption of a comprehensive plan or development regulations.

(3)(a) The policies, goals, and provisions of chapter 90.58 RCW and applicable guidelines shall be the sole basis for determining compliance of a shoreline master program with this chapter except as the shoreline master program is required to comply with the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105.

(b) Except as otherwise provided in (c) of this subsection, development regulations adopted under this chapter to protect critical areas within shorelines of the state apply within shorelines of the state until the department of ecology approves one of the following: A comprehensive master program update, as defined in RCW 90.58.030; a segment of a master program relating to critical areas, as provided in RCW 90.58.090; or a new or amended master program approved by the department of ecology on or after March 1, 2002, as provided in RCW 90.58.080. The adoption or update of development regulations to protect critical areas under this chapter prior to department of ecology approval of a master program update as provided in this subsection is not a comprehensive or segment update to the master program.

(c)(i) Until the department of ecology approves a master program or segment of a master program as provided in (b) of this subsection, a use or structure legally located within shorelines of the state that was established or vested on or before the effective date of the local government's development regulations to protect critical areas may continue as a conforming use and may be redeveloped or modified if: (A) The redevelopment or modification is consistent with the local government's master program; and (B) the local government determines that the proposed redevelopment or modification will result in no net loss of shoreline ecological functions. The local government may waive this requirement if the redevelopment or modification is consistent with the master program and the local government's development regulations to protect critical areas.

(ii) For purposes of this subsection (3)(c), an agricultural activity that does not expand the area being used for the agricultural activity is not a redevelopment or modification. "Agricultural activity," as used in this subsection (3)(c), has the same meaning as defined in RCW 90.58.065.

(d) Upon department of ecology approval of a shoreline master program or critical area segment of a shoreline master program, critical areas within shorelines of the state are protected under chapter 90.58 RCW and are not subject to the procedural and substantive requirements of this chapter, except as provided in subsection (6) of this section. Nothing in chapter 321, Laws of 2003 or chapter 107, Laws of 2010 is intended to affect whether or to what extent agricultural activities, as defined in RCW 90.58.065, are subject to chapter 36.70A RCW.

(e) The provisions of RCW 36.70A.172 shall not apply to the adoption or subsequent amendment of a local government's shoreline master program and shall not be used to determine compliance of a local government's shoreline master program with chapter 90.58 RCW and applicable guidelines. Nothing in this section, however, is intended to limit or change the quality of information to be applied in protecting

critical areas within shorelines of the state, as required by chapter 90.58 RCW and applicable guidelines.

(4) Shoreline master programs shall provide a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by department of ecology guidelines adopted pursuant to RCW 90.58.060.

(5) Shorelines of the state shall not be considered critical areas under this chapter except to the extent that specific areas located within shorelines of the state qualify for critical area designation based on the definition of critical areas provided by RCW 36.70A.030(5) and have been designated as such by a local government pursuant to RCW 36.70A.060(2).

(6) If a local jurisdiction's master program does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized by *RCW 90.58.030(2)(f), then the local jurisdiction shall continue to regulate those critical areas and their required buffers pursuant to RCW 36.70A.060(2). [2010 c 107 § 2; 2003 c 321 § 5; 1995 c 347 § 104.]

***Reviser's note:** RCW 90.58.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (2)(f) to subsection (2)(d).

Intent—2010 c 107: "(1) The legislature recognizes that Engrossed Substitute House Bill No. 1933, enacted as chapter 321, Laws of 2003, modified the relationship between the shoreline management act and the growth management act. The legislature recognizes also that its 2003 efforts, while intended to create greater operational clarity between these significant shoreline and land use acts, have been the subject of differing, and occasionally contrary, legal interpretations. This act is intended to affirm and clarify the legislature's intent relating to the provisions of chapter 321, Laws of 2003.

(2) The legislature affirms that development regulations adopted under the growth management act to protect critical areas apply within shorelines of the state as provided in section 2 of this act.

(3) The legislature affirms that the adoption or update of critical area regulations under the growth management act is not automatically an update to the shoreline master program.

(4) The legislature intends for this act to be remedial and curative in nature, and to apply retroactively to July 27, 2003." [2010 c 107 § 1.]

Retroactive application—2010 c 107: "This act is remedial and curative in nature and applies retroactively to July 27, 2003." [2010 c 107 § 5.]

Effective date—2010 c 107: "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 immediately [March 18, 2010]." [2010 c 107 § 6.]

Finding—Intent—2003 c 321: See note following RCW 90.58.030.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

36.70A.481 Construction—Chapter 347, Laws of 1995. Nothing in RCW 36.70A.480 shall be construed to authorize a county or city to adopt regulations applicable to shorelands as defined in RCW 90.58.030 that are inconsistent with the provisions of chapter 90.58 RCW. [1995 c 382 § 13.]

36.70A.490 Growth management planning and environmental review fund—Established. The growth management planning and environmental review fund is hereby established in the state treasury. Moneys may be placed in the fund from the proceeds of bond sales, tax revenues, budget transfers, federal appropriations, gifts, or any other lawful source. Moneys in the fund may be spent only after appropriation. Moneys in the fund shall be used to make grants or loans to local governments for the purposes set forth in RCW 43.21C.240, 43.21C.031, or 36.70A.500. Any payment of either principal or interest, or both, derived from loans made from this fund must be deposited into the fund. [2012 1st sp.s. c 1 § 309; 1995 c 347 § 115.]

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

Findings—Purpose—1995 c 347 § 115: "(1) The legislature finds that:

(a) As of July 23, 1995, twenty-nine counties and two hundred eight cities are conducting comprehensive planning under the growth management act, chapter 36.70A RCW, which together comprise over ninety percent of the state's population;

(b) Comprehensive plans for many of the jurisdictions were due by July 1, 1994, and the remaining jurisdictions must complete plans under due dates ranging from October 1994 to September 1997;

(c) Concurrently with these comprehensive planning activities, local governments must conduct several other planning requirements under the growth management act, such as the adoption of capital facilities plans, urban growth areas, and development regulations;

(d) Local governments must also comply with the state environmental policy act, chapter 43.21C RCW, in the development of comprehensive plans and development regulations;

(e) The combined activities of comprehensive planning and the state environmental policy act present a serious fiscal burden upon local governments; and

(f) Detailed environmental analysis integrated with comprehensive plans, subarea plans, and development regulations will facilitate planning for and managing growth, allow greater protection of the environment, and benefit both the general public and private property owners.

(2) In order to provide financial assistance to cities and counties planning under chapter 36.70A RCW and to improve the usefulness of plans and integrated environmental analyses, the legislature has created the fund described in RCW 36.70A.490." [1995 c 347 § 114.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

36.70A.500 Growth management planning and environmental review fund—Awarding of grant or loan—Procedures. (1) The department of commerce shall provide management services for the growth management planning and environmental review fund created by RCW 36.70A.490. The department shall establish procedures for fund management. The department shall encourage participation in the grant or loan program by other public agencies. The department shall develop the grant or loan criteria, monitor the grant or loan program, and select grant or loan recipients in consultation with state agencies participating in the grant or loan program through the provision of grant or loan funds or technical assistance.

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

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

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

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

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

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

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

(d) Include mechanisms to monitor the consequences of growth as it occurs in the plan area and to use the resulting data to update the plan, policy, or implementing mechanisms and associated environmental analysis;

(e) Demonstrate substantial progress towards compliance with the requirements of this chapter. A county or city that is more than six months out of compliance with a requirement of this chapter is deemed not to be making substantial progress towards compliance; and

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

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

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

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

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

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

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

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

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

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

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

(6) State agencies shall work with grant or loan recipients to facilitate state and local project review processes that will implement the projects receiving grants or loans under this section. [2012 1st sp.s. c 1 § 310; 1997 c 429 § 28; 1995 c 347 § 116.]

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

Severability—1997 c 429: See note following RCW 36.70A.3201.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

36.70A.510 General aviation airports. Adoption and amendment of comprehensive plan provisions and development regulations under this chapter affecting a general aviation airport are subject to RCW 36.70.547. [1996 c 239 § 5.]

36.70A.520 National historic towns—Designation. Counties that are required or choose to plan under RCW 36.70A.040 may authorize and designate national historic towns that may constitute urban growth outside of urban growth areas as limited by this section. A national historic town means a town or district that has been designated a national historic landmark by the United States secretary of the interior pursuant to 16 U.S.C. 461 et seq., as amended, based on its significant historic urban features, and which historically contained a mix of residential and commercial or industrial uses.

A national historic town may be designated under this chapter by a county only if:

(1) The comprehensive plan specifically identifies policies to guide the preservation, redevelopment, infill, and development of the town;

(2) The comprehensive plan and development regulations specify a mix of residential, commercial, industrial, tourism-recreation, waterfront, or other historical uses, along with other uses, infrastructure, and services which promote the economic sustainability of the town and its historic character. To promote historic preservation, redevelopment, and an economically sustainable community, the town also may include the types of uses that existed at times during its history and is not limited to those present at the time of the historic designation. Portions of the town may include urban densities if they reflect density patterns that existed at times during its history;

(3) The boundaries of the town include all of the area contained in the national historic landmark designation, along with any additional limited areas determined by the county as appropriate for transitional uses and buffering. Provisions for transitional uses and buffering must be compatible with the town's historic character and must protect the existing natural and built environment under the requirements of this chapter within and beyond the additional limited areas, including visual compatibility. The comprehensive plan and development regulations must include restrictions that preclude new urban or suburban land uses in the vicinity of the town, including the additional limited areas, except in areas otherwise designated for urban growth under this chapter;

(4) The development regulations provide for architectural controls and review procedures applicable to the rehabilitation, redevelopment, infill, or new development to promote the historic character of the town;

(5) The county finds that the national historic town is consistent with the development regulations established for critical areas; and

(6) On-site and off-site infrastructure impacts are fully considered and mitigated concurrent with development.

A county may allocate a portion of its twenty-year population projection, prepared by the office of financial management, to the national historic town corresponding to the projected number of permanent residents within the national historic town. [2000 c 196 § 1.]

36.70A.530 Land use development incompatible with military installation not allowed—Revision of comprehensive plans and development regulations. (1) Military installations are of particular importance to the economic health of the state of Washington and it is a priority of the state to protect the land surrounding our military installations from incompatible development.

(2) Comprehensive plans, amendments to comprehensive plans, development regulations, or amendments to development regulations adopted under this section shall be adopted or amended concurrent with the scheduled update provided in RCW 36.70A.130, except that counties and cities identified in RCW 36.70A.130(4)(a) shall comply with this section on or before December 1, 2005, and shall thereafter comply with this section on a schedule consistent with RCW 36.70A.130(4).

(3) A comprehensive plan, amendment to a plan, a development regulation or amendment to a development regulation, should not allow development in the vicinity of a military installation that is incompatible with the installation's ability to carry out its mission requirements. A city or county may find that an existing comprehensive plan or development regulations are compatible with the installation's ability to carry out its mission requirements.

(4) As part of the requirements of RCW 36.70A.070(1) each county and city planning under RCW 36.70A.040 that has a federal military installation, other than a reserve center, that employs one hundred or more personnel and is operated by the United States department of defense within or adjacent to its border, shall notify the commander of the military installation of the county's or city's intent to amend its comprehensive plan or development regulations to address lands adjacent to military installations to ensure those lands are protected from incompatible development.

(5)(a) The notice provided under subsection (4) of this section shall request from the commander of the military installation a written recommendation and supporting facts relating to the use of land being considered in the adoption of a comprehensive plan or an amendment to a plan. The notice shall provide sixty days for a response from the commander. If the commander does not submit a response to such request within sixty days, the local government may presume that implementation of the proposed plan or amendment will not have any adverse effect on the operation of the installation.

(b) When a county or city intends to amend its development regulations to be consistent with the comprehensive plan elements addressed in (a) of this subsection, notice shall be provided to the commander of the military installation consistent with subsection (4) of this section. The notice shall request from the commander of the military installation a written recommendation and supporting facts relating to the use of land being considered in the amendment to the development regulations. The notice shall provide sixty days for a response from the commander to the requesting government. If the commander does not submit a response to such request within sixty days, the local government may presume that implementation of the proposed development regulation or amendment will not have any adverse effect on the operation of the installation. [2004 c 28 § 2.]

Finding—2004 c 28: "The United States military is a vital component of the Washington state economy. The protection of military installations from incompatible development of land is essential to the health of Washington's economy and quality of life. Incompatible development of land close to a military installation reduces the ability of the military to complete its mission or to undertake new missions, and increases its cost of operating. The department of defense evaluates continued utilization of military installations based upon their operating costs, their ability to carry out missions, and their ability to undertake new missions." [2004 c 28 § 1.]

36.70A.540 Affordable housing incentive programs—Low-income housing units. (1)(a) Any city or county planning under RCW 36.70A.040 may enact or expand affordable housing incentive programs providing for the development of low-income housing units through development regulations or conditions on rezoning or permit decisions, or both, on one or more of the following types of development: Residential; commercial; industrial; or mixed-use. An affordable housing incentive program may include, but is not limited to, one or more of the following:

(i) Density bonuses within the urban growth area;

(ii) Height and bulk bonuses;

(iii) Fee waivers or exemptions;

(iv) Parking reductions; or

(v) Expedited permitting.

(b) The city or county may enact or expand such programs whether or not the programs may impose a tax, fee, or charge on the development or construction of property.

(c) If a developer chooses not to participate in an optional affordable housing incentive program adopted and authorized under this section, a city, county, or town may not condition, deny, or delay the issuance of a permit or development approval that is consistent with zoning and development standards on the subject property absent incentive provisions of this program.

(2) Affordable housing incentive programs enacted or expanded under this section shall comply with the following:

(a) The incentives or bonuses shall provide for the development of low-income housing units;

(b) Jurisdictions shall establish standards for low-income renter or owner occupancy housing, including income guidelines consistent with local housing needs, to assist low-income households that cannot afford market-rate housing. Low-income households are defined for renter and owner occupancy program purposes as follows:

(i) Rental housing units to be developed shall be affordable to and occupied by households with an income of fifty percent or less of the county median family income, adjusted for family size;

(ii) Owner occupancy housing units shall be affordable to and occupied by households with an income of eighty percent or less of the county median family income, adjusted for family size. The legislative authority of a jurisdiction, after

holding a public hearing, may establish lower income levels; and

(iii) The legislative authority of a jurisdiction, after holding a public hearing, may also establish higher income levels for rental housing or for owner occupancy housing upon finding that higher income levels are needed to address local housing market conditions. The higher income level for rental housing may not exceed eighty percent of the county area median family income. The higher income level for owner occupancy housing may not exceed one hundred percent of the county area median family income. These established higher income levels are considered "low-income" for the purposes of this section;

(c) The jurisdiction shall establish a maximum rent level or sales price for each low-income housing unit developed under the terms of a program and may adjust these levels or prices based on the average size of the household expected to occupy the unit. For renter-occupied housing units, the total housing costs, including basic utilities as determined by the jurisdiction, may not exceed thirty percent of the income limit for the low-income housing unit;

(d) Where a developer is utilizing a housing incentive program authorized under this section to develop market rate housing, and is developing low-income housing to satisfy the requirements of the housing incentive program, the low-income housing units shall be provided in a range of sizes comparable to those units that are available to other residents. To the extent practicable, the number of bedrooms in low-income units must be in the same proportion as the number of bedrooms in units within the entire development. The low-income units shall generally be distributed throughout the development and have substantially the same functionality as the other units in the development;

(e) Low-income housing units developed under an affordable housing incentive program shall be committed to continuing affordability for at least fifty years. A local government, however, may accept payments in lieu of continuing affordability. The program shall include measures to enforce continuing affordability and income standards applicable to low-income units constructed under this section that may include, but are not limited to, covenants, options, or other agreements to be executed and recorded by owners and developers;

(f) Programs authorized under subsection (1) of this section may apply to part or all of a jurisdiction and different standards may be applied to different areas within a jurisdiction or to different types of development. Programs authorized under this section may be modified to meet local needs and may include provisions not expressly provided in this section or RCW 82.02.020;

(g) Low-income housing units developed under an affordable housing incentive program are encouraged to be provided within developments for which a bonus or incentive is provided. However, programs may allow units to be provided in a building located in the general area of the development for which a bonus or incentive is provided; and

(h) Affordable housing incentive programs may allow a payment of money or property in lieu of low-income housing units if the jurisdiction determines that the payment achieves a result equal to or better than providing the affordable housing on-site, as long as the payment does not exceed the approximate cost of developing the same number and quality of housing units that would otherwise be developed. Any city or county shall use these funds or property to support the development of low-income housing, including support provided through loans or grants to public or private owners or developers of housing.

(3) Affordable housing incentive programs enacted or expanded under this section may be applied within the jurisdiction to address the need for increased residential development, consistent with local growth management and housing policies, as follows:

(a) The jurisdiction shall identify certain land use designations within a geographic area where increased residential development will assist in achieving local growth management and housing policies;

(b) The jurisdiction shall provide increased residential development capacity through zoning changes, bonus densities, height and bulk increases, parking reductions, or other regulatory changes or other incentives;

(c) The jurisdiction shall determine that increased residential development capacity or other incentives can be achieved within the identified area, subject to consideration of other regulatory controls on development; and

(d) The jurisdiction may establish a minimum amount of affordable housing that must be provided by all residential developments being built under the revised regulations, consistent with the requirements of this section. [2009 c 80 § 1; 2006 c 149 § 2.]

Findings—2006 c 149: "The legislature finds that as new market-rate housing developments are constructed and housing costs rise, there is a significant and growing number of low-income households that cannot afford market-rate housing in Washington state. The legislature finds that assistance to low-income households that cannot afford market-rate housing requires a broad variety of tools to address this serious, statewide problem. The legislature further finds that absent any incentives to provide low-income housing, market conditions will result in housing developments in many areas that lack units affordable to low-income households, circumstances that can cause adverse socioeconomic effects.

The legislature encourages cities, towns, and counties to enact or expand affordable housing incentive programs, including density bonuses and other incentives, to increase the availability of low-income housing for renter and owner occupancy that is located in largely market-rate housing developments throughout the community, consistent with local needs and adopted comprehensive plans. While this act establishes minimum standards for those cities, towns, and counties choosing to implement or expand upon an affordable housing incentive program, cities, towns, and counties are encouraged to enact programs that address local circumstances and conditions while simultaneously contributing to the statewide need for additional low-income housing." [2006 c 149 § 1.]

Construction—2006 c 149: "The powers granted in this act are supplemental and additional to the powers otherwise held by local governments, and nothing in this act shall be construed as a limit on such powers. The authority granted in this act shall extend to any affordable housing incentive program enacted or expanded prior to June 7, 2006, if the extension is adopted by the applicable local government in an ordinance or resolution." [2006 c 149 § 4.]

36.70A.550 Aquifer conservation zones. (1) Any city coterminous with, and comprised only of, an island that relies solely on groundwater aquifers for its potable water source and does not have reasonable access to a potable water source outside its jurisdiction may designate one or more aquifer conservation zones.

Aquifer conservation zones may only be designated for the purpose of conserving and protecting potable water sources.

(2) Aquifer conservation zones may not be considered critical areas under this chapter except to the extent that specific areas located within aquifer conservation zones qualify for critical area designation and have been designated as such under RCW 36.70A.060(2).

(3) Any city may consider whether an area is within an aquifer conservation zone when determining the residential density of that particular area. The residential densities within conservation zones, in combination with other densities of the city, must be sufficient to accommodate projected population growth under RCW 36.70A.110.

(4) Nothing in this section may be construed to modify the population accommodation obligations required of jurisdictions under this chapter. [2007 c 159 § 1.]

36.70A.570 Regulation of forest practices. (1) Each county, city, and town assuming regulation of forest practices as provided in RCW 76.09.240 (1) and (2) shall adopt development regulations that:

(a) Protect public resources, as defined in RCW 76.09.020, from material damage or the potential for material damage;

(b) Require appropriate approvals for all phases of the conversion of forest lands, including clearing and grading;

(c) Are guided by the planning goals in RCW 36.70A.020 and by the purposes and policies of the forest practices act as set forth in RCW 76.09.010; and

(d) Are consistent with or supplement development regulations that protect critical areas pursuant to RCW 36.70A.060.

(2) If necessary, each county, city, or town that assumes regulation of forest practices under RCW 76.09.240 shall amend its comprehensive plan to ensure consistency between its comprehensive plan and development regulations.

(3) Before a county, city, or town may regulate forest practices under RCW 76.09.240 (1) and (2), it shall update its development regulations as required by RCW 36.70A.130 and, if applicable, RCW 36.70A.215. Forest practices regulations adopted under RCW 76.09.240 (1) and (2) may be adopted as part of the legislative action taken under RCW 36.70A.130 or 36.70A.215. [2007 c 236 § 2.]

36.70A.695 Development regulations—Jurisdictions specified—Electric vehicle infrastructure. (1) By July 1, 2010, the development regulations of any jurisdiction:

(a) Adjacent to Interstate 5, Interstate 90, Interstate 405, or state route number 520, with a population over twenty thousand, and located in a county with a population over one million five hundred thousand; or

(b) Adjacent to Interstate 5 and located in a county with a population greater than six hundred thousand; or

(c) Adjacent to Interstate 5 and located in a county with a state capitol within its borders;

planning under this chapter must allow electric vehicle infrastructure as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(2) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction adjacent to Interstate 5, Interstate 90, Interstate 405, or state route number 520 planning under this chapter must allow electric vehicle infrastructure as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(3) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction planning under this chapter must allow battery charging stations as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(4) Cities are authorized to adopt incentive programs to encourage the retrofitting of existing structures with the electrical outlets capable of charging electric vehicles. Incentives may include bonus height, site coverage, floor area ratio, and transferable development rights for use in urban growth areas.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(6) If federal funding for public investment in electric vehicles, electric vehicle infrastructure, or alternative fuel distribution infrastructure is not provided by February 1, 2010, subsection (1) of this section is null and void. [2009 c 459 § 12.]

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.

Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

VOLUNTARY STEWARDSHIP PROGRAM

36.70A.700 Purpose—Intent—2011 c 360. (1) The purpose of chapter 360, Laws of 2011 is to establish the vol-

untary stewardship program as recommended in the report submitted by the William D. Ruckelshaus Center to the legislature as required by chapter 353, Laws of 2007 and chapter 203, Laws of 2010.

(2) It is the intent of chapter 360, Laws of 2011 to:

(a) Promote plans to protect and enhance critical areas within the area where agricultural activities are conducted, while maintaining and improving the long-term viability of agriculture in the state of Washington and reducing the conversion of farmland to other uses;

(b) Focus and maximize voluntary incentive programs to encourage good riparian and ecosystem stewardship as an alternative to historic approaches used to protect critical areas;

(c) Rely upon RCW 36.70A.060 for the protection of critical areas for those counties that do not choose to participate in this program;

(d) Leverage existing resources by relying upon existing work and plans in counties and local watersheds, as well as existing state and federal programs to the maximum extent practicable to achieve program goals;

(e) Encourage and foster a spirit of cooperation and partnership among county, tribal, environmental, and agricultural interests to better assure the program success;

(f) Improve compliance with other laws designed to protect water quality and fish habitat; and

(g) Rely upon voluntary stewardship practices as the primary method of protecting critical areas and not require the cessation of agricultural activities. [2011 c 360 § 1.]

36.70A.702 Construction. Nothing in RCW 36.70A.700 through 36.70A.760 may be construed to:

(1) Interfere with or supplant the ability of any agricultural operator to work cooperatively with a conservation district or participate in state or federal conservation programs;

(2) Require an agricultural operator to discontinue agricultural activities legally existing before July 22, 2011;

(3) Prohibit the voluntary sale or leasing of land for conservation purposes, either in fee or as an easement;

(4) Grant counties or state agencies additional authority to regulate critical areas on lands used for agricultural activities; and

(5) Limit the authority of a state agency, local government, or landowner to carry out its obligations under any other federal, state, or local law. [2011 c 360 § 15.]

36.70A.703 Definitions. The definitions in this section apply to RCW 36.70A.700 through 36.70A.760 and RCW 36.70A.130 and 36.70A.280 unless the context clearly requires otherwise.

(1) "Agricultural activities" means all agricultural uses and practices as defined in RCW 90.58.065.

(2) "Commission" means the state conservation commission as defined in RCW 89.08.030.

(3) "Director" means the executive director of the state conservation commission.

(4) "Enhance" or "enhancement" means to improve the processes, structure, and functions existing, as of July 22, 2011, of ecosystems and habitats associated with critical areas.

(5) "Participating watershed" means a watershed identified by a county under RCW 36.70A.710(1) to participate in the program.

(6) "Priority watershed" means a geographic area nominated by the county and designated by the commission.

(7) "Program" means the voluntary stewardship program established in RCW 36.70A.705.

(8) "Protect" or "protecting" means to prevent the degradation of functions and values existing as of July 22, 2011.

(9) "Receipt of funding" means the date a county takes legislative action accepting any funds as required in RCW 36.70A.715(1) to implement the program.

(10) "Statewide advisory committee" means the statewide advisory committee created in RCW 36.70A.745.

(11) "Technical panel" means the directors or director designees of the following agencies: The department of fish and wildlife; the department of agriculture; the department of ecology; and the commission.

(12) "Watershed" means a water resource inventory area, salmon recovery planning area, or a subbasin as determined by a county.

(13) "Watershed group" means an entity designated by a county under the provisions of RCW 36.70A.715.

(14) "Work plan" means a watershed work plan developed under the provisions of RCW 36.70A.720. [2011 c 360 § 2.]

36.70A.705 Voluntary stewardship program established—Administered by commission—Agency participation. (1) The voluntary stewardship program is established to be administered by the commission. The program shall be designed to protect and enhance critical areas on lands used for agricultural activities through voluntary actions by agricultural operators.

(2) In administering the program, the commission must:

(a) Establish policies and procedures for implementing the program;

(b) Administer funding for counties to implement the program including, but not limited to, funding to develop strategies and incentive programs and to establish local guidelines for watershed stewardship programs;

(c) Administer the program's technical assistance funds and coordinate among state agencies and other entities for the implementation of the program;

(d) Establish a technical panel;

(e) In conjunction with the technical panel, review and evaluate: (i) Work plans submitted for approval under RCW 36.70A.720(2)(a); and (ii) reports submitted under RCW 36.70A.720(2)(b);

(f) Review and evaluate the program's success and effectiveness and make appropriate changes to policies and procedures for implementing the program, in consultation with the statewide advisory committee and other affected agencies;

(g) Designate priority watersheds based upon the recommendation of the statewide advisory committee. The commission and the statewide advisory committee may only consider watersheds nominated by counties under RCW 36.70A.710. When designating priority watersheds, the commission and the statewide advisory committee shall consider the statewide significance of the criteria listed in RCW 36.70A.710(3);

(h) Provide administrative support for the program's statewide advisory committee in its work. The administrative support must be in collaboration with the department of ecology and other agencies involved in the program;

(i) Maintain a web site about the program that includes times, locations, and agenda information for meetings of the statewide advisory committee;

(j) Report to the legislature on the general status of program implementation by December 1, 2013, and December 1, 2015;

(k) In conjunction with the statewide advisory committee, conduct a review of the program beginning in 2017 and every five years thereafter, and report its findings to the legislature by December 1st; and

(l) Report to the appropriate committees of the legislature in the format provided in RCW 43.01.036.

(3) The department shall assist counties participating in the program to develop plans and development regulations under RCW 36.70A.735(1).

(4) The commission, department, department of agriculture, department of fish and wildlife, department of ecology, and other state agencies as directed by the governor shall:

(a) Cooperate and collaborate to implement the program; and

(b) Develop materials to assist local watershed groups in development of work plans.

(5) State agencies conducting new monitoring to implement the program in a watershed must focus on the goals and benchmarks of the work plan. [2011 c 360 § 3.]

36.70A.710 Critical areas protection—Alternative to RCW 36.70A.060—County's responsibilities—Procedures. (1)(a) As an alternative to protecting critical areas in areas used for agricultural activities through development regulations adopted under RCW 36.70A.060, the legislative authority of a county may elect to protect such critical areas through the program.

(b) In order to participate in the program, within six months after July 22, 2011, the legislative authority of a county must adopt an ordinance or resolution that:

(i) Elects to have the county participate in the program;

(ii) Identifies the watersheds that will participate in the program; and

(iii) Based on the criteria in subsection (4) of this section, nominates watersheds for consideration by the commission as state priority watersheds.

(2) Before adopting the ordinance or resolution under subsection (1) of this section, the county must (a) confer with tribes, and environmental and agricultural interests; and (b) provide notice following the public participation and notice provisions of RCW 36.70A.035 to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations.

(3) In identifying watersheds to participate in the program, a county must consider:

(a) The role of farming within the watershed, including the number and acreage of farms, the economic value of crops and livestock, and the risk of the conversion of farmland;

(b) The overall likelihood of completing a successful program in the watershed; and

(c) Existing watershed programs, including those of other jurisdictions in which the watershed has territory.

(4) In identifying priority watersheds, a county must consider the following:

(a) The role of farming within the watershed, including the number and acreage of farms, the economic value of crops and livestock, and the risk of the conversion of farmland;

(b) The importance of salmonid resources in the watershed;

(c) An evaluation of the biological diversity of wildlife species and their habitats in the geographic region including their significance and vulnerability;

(d) The presence of leadership within the watershed that is representative and inclusive of the interests in the watershed;

(e) Integration of regional watershed strategies, including the availability of a data and scientific review structure related to all types of critical areas;

(f) The presence of a local watershed group that is willing and capable of overseeing a successful program, and that has the operational structures to administer the program effectively, including professional technical assistance staff, and monitoring and adaptive management structures; and

(g) The overall likelihood of completing a successful program in the watershed.

(5) Except as otherwise provided in subsection (9) of this section, beginning with the effective date of the ordinance or resolution adopted under subsection (1) of this section, the program applies to all unincorporated property upon which agricultural activities occur within a participating watershed.

(6)(a) Except as otherwise provided in (b) of this subsection, within two years after July 22, 2011, a county must review and, if necessary, revise development regulations adopted under this chapter to protect critical areas as they specifically apply to agricultural activities:

(i) If the county has not elected to participate in the program, for all unincorporated areas; or

(ii) If the county has elected to participate in the program, for any watershed not participating in the program.

(b) A county that between July 1, 2003, and June 30, 2007, in accordance with RCW 36.70A.130 completed the review of its development regulations as required by RCW 36.70A.130 to protect critical areas as they specifically apply to agricultural activities is not required to review and revise its development regulations until required by RCW 36.70A.130.

(c) After the review and amendment required under (a) of this subsection, RCW 36.70A.130 applies to the subsequent review and amendment of development regulations adopted under this chapter to protect critical areas as they specifically apply to agricultural activities.

(7)(a) A county that has made the election under subsection (1) of this section may withdraw a participating watershed from the program by adopting an ordinance or resolution withdrawing the watershed from the program. A county may withdraw a watershed from the program at the end of three years, five years, or eight years after receipt of funding, or any time after ten years from receipt of funding.

(b) Within eighteen months after withdrawing a participating watershed from the program, the county must review

and, if necessary, revise its development regulations that protect critical areas in that watershed as they specifically apply to agricultural activities. The development regulations must protect the critical area functions and values as they existed on July 22, 2011. RCW 36.70A.130 applies to the subsequent review and amendment of development regulations adopted under this chapter to protect critical areas as they specifically apply to agricultural activities.

(8) A county that has made the election under subsection (1) of this section is eligible for a share of the funding made available to implement the program, subject to funding availability from the state.

(9) A county that has made the election under subsection (1) of this section is not required to implement the program in a participating watershed until adequate funding for the program in that watershed is provided to the county. [2011 c 360 § 4.]

36.70A.715 Funding by commission—County's duties—Watershed group established. (1) When the commission makes funds available to a county that has made the election provided in RCW 36.70A.710(1), the county must within sixty days:

(a) Acknowledge the receipt of funds; and

(b) Designate a watershed group and an entity to administer funds for each watershed for which funding has been provided.

(2) A county must confer with tribes and interested stakeholders before designating or establishing a watershed group.

(3) The watershed group must include broad representation of key watershed stakeholders and, at a minimum, representatives of agricultural and environmental groups and tribes that agree to participate. The county should encourage existing lead entities, watershed planning units, or other integrating organizations to serve as the watershed group.

(4) The county may designate itself, a tribe, or another entity to coordinate the local watershed group. [2011 c 360 § 5.]

36.70A.720 Watershed group's duties—Work plan—Conditional priority funding. (1) A watershed group designated by a county under RCW 36.70A.715 must develop a work plan to protect critical areas while maintaining the viability of agriculture in the watershed. The work plan must include goals and benchmarks for the protection and enhancement of critical areas. In developing and implementing the work plan, the watershed group must:

(a) Review and incorporate applicable water quality, watershed management, farmland protection, and species recovery data and plans;

(b) Seek input from tribes, agencies, and stakeholders;

(c) Develop goals for participation by agricultural operators conducting commercial and noncommercial agricultural activities in the watershed necessary to meet the protection and enhancement benchmarks of the work plan;

(d) Ensure outreach and technical assistance is provided to agricultural operators in the watershed;

(e) Create measurable benchmarks that, within ten years after the receipt of funding, are designed to result in (i) the protection of critical area functions and values and (ii) the enhancement of critical area functions and values through voluntary, incentive-based measures;

(f) Designate the entity or entities that will provide technical assistance;

(g) Work with the entity providing technical assistance to ensure that individual stewardship plans contribute to the goals and benchmarks of the work plan;

(h) Incorporate into the work plan any existing development regulations relied upon to achieve the goals and benchmarks for protection;

(i) Establish baseline monitoring for: (i) Participation activities and implementation of the voluntary stewardship plans and projects; (ii) stewardship activities; and (iii) the effects on critical areas and agriculture relevant to the protection and enhancement benchmarks developed for the watershed;

(j) Conduct periodic evaluations, institute adaptive management, and provide a written report of the status of plans and accomplishments to the county and to the commission within sixty days after the end of each biennium;

(k) Assist state agencies in their monitoring programs; and

(l) Satisfy any other reporting requirements of the program.

(2)(a) The watershed group shall develop and submit the work plan to the director for approval as provided in RCW 36.70A.725.

(b)(i) Not later than five years after the receipt of funding for a participating watershed, the watershed group must report to the director and the county on whether it has met the work plan's protection and enhancement goals and benchmarks.

(ii) If the watershed group determines the protection goals and benchmarks have been met, and the director concurs under RCW 36.70A.730, the watershed group shall continue to implement the work plan.

(iii) If the watershed group determines the protection goals and benchmarks have not been met, it must propose and submit to the director an adaptive management plan to achieve the goals and benchmarks that were not met. If the director does not approve the adaptive management plan under RCW 36.70A.730, the watershed is subject to RCW 36.70A.735.

(iv) If the watershed group determines the enhancement goals and benchmarks have not been met, the watershed group must determine what additional voluntary actions are needed to meet the benchmarks, identify the funding necessary to implement these actions, and implement these actions when funding is provided.

(c)(i) Not later than ten years after receipt of funding for a participating watershed, and every five years thereafter, the watershed group must report to the director and the county on whether it has met the protection and enhancement goals and benchmarks of the work plan.

(ii) If the watershed group determines the protection goals and benchmarks have been met, and the director concurs under RCW 36.70A.730, the watershed group shall continue to implement the work plan.

(iii) If the watershed group determines the protection goals and benchmarks have not been met, the watershed is subject to RCW 36.70A.735.

(iv) If the watershed group determines the enhancement goals and benchmarks have not been met, the watershed group must determine what additional voluntary actions are needed to meet the benchmarks, identify the funding necessary to implement these actions, and implement these actions when funding is provided.

(3) Following approval of a work plan, a county or watershed group may request a state or federal agency to focus existing enforcement authority in that participating watershed, if the action will facilitate progress toward achieving work plan protection goals and benchmarks.

(4) The commission may provide priority funding to any watershed designated under the provisions of RCW 36.70A.705(2)(g). The director, in consultation with the statewide advisory committee, shall work with the watershed group to develop an accelerated implementation schedule for watersheds that receive priority funding.

(5) Commercial and noncommercial agricultural operators participating in the program are eligible to receive funding and assistance under watershed programs. [2011 c 360 § 6.]

36.70A.725 Technical review of work plan—Time frame for action by director. (1) Upon receipt of a work plan submitted to the director under RCW 36.70A.720(2)(a), the director must submit the work plan to the technical panel for review.

(2) The technical panel shall review the work plan and report to the director within forty-five days after the director receives the work plan. The technical panel shall assess whether at the end of ten years after receipt of funding, the work plan, in conjunction with other existing plans and regulations, will protect critical areas while maintaining and enhancing the viability of agriculture in the watershed.

(3)(a) If the technical panel determines the proposed work plan will protect critical areas while maintaining and enhancing the viability of agriculture in the watershed:

(i) It must recommend approval of the work plan; and

(ii) The director must approve the work plan.

(b) If the technical panel determines the proposed work plan will not protect critical areas while maintaining and enhancing the viability of agriculture in the watershed:

(i) It must identify the reasons for its determination; and

(ii) The director must advise the watershed group of the reasons for disapproval.

(4) The watershed group may modify and resubmit its work plan for review and approval consistent with this section.

(5) If the director does not approve a work plan submitted under this section within two years and nine months after receipt of funding, the director shall submit the work plan to the statewide advisory committee for resolution. If the statewide advisory committee recommends approval, the director must approve the work plan.

(6) If the director does not approve a work plan for a watershed within three years after receipt of funding, the provisions of RCW 36.70A.735(2) apply to the watershed. [2011 c 360 § 7.]

36.70A.730 Report by watershed group—Director consults with statewide advisory committee. (1) Upon receipt of a report by a watershed group under RCW 36.70A.720(2)(b) that the work plan goals and benchmarks have been met, the director must consult with the statewide advisory committee. If the director concurs with the watershed group report, the watershed group shall continue to implement the work plan. If the director does not concur with the watershed group report, the director shall consult with the statewide advisory committee following the procedures in subsection (2) of this section.

(2) If either the director, following receipt of a report under subsection (1) of this section, or the watershed group, in the report submitted to the director under RCW 36.70A.720(2)(b), concludes that the work plan goals and benchmarks for protection have not been met, the director must consult with the statewide advisory committee for a recommendation on how to proceed. If the director, acting upon recommendation from the statewide advisory committee, determines that the watershed is likely to meet the goals and benchmarks with an additional six months of planning and implementation time, the director must grant an extension. If the director, acting upon a recommendation from the statewide advisory committee, determines that the watershed is unlikely to meet the goals and benchmarks within six months, the watershed is subject to RCW 36.70A.735.

(3) A watershed that fails to meet its goals and benchmarks for protection within the six-month time extension under subsection (2) of this section is subject to RCW 36.70A.735. [2011 c 360 § 8.]

36.70A.735 When work plan is not approved, fails, or is unfunded—County's duties—Rules. (1) Within eighteen months after one of the events in subsection (2) of this section, a county must:

(a) Develop, adopt, and implement a watershed work plan approved by the department that protects critical areas in areas used for agricultural activities while maintaining the viability of agriculture in the watershed. The department shall consult with the departments of agriculture, ecology, and fish and wildlife and the commission, and other relevant state agencies before approving or disapproving the proposed work plan. The appeal of the department's decision under this subsection is subject to appeal under RCW 36.70A.280;

(b) Adopt development regulations previously adopted under this chapter by another local government for the purpose of protecting critical areas in areas used for agricultural activities. Regulations adopted under this subsection (1)(b) must be from a region with similar agricultural activities, geography, and geology and must: (i) Be from Clallam, Clark, King, or Whatcom counties; or (ii) have been upheld by a growth management hearings board or court after July 1, 2011, where the board or court determined that the provisions adequately protected critical areas functions and values in areas used for agricultural activities;

(c) Adopt development regulations certified by the department as protective of critical areas in areas used for agricultural activities as required by this chapter. The county may submit existing or amended regulations for certification. The department must make its decision on whether to certify the development regulations within ninety days after the county submits its request. If the department denies the certification, the county shall take an action under (a), (b), or (d)

of this subsection. The department must consult with the departments of agriculture, ecology, and fish and wildlife and the commission before making a certification under this section. The appeal of the department's decision under this subsection (1)(c) is subject to appeal under RCW 36.70A.280; or

(d) Review and, if necessary, revise development regulations adopted under this chapter to protect critical areas as they relate to agricultural activities.

(2) A participating watershed is subject to this section if:

(a) The work plan is not approved by the director as provided in RCW 36.70A.725;

(b) The work plan's goals and benchmarks for protection have not been met as provided in RCW 36.70A.720;

(c) The commission has determined under RCW 36.70A.740 that the county, department, commission, or departments of agriculture, ecology, or fish and wildlife have not received adequate funding to implement a program in the watershed; or

(d) The commission has determined under RCW 36.70A.740 that the watershed has not received adequate funding to implement the program.

(3) The department shall adopt rules to implement subsection (1)(a) and (c) of this section. [2011 c 360 § 9.]

36.70A.740 Commission's duties—Timelines. (1) By July 31, 2015, the commission must:

(a) In consultation with each county that has elected under RCW 36.70A.710 to participate in the program, determine which participating watersheds received adequate funding to establish and implement the program in a participating watershed by July 1, 2015; and

(b) In consultation with other state agencies, for each participating watershed determine whether state agencies required to take action under the provisions of RCW 36.70A.700 through 36.70A.760 have received adequate funding to support the program by July 1, 2015.

(2) By July 31, 2017, and every two years thereafter, in consultation with each county that has elected under RCW 36.70A.710 to participate in the program and other state agencies, the commission shall determine for each participating watershed whether adequate funding to implement the program was provided during the preceding biennium as provided in subsection (1) of this section.

(3) If the commission determines under subsection (1) or (2) of this section that a participating watershed has not received adequate funding, the watershed is subject to the provisions of RCW 36.70A.735.

(4) In consultation with the statewide advisory committee and other state agencies, not later than August 31, 2015, and each August 31st every two years thereafter, the commission shall report to the legislature and each county that has elected under RCW 36.70A.710 to participate in the program on the participating watersheds that have received adequate funding to establish and implement the program. [2011 c 360 § 10.]

36.70A.745 Statewide advisory committee—Membership. (1)(a) From the nominations made under (b) of this subsection, the commission shall appoint a statewide advisory committee, consisting of: Two persons representing county government, two persons representing agricultural organizations, and two persons representing environmental organizations. The commission, in conjunction with the governor's office, shall also invite participation by two representatives of tribal governments.

(b) Organizations representing county, agricultural, and environmental organizations shall submit nominations of their representatives to the commission within ninety days of July 22, 2011. Members of the statewide advisory committee shall serve two-year terms except that for the first year, one representative from each of the sectors shall be appointed to the statewide advisory committee for a term of one year. Members may be reappointed by the commission for additional two-year terms and replacement members shall be appointed in accordance with the process for selection of the initial members of the statewide advisory committee.

(c) Upon notification of the commission by an appointed member, the appointed member may designate a person to serve as an alternate.

(d) The executive director of the commission shall serve as a nonvoting chair of the statewide advisory committee.

(e) Members of the statewide advisory committee shall serve without compensation and, unless serving as a state officer or employee, are not eligible for reimbursement for subsistence, lodging, and travel expenses under RCW 43.03.050 and 43.03.060.

(2) The role of the statewide advisory committee is to advise the commission and other agencies involved in development and operation of the program. [2011 c 360 § 11.]

36.70A.750 Agricultural operators—Individual stewardship plan. (1) Agricultural operators implementing an individual stewardship plan consistent with a work plan are presumed to be working toward the protection and enhancement of critical areas.

(2) If the watershed group determines that additional or different practices are needed to achieve the work plan's goals and benchmarks, the agricultural operator may not be required to implement those practices but may choose to implement the revised practices on a voluntary basis and is eligible for funding to revise the practices. [2011 c 360 § 12.]

36.70A.755 Implementing the work plan. In developing stewardship practices to implement the work plan, to the maximum extent practical the watershed group should:

(1) Avoid management practices that may have unintended adverse consequences for other habitats, species, and critical areas functions and values; and

(2) Administer the program in a manner that allows participants to be eligible for public or private environmental protection and enhancement incentives while protecting and enhancing critical area functions and values. [2011 c 360 § 13.]

36.70A.760 Agricultural operators—Withdrawal from program. An agricultural operator participating in the program may withdraw from the program and is not required to continue voluntary measures after the expiration of an applicable contract. The watershed group must account for any loss of protection resulting from withdrawals when establishing goals and benchmarks for protection and a work plan under RCW 36.70A.720. [2011 c 360 § 14.]

36.70A.800 Role of growth strategies commission. The growth strategies commission created by executive order shall:

(1) Analyze different methods for assuring that county and city comprehensive plans adopted under chapter 36.70A RCW are consistent with the planning goals under RCW 36.70A.020 and with other requirements of chapter 36.70A RCW;

(2) Recommend to the legislature and the governor by October 1, 1990, a specific structure or process that, among other things:

(a) Ensures county and city comprehensive plans adopted under chapter 36.70A RCW are coordinated and comply with planning goals and other requirements under chapter 36.70A RCW;

(b) Requires state agencies to comply with this chapter and to consider and be consistent with county and city comprehensive plans in actions by state agencies, including the location, financing, and expansion of transportation systems and other public facilities;

(c) Defines the state role in growth management;

(d) Addresses lands and resources of statewide significance, including to:

(i) Protect these lands and resources of statewide significance by developing standards for their preservation and protection and suggesting the appropriate structure to monitor and enforce the preservation of these lands and resources; and

(ii) Consider the environmental, economic, and social values of the lands and resources with statewide significance;

(e) Identifies potential state funds that may be withheld and incentives that promote county and city compliance with chapter 36.70A RCW;

(f) Increases affordable housing statewide and promotes linkages between land use and transportation;

(g) Addresses vesting of rights; and

(h) Addresses short subdivisions; and

(3) Develop recommendations to provide for the resolution of disputes over urban growth areas between counties and cities, including incorporations and annexations. [1990 1st ex.s. c 17 § 86.]

36.70A.900 Severability—1990 1st ex.s. c 17. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 1st ex.s. c 17 § 88.]

36.70A.901 Part, section headings not law—1990 1st ex.s. c 17. Part and section headings as used in this act do not constitute any part of the law. [1990 1st ex.s. c 17 § 89.]

36.70A.902 Section headings not law—1991 sp.s. c 32. Section headings as used in this act do not constitute any part of the law. [1991 sp.s. c 32 § 40.]

36.70A.903 Transfer of powers, duties, and functions. (1) The powers, duties, and functions of the growth management hearings board are hereby transferred to the environmental and land use hearings office.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the growth management hearings board shall be delivered to the custody of the environmental and land use hearings office. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the growth management hearings board shall be made available to the environmental and land use hearings office. All funds, credits, or other assets held by the growth management hearings board shall be assigned to the environmental and land use hearings office.

(b) Any appropriations made to the growth management hearings board shall, on July 1, 2011, be transferred and credited to the environmental and land use hearings office.

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

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

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

(5) The transfer of the powers, duties, functions, and personnel of the growth management hearings board shall not affect the validity of any act performed before July 1, 2011.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification. [2010 c 210 § 43.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

36.70A.904 Conflict with federal requirements—2011 c 360. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [2011 c 360 § 21.]

Chapter 36.70B RCW
LOCAL PROJECT REVIEW

Sections

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36.70B.010 Findings and declaration. The legislature finds and declares the following:

(1) As the number of environmental laws and development regulations has increased for land uses and development, so has the number of required local land use permits, each with its own separate approval process.

(2) The increasing number of local and state land use permits and separate environmental review processes required by agencies has generated continuing potential for conflict, overlap, and duplication between the various permit and review processes.

(3) This regulatory burden has significantly added to the cost and time needed to obtain local and state land use permits and has made it difficult for the public to know how and when to provide timely comments on land use proposals that require multiple permits and have separate environmental review processes. [1995 c 347 § 401.]

36.70B.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Closed record appeal" means an administrative appeal on the record to a local government body or officer, including the legislative body, following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.

(2) "Local government" means a county, city, or town.

(3) "Open record hearing" means a hearing, conducted by a single hearing body or officer authorized by the local government to conduct such hearings, that creates the local government's record through testimony and submission of evidence and information, under procedures prescribed by the local government by ordinance or resolution. An open record hearing may be held prior to a local government's decision on a project permit to be known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record predecision hearing has been held on the project permit.

(4) "Project permit" or "project permit application" means any land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.

(5) "Public meeting" means an informal meeting, hearing, workshop, or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to the local government's decision. A public meeting may include, but is not limited to, a design review or architectural control board meeting, a special review district or community council meeting, or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the local government's project permit application file. [1995 c 347 § 402.]

36.70B.030 Project review—Required elements—Limitations. (1) Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. The review of a proposed project's consistency with applicable development regulations, or in the absence of applicable regulations the adopted comprehensive plan, under RCW 36.70B.040 shall incorporate the determinations under this section.

(2) During project review, a local government or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations the adopted comprehensive plan. At a minimum, such applicable regulations or plans shall be determinative of the:

(a) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;

(b) Density of residential development in urban growth areas; and

(c) Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development

regulations provide for funding of these facilities as required by chapter 36.70A RCW.

(3) During project review, the local government or any subsequent reviewing body shall not reexamine alternatives to or hear appeals on the items identified in subsection (2) of this section, except for issues of code interpretation. As part of its project review process, a local government shall provide a procedure for obtaining a code interpretation as provided in RCW 36.70B.110.

(4) Pursuant to RCW 43.21C.240, a local government may determine that the requirements for environmental analysis and mitigation measures in development regulations and other applicable laws provide adequate mitigation for some or all of the project's specific adverse environmental impacts to which the requirements apply.

(5) Nothing in this section limits the authority of a permitting agency to approve, condition, or deny a project as provided in its development regulations adopted under chapter 36.70A RCW and in its policies adopted under RCW 43.21C.060. Project review shall be used to identify specific project design and conditions relating to the character of development, such as the details of site plans, curb cuts, drainage swales, transportation demand management, the payment of impact fees, or other measures to mitigate a proposal's probable adverse environmental impacts, if applicable.

(6) Subsections (1) through (4) of this section apply only to local governments planning under RCW 36.70A.040. [1995 c 347 § 404.]

Intent—Findings—1995 c 347 §§ 404 and 405: "In enacting RCW 36.70B.030 and 36.70B.040, the legislature intends to establish a mechanism for implementing the provisions of chapter 36.70A RCW regarding compliance, conformity, and consistency of proposed projects with adopted comprehensive plans and development regulations. In order to achieve this purpose the legislature finds that:

(1) Given the extensive investment that public agencies and a broad spectrum of the public are making and will continue to make in comprehensive plans and development regulations for their communities, it is essential that project review start from the fundamental land use planning choices made in these plans and regulations. If the applicable regulations or plans identify the type of land use, specify residential density in urban growth areas, and identify and provide for funding of public facilities needed to serve the proposed development and site, these decisions at a minimum provide the foundation for further project review unless there is a question of code interpretation. The project review process, including the environmental review process under chapter 43.21C RCW and the consideration of consistency, should start from this point and should not reanalyze these land use planning decisions in making a permit decision.

(2) Comprehensive plans and development regulations adopted by local governments under chapter 36.70A RCW and environmental laws and rules adopted by the state and federal government have addressed a wide range of environmental subjects and impacts. These provisions typically require environmental studies and contain specific standards to address various impacts associated with a proposed development, such as building size and location, drainage, transportation requirements, and protection of critical areas. When a permitting agency applies these existing requirements to a proposed project, some or all of a project's potential environmental impacts will be avoided or otherwise mitigated. Through the integrated project review process described in subsection (1) of this section, the local government will determine whether existing requirements, including the applicable regulations or plans, adequately analyze and address a project's environmental impacts. RCW 43.21C.240 provides that project review should not require additional studies or mitigation under chapter 43.21C RCW where existing regulations have adequately addressed a proposed project's probable specific adverse environmental impacts.

(3) Given the hundreds of jurisdictions and agencies in the state and the numerous communities and applicants affected by development regulations and comprehensive plans adopted under chapter 36.70A RCW, it is essential to establish a uniform framework for considering the consistency of a proposed project with the applicable regulations or plan. Consistency should be determined in the project review process by considering four factors found in applicable regulations or plans: The type of land use allowed; the level of development allowed, such as units per acre or other measures of density; infrastructure, such as the adequacy of public facilities and services to serve the proposed project; and the character of the proposed development, such as compliance with specific development standards. This uniform approach corresponds to existing project review practices and will not place a burden on applicants or local government. The legislature intends that this approach should be largely a matter of checking compliance with existing requirements for most projects, which are simple or routine, while more complex projects may require more analysis. RCW 43.21C.240 and 36.70B.030 establish this uniform framework and also direct state agencies to consult with local government and the public to develop a better format than the current environmental checklist to meet this objective.

(4) When an applicant applies for a project permit, consistency between the proposed project and applicable regulations or plan should be determined through a project review process that integrates land use and environmental impact analysis, so that governmental and public review of the proposed project as required by this chapter, by development regulations under chapter 36.70A RCW, and by the environmental process under chapter 43.21C RCW run concurrently and not separately.

(5) RCW 36.70B.030 and 36.70B.040 address three related needs with respect to how the project review process should address consistency between a proposed project and the applicable regulations or plan:

(a) A uniform framework for the meaning of consistency;

(b) An emphasis on relying on existing requirements and adopted standards, with the use of supplemental authority as specified by chapter 43.21C RCW to the extent that existing requirements do not adequately address a project's specific probable adverse environmental impacts; and

(c) The identification of three basic land use planning choices made in applicable regulations or plans that, at a minimum, serve as a foundation for project review and that should not be reanalyzed during project permitting." [1995 c 347 § 403.]

36.70B.040 Determination of consistency. (1) A proposed project's consistency with a local government's development regulations adopted under chapter 36.70A RCW, or, in the absence of applicable development regulations, the appropriate elements of the comprehensive plan adopted under chapter 36.70A RCW shall be decided by the local government during project review by consideration of:

(a) The type of land use;

(b) The level of development, such as units per acre or other measures of density;

(c) Infrastructure, including public facilities and services needed to serve the development; and

(d) The characteristics of the development, such as development standards.

(2) In deciding whether a project is consistent, the determinations made pursuant to RCW 36.70B.030(2) shall be controlling.

(3) For purposes of this section, the term "consistency" shall include all terms used in this chapter and chapter 36.70A RCW to refer to performance in accordance with this chapter and chapter 36.70A RCW, including but not limited to compliance, conformity, and consistency.

(4) Nothing in this section requires documentation, dictates an agency's procedures for considering consistency, or limits a city or county from asking more specific or related questions with respect to any of the four main categories listed in subsection (1)(a) through (d) of this section.

(5) The *department of community, trade, and economic development is authorized to develop and adopt by rule criteria to assist local governments planning under RCW 36.70A.040 to analyze the consistency of project actions.

These criteria shall be jointly developed with the department of ecology. [1997 c 429 § 46; 1995 c 347 § 405.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Intent—Findings—1995 c 347 §§ 404 and 405: See note following RCW 36.70B.030.

Additional notes found at www.leg.wa.gov

36.70B.050 Local government review of project permit applications required—Objectives. Not later than March 31, 1996, each local government shall provide by ordinance or resolution for review of project permit applications to achieve the following objectives:

(1) Combine the environmental review process, both procedural and substantive, with the procedure for review of project permits; and

(2) Except for the appeal of a determination of significance as provided in RCW 43.21C.075, provide for no more than one open record hearing and one closed record appeal. [1995 c 347 § 406.]

36.70B.060 Local governments planning under the growth management act to establish integrated and consolidated project permit process—Required elements. Not later than March 31, 1996, each local government planning under RCW 36.70A.040 shall establish by ordinance or resolution an integrated and consolidated project permit process that may be included in its development regulations. In addition to the elements required by RCW 36.70B.050, the process shall include the following elements:

(1) A determination of completeness to the applicant as required by RCW 36.70B.070;

(2) A notice of application to the public and agencies with jurisdiction as required by RCW 36.70B.110;

(3) Except as provided in RCW 36.70B.140, an optional consolidated project permit review process as provided in RCW 36.70B.120. The review process shall provide for no more than one consolidated open record hearing and one closed record appeal. If an open record predecision hearing is provided prior to the decision on a project permit, the process shall not allow a subsequent open record appeal hearing;

(4) Provision allowing for any public meeting or required open record hearing to be combined with any public meeting or open record hearing that may be held on the project by another local, state, regional, federal, or other agency, in accordance with provisions of RCW *36.70B.090 and 36.70B.110;

(5) A single report stating all the decisions made as of the date of the report on all project permits included in the consolidated permit process that do not require an open record predecision hearing and any recommendations on project permits that do not require an open record predecision hearing. The report shall state any mitigation required or proposed under the development regulations or the agency's authority under RCW 43.21C.060. The report may be the local permit. If a threshold determination other than a determination of significance has not been issued previously by the local government, the report shall include or append this determination;

(6) Except for the appeal of a determination of significance as provided in RCW 43.21C.075, if a local government elects to provide an appeal of its threshold determinations or project permit decisions, the local government shall provide for no more than one consolidated open record hearing on such appeal. The local government need not provide for any further appeal and may provide an appeal for some but not all project permit decisions. If an appeal is provided after the open record hearing, it shall be a closed record appeal before a single decision-making body or officer;

(7) A notice of decision as required by RCW 36.70B.130 and issued within the time period provided in RCW 36.70B.080 and *36.70B.090;

(8) Completion of project review by the local government, including environmental review and public review and any appeals to the local government, within any applicable time periods under *RCW 36.70B.090; and

(9) Any other provisions not inconsistent with the requirements of this chapter or chapter 43.21C RCW. [1995 c 347 § 407.]

***Reviser's note:** RCW 36.70B.090 expired June 30, 2000, pursuant to 1998 c 286 § 8.

36.70B.070 Project permit applications—Determination of completeness—Notice to applicant. (1) Within twenty-eight days after receiving a project permit application, a local government planning pursuant to RCW 36.70A.040 shall mail or provide in person a written determination to the applicant, stating either:

(a) That the application is complete; or

(b) That the application is incomplete and what is necessary to make the application complete.

To the extent known by the local government, the local government shall identify other agencies of local, state, or federal governments that may have jurisdiction over some aspect of the application.

(2) A project permit application is complete for purposes of this section when it meets the procedural submission requirements of the local government and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude the local government from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur.

(3) The determination of completeness may include the following as optional information:

(a) A preliminary determination of those development regulations that will be used for project mitigation;

(b) A preliminary determination of consistency, as provided under RCW 36.70B.040; or

(c) Other information the local government chooses to include.

(4)(a) An application shall be deemed complete under this section if the local government does not provide a written determination to the applicant that the application is incomplete as provided in subsection (1)(b) of this section.

(b) Within fourteen days after an applicant has submitted to a local government additional information identified by the local government as being necessary for a complete applica-

tion, the local government shall notify the applicant whether the application is complete or what additional information is necessary. [1995 c 347 § 408; 1994 c 257 § 4. Formerly RCW 36.70A.440.]

Severability—1994 c 257: See note following RCW 36.70A.270.

Additional notes found at www.leg.wa.gov

36.70B.080 Development regulations—Requirements—Report on implementation costs. (1) Development regulations adopted pursuant to RCW 36.70A.040 must establish and implement time periods for local government actions for each type of project permit application and provide timely and predictable procedures to determine whether a completed project permit application meets the requirements of those development regulations. The time periods for local government actions for each type of complete project permit application or project type should not exceed one hundred twenty days, unless the local government makes written findings that a specified amount of additional time is needed to process specific complete project permit applications or project types.

The development regulations must, for each type of permit application, specify the contents of a completed project permit application necessary for the complete compliance with the time periods and procedures.

(2)(a) Counties subject to the requirements of RCW 36.70A.215 and the cities within those counties that have populations of at least twenty thousand must, for each type of permit application, identify the total number of project permit applications for which decisions are issued according to the provisions of this chapter. For each type of project permit application identified, these counties and cities must establish and implement a deadline for issuing a notice of final decision as required by subsection (1) of this section and minimum requirements for applications to be deemed complete under RCW 36.70B.070 as required by subsection (1) of this section.

(b) Counties and cities subject to the requirements of this subsection also must prepare annual performance reports that include, at a minimum, the following information for each type of project permit application identified in accordance with the requirements of (a) of this subsection:

(i) Total number of complete applications received during the year;

(ii) Number of complete applications received during the year for which a notice of final decision was issued before the deadline established under this subsection;

(iii) Number of applications received during the year for which a notice of final decision was issued after the deadline established under this subsection;

(iv) Number of applications received during the year for which an extension of time was mutually agreed upon by the applicant and the county or city;

(v) Variance of actual performance, excluding applications for which mutually agreed time extensions have occurred, to the deadline established under this subsection during the year; and

(vi) The mean processing time and the number standard deviation from the mean.

(c) Counties and cities subject to the requirements of this subsection must:

(i) Provide notice of and access to the annual performance reports through the county's or city's web site; and

(ii) Post electronic facsimiles of the annual performance reports through the county's or city's web site. Postings on a county's or city's web site indicating that the reports are available by contacting the appropriate county or city department or official do not comply with the requirements of this subsection.

If a county or city subject to the requirements of this subsection does not maintain a web site, notice of the reports must be given by reasonable methods, including but not limited to those methods specified in RCW 36.70B.110(4).

(3) Nothing in this section prohibits a county or city from extending a deadline for issuing a decision for a specific project permit application for any reasonable period of time mutually agreed upon by the applicant and the local government.

(4) The *department of community, trade, and economic development shall work with the counties and cities to review the potential implementation costs of the requirements of subsection (2) of this section. The department, in cooperation with the local governments, shall prepare a report summarizing the projected costs, together with recommendations for state funding assistance for implementation costs, and provide the report to the governor and appropriate committees of the senate and house of representatives by January 1, 2005. [2004 c 191 § 2; 2001 c 322 § 1; 1995 c 347 § 410; (1995 c 347 § 409 expired July 1, 2000); 1994 c 257 § 3. Formerly RCW 36.70A.065.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Findings—Intent—2004 c 191: "The legislature finds that the timely issuance of project permit decisions by local governments serves the public interest. When these decisions, that are often responses to land use and building permit applications, are issued according to specific and locally established time periods and without unnecessary or inappropriate delays, the public enjoys greater efficiency, consistency, and predictability in the permitting process.

The legislature also finds that full access to relevant performance data produced annually by local governments for each type of permit application affords elected officials, project proponents, and the general public the opportunity to review and compare the permit application and processing performance of jurisdictions. Furthermore, the legislature finds that the review and comparison of this data, and the requirement to provide convenient and direct internet access to germane and consistent reports, will likely foster improved methods for processing applications, and issuing project permit decisions in a timely manner.

The legislature, therefore, intends to continue and clarify the requirements for certain jurisdictions to produce and provide access to annual permitting performance reports." [2004 c 191 § 1.]

Effective date—1995 c 347 § 410: "Section 410, chapter 347, Laws of 1995 shall take effect July 1, 2000." [1998 c 286 § 10; 1995 c 347 § 412.]

Expiration date—1995 c 347 § 409: "The amendments to RCW 36.70B.080 contained in section 409, chapter 347, Laws of 1995 shall expire July 1, 2000." [1998 c 286 § 9; 1995 c 347 § 411.]

Severability—1994 c 257: See note following RCW 36.70A.270.

Development regulations must provide sufficient land capacity for development: RCW 36.70A.115.

Additional notes found at www.leg.wa.gov

36.70B.100 Designation of person or entity to receive determinations and notices. A local government may require the applicant for a project permit to designate a single person or entity to receive determinations and notices required by this chapter. [1995 c 347 § 414.]

36.70B.110 Notice of application—Required elements—Integration with other review procedures—Administrative appeals *(as amended by 1997 c 396).* (1) Not later than April 1, 1996, a local government planning under RCW 36.70A.040 shall provide a notice of application to the public and the departments and agencies with jurisdiction as provided in this section. If a local government has made a threshold determination ((~~of significance~~)) under chapter 43.21C RCW concurrently with the notice of application, the notice of application ((~~shall~~)) may be combined with the threshold determination ((~~of significance~~)) and the scoping notice for a determination of significance. Nothing in this section prevents a determination of significance and scoping notice from being issued prior to the notice of application.

(2) The notice of application shall be provided within fourteen days after the determination of completeness as provided in RCW 36.70B.070 and include the following in whatever sequence or format the local government deems appropriate:

(a) The date of application, the date of the notice of completion for the application, and the date of the notice of application;

(b) A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested under RCW 36.70B.070 or *36.70B.090;

(c) The identification of other permits not included in the application to the extent known by the local government;

(d) The identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing the notice of application, such as a city land use bulletin, the location where the application and any studies can be reviewed;

(e) A statement of the public comment period, which shall be not less than fourteen nor more than thirty days following the date of notice of application, and statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights. A local government may accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or, if no open record predecision hearing is provided, prior to the decision on the project permit;

(f) The date, time, place, and type of hearing, if applicable and scheduled at the date of notice of the application;

(g) A statement of the preliminary determination, if one has been made at the time of notice, of those development regulations that will be used for project mitigation and of consistency as provided in RCW 36.70B.040; and

(h) Any other information determined appropriate by the local government.

(3) If an open record predecision hearing is required for the requested project permits, the notice of application shall be provided at least fifteen days prior to the open record hearing.

(4) A local government shall use reasonable methods to give the notice of application to the public and agencies with jurisdiction and may use its existing notice procedures. A local government may use different types of notice for different categories of project permits or types of project actions. If a local government by resolution or ordinance does not specify its method of public notice, the local government shall use the methods provided for in (a) and (b) of this subsection. Examples of reasonable methods to inform the public are:

(a) Posting the property for site-specific proposals;

(b) Publishing notice, including at least the project location, description, type of permit(s) required, comment period dates, and location where the complete application may be reviewed, in the newspaper of general circulation in the general area where the proposal is located or in a local land use newsletter published by the local government;

(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(d) Notifying the news media;

(e) Placing notices in appropriate regional or neighborhood newspapers or trade journals;

(f) Publishing notice in agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; and

(g) Mailing to neighboring property owners.

(5) A notice of application shall not be required for project permits that are categorically exempt under chapter 43.21C RCW, unless a public comment period or an open record predecision hearing is required.

(6) A local government shall integrate the permit procedures in this section with environmental review under chapter 43.21C RCW as follows:

(a) Except for a threshold determination ((~~of significance~~)), the local government may not issue ((~~its threshold determination, or issue~~)) a decision or a recommendation on a project permit until the expiration of the public comment period on the notice of application.

(b) If an open record predecision hearing is required and the local government's threshold determination requires public notice under chapter 43.21C RCW, the local government shall issue its threshold determination at least fifteen days prior to the open record predecision hearing.

(c) Comments shall be as specific as possible.

(7) A local government may combine any hearing on a project permit with any hearing that may be held by another local, state, regional, federal, or other agency provided that the hearing is held within the geographic boundary of the local government. Hearings shall be combined if requested by an applicant, as long as the joint hearing can be held within the time periods specified in *RCW 36.70B.090 or the applicant agrees to the schedule in the event that additional time is needed in order to combine the hearings. All agencies of the state of Washington, including municipal corporations and counties participating in a combined hearing, are hereby authorized to issue joint hearing notices and develop a joint format, select a mutually acceptable hearing body or officer, and take such other actions as may be necessary to hold joint hearings consistent with each of their respective statutory obligations.

(8) All state and local agencies shall cooperate to the fullest extent possible with the local government in holding a joint hearing if requested to do so, as long as:

(a) The agency is not expressly prohibited by statute from doing so;

(b) Sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule; and

(c) The agency has received the necessary information about the proposed project from the applicant to hold its hearing at the same time as the local government hearing.

(9) A local government is not required to provide for administrative appeals. If provided, an administrative appeal of the project decision, combined with any environmental determinations, shall be filed within fourteen days after the notice of the decision or after other notice that the decision has been made and is appealable. The local government shall extend the appeal period for an additional seven days, if state or local rules adopted pursuant to chapter 43.21C RCW allow public comment on a determination of nonsignificance issued as part of the appealable project permit decision.

(10) The applicant for a project permit is deemed to be a participant in any comment period, open record hearing, or closed record appeal.

(11) Each local government planning under RCW 36.70A.040 shall adopt procedures for administrative interpretation of its development regulations. [1997 c 396 § 1; 1995 c 347 § 415.]

***Reviser's note:** RCW 36.70B.090 expired June 30, 2000, pursuant to 1998 c 286 § 8.

36.70B.110 Notice of application—Required elements—Integration with other review procedures—Administrative appeals *(as amended by 1997 c 429).* (1) Not later than April 1, 1996, a local government planning under RCW 36.70A.040 shall provide a notice of application to the public and the departments and agencies with jurisdiction as provided in this section. If a local government has made a determination of significance under chapter 43.21C RCW concurrently with the notice of application, the notice of application shall be combined with the determination of significance and scoping notice. Nothing in this section prevents a determination of significance and scoping notice from being issued prior to the notice of application. Nothing in this section or this chapter prevents a lead agency, when it is a project proponent or is funding a project, from conducting its review under chapter 43.21C RCW or from allowing appeals of procedural determinations prior to submitting a project permit application.

(2) The notice of application shall be provided within fourteen days after the determination of completeness as provided in RCW 36.70B.070 and, except as limited by the provisions of subsection (4)(b) of this section, shall include the following in whatever sequence or format the local government deems appropriate:

(a) The date of application, the date of the notice of completion for the application, and the date of the notice of application;

(b) A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested under RCW 36.70B.070 or *36.70B.090;

(c) The identification of other permits not included in the application to the extent known by the local government;

(d) The identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document provid-

ing the notice of application, such as a city land use bulletin, the location where the application and any studies can be reviewed;

(e) A statement of the public comment period, which shall be not less than fourteen nor more than thirty days following the date of notice of application, and statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights. A local government may accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or, if no open record predecision hearing is provided, prior to the decision on the project permit;

(f) The date, time, place, and type of hearing, if applicable and scheduled at the date of notice of the application;

(g) A statement of the preliminary determination, if one has been made at the time of notice, of those development regulations that will be used for project mitigation and of consistency as provided in RCW ((~~36.70B.040~~)) 36.70B.030(2); and

(h) Any other information determined appropriate by the local government.

(3) If an open record predecision hearing is required for the requested project permits, the notice of application shall be provided at least fifteen days prior to the open record hearing.

(4) A local government shall use reasonable methods to give the notice of application to the public and agencies with jurisdiction and may use its existing notice procedures. A local government may use different types of notice for different categories of project permits or types of project actions. If a local government by resolution or ordinance does not specify its method of public notice, the local government shall use the methods provided for in (a) and (b) of this subsection. Examples of reasonable methods to inform the public are:

(a) Posting the property for site-specific proposals;

(b) Publishing notice, including at least the project location, description, type of permit(s) required, comment period dates, and location where the notice of application required by subsection (2) of this section and the complete application may be reviewed, in the newspaper of general circulation in the general area where the proposal is located or in a local land use newsletter published by the local government;

(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(d) Notifying the news media;

(e) Placing notices in appropriate regional or neighborhood newspapers or trade journals;

(f) Publishing notice in agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; and

(g) Mailing to neighboring property owners.

(5) A notice of application shall not be required for project permits that are categorically exempt under chapter 43.21C RCW, unless ((~~a public comment period or~~)) an open record predecision hearing is required or an open record appeal hearing is allowed on the project permit decision.

(6) A local government shall integrate the permit procedures in this section with its environmental review under chapter 43.21C RCW as follows:

(a) Except for a determination of significance and except as otherwise expressly allowed in this section, the local government may not issue its threshold determination((~~, or issue a decision or a recommendation on a project permit~~)) until the expiration of the public comment period on the notice of application.

(b) If an open record predecision hearing is required ((~~and the local government's threshold determination requires public notice under chapter 43.21C RCW~~)), the local government shall issue its threshold determination at least fifteen days prior to the open record predecision hearing.

(c) Comments shall be as specific as possible.

(d) A local government is not required to provide for administrative appeals of its threshold determination. If provided, an administrative appeal shall be filed within fourteen days after notice that the determination has been made and is appealable. Except as otherwise expressly provided in this section, the appeal hearing on a determination of nonsignificance shall be consolidated with any open record hearing on the project permit.

(7) At the request of the applicant, a local government may combine any hearing on a project permit with any hearing that may be held by another local, state, regional, federal, or other agency ((~~provided that~~)), if:

(a) The hearing is held within the geographic boundary of the local government((~~. Hearings shall be combined if requested by an applicant, as long as~~)); and

(b) The joint hearing can be held within the time periods specified in *RCW 36.70B.090 or the applicant agrees to the schedule in the event that additional time is needed in order to combine the hearings. All agencies of the state of Washington, including municipal corporations and counties participating in a combined hearing, are hereby authorized to issue joint hearing notices and develop a joint format, select a mutually acceptable hearing body or officer, and take such other actions as may be necessary to hold joint hearings consistent with each of their respective statutory obligations.

(8) All state and local agencies shall cooperate to the fullest extent possible with the local government in holding a joint hearing if requested to do so, as long as:

(a) The agency is not expressly prohibited by statute from doing so;

(b) Sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule; and

(c) The agency has received the necessary information about the proposed project from the applicant to hold its hearing at the same time as the local government hearing.

(9) A local government is not required to provide for administrative appeals. If provided, an administrative appeal of the project decision((~~, combined with~~)) and of any environmental determination((~~s~~)) issued at the same time as the project decision, shall be filed within fourteen days after the notice of the decision or after other notice that the decision has been made and is appealable. The local government shall extend the appeal period for an additional seven days, if state or local rules adopted pursuant to chapter 43.21C RCW allow public comment on a determination of nonsignificance issued as part of the appealable project permit decision.

(10) The applicant for a project permit is deemed to be a participant in any comment period, open record hearing, or closed record appeal.

(11) Each local government planning under RCW 36.70A.040 shall adopt procedures for administrative interpretation of its development regulations. [1997 c 429 § 48; 1995 c 347 § 415.]

Reviser's note: *(1) RCW 36.70B.090 expired June 30, 2000, pursuant to 1998 c 286 § 8.

(2) RCW 36.70B.110 was amended twice during the 1997 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Additional notes found at www.leg.wa.gov

36.70B.120 Permit review process. (1) Each local government planning under RCW 36.70A.040 shall establish a permit review process that provides for the integrated and consolidated review and decision on two or more project permits relating to a proposed project action, including a single application review and approval process covering all project permits requested by an applicant for all or part of a project action and a designated permit coordinator. If an applicant elects the consolidated permit review process, the determination of completeness, notice of application, and notice of final decision must include all project permits being reviewed through the consolidated permit review process.

(2) Consolidated permit review may provide different procedures for different categories of project permits, but if a project action requires project permits from more than one category, the local government shall provide for consolidated permit review with a single open record hearing and no more than one closed record appeal as provided in RCW 36.70B.060. Each local government shall determine which project permits are subject to an open record hearing and a closed record appeal. Examples of categories of project permits include but are not limited to:

(a) Proposals that are categorically exempt from chapter 43.21C RCW, such as construction permits, that do not require environmental review or public notice;

(b) Permits that require environmental review, but no open record predecision hearing; and

(c) Permits that require a threshold determination and an open record predecision hearing and may provide for a closed

record appeal to a hearing body or officer or to the local government legislative body.

(3) A local government may provide by ordinance or resolution for the same or a different decision maker or hearing body or officer for different categories of project permits. In the case of consolidated project permit review, the local government shall specify which decision makers shall make the decision or recommendation, conduct the hearing, or decide the appeal to ensure that consolidated permit review occurs as provided in this section. The consolidated permit review may combine an open record predecision hearing on one or more permits with an open record appeal hearing on other permits. In such cases, the local government by ordinance or resolution shall specify which project permits, if any, shall be subject to a closed record appeal. [1995 c 347 § 416.]

36.70B.130 Notice of decision—Distribution. A local government planning under RCW 36.70A.040 shall provide a notice of decision that also includes a statement of any threshold determination made under chapter 43.21C RCW and the procedures for administrative appeal, if any. The notice of decision may be a copy of the report or decision on the project permit application. The notice shall be provided to the applicant and to any person who, prior to the rendering of the decision, requested notice of the decision or submitted substantive comments on the application. The local government shall provide for notice of its decision as provided in RCW 36.70B.110(4), which shall also state that affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation. The local government shall provide notice of decision to the county assessor's office of the county or counties in which the property is situated. [1996 c 254 § 1; 1995 c 347 § 417.]

36.70B.140 Project permits that may be excluded from review. (1) A local government by ordinance or resolution may exclude the following project permits from the provisions of RCW 36.70B.060 through *36.70B.090 and 36.70B.110 through 36.70B.130: Landmark designations, street vacations, or other approvals relating to the use of public areas or facilities, or other project permits, whether administrative or quasi-judicial, that the local government by ordinance or resolution has determined present special circumstances that warrant a review process different from that provided in RCW 36.70B.060 through *36.70B.090 and 36.70B.110 through 36.70B.130.

(2) A local government by ordinance or resolution also may exclude the following project permits from the provisions of RCW 36.70B.060 and 36.70B.110 through 36.70B.130: Lot line or boundary adjustments and building and other construction permits, or similar administrative approvals, categorically exempt from environmental review under chapter 43.21C RCW, or for which environmental review has been completed in connection with other project permits. [1995 c 347 § 418.]

***Reviser's note:** RCW 36.70B.090 expired June 30, 2000, pursuant to 1998 c 286 § 8.

36.70B.150 Local governments not planning under the growth management act may use provisions. A local government not planning under RCW 36.70A.040 may incorporate some or all of the provisions of RCW 36.70B.060 through *36.70B.090 and 36.70B.110 through 36.70B.130 into its procedures for review of project permits or other project actions. [1995 c 347 § 419.]

***Reviser's note:** RCW 36.70B.090 expired June 30, 2000, pursuant to 1998 c 286 § 8.

36.70B.160 Additional project review encouraged—Construction. (1) Each local government is encouraged to adopt further project review provisions to provide prompt, coordinated review and ensure accountability to applicants and the public, including expedited review for project permit applications for projects that are consistent with adopted development regulations and within the capacity of systemwide infrastructure improvements.

(2) Nothing in this chapter is intended or shall be construed to prevent a local government from requiring a preapplication conference or a public meeting by rule, ordinance, or resolution.

(3) Each local government shall adopt procedures to monitor and enforce permit decisions and conditions.

(4) Nothing in this chapter modifies any independent statutory authority for a government agency to appeal a project permit issued by a local government. [1995 c 347 § 420.]

36.70B.170 Development agreements—Authorized. (1) A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW.

(2) RCW 36.70B.170 through 36.70B.190 and section 501, chapter 347, Laws of 1995 do not affect the validity of a contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on July 23, 1995, or adopted under separate authority, that includes some or all of the development standards provided in subsection (3) of this section.

(3) For the purposes of this section, "development standards" includes, but is not limited to:

(a) Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;

(b) The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

(c) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

(d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

(e) Affordable housing;

(f) Parks and open space preservation;

(g) Phasing;

(h) Review procedures and standards for implementing decisions;

(i) A build-out or vesting period for applicable standards; and

(j) Any other appropriate development requirement or procedure.

(4) The execution of a development agreement is a proper exercise of county and city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety. [1995 c 347 § 502.]

Findings—Intent—1995 c 347 §§ 502-506: "The legislature finds that the lack of certainty in the approval of development projects can result in a waste of public and private resources, escalate housing costs for consumers and discourage the commitment to comprehensive planning which would make maximum efficient use of resources at the least economic cost to the public. Assurance to a development project applicant that upon government approval the project may proceed in accordance with existing policies and regulations, and subject to conditions of approval, all as set forth in a development agreement, will strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic costs of development. Further, the lack of public facilities and services is a serious impediment to development of new housing and commercial uses. Project applicants and local governments may include provisions and agreements whereby applicants are reimbursed over time for financing public facilities. It is the intent of the legislature by RCW 36.70B.170 through 36.70B.210 to allow local governments and owners and developers of real property to enter into development agreements." [1995 c 347 § 501.]

36.70B.180 Development agreements—Effect. Unless amended or terminated, a development agreement is enforceable during its term by a party to the agreement. A development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build-out period specified in the agreement, and may not be subject to an amendment to a zoning ordinance or development standard or regulation or a new zoning ordinance or development standard or regulation adopted after the effective date of the agreement. A permit or approval issued by the county or city after the execution of the development agreement must be consistent with the development agreement. [1995 c 347 § 503.]

Findings—Intent—1995 c 347 §§ 502-506: See note following RCW 36.70B.170.

36.70B.190 Development agreements—Recording—Parties and successors bound. A development agreement shall be recorded with the real property records of the county in which the property is located. During the term of the development agreement, the agreement is binding on the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area covering the property covered by the development agreement. [1995 c 347 § 504.]

Findings—Intent—1995 c 347 §§ 502-506: See note following RCW 36.70B.170.

36.70B.200 Development agreements—Public hearing. A county or city shall only approve a development agreement by ordinance or resolution after a public hearing. The county or city legislative body or a planning commission, hearing examiner, or other body designated by the legislative body to conduct the public hearing may conduct the hearing. If the development agreement relates to a project permit application, the provisions of chapter 36.70C RCW shall apply to the appeal of the decision on the development agreement. [1995 c 347 § 505.]

Findings—Intent—1995 c 347 §§ 502-506: See note following RCW 36.70B.170.

36.70B.210 Development agreements—Authority to impose fees not extended. Nothing in RCW 36.70B.170 through 36.70B.200 and section 501, chapter 347, Laws of 1995 is intended to authorize local governments to impose impact fees, inspection fees, or dedications or to require any other financial contributions or mitigation measures except as expressly authorized by other applicable provisions of state law. [1995 c 347 § 506.]

Findings—Intent—1995 c 347 §§ 502-506: See note following RCW 36.70B.170.

36.70B.220 Permit assistance staff. (1) Each county and city having populations of ten thousand or more that plan under RCW 36.70A.040 shall designate permit assistance staff whose function it is to assist permit applicants. An existing employee may be designated as the permit assistance staff.

(2) Permit assistance staff designated under this section shall:

(a) Make available to permit applicants all current local government regulations and adopted policies that apply to the subject application. The local government shall provide counter copies thereof and, upon request, provide copies according to chapter 42.56 RCW. The staff shall also publish and keep current one or more handouts containing lists and explanations of all local government regulations and adopted policies;

(b) Establish and make known to the public the means of obtaining the handouts and related information; and

(c) Provide assistance regarding the application of the local government's regulations in particular cases.

(3) Permit assistance staff designated under this section may obtain technical assistance and support in the compilation and production of the handouts under subsection (2) of this section from the department of commerce. [2010 c 271 § 707; 2005 c 274 § 272; 1996 c 206 § 9.]

Purpose—Effective date—2010 c 271: See notes following RCW 43.330.005.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Findings—1996 c 206: See note following RCW 43.05.030.

36.70B.230 Planning regulations—Copies provided to county assessor. By July 31, 1997, a local government planning under RCW 36.70A.040 shall provide to the county assessor a copy of the local government's comprehensive plan and development regulations in effect on July 1st of that year and shall thereafter provide any amendments to the plan and regulations that were adopted before July 31st of each following year. [1996 c 254 § 6.]

36.70B.900 Finding—Severability—Part headings and table of contents not law—1995 c 347. See notes following RCW 36.70A.470.

Chapter 36.70C RCW
JUDICIAL REVIEW OF LAND USE DECISIONS

Sections

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36.70C.005 Short title. This chapter may be known and cited as the land use petition act. [1995 c 347 § 701.]

36.70C.010 Purpose. The purpose of this chapter is to reform the process for judicial review of land use decisions made by local jurisdictions, by establishing uniform, expedited appeal procedures and uniform criteria for reviewing such decisions, in order to provide consistent, predictable, and timely judicial review. [1995 c 347 § 702.]

36.70C.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Energy overlay zone" means a formal plan enacted by the county legislative authority that establishes suitable areas for siting renewable resource projects based on currently available resources and existing infrastructure with sensitivity to adverse environmental impact.

(2) "Land use decision" means a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:

(a) An application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used, but excluding applications for permits or approvals to use, vacate, or transfer streets, parks, and similar types of public property; excluding applications for legislative approvals such as area-wide rezones and annexations; and excluding applications for business licenses;

(b) An interpretative or declaratory decision regarding the application to a specific property of zoning or other ordinances or rules regulating the improvement, development, modification, maintenance, or use of real property; and

(c) The enforcement by a local jurisdiction of ordinances regulating the improvement, development, modification, maintenance, or use of real property. However, when a local jurisdiction is required by law to enforce the ordinances in a court of limited jurisdiction, a petition may not be brought under this chapter.

Where a local jurisdiction allows or requires a motion for reconsideration to the highest level of authority making the determination, and a timely motion for reconsideration has been filed, the land use decision occurs on the date a decision is entered on the motion for reconsideration, and not the date of the original decision for which the motion for reconsideration was filed.

(3) "Local jurisdiction" means a county, city, or incorporated town.

(4) "Person" means an individual, partnership, corporation, association, public or private organization, or governmental entity or agency.

(5) "Renewable resources" has the same meaning provided in RCW 19.280.020. [2010 c 59 § 1; 2009 c 419 § 1; 1995 c 347 § 703.]

36.70C.030 Chapter exclusive means of judicial review of land use decisions—Exceptions. (1) This chapter replaces the writ of certiorari for appeal of land use decisions and shall be the exclusive means of judicial review of land use decisions, except that this chapter does not apply to:

(a) Judicial review of:

(i) Land use decisions made by bodies that are not part of a local jurisdiction;

(ii) Land use decisions of a local jurisdiction that are subject to review by a quasi-judicial body created by state law, such as the shorelines hearings board or the growth management hearings board;

(b) Judicial review of applications for a writ of mandamus or prohibition; or

(c) Claims provided by any law for monetary damages or compensation. If one or more claims for damages or compensation are set forth in the same complaint with a land use petition brought under this chapter, the claims are not subject to the procedures and standards, including deadlines, provided in this chapter for review of the petition. The judge who hears the land use petition may, if appropriate, preside at a trial for damages or compensation.

(2) The superior court civil rules govern procedural matters under this chapter to the extent that the rules are consistent with this chapter. [2010 1st sp.s. c 7 § 38; 2003 c 393 § 17; 1995 c 347 § 704.]

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

36.70C.040 Commencement of review—Land use petition—Procedure. (1) Proceedings for review under this chapter shall be commenced by filing a land use petition in superior court.

(2) A land use petition is barred, and the court may not grant review, unless the petition is timely filed with the court and timely served on the following persons who shall be parties to the review of the land use petition:

(a) The local jurisdiction, which for purposes of the petition shall be the jurisdiction's corporate entity and not an individual decision maker or department;

(b) Each of the following persons if the person is not the petitioner:

(i) Each person identified by name and address in the local jurisdiction's written decision as an applicant for the permit or approval at issue; and

(ii) Each person identified by name and address in the local jurisdiction's written decision as an owner of the property at issue;

(c) If no person is identified in a written decision as provided in (b) of this subsection, each person identified by name and address as a taxpayer for the property at issue in the records of the county assessor, based upon the description of the property in the application; and

(d) Each person named in the written decision who filed an appeal to a local jurisdiction quasi-judicial decision maker regarding the land use decision at issue, unless the person has abandoned the appeal or the person's claims were dismissed before the quasi-judicial decision was rendered. Persons who later intervened or joined in the appeal are not required to be made parties under this subsection.

(3) The petition is timely if it is filed and served on all parties listed in subsection (2) of this section within twenty-one days of the issuance of the land use decision.

(4) For the purposes of this section, the date on which a land use decision is issued is:

(a) Three days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available;

(b) If the land use decision is made by ordinance or resolution by a legislative body sitting in a quasi-judicial capacity, the date the body passes the ordinance or resolution; or

(c) If neither (a) nor (b) of this subsection applies, the date the decision is entered into the public record.

(5) Service on the local jurisdiction must be by delivery of a copy of the petition to the persons identified by or pursuant to RCW 4.28.080 to receive service of process. Service on other parties must be in accordance with the superior court civil rules or by first-class mail to:

(a) The address stated in the written decision of the local jurisdiction for each person made a party under subsection (2)(b) of this section;

(b) The address stated in the records of the county assessor for each person made a party under subsection (2)(c) of this section; and

(c) The address stated in the appeal to the quasi-judicial decision maker for each person made a party under subsection (2)(d) of this section.

(6) Service by mail is effective on the date of mailing and proof of service shall be by affidavit or declaration under penalty of perjury. [1995 c 347 § 705.]

36.70C.050 Joinder of parties. If the applicant for the land use approval is not the owner of the real property at issue, and if the owner is not accurately identified in the records referred to in RCW 36.70C.040(2) (b) and (c), the applicant shall be responsible for promptly securing the joinder of the owners. In addition, within fourteen days after service each party initially named by the petitioner shall disclose to the other parties the name and address of any person whom such party knows may be needed for just adjudication of the petition, and the petitioner shall promptly name and serve any such person whom the petitioner agrees may be needed for just adjudication. If such a person is named and served before the initial hearing, leave of court for the joinder is not required, and the petitioner shall provide the newly joined party with copies of the pleadings filed before the party's joinder. Failure by the petitioner to name or serve, within the time required by RCW 36.70C.040(3), persons who are needed for just adjudication but who are not identified in the records referred to in RCW 36.70C.040(2)(b), or in RCW 36.70C.040(2)(c) if applicable, shall not deprive the court of jurisdiction to hear the land use petition. [1995 c 347 § 706.]

36.70C.060 Standing. Standing to bring a land use petition under this chapter is limited to the following persons:

(1) The applicant and the owner of property to which the land use decision is directed;

(2) Another person aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:

(a) The land use decision has prejudiced or is likely to prejudice that person;

(b) That person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision;

(c) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and

(d) The petitioner has exhausted his or her administrative remedies to the extent required by law. [1995 c 347 § 707.]

36.70C.070 Land use petition—Required elements. A land use petition must set forth:

(1) The name and mailing address of the petitioner;

(2) The name and mailing address of the petitioner's attorney, if any;

(3) The name and mailing address of the local jurisdiction whose land use decision is at issue;

(4) Identification of the decision-making body or officer, together with a duplicate copy of the decision, or, if not a written decision, a summary or brief description of it;

(5) Identification of each person to be made a party under RCW 36.70C.040(2) (b) through (d);

(6) Facts demonstrating that the petitioner has standing to seek judicial review under RCW 36.70C.060;

(7) A separate and concise statement of each error alleged to have been committed;

(8) A concise statement of facts upon which the petitioner relies to sustain the statement of error; and

(9) A request for relief, specifying the type and extent of relief requested. [1995 c 347 § 708.]

36.70C.080 Initial hearing. (1) Within seven days after the petition is served on the parties identified in RCW 36.70C.040(2), the petitioner shall note, according to the local rules of superior court, an initial hearing on jurisdictional and preliminary matters. This initial hearing shall be set no sooner than thirty-five days and no later than fifty days after the petition is served on the parties identified in RCW 36.70C.040(2).

(2) The parties shall note all motions on jurisdictional and procedural issues for resolution at the initial hearing, except that a motion to allow discovery may be brought sooner. Where confirmation of motions is required, each party shall be responsible for confirming its own motions.

(3) The defenses of lack of standing, untimely filing or service of the petition, and failure to join persons needed for just adjudication are waived if not raised by timely motion noted to be heard at the initial hearing, unless the court allows discovery on such issues.

(4) The petitioner shall move the court for an order at the initial hearing that sets the date on which the record must be submitted, sets a briefing schedule, sets a discovery schedule if discovery is to be allowed, and sets a date for the hearing or trial on the merits.

(5) The parties may waive the initial hearing by scheduling with the court a date for the hearing or trial on the merits and filing a stipulated order that resolves the jurisdictional and procedural issues raised by the petition, including the issues identified in subsections (3) and (4) of this section.

(6) A party need not file an answer to the petition. [1995 c 347 § 709.]

36.70C.090 Expedited review. The court shall provide expedited review of petitions filed under this chapter. The matter must be set for hearing within sixty days of the date set for submitting the local jurisdiction's record, absent a showing of good cause for a different date or a stipulation of the parties. [1995 c 347 § 710.]

36.70C.100 Stay of action pending review. (1) A petitioner or other party may request the court to stay or suspend an action by the local jurisdiction or another party to implement the decision under review. The request must set forth a statement of grounds for the stay and the factual basis for the request.

(2) A court may grant a stay only if the court finds that:

(a) The party requesting the stay is likely to prevail on the merits;

(b) Without the stay the party requesting it will suffer irreparable harm;

(c) The grant of a stay will not substantially harm other parties to the proceedings; and

(d) The request for the stay is timely in light of the circumstances of the case.

(3) The court may grant the request for a stay upon such terms and conditions, including the filing of security, as are necessary to prevent harm to other parties by the stay. [1995 c 347 § 711.]

36.70C.110 Record for judicial review—Costs. (1) Within forty-five days after entry of an order to submit the record, or within such a further time as the court allows or as the parties agree, the local jurisdiction shall submit to the court a certified copy of the record for judicial review of the land use decision, except that the petitioner shall prepare at the petitioner's expense and submit a verbatim transcript of any hearings held on the matter.

(2) If the parties agree, or upon order of the court, the record shall be shortened or summarized to avoid reproduction and transcription of portions of the record that are duplicative or not relevant to the issues to be reviewed by the court.

(3) The petitioner shall pay the local jurisdiction the cost of preparing the record before the local jurisdiction submits the record to the court. Failure by the petitioner to timely pay the local jurisdiction relieves the local jurisdiction of responsibility to submit the record and is grounds for dismissal of the petition.

(4) If the relief sought by the petitioner is granted in whole or in part the court shall equitably assess the cost of preparing the record among the parties. In assessing costs the court shall take into account the extent to which each party prevailed and the reasonableness of the parties' conduct in agreeing or not agreeing to shorten or summarize the record under subsection (2) of this section. [1995 c 347 § 712.]

36.70C.120 Scope of review—Discovery. (1) When the land use decision being reviewed was made by a quasi-judicial body or officer who made factual determinations in support of the decision and the parties to the quasi-judicial proceeding had an opportunity consistent with due process to make a record on the factual issues, judicial review of factual issues and the conclusions drawn from the factual issues shall be confined to the record created by the quasi-judicial body or officer, except as provided in subsections (2) through (4) of this section.

(2) For decisions described in subsection (1) of this section, the record may be supplemented by additional evidence only if the additional evidence relates to:

(a) Grounds for disqualification of a member of the body or of the officer that made the land use decision, when such grounds were unknown by the petitioner at the time the record was created;

(b) Matters that were improperly excluded from the record after being offered by a party to the quasi-judicial proceeding; or

(c) Matters that were outside the jurisdiction of the body or officer that made the land use decision.

(3) For land use decisions other than those described in subsection (1) of this section, the record for judicial review may be supplemented by evidence of material facts that were not made part of the local jurisdiction's record.

(4) The court may require or permit corrections of ministerial errors or inadvertent omissions in the preparation of the record.

(5) The parties may not conduct pretrial discovery except with the prior permission of the court, which may be sought by motion at any time after service of the petition. The court shall not grant permission unless the party requesting it makes a prima facie showing of need. The court shall strictly limit discovery to what is necessary for equitable and timely review of the issues that are raised under subsections (2) and (3) of this section. If the court allows the record to be supplemented, the court shall require the parties to disclose before the hearing or trial on the merits the specific evidence they intend to offer. If any party, or anyone acting on behalf of any party, requests records under chapter 42.56 RCW relating to the matters at issue, a copy of the request shall simultaneously be given to all other parties and the court shall take such request into account in fashioning an equitable discov-

ery order under this section. [2005 c 274 § 273; 1995 c 347 § 713.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

36.70C.130 Standards for granting relief—Renewable resource projects within energy overlay zones. (1) The superior court, acting without a jury, shall review the record and such supplemental evidence as is permitted under RCW 36.70C.120. The court may grant relief only if the party seeking relief has carried the burden of establishing that one of the standards set forth in (a) through (f) of this subsection has been met. The standards are:

(a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;

(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

(c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(d) The land use decision is a clearly erroneous application of the law to the facts;

(e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or

(f) The land use decision violates the constitutional rights of the party seeking relief.

(2) In order to grant relief under this chapter, it is not necessary for the court to find that the local jurisdiction engaged in arbitrary and capricious conduct. A grant of relief by itself may not be deemed to establish liability for monetary damages or compensation.

(3) Land use decisions made by a local jurisdiction concerning renewable resource projects within a county energy overlay zone are presumed to be reasonable if they are in compliance with the requirements and standards established by local ordinance for that zone. However, for land use decisions concerning wind power generation projects, either:

(a) The local ordinance for that zone is consistent with the department of fish and wildlife's wind power guidelines; or

(b) The local jurisdiction prepared an environmental impact statement under chapter 43.21C RCW on the energy overlay zone; and

(i) The local ordinance for that zone requires project mitigation, as addressed in the environmental impact statement and consistent with local, state, and federal law;

(ii) The local ordinance for that zone requires site specific fish and wildlife and cultural resources analysis; and

(iii) The local jurisdiction has adopted an ordinance that addresses critical areas under chapter 36.70A RCW.

(4) If a local jurisdiction has taken action and adopted local ordinances consistent with subsection (3)(b) of this section, then wind power generation projects permitted consistently with the energy overlay zone are deemed to have adequately addressed their environmental impacts as required under chapter 43.21C RCW. [2009 c 419 § 2; 1995 c 347 § 714.]

36.70C.140 Decision of the court. The court may affirm or reverse the land use decision under review or remand it for modification or further proceedings. If the decision is remanded for modification or further proceedings, the court may make such an order as it finds necessary to preserve the interests of the parties and the public, pending further proceedings or action by the local jurisdiction. [1995 c 347 § 715.]

36.70C.900 Finding—Severability—Part headings and table of contents not law—1995 c 347. See notes following RCW 36.70A.470.

36.79.150 Allocation of funds to rural arterial projects—Subsequent application for increased allocation—Withholding of funds for noncompliance. (1) Whenever the board approves a rural arterial project it shall determine the amount of rural arterial trust account funds to be allocated for such project. The allocation shall be based upon information contained in the six-year plan submitted by the county seeking approval of the project and upon such further investigation as the board deems necessary. The board shall adopt reasonable rules pursuant to which rural arterial trust account funds allocated to a project may be increased upon a subsequent application of the county constructing the project. The rules adopted by the board shall take into account, but shall not be limited to, the following factors: (a) The financial effect of increasing the original allocation for the project upon other rural arterial projects either approved or requested; (b) whether the project for which an additional allocation is requested can be reduced in scope while retaining a usable segment; (c) whether the original cost of the project shown in the applicant's six-year program was based upon reasonable engineering estimates; and (d) whether the requested additional allocation is to pay for an expansion in the scope of work originally approved.

(2) The board shall not allocate funds, nor make payments under RCW 36.79.160, to any county or city identified by the governor under RCW 36.70A.340. [1991 sp.s. c 32 § 31; 1983 1st ex.s. c 49 § 15.]

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Additional notes found at www.leg.wa.gov

36.81.121 Perpetual advanced six-year plans for coordinated transportation program, expenditures—Nonmotorized transportation—Railroad right-of-way. (1) At any time before adoption of the budget, the legislative authority of each county, after one or more public hearings thereon, shall prepare and adopt a comprehensive transportation program for the ensuing six calendar years. If the county has adopted a comprehensive plan pursuant to chapter 35.63 or 36.70 RCW, the inherent authority of a charter county derived from its charter, or chapter 36.70A RCW, the program shall be consistent with this comprehensive plan.

The program shall include proposed road and bridge construction work and other transportation facilities and programs deemed appropriate, and for those counties operating ferries shall also include a separate section showing proposed capital expenditures for ferries, docks, and related facilities. The program shall include any new or enhanced bicycle or pedestrian facilities identified pursuant to RCW

36.70A.070(6) or other applicable changes that promote nonmotorized transit. Copies of the program shall be filed with the county road administration board and with the state secretary of transportation not more than thirty days after its adoption by the legislative authority. The purpose of this section is to assure that each county shall perpetually have available advanced plans looking to the future for not less than six years as a guide in carrying out a coordinated transportation program. The program may at any time be revised by a majority of the legislative authority but only after a public hearing thereon.

(2) Each six-year transportation program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a county will expend its moneys, including funds made available pursuant to chapter 47.30 RCW, for nonmotorized transportation purposes.

(3) Each six-year transportation program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a county shall act to preserve railroad right-of-way in the event the railroad ceases to operate in the county's jurisdiction.

(4) The six-year plan for each county shall specifically set forth those projects and programs of regional significance for inclusion in the transportation improvement program within that region. [2005 c 360 § 3; 1997 c 188 § 1. Prior: 1994 c 179 § 2; 1994 c 158 § 8; 1990 1st ex.s. c 17 § 58; 1988 c 167 § 8; 1983 1st ex.s. c 49 § 20; prior: 1975 1st ex.s. c 215 § 2; 1975 1st ex.s. c 21 § 3; 1967 ex.s. c 83 § 26; 1963 c 4 § 36.81.121; prior: 1961 c 195 § 1.]

Findings—Intent—2005 c 360: See note following RCW 36.70A.070.

Captions not law—Severability—Effective date—1994 c 158: See RCW 47.80.902 through 47.80.904.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Severability—Effective dates—1967 ex.s. c 83: See RCW 47.26.900 and 47.26.910.

Highways, roads, streets in urban areas, urban arterials, development: Chapter 47.26 RCW.

Long range arterial construction planning, counties and cities to prepare data: RCW 47.26.170.

Additional notes found at www.leg.wa.gov

36.88.160 District fund—Purposes—Bond redemptions. All moneys collected by the treasurer upon any assessments under this chapter shall be kept as a separate fund to be known as ". . . . . ., county road improvement district No. . . . . fund." Such funds shall be used for no other purpose than the payment of costs and expense of construction and improvement in such district and the payment of interest or principal of warrants and bonds drawn or issued upon or against said fund for said purposes. Whenever after payment of the costs and expenses of the improvement there shall be available in the local improvement district fund a sum, over and above the amount necessary to meet the interest payments next accruing on outstanding bonds, sufficient to retire one or more outstanding bonds the treasurer shall forthwith call such bond or bonds for redemption as determined in the bond authorizing ordinance. [2003 c 139 § 3; 1963 c 4 § 36.88.160. Prior: 1951 c 192 § 16.]

Effective date—2003 c 139: See note following RCW 35.45.180.

Chapter 36.93 RCW
LOCAL GOVERNMENTAL ORGANIZATION—BOUNDARIES—REVIEW BOARDS

Sections

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36.93.020 Definitions.
36.93.030 Creation of boundary review boards in counties with populations of two hundred ten thousand or more—Creation in other counties.
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36.93.170 Factors to be considered by board—Incorporation proceedings exempt from state environmental policy act.
36.93.180 Objectives of boundary review board.
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36.93.200 Rules and regulations—Adoption procedure.
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36.93.220 Provisions of prior laws superseded by chapter.
36.93.230 Power to disband boundary review board.
36.93.800 Application of chapter to merged special purpose districts.
36.93.900 Effective date—1967 c 189.
36.93.910 Severability—1967 c 189.

36.93.090 Filing notice of proposed actions with board. Whenever any of the following described actions are proposed in a county in which a board has been established, the initiators of the action shall file within one hundred eighty days a notice of intention with the board: PROVIDED, That when the initiator is the legislative body of a governmental unit, the notice of intention may be filed immediately following the body's first acceptance or approval of the action. The board may review any such proposed actions pertaining to:

(1) The: (a) Creation, incorporation, or change in the boundary, other than a consolidation, of any city, town, or special purpose district; (b) consolidation of special purpose districts, but not including consolidation of cities and towns; or (c) dissolution or disincorporation of any city, town, or

special purpose district, except that a board may not review the dissolution or disincorporation of a special purpose district which was dissolved or disincorporated pursuant to the provisions of chapter 36.96 RCW: PROVIDED, That the change in the boundary of a city or town arising from the annexation of contiguous city or town owned property held for a public purpose shall be exempted from the requirements of this section; or

(2) The assumption by any city or town of all or part of the assets, facilities, or indebtedness of a special purpose district which lies partially within such city or town; or

(3) The establishment of or change in the boundaries of a mutual water and sewer system or separate sewer system by a water-sewer district pursuant to RCW 57.08.065 or *chapter 57.40 RCW; or

(4) The extension of permanent water or sewer service outside of its existing service area by a city, town, or special purpose district. The service area of a city, town, or special purpose district shall include all of the area within its corporate boundaries plus, (a) for extensions of water service, the area outside of the corporate boundaries which it is designated to serve pursuant to a coordinated water system plan approved in accordance with RCW 70.116.050; and (b) for extensions of sewer service, the area outside of the corporate boundaries which it is designated to serve pursuant to a comprehensive sewerage plan approved in accordance with chapter 36.94 RCW and RCW 90.48.110. [1996 c 230 § 1608; 1995 c 131 § 1; 1987 c 477 § 2; 1985 c 281 § 28; 1982 c 10 § 7. Prior: 1981 c 332 § 9; 1981 c 45 § 2; 1979 ex.s. c 5 § 12; 1971 ex.s. c 127 § 1; 1969 ex.s. c 111 § 5; 1967 c 189 § 9.]

***Reviser's note:** Chapter 57.40 RCW was repealed and/or decodified in its entirety.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Effective date—1995 c 131: "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 24, 1995]." [1995 c 131 § 2.]

Severability—1985 c 281: See RCW 35.10.905.

Severability—1982 c 10: See note following RCW 6.13.080.

Severability—1981 c 332: See note following RCW 35.13.165.

Legislative declaration—"District" defined—1981 c 45: "It is declared to be the public policy of the state of Washington to provide for the orderly growth and development of those areas of the state requiring public water service or sewer service and to secure the health and welfare of the people residing therein. The growth of urban population and the movement of people into suburban areas has required the performance of such services by water districts and sewer districts and the development of such districts has created problems of conflicting jurisdiction and potential double taxation.

It is the purpose of this act to reduce the duplication of service and the conflict among jurisdictions by establishing the principle that the first in time is the first in right where districts overlap and by encouraging the consolidation of districts. It is also the purpose of this act to prevent the imposition of double taxation upon the same property by establishing a general classification of property which will be exempt from property taxation by a district when such property is within the jurisdiction of an established district duly authorized to provide service of like character.

Unless the context clearly requires otherwise, as used in this act, the term "district" means either a water district organized under Title 57 RCW or a sewer district organized under Title 56 RCW or a merged water and sewer district organized pursuant to chapter 57.40 or 56.36 RCW." [1981 c 45 § 1.]

Severability—1981 c 45: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 45 § 14.]

Severability—1979 ex.s. c 5: See RCW 36.96.920.

Consolidation of cities and towns—Role of boundary review board: RCW 35.10.450.

Additional notes found at www.leg.wa.gov

36.93.105 Actions not subject to review by board. The following actions shall not be subject to potential review by a boundary review board:

(1) Annexations of territory to a water-sewer district pursuant to RCW 36.94.410 through 36.94.440;

(2) Revisions of city or town boundaries pursuant to RCW 35.21.790 or 35A.21.210;

(3) Adjustments to city or town boundaries pursuant to RCW 35.13.340; and

(4) Adjustments to city and town boundaries pursuant to RCW 35.13.300 through 35.13.330. [1999 c 153 § 46; 1989 c 84 § 4; 1984 c 147 § 5.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Additional notes found at www.leg.wa.gov

36.93.150 Review of proposed actions—Actions and determinations of board—Disapproval, effect. The board, upon review of any proposed action, shall take such of the following actions as it deems necessary to best carry out the intent of this chapter:

(1) Approve the proposal as submitted.

(2) Subject to RCW 35.02.170, modify the proposal by adjusting boundaries to add or delete territory. Subject to the requirements of this chapter, a board may modify a proposal by adding territory that would increase the total area of the proposal before the board. A board, however, may not modify a proposal for annexation of territory to a city or town by adding an amount of territory that constitutes more than one hundred percent of the total area of the proposal before the board. Any modifications shall not interfere with the authority of a city, town, or special purpose district to require or not require preannexation agreements, covenants, or petitions. A board shall not modify the proposed incorporation of a city with an estimated population of seven thousand five hundred or more by removing territory from the proposal, or adding territory to the proposal, that constitutes ten percent or more of the total area included within the proposal before the board. However, a board shall remove territory in the proposed incorporation that is located outside of an urban growth area or is annexed by a city or town, and may remove territory in the proposed incorporation if a petition or resolution proposing the annexation is filed or adopted that has priority over the proposed incorporation, before the area is established that is subject to this ten percent restriction on removing or adding territory. A board shall not modify the proposed incorporation of a city with a population of seven thousand five hundred or more to reduce the territory in such a manner as to reduce the population below seven thousand five hundred.

(3) Determine a division of assets and liabilities between two or more governmental units where relevant.

(4) Determine whether, or the extent to which, functions of a special purpose district are to be assumed by an incorporated city or town, metropolitan municipal corporation, or another existing special purpose district.

(5) Disapprove the proposal except that the board shall not have jurisdiction: (a) To disapprove the dissolution or disincorporation of a special purpose district which is not providing services but shall have jurisdiction over the determination of a division of the assets and liabilities of a dissolved or disincorporated special purpose district; (b) over the division of assets and liabilities of a special purpose district that is dissolved or disincorporated pursuant to chapter 36.96 RCW; nor (c) to disapprove the incorporation of a city with an estimated population of seven thousand five hundred or more, but the board may recommend against the proposed incorporation of a city with such an estimated population.

Unless the board disapproves a proposal, it shall be presented under the appropriate statute for approval of a public body and, if required, a vote of the people. A proposal that has been modified shall be presented under the appropriate statute for approval of a public body and if required, a vote of the people. If a proposal, other than that for a city, town, or special purpose district annexation, after modification does not contain enough signatures of persons within the modified area, as are required by law, then the initiating party, parties or governmental unit has thirty days after the modification decision to secure enough signatures to satisfy the legal requirement. If the signatures cannot be secured then the proposal may be submitted to a vote of the people, as required by law.

The addition or deletion of property by the board shall not invalidate a petition which had previously satisfied the sufficiency of signature provisions of RCW 35.13.130 or 35A.14.120. When the board, after due proceedings held, disapproves a proposed action, such proposed action shall be unavailable, the proposing agency shall be without power to initiate the same or substantially the same as determined by the board, and any succeeding acts intended to or tending to effectuate that action shall be void, but such action may be reinitiated after a period of twelve months from date of disapproval and shall again be subject to the same consideration.

The board shall not modify or deny a proposed action unless there is evidence on the record to support a conclusion that the action is inconsistent with one or more of the objectives under RCW 36.93.180. The board may not increase the area of a city or town annexation unless it holds a separate public hearing on the proposed increase and provides ten or more days' notice of the hearing to the registered voters and property owners residing within the area subject to the proposed increase. Every such determination to modify or deny a proposed action shall be made in writing pursuant to a motion, and shall be supported by appropriate written findings and conclusions, based on the record. [2012 c 212 § 1; 1994 c 216 § 15; 1990 c 273 § 1; 1987 c 477 § 7; 1979 ex.s. c 5 § 13; 1975 1st ex.s. c 220 § 10; 1969 ex.s. c 111 § 8; 1967 c 189 § 15.]

Effective date—1994 c 216: See note following RCW 35.02.015.

Severability—1990 c 273: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 273 § 3.]

Severability—1979 ex.s. c 5: See RCW 36.96.920.

Legislative finding, intent—1975 1st ex.s. c 220: See note following RCW 35.02.170.

Additional notes found at www.leg.wa.gov

36.93.157 Decisions to be consistent with growth management act. The decisions of a boundary review board located in a county that is required or chooses to plan under RCW 36.70A.040 must be consistent with RCW 36.70A.020, 36.70A.110, and 36.70A.210. [1992 c 162 § 2.]

36.93.170 Factors to be considered by board—Incorporation proceedings exempt from state environmental policy act. In reaching a decision on a proposal or an alternative, the board shall consider the factors affecting such proposal, which shall include, but not be limited to the following:

(1) Population and territory; population density; land area and land uses; comprehensive plans and zoning, as adopted under chapter 35.63, 35A.63, or 36.70 RCW; comprehensive plans and development regulations adopted under chapter 36.70A RCW; applicable service agreements entered into under chapter 36.115 or 39.34 RCW; applicable interlocal annexation agreements between a county and its cities; per capita assessed valuation; topography, natural boundaries and drainage basins, proximity to other populated areas; the existence and preservation of prime agricultural soils and productive agricultural uses; the likelihood of significant growth in the area and in adjacent incorporated and unincorporated areas during the next ten years; location and most desirable future location of community facilities;

(2) Municipal services; need for municipal services; effect of ordinances, governmental codes, regulations and resolutions on existing uses; present cost and adequacy of governmental services and controls in area; prospects of governmental services from other sources; probable future needs for such services and controls; probable effect of proposal or alternative on cost and adequacy of services and controls in area and adjacent area; the effect on the finances, debt structure, and contractual obligations and rights of all affected governmental units; and

(3) The effect of the proposal or alternative on adjacent areas, on mutual economic and social interests, and on the local governmental structure of the county.

The provisions of chapter 43.21C RCW, State Environmental Policy, shall not apply to incorporation proceedings covered by chapter 35.02 RCW. [1997 c 429 § 39; 1989 c 84 § 5; 1986 c 234 § 33; 1982 c 220 § 2; 1979 ex.s. c 142 § 1; 1967 c 189 § 17.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

Severability—1982 c 220: See note following RCW 36.93.100.

Incorporation proceedings exempt from state environmental policy act: RCW 43.21C.220.

Additional notes found at www.leg.wa.gov

36.93.180 Objectives of boundary review board. The decisions of the boundary review board shall attempt to achieve the following objectives:

(1) Preservation of natural neighborhoods and communities;

(2) Use of physical boundaries, including but not limited to bodies of water, highways, and land contours;

(3) Creation and preservation of logical service areas;

(4) Prevention of abnormally irregular boundaries;

(5) Discouragement of multiple incorporations of small cities and encouragement of incorporation of cities in excess of ten thousand population in heavily populated urban areas;

(6) Dissolution of inactive special purpose districts;

(7) Adjustment of impractical boundaries;

(8) Incorporation as cities or towns or annexation to cities or towns of unincorporated areas which are urban in character; and

(9) Protection of agricultural and rural lands which are designated for long term productive agricultural and resource use by a comprehensive plan adopted by the county legislative authority. [1989 c 84 § 6; 1981 c 332 § 10; 1979 ex.s. c 142 § 2; 1967 c 189 § 18.]

Severability—1981 c 332: See note following RCW 35.13.165.

Additional notes found at www.leg.wa.gov

36.93.185 Objectives of boundary review board—Water-sewer district annexations, mergers—Territory not adjacent to district. The proposal by a water-sewer district to annex territory that is not adjacent to the district shall not be deemed to be violative of the objectives of a boundary review board solely due to the fact that the territory is not adjacent to the water-sewer district. The proposed consolidation or merger of two or more water-sewer districts that are not adjacent to each other shall not be deemed to be violative of the objectives of a boundary review board solely due to the fact that the districts are not adjacent. [1999 c 153 § 47; 1989 c 308 § 13.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Additional notes found at www.leg.wa.gov

36.93.230 Power to disband boundary review board. When a county and the cities and towns within the county have adopted a comprehensive plan and consistent development regulations pursuant to the provisions of chapter 36.70A RCW, the county may, at the discretion of the county legislative authority, disband the boundary review board in that county. [1991 sp.s. c 32 § 22.]

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Additional notes found at www.leg.wa.gov

36.94.040 Incorporation of provisions of comprehensive plan in general plan. The sewerage and/or water general plan must incorporate the provisions of existing comprehensive plans relating to sewerage and water systems of cities, towns, municipalities, and private utilities, to the extent they have been implemented. [1990 1st ex.s. c 17 § 33; 1967 c 72 § 4.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

36.105.090 Annexation. A community council may provide for the annexation of adjacent unincorporated areas to the community that are not included within another community for which a community council has been established. Annexations shall be initiated by either resolution of the community council proposing the annexation or petition of voters residing in the adjacent area, which petition: (a) Requests the annexation; (b) sets forth the boundaries of the area proposed to be annexed; and (c) contains signatures of voters residing within the area that is proposed to be annexed equal in number to at least ten percent of the voters residing in that area who voted at the last state general election. Annexation petitions shall be filed with the county auditor who shall determine if the petitions contain a sufficient number of valid signatures, certify the sufficiency of the petitions, and notify the community council of the sufficiency of the petitions within fifteen days of when the petitions are submitted.

A ballot proposition authorizing the annexation shall be submitted to the voters of the area that is proposed to be annexed at a primary or general election in either an odd-numbered or even-numbered year, if the community council initiated the annexation by resolution or if the community council concurs in an annexation that was initiated by the submission of annexation petitions containing sufficient valid signatures. The annexation shall occur if the ballot proposition authorizing the creation of the community is approved by a simple majority vote of the voters voting on the proposition. The county's comprehensive plan, and where applicable to the county's subarea plan, and zoning ordinances shall continue in effect in the annexed area until proposed amendments to the approved community comprehensive plans and approved community zoning ordinance have been approved that apply to the annexed area. [1991 c 363 § 107.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Chapter 36.115 RCW
SERVICE AGREEMENTS

Sections

36.115.010 Purpose.
36.115.020 Definitions.
36.115.030 Coordination—Consistency.
36.115.040 Geographic area covered—Contents—When effective.
36.115.050 Matters included.
36.115.060 Procedure for establishment—Counties affected.
36.115.070 Legislative intent.
36.115.080 Duties, requirements, authorities under growth management act not altered.

36.115.010 Purpose. The purpose of chapter 266, Laws of 1994 is to establish a flexible process by which local governments enter into service agreements that will establish which jurisdictions should provide various local government services and facilities within specified geographic areas and how those services and facilities will be financed. [1994 c 266 § 1.]

36.115.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "City" means a city or town, including a city operating under Title 35A RCW.

(2) "Governmental service" includes a service provided by local government, and any facilities and equipment related to the provision of such services, including but not limited to utility services, health services, social services, law enforcement services, fire prevention and suppression services, community development activities, environmental protection

activities, economic development activities, and transportation services and facilities, but shall not include the generation, conservation, or distribution of electrical energy nor maritime shipping activities.

(3) "Regional service" means a governmental service established by agreement among local governments that delineates the government entity or entities responsible for the service provision and allows for that delivery to extend over jurisdictional boundaries.

(4) "Local government" means a county, city, or special district.

(5) "Service agreement" means an agreement among counties, cities, and special districts established pursuant to this chapter.

(6) "Special district" means a municipal or quasi-municipal corporation in the state, other than a county, city, or school district. [1994 c 266 § 2.]

36.115.030 Coordination—Consistency. A service agreement addressing children and family services shall enhance coordination and shall be consistent with the comprehensive plan developed under chapter 7, Laws of 1994 sp. sess. [1994 c 266 § 3.]

36.115.040 Geographic area covered—Contents—When effective. (1) Agreements among local governments concerning one or more governmental service should be established for a designated geographic area as provided in this section.

(2) A service agreement must describe: (a) The governmental service or services addressed by the agreement; (b) the geographic area covered by the agreement; (c) which local government or local governments are to provide each of the governmental services addressed by the agreement within the geographic area covered by the agreement; and (d) the term of the agreement, if any.

(3) A service agreement becomes effective when approved by: (a) The county legislative authority of each county that includes territory located within the geographic area covered by the agreement; (b) the governing body or bodies of at least a simple majority of the total number of cities that includes territory located within the geographic area covered by the agreement, which cities include at least seventy-five percent of the total population of all cities that includes territory located within the geographic area covered by the agreement; and (c) for each governmental service addressed by the agreement, the governing body or bodies of at least a simple majority of the special districts that include territory located within the geographic area covered by the agreement and which provide the governmental service within such territory. The participants may agree to use another formula. An agreement pursuant to this section shall be effective upon adoption by the county legislative authority following a public hearing.

(4) A service agreement may cover a geographic area that includes territory located in more than a single county. [1994 c 266 § 4.]

36.115.050 Matters included. A service agreement may include, but is not limited to, any or all of the following matters:

(1) A dispute resolution arrangement;

(2) How joint land-use planning and development regulations by the county and a city or cities, or by two or more cities, may be established, made binding, and enforced;

(3) How common development standards between the county and a city or cities, or between two or more cities, may be established, made binding, and enforced;

(4) How capital improvement plans of the county, cities, and special districts shall be coordinated;

(5) How plans and policies adopted under chapter 36.70A RCW will be implemented by the service agreement;

(6) A transfer of revenues between local governments in relationship to their obligations for providing governmental services;

(7) The designation of additional area-wide governmental services to be provided by the county. [1994 c 266 § 5.]

36.115.060 Procedure for establishment—Counties affected. (1) The county legislative authority of every county with a population of one hundred fifty thousand or more shall convene a meeting on or before March 1, 1995, to develop a process for the establishment of service agreements. Invitations to attend this meeting shall be sent to the governing body of each city located in the county, and to the governing body of each special district located in the county that provides one or more of the governmental services as defined in RCW 36.115.020(2).

The legislative authorities of counties of less than one hundred fifty thousand population may utilize this chapter by adopting a resolution stating their intent to do so. In that case or in the case of counties whose populations reach one hundred fifty thousand after March 1, 1995, this meeting shall be convened no later than sixty days after the date the county adopts its resolution of intention or was certified by the office of financial management as having a population of one hundred fifty thousand or more.

(2) On or before January 1, 1997, a service agreement must be adopted in each county under this chapter or a progress report must be submitted to the appropriate committees of the legislature.

(3) In other counties that choose to utilize this chapter or whose population reaches one hundred fifty thousand, the service agreement must be adopted two years after the initial meeting provided for in subsection (1) of this section is convened or a progress report must be submitted to the appropriate committees of the legislature. [1994 c 266 § 6.]

36.115.070 Legislative intent. It is the intent of the legislature to permit the creation of a flexible process to establish service agreements and to recognize that local governments possess broad authority to shape a variety of government service agreements to meet their local needs and circumstances. However, it is noted that in general, cities are the unit of local government most appropriate to provide urban governmental services and counties are the unit of local government most appropriate to provide regional governmental services.

The process to establish service agreements should assure that all directly affected local governments, and Indian tribes at their option, are allowed to be heard on issues relevant to them. [1994 c 266 § 7.]

36.115.080 Duties, requirements, authorities under growth management act not altered. Nothing contained in this chapter alters the duties, requirements, and authorities of cities and counties contained in chapter 36.70A RCW. [1994 c 266 § 8.]

Chapter 39.102 RCW
LOCAL INFRASTRUCTURE FINANCING TOOL PROGRAM

Sections

39.102.010 Finding.
39.102.020 Definitions.
39.102.030 Creation.
39.102.040 Application process—Board approval.
39.102.050 Demonstration projects.
39.102.060 Limitations on revenue development areas.
39.102.070 Local infrastructure financing—Conditions.
39.102.080 Revenue development area adoption—Process.
39.102.090 Revenue development area adoption—Ordinance—Hearing and delivery requirements.
39.102.100 Revenue development area adoption—Notice requirements.
39.102.110 Local excise tax allocation revenues.
39.102.120 Local property tax allocation revenues.
39.102.130 Use of sales and use tax funds.
39.102.140 Reporting requirements.
39.102.150 Issuance of general obligation bonds.
39.102.160 Use of tax revenue for bond repayment.
39.102.170 Limitation on bonds issued.
39.102.190 Revenue bonds to fund public improvements.
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39.102.200 Joint legislative audit and review committee reports.
39.102.210 Program evaluation.
39.102.220 Administration by department and board.
39.102.900 Captions and part headings not law—2006 c 181.
39.102.901 Severability—2006 c 181.
39.102.902 Construction—2006 c 181.
39.102.903 Effective date—2006 c 181.
39.102.905 Expiration date—2013 2nd sp.s. c 21.

39.102.020 Definitions. ***(Expires June 30, 2044.)*** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Annual state contribution limit" means seven million five hundred thousand dollars statewide per fiscal year.

(2) "Assessed value" means the valuation of taxable real property as placed on the last completed assessment roll.

(3) "Board" means the community economic revitalization board under chapter 43.160 RCW.

(4) "Dedicated" means pledged, set aside, allocated, received, budgeted, or otherwise identified.

(5) "Demonstration project" means one of the following projects:

(a) Bellingham waterfront redevelopment project;

(b) Spokane river district project at Liberty Lake; and

(c) Vancouver riverwest project.

(6) "Department" means the department of revenue.

(7) "Fiscal year" means the twelve-month period beginning July 1st and ending the following June 30th.

(8) "Local excise tax allocation revenue" means an amount of local excise taxes equal to some or all of the sponsoring local government's local excise tax increment, amounts of local excise taxes equal to some or all of any participating local government's excise tax increment as agreed upon in the written agreement under RCW 39.102.080(1), or both, and dedicated to local infrastructure financing.

(9) "Local excise tax increment" means an amount equal to the estimated annual increase in local excise taxes in each calendar year following the approval of the revenue development area by the board from taxable activity within the revenue development area, as set forth in the application provided to the board under RCW 39.102.040, and updated in accordance with RCW 39.102.140(1)(f).

(10) "Local excise taxes" means local revenues derived from the imposition of sales and use taxes authorized in RCW 82.14.030.

(11) "Local government" means any city, town, county, port district, and any federally recognized Indian tribe.

(12) "Local infrastructure financing" means the use of revenues received from local excise tax allocation revenues, local property tax allocation revenues, other revenues from local public sources, and revenues received from the local option sales and use tax authorized in RCW 82.14.475, dedicated to pay either the principal and interest on bonds authorized under RCW 39.102.150 or to pay public improvement costs on a pay-as-you-go basis subject to RCW 39.102.195, or both.

(13) "Local property tax allocation revenue" means those tax revenues derived from the receipt of regular property taxes levied on the property tax allocation revenue value and used for local infrastructure financing.

(14) "Low-income housing" means residential housing for low-income persons or families who lack the means which is necessary to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding. For the purposes of this subsection, "low income" means income that does not exceed eighty percent of the median family income for the standard metropolitan statistical area in which the revenue development area is located.

(15) "Ordinance" means any appropriate method of taking legislative action by a local government.

(16) "Participating local government" means a local government having a revenue development area within its geographic boundaries that has entered into a written agreement with a sponsoring local government as provided in RCW 39.102.080 to allow the use of all or some of its local excise tax allocation revenues or other revenues from local public sources dedicated for local infrastructure financing.

(17) "Participating taxing district" means a local government having a revenue development area within its geographic boundaries that has entered into a written agreement with a sponsoring local government as provided in RCW 39.102.080 to allow the use of some or all of its local property tax allocation revenues or other revenues from local public sources dedicated for local infrastructure financing.

(18) "Property tax allocation revenue base value" means the assessed value of real property located within a revenue development area less the property tax allocation revenue value.

(19)(a)(i) "Property tax allocation revenue value" means seventy-five percent of any increase in the assessed value of real property in a revenue development area resulting from:

(A) The placement of new construction, improvements to property, or both, on the assessment roll, where the new construction and improvements are initiated after the revenue development area is approved by the board;

(B) The cost of new housing construction, conversion, and rehabilitation improvements, when such cost is treated as

new construction for purposes of chapter 84.55 RCW as provided in RCW 84.14.020, and the new housing construction, conversion, and rehabilitation improvements are initiated after the revenue development area is approved by the board;

(C) The cost of rehabilitation of historic property, when such cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.26.070, and the rehabilitation is initiated after the revenue development area is approved by the board.

(ii) Increases in the assessed value of real property in a revenue development area resulting from (a)(i)(A) through (C) of this subsection are included in the property tax allocation revenue value in the initial year. These same amounts are also included in the property tax allocation revenue value in subsequent years unless the property becomes exempt from property taxation.

(b) "Property tax allocation revenue value" includes seventy-five percent of any increase in the assessed value of new construction consisting of an entire building in the years following the initial year, unless the building becomes exempt from property taxation.

(c) Except as provided in (b) of this subsection, "property tax allocation revenue value" does not include any increase in the assessed value of real property after the initial year.

(d) There is no property tax allocation revenue value if the assessed value of real property in a revenue development area has not increased as a result of any of the reasons specified in (a)(i)(A) through (C) of this subsection.

(e) For purposes of this subsection, "initial year" means:

(i) For new construction and improvements to property added to the assessment roll, the year during which the new construction and improvements are initially placed on the assessment roll;

(ii) For the cost of new housing construction, conversion, and rehabilitation improvements, when such cost is treated as new construction for purposes of chapter 84.55 RCW, the year when such cost is treated as new construction for purposes of levying taxes for collection in the following year; and

(iii) For the cost of rehabilitation of historic property, when such cost is treated as new construction for purposes of chapter 84.55 RCW, the year when such cost is treated as new construction for purposes of levying taxes for collection in the following year.

(20) "Public improvement costs" means the cost of: (a) Design, planning, acquisition including land acquisition, site preparation including land clearing, construction, reconstruction, rehabilitation, improvement, and installation of public improvements; (b) demolishing, relocating, maintaining, and operating property pending construction of public improvements; (c) the local government's portion of relocating utilities as a result of public improvements; (d) financing public improvements, including interest during construction, legal and other professional services, taxes, insurance, principal and interest costs on general indebtedness issued to finance public improvements, and any necessary reserves for general indebtedness; (e) assessments incurred in revaluing real property for the purpose of determining the property tax allocation revenue base value that are in excess of costs incurred by the assessor in accordance with the revaluation plan under chapter 84.41 RCW, and the costs of apportioning the taxes and complying with this chapter and other applicable law; (f) administrative expenses and feasibility studies reasonably necessary and related to these costs; and (g) any of the above-described costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of local infrastructure financing to fund the costs of the public improvements.

(21) "Public improvements" means:

(a) Infrastructure improvements within the revenue development area that include:

(i) Street, bridge, and road construction and maintenance, including highway interchange construction;

(ii) Water and sewer system construction and improvements, including wastewater reuse facilities;

(iii) Sidewalks, traffic controls, and streetlights;

(iv) Parking, terminal, and dock facilities;

(v) Park and ride facilities of a transit authority;

(vi) Park facilities and recreational areas, including trails; and

(vii) Storm water and drainage management systems;

(b) Expenditures for facilities and improvements that support affordable housing as defined in RCW 43.63A.510.

(22) "Real property" has the same meaning as in RCW 84.04.090 and also includes any privately owned improvements located on publicly owned land that are subject to property taxation.

(23) "Regular property taxes" means regular property taxes as defined in RCW 84.04.140, except: (a) Regular property taxes levied by public utility districts specifically for the purpose of making required payments of principal and interest on general indebtedness; (b) regular property taxes levied by the state for the support of the common schools under RCW 84.52.065; and (c) regular property taxes authorized by RCW 84.55.050 that are limited to a specific purpose. "Regular property taxes" do not include excess property tax levies that are exempt from the aggregate limits for junior and senior taxing districts as provided in RCW 84.52.043.

(24) "Relocating a business" means the closing of a business and the reopening of that business, or the opening of a new business that engages in the same activities as the previous business, in a different location within a one-year period, when an individual or entity has an ownership interest in the business at the time of closure and at the time of opening or reopening. "Relocating a business" does not include the closing and reopening of a business in a new location where the business has been acquired and is under entirely new ownership at the new location, or the closing and reopening of a business in a new location as a result of the exercise of the power of eminent domain.

(25) "Revenue development area" means the geographic area adopted by a sponsoring local government and approved by the board, from which local excise and property tax allocation revenues are derived for local infrastructure financing.

(26)(a) "Revenues from local public sources" means:

(i) Amounts of local excise tax allocation revenues and local property tax allocation revenues, dedicated by sponsoring local governments, participating local governments, and participating taxing districts, for local infrastructure financing; and

(ii) Any other local revenues, except as provided in (b) of this subsection, including revenues derived from federal and private sources.

(b) Revenues from local public sources do not include any local funds derived from state grants, state loans, or any other state moneys including any local sales and use taxes credited against the state sales and use taxes imposed under chapter 82.08 or 82.12 RCW.

(27) "Small business" has the same meaning as provided in RCW 19.85.020.

(28) "Sponsoring local government" means a city, town, or county, and for the purpose of this chapter a federally recognized Indian tribe or any combination thereof, that adopts a revenue development area and applies to the board to use local infrastructure financing.

(29) "State contribution" means the lesser of:

(a) One million dollars;

(b) The total amount of local excise tax allocation revenues, local property tax allocation revenues, and other revenues from local public sources, that are dedicated by a sponsoring local government, any participating local governments, and participating taxing districts, in the preceding calendar year to the payment of principal and interest on bonds issued under RCW 39.102.150 or to pay public improvement costs on a pay-as-you-go basis subject to RCW 39.102.195, or both;

(c) The amount of project award granted by the board in the notice of approval to use local infrastructure financing under RCW 39.102.040; or

(d) The highest amount of state excise tax allocation revenues and state property tax allocation revenues for any one calendar year as determined by the sponsoring local government and reported to the board and the department as required by RCW 39.102.140.

(30) "State excise tax allocation revenue" means an amount equal to the annual increase in state excise taxes estimated to be received by the state in each calendar year following the approval of the revenue development area by the board, from taxable activity within the revenue development area as set forth in the application provided to the board under RCW 39.102.040 and periodically updated and reported as required in RCW 39.102.140(1)(f).

(31) "State excise taxes" means revenues derived from state retail sales and use taxes under RCW 82.08.020(1) and 82.12.020 at the rate provided in RCW 82.08.020(1), less the amount of tax distributions from all local retail sales and use taxes, other than the local sales and use taxes authorized by RCW 82.14.475 for the applicable revenue development area, imposed on the same taxable events that are credited against the state retail sales and use taxes under chapters 82.08 and 82.12 RCW.

(32) "State property tax allocation revenue" means an amount equal to the estimated tax revenues derived from the imposition of property taxes levied by the state for the support of common schools under RCW 84.52.065 on the property tax allocation revenue value, as set forth in the application submitted to the board under RCW 39.102.040 and updated annually in the report required under RCW 39.102.140(1)(f).

(33) "Taxing district" means a government entity that levies or has levied for it regular property taxes upon real property located within a proposed or approved revenue development area. [2013 2nd sp.s. c 21 § 6; 2010 c 164 § 11. Prior: 2009 c 267 § 1; 2008 c 209 § 1; 2007 c 229 § 1; 2006 c 181 § 102.]

Expiration date—2010 c 164 §§ 11 and 12: "Sections 11 and 12 of this act expire June 30, 2039." [2010 c 164 § 13.]

Expiration date—2009 c 267: "This act expires June 30, 2039." [2009 c 267 § 9.]

Expiration date—2008 c 209 § 1: "Section 1 of this act expires June 30, 2039." [2008 c 209 § 2.]

Application—2007 c 229: "This act applies retroactively as well as prospectively." [2007 c 229 § 15.]

Severability—2007 c 229: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 229 § 16.]

Expiration date—2007 c 229: "This act expires June 30, 2039." [2007 c 229 § 17.]

39.102.030 Creation. ***(Expires June 30, 2044.)*** The local infrastructure financing tool program is created to assist local governments in financing authorized public infrastructure projects designed to promote economic development in the jurisdiction. The local infrastructure financing tool program is not created to enable existing Washington-based businesses from outside a revenue development area to relocate into a revenue development area. [2006 c 181 § 201.]

39.102.070 Local infrastructure financing—Conditions. ***(Expires June 30, 2044.)*** The use of local infrastructure financing under this chapter is subject to the following conditions:

(1) No funds may be used to finance, design, acquire, construct, equip, operate, maintain, remodel, repair, or reequip public facilities funded with taxes collected under RCW 82.14.048 or 82.14.390;

(2)(a) Except as provided in (b) of this subsection no funds may be used for public improvements other than projects identified within the capital facilities, utilities, housing, or transportation element of a comprehensive plan required under chapter 36.70A RCW;

(b) Funds may be used for public improvements that are historical preservation activities as defined in RCW 39.89.020;

(3) The public improvements proposed to be financed in whole or in part using local infrastructure financing are expected to encourage private development within the revenue development area and to increase the fair market value of real property within the revenue development area;

(4) A sponsoring local government, participating local government, or participating taxing district has entered or expects to enter into a contract with a private developer relating to the development of private improvements within the revenue development area or has received a letter of intent from a private developer relating to the developer's plans for the development of private improvements within the revenue development area;

(5) Private development that is anticipated to occur within the revenue development area, as a result of the public improvements, will be consistent with the countywide planning policy adopted by the county under RCW 36.70A.210

and the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW;

(6) The governing body of the sponsoring local government, and any cosponsoring local government, must make a finding that local infrastructure financing:

(a) Is not expected to be used for the purpose of relocating a business from outside the revenue development area, but within this state, into the revenue development area; and

(b) Will improve the viability of existing business entities within the revenue development area;

(7) The governing body of the sponsoring local government, and any cosponsoring local government, finds that the public improvements proposed to be financed in whole or in part using local infrastructure financing are reasonably likely to:

(a) Increase private residential and commercial investment within the revenue development area;

(b) Increase employment within the revenue development area;

(c) Improve the viability of any existing communities that are based on mixed-use development within the revenue development area; and

(d) Generate, over the period of time that the local option sales and use tax will be imposed under RCW 82.14.475, state excise tax allocation revenues and state property tax allocation revenues derived from the revenue development area that are equal to or greater than the respective state contributions made under this chapter;

(8) The sponsoring local government may only use local infrastructure financing in areas deemed in need of economic development or redevelopment within boundaries of the sponsoring local government. [2009 c 267 § 2; 2006 c 181 § 205.]

Expiration date—2009 c 267: See note following RCW 39.102.020.

43.17.250 Countywide planning policy. (1) Whenever a state agency is considering awarding grants or loans for a county, city, or town planning under RCW 36.70A.040 to finance public facilities, it shall consider whether the county, city, or town requesting the grant or loan has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(2) If a comprehensive plan, development regulation, or amendment thereto adopted by a county, city, or town has been appealed to the growth management hearings board under RCW 36.70A.280, the county, city, or town may not be determined to be ineligible or otherwise penalized in the acceptance of applications or the awarding of state agency grants or loans during the pendency of the appeal before the board or subsequent judicial appeals. This subsection (2) applies only to counties, cities, and towns that have: (a) Delayed the initial effective date of the action subject to the petition before the board until after the board issues a final determination; or (b) within thirty days of receiving notice of a petition for review by the board, delayed or suspended the effective date of the action subject to the petition before the board until after the board issues a final determination.

(3) When reviewing competing requests from counties, cities, or towns planning under RCW 36.70A.040, a state agency considering awarding grants or loans for public facilities shall accord additional preference to those counties, cities, or towns that have adopted a comprehensive plan and development regulations as required by RCW 36.70A.040. For the purposes of the preference accorded in this section, a county, city, or town planning under RCW 36.70A.040 is deemed to have satisfied the requirements for adopting a comprehensive plan and development regulations specified in RCW 36.70A.040 if the county, city, or town:

(a) Adopts or has adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040;

(b) Adopts or has adopted a comprehensive plan and development regulations before the state agency makes a decision regarding award recipients of the grants or loans if the county, city, or town failed to adopt a comprehensive plan and/or development regulations within the time periods specified in RCW 36.70A.040; or

(c) Demonstrates substantial progress toward adopting a comprehensive plan or development regulations within the time periods specified in RCW 36.70A.040. A county, city, or town that is more than six months out of compliance with the time periods specified in RCW 36.70A.040 shall not be deemed to demonstrate substantial progress for purposes of this section.

(4) The preference specified in subsection (3) of this section applies only to competing requests for grants or loans from counties, cities, or towns planning under RCW 36.70A.040. A request from a county, city, or town planning under RCW 36.70A.040 shall be accorded no additional preference based on subsection (3) of this section over a request from a county, city, or town not planning under RCW 36.70A.040.

(5) Whenever a state agency is considering awarding grants or loans for public facilities to a special district requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, it shall consider whether the county, city, or town in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040 and shall apply the standards in subsection (2) of this section and the preference specified in subsection (3) of this section and restricted in subsection (4) of this section. [2013 c 275 § 2; 1999 c 164 § 601; 1991 sp.s. c 32 § 25.]

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Savings—1999 c 164 §§ 301-303, 305, 306, and 601-603: See note following RCW 82.60.020.

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Additional notes found at www.leg.wa.gov

43.20.260 Review of water system plan, requirements—Municipal water suppliers, retail service. In approving the water system plan of a public water system, the department shall ensure that water service to be provided by the system under the plan for any new industrial, commercial, or residential use is consistent with the requirements of any comprehensive plans or development regulations adopted under chapter 36.70A RCW or any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county for the service area. A

municipal water supplier, as defined in RCW 90.03.015, has a duty to provide retail water service within its retail service area if: (1) Its service can be available in a timely and reasonable manner; (2) the municipal water supplier has sufficient water rights to provide the service; (3) the municipal water supplier has sufficient capacity to serve the water in a safe and reliable manner as determined by the department of health; and (4) it is consistent with the requirements of any comprehensive plans or development regulations adopted under chapter 36.70A RCW or any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county for the service area and, for water service by the water utility of a city or town, with the utility service extension ordinances of the city or town. [2003 1st sp.s. c 5 § 8.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

43.21B.001 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Date of receipt" means:

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

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

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

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

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

(6) "Land use board" means the growth management hearings board created in RCW 36.70A.250. [2010 c 210 § 2; 2004 c 204 § 1; 1987 c 109 § 4.]

Intent—2010 c 210: "It is the intent of the legislature to reduce and consolidate the number of state boards that conduct administrative review of environmental and land use decisions and to make more uniform the timelines for filing appeals with such boards. The legislature intends to eliminate the hydraulics appeals board and the forest practices appeals board by transferring their duties to the pollution control hearings board. The legislature further intends to eliminate certain preliminary informal appeals heard internally by agencies. The legislature also intends to consolidate administratively and physically collocate the growth management hearings boards into the environmental and land use hearings office by July 1, 2011." [2010 c 210 § 1.]

Effective dates—2010 c 210: "(1) Sections 1, 3, 5, 7, 9 through 14, and 16 through 42 of this act take effect July 1, 2010.

(2) Sections 2, 4, 6, 15, 43, and 46 of this act take effect July 1, 2011. The chief executive officer of the environmental hearings office may take the necessary steps to ensure that these sections are implemented on their effective date.

(3) Section 8 of this act takes effect June 30, 2019." [2010 c 210 § 44.]

Application—Pending cases and rules—2010 c 210: "(1) This act applies prospectively only and not retroactively. It applies only to appeals that are commenced on or after July 1, 2010. The repeals in section 41 of this act do not affect any existing right acquired or liability or obligation incurred under the statutes repealed or under any rule or order adopted under those statutes nor do they affect any proceeding instituted under them.

(2) All pending cases before the forest practices appeals board and the hydraulics appeals board shall be continued and acted upon by those boards. All existing rules of the forest practices appeals board shall remain in effect and be used by the pollution control hearings board until the pollution control hearings board adopts superseding rules for forest practices appeals." [2010 c 210 § 42.]

Purpose—1987 c 109: "The purposes of this act are to:

(1) Simplify and clarify existing statutory and administrative procedures for appealing decisions of the department of ecology and air pollution control authorities in order to (a) expedite those appeals, (b) insure that those appeals are conducted with a minimum of expense to save state and private resources, and (c) allow the appellate authorities to decide cases on their merits rather than on procedural technicalities.

(2) Clarify existing statutes relating to the environment but which refer to numerous agencies no longer in existence.

(3) Eliminate provisions no longer effective or meaningful and abbreviate statutory provisions which are unnecessarily long and confusing." [1987 c 109 § 1.]

Short title—1987 c 109: "This act may be referred to as the "ecology procedures simplification act of 1987." [1987 c 109 § 2.]

Construction—1987 c 109: "Unless otherwise specifically intended, this act shall not be construed to change existing substantive or procedural law; it should only clarify and standardize existing procedures." [1987 c 109 § 3.]

Rules—1987 c 109: "The department of ecology shall amend its rules by June 30, 1988, to effect the purposes of this act." [1987 c 109 § 160.]

Severability—1987 c 109: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 109 § 161.]

Captions—1987 c 109: "As used in this act, bill headings and section captions constitute no part of the law." [1987 c 109 § 162.]

Additional notes found at www.leg.wa.gov

43.21B.005 Environmental and land use hearings office created—Composition—Administrative appeals judges—Contracts for services *(as amended by 2010 c 210)*. (1) There is created an environmental and land use hearings office of the state of Washington. The environmental and land use hearings office ((~~shall~~)) consists of the pollution control hearings board created in RCW 43.21B.010, ((~~the forest practices appeals board created in RCW 76.09.210,~~)) the shorelines hearings board created in RCW 90.58.170, ((~~the environmental and land use hearings board created in chapter 43.21L RCW, and the hydraulic appeals board created in RCW 77.55.170. The chair of the pollution control hearings board shall be the chief executive officer of the environmental hearings office~~)) and the growth management hearings board created in RCW 36.70A.250. The governor shall designate one of the members of the pollution control hearings board or growth management hearings board to be the director of the environmental and land use hearings office during the term of the governor. Membership, powers, functions, and duties of the pollution control hearings board, ((~~the forest practices appeals board,~~)) the shorelines hearings board, and the ((~~hydraulic appeals~~)) growth management hearings board shall be as provided by law.

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

(3) Administrative appeals judges are not subject to chapter 41.06 RCW. The administrative appeals judges appointed under subsection (2) of this section are subject to discipline and termination, for cause, by the ((~~chief executive officer~~)) director of the environmental and land use hearings office. Upon written request by the person so disciplined or terminated, the ((~~chief executive officer~~)) director of the environmental and land use hearings office shall state the reasons for such action in writing. The person affected has a right of review by the superior court of Thurston county on

petition for reinstatement or other remedy filed within thirty days of receipt of such written reasons.

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

(5) The ((~~chief executive officer~~)) director of the environmental and land use hearings office may also contract for required services. [2010 c 210 § 4; (2010 c 210 § 3 expired July 1, 2011); 2003 c 393 § 18; 2003 c 39 § 22; 1999 c 125 § 1; 1990 c 65 § 1; 1986 c 173 § 3; 1979 ex.s. c 47 § 2.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Expiration dates—2010 c 210 §§ 3, 5, and 7: See note following RCW 43.21B.110.

43.21B.005 Environmental hearings office created—Composition—Administrative appeals judges—Contracts for services ***(as amended by 2010 1st sp.s. c 7).*** (1) There is created an environmental hearings office of the state of Washington. The environmental hearings office shall consist of the pollution control hearings board created in RCW 43.21B.010, the forest practices appeals board created in RCW *76.09.210, the shorelines hearings board created in RCW 90.58.170, ((~~the environmental and land use hearings board created in chapter 43.21L RCW,~~)) and the hydraulic appeals board created in **RCW ((~~77.55.170~~)) 77.55.301. The chair of the pollution control hearings board shall be the chief executive officer of the environmental hearings office. Membership, powers, functions, and duties of the pollution control hearings board, the forest practices appeals board, the shorelines hearings board, and the hydraulic appeals board shall be as provided by law.

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

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

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

(5) The chief executive officer may also contract for required services. [2010 1st sp.s. c 7 § 39. Prior: 2003 c 393 § 18; 2003 c 39 § 22; 1999 c 125 § 1; 1990 c 65 § 1; 1986 c 173 § 3; 1979 ex.s. c 47 § 2.]

Reviser's note: *(1) RCW 76.09.210 was repealed by 2010 c 210 § 41.

**(2) RCW 77.55.301 was repealed by 2010 c 210 § 41.

(3) RCW 43.21B.005 was amended three times during the 2010 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

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

Intent—1979 ex.s. c 47: "It is the intent of the legislature to consolidate administratively the pollution control hearings board, the forest practices appeals board, and the shorelines hearings board into one agency of state government with minimum disturbance to these boards. It is not the intent of the legislature in consolidating these boards to change the existing membership of these boards.

All full-time employees of the pollution control hearings board and the full-time employee of the forest practices appeals board shall be full-time employees of the environmental hearings office without loss of rights. Property and obligations of these boards and the shorelines hearings board shall be property and obligations of the environmental hearings office." [1979 ex.s. c 47 § 1.]

43.21B.110 Pollution control hearings board jurisdiction. ***(Effective until June 30, 2019.)*** (1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

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

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

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

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

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

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

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

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

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

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

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

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

(n) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a ves-

sel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

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

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

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

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

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

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW. [2013 c 291 § 33. Prior: 2010 c 210 § 7; 2010 c 84 § 2; prior: 2009 c 456 § 16; 2009 c 332 § 18; 2009 c 183 § 17; 2003 c 393 § 19; 2001 c 220 § 2; prior: 1998 c 262 § 18; 1998 c 156 § 8; 1998 c 36 § 22; 1993 c 387 § 22; prior: 1992 c 174 § 13; 1992 c 73 § 1; 1989 c 175 § 102; 1987 c 109 § 10; 1970 ex.s. c 62 § 41.]

Expiration date—2013 c 291 § 33: "Section 33 of this act expires June 30, 2019." [2013 c 291 § 46.]

Expiration dates—2010 c 210 §§ 3, 5, and 7: "(1) Sections 3 and 5 of this act expire July 1, 2011.

(2) Section 7 of this act expires June 30, 2019." [2010 c 210 § 45.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Expiration date—2010 c 84 § 2: "Section 2 of this act expires June 30, 2019." [2010 c 84 § 5.]

Application—2009 c 332: See note following RCW 90.03.110.

Expiration date—2009 c 183: See note following RCW 90.92.010.

Intent—2001 c 220: "The legislature intends to assure that appeals of department of ecology decisions regarding changes or transfers of water rights that are the subject of an ongoing general adjudication of water rights are governed by an appeals process that is efficient and eliminates unnecessary duplication, while fully preserving the rights of all affected parties. The legislature intends to address only the judicial review process for certain decisions of the pollution control hearings board when a general adjudication is being actively litigated. The legislature intends to fully preserve the role of the pollution control hearings board, except as specifically provided in this act." [2001 c 220 § 1.]

Construction—2001 c 220: "Nothing in this act shall be construed to affect or modify any treaty or other federal rights of an Indian tribe, or the rights of any federal agency or other person or entity arising under federal law. Nothing in this act is intended or shall be construed as affecting or modifying any existing right of a federally recognized Indian tribe to protect from impairment its federally reserved water rights in federal court." [2001 c 220 § 6.]

Effective date—2001 c 220: "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 immediately [May 9, 2001]." [2001 c 220 § 7.]

Effective date—1998 c 262: See RCW 90.64.900.

Intent—1998 c 36: See RCW 15.54.265.

Short title—1998 c 36: See note following RCW 15.54.265.

Effective date—1993 c 387: See RCW 18.104.930.

Effective dates—Severability—1992 c 73: See RCW 82.23B.902 and 90.56.905.

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

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Order for compliance with oil spill contingency or prevention plan not subject to review by pollution control hearings board: RCW 90.56.270.

Additional notes found at www.leg.wa.gov

43.21B.110 Pollution control hearings board jurisdiction. ***(Effective June 30, 2019.)*** (1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

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

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

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

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

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

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

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

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

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

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

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

(m) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

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

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

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

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

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

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW. [2013 c 291 § 34. Prior: 2010 c 210 § 8; 2010 c 84 § 3; prior: 2009 c 456 § 16; 2009 c 332 § 18; 2003 c 393 § 19; 2001 c 220 § 2; prior: 1998 c 262 § 18; 1998 c 156 § 8; 1998 c 36 § 22; 1993 c 387 § 22; prior: 1992 c 174 § 13; 1992 c 73 § 1; 1989 c 175 § 102; 1987 c 109 § 10; 1970 ex.s. c 62 § 41.]

Effective date—2013 c 291 § 34: "Section 34 of this act takes effect June 30, 2019." [2013 c 291 § 47.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Effective date—2010 c 84 § 3: "Section 3 of this act takes effect June 30, 2019." [2010 c 84 § 6.]

Application—2009 c 332: See note following RCW 90.03.110.

Intent—2001 c 220: "The legislature intends to assure that appeals of department of ecology decisions regarding changes or transfers of water rights that are the subject of an ongoing general adjudication of water rights are governed by an appeals process that is efficient and eliminates unnecessary duplication, while fully preserving the rights of all affected parties. The legislature intends to address only the judicial review process for certain decisions of the pollution control hearings board when a general adjudication is being actively litigated. The legislature intends to fully preserve the role of the pollution control hearings board, except as specifically provided in this act." [2001 c 220 § 1.]

Construction—2001 c 220: "Nothing in this act shall be construed to affect or modify any treaty or other federal rights of an Indian tribe, or the rights of any federal agency or other person or entity arising under federal law. Nothing in this act is intended or shall be construed as affecting or modifying any existing right of a federally recognized Indian tribe to protect from impairment its federally reserved water rights in federal court." [2001 c 220 § 6.]

Effective date—2001 c 220: "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 immediately [May 9, 2001]." [2001 c 220 § 7.]

Effective date—1998 c 262: See RCW 90.64.900.

Intent—1998 c 36: See RCW 15.54.265.

Short title—1998 c 36: See note following RCW 15.54.265.

Effective date—1993 c 387: See RCW 18.104.930.

Effective dates—Severability—1992 c 73: See RCW 82.23B.902 and 90.56.905.

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

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Order for compliance with oil spill contingency or prevention plan not subject to review by pollution control hearings board: RCW 90.56.270.

Additional notes found at www.leg.wa.gov

43.21B.230 Appeals of agency actions. (1) Unless otherwise provided by law, any person with standing may commence an appeal to the pollution control hearings board by filing a notice of appeal with the board within thirty days from the date of receipt of the decision being appealed.

(2) The appeal is timely if it is filed with the board and served upon the state or local agency whose action is being appealed within the same thirty-day period. Proof of service must be filed with the clerk of the hearings board to perfect the appeal.

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

(a) The appellant's name and address;

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

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

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

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

(f) A statement setting forth the relief sought. [2010 c 210 § 11; 2004 c 204 § 3; 1997 c 125 § 2; 1994 c 253 § 8; 1990 c 65 § 6; 1970 ex.s. c 62 § 53.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

43.21B.300 Penalty procedures *(as amended by 2010 c 84)*. (1) Any civil penalty provided in RCW 18.104.155, 70.94.431, 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, ((~~and~~)) 90.56.330, and 90.64.102 and chapter 90.76 RCW shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. Within thirty days after the notice is received, the person incurring the penalty may apply in writing to the department or the authority for the remission or mitigation of the penalty. Upon receipt of the application, the department or authority may remit or mitigate the penalty upon whatever terms the department or the authority in its discretion deems proper. The department or the authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

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

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

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

(b) Thirty days after receipt of the notice of disposition on application for relief from penalty, if such an application is made; or

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

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

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70.94.431, the disposition of which shall be

governed by that provision, RCW 70.105.080, which shall be credited to the hazardous waste control and elimination account created by RCW 70.105.180, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, and RCW 90.76.080, which shall be credited to the underground storage tank account created by RCW 90.76.100. [2010 c 84 § 4. Prior: 2009 c 456 § 17; 2009 c 178 § 2; 2007 c 147 § 9; 2004 c 204 § 4; 2001 c 36 § 2; 1993 c 387 § 23; 1992 c 73 § 2; 1987 c 109 § 5.]

43.21B.300 Penalty procedures *(as amended by 2010 c 210)*. (1) Any civil penalty provided in RCW 18.104.155, 70.94.431, 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, and 90.56.330 and chapter 90.76 RCW shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. For penalties issued by local air authorities, within thirty days after the notice is received, the person incurring the penalty may apply in writing to ((~~the department or~~)) the authority for the remission or mitigation of the penalty. Upon receipt of the application, the ((~~department or~~)) authority may remit or mitigate the penalty upon whatever terms ((~~the department or~~)) the authority in its discretion deems proper. The ((~~department or the~~)) authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

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

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

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

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

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

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

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70.94.431, the disposition of which shall be governed by that provision, RCW 70.105.080, which shall be credited to the hazardous waste control and elimination account created by RCW 70.105.180, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, and RCW 90.76.080, which shall be credited to the underground storage tank account created by RCW 90.76.100. [2010 c 210 § 12. Prior: 2009 c 456 § 17; 2009 c 178 § 2; 2007 c 147 § 9; 2004 c 204 § 4; 2001 c 36 § 2; 1993 c 387 § 23; 1992 c 73 § 2; 1987 c 109 § 5.]

Reviser's note: RCW 43.21B.300 was amended twice during the 2010 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Effective date—1993 c 387: See RCW 18.104.930.

Effective dates—Severability—1992 c 73: See RCW 82.23B.902 and 90.56.905.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Additional notes found at www.leg.wa.gov

43.21B.310 Appeal of orders. (1) The issuing agency in its discretion may stay the effectiveness of any order that has been appealed to the board during the pendency of such an appeal.

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

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

(4) An appealable decision or order shall be identified as such and shall contain a conspicuous notice to the recipient that it may be appealed only by filing an appeal with the hearings board and serving it on the issuing agency within thirty days of the date of receipt. [2010 c 210 § 13. Prior: 2009 c 456 § 18; 2009 c 178 § 3; 2004 c 204 § 5; prior: 2001 c 220 § 4; 2001 c 36 § 3; 1992 c 73 § 3; 1989 c 2 § 14 (Initiative Measure No. 97, approved November 8, 1988); (1987 3rd ex.s. c 2 § 49 repealed by 1989 c 2 § 24, effective March 1, 1989); 1987 c 109 § 6.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Intent—Construction—Effective date—2001 c 220: See notes following RCW 43.21B.110.

Effective dates—Severability—1992 c 73: See RCW 82.23B.902 and 90.56.905.

Short title—Construction—Existing agreements—Effective date—Severability—1989 c 2: See RCW 70.105D.900 and 70.105D.910 through 70.105D.921, respectively.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Additional notes found at www.leg.wa.gov

Chapter 43.21C RCW
STATE ENVIRONMENTAL POLICY

Sections

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43.21C.913 Severability—1983 c 117.
43.21C.914 Effective dates—1983 c 117.

Economic policy: Chapter 43.21H RCW.

43.21C.010 Purposes. The purposes of this chapter are: (1) To declare a state policy which will encourage productive and enjoyable harmony between humankind and the environment; (2) to promote efforts which will prevent or eliminate damage to the environment and biosphere; (3) and [to] stimulate the health and welfare of human beings; and (4) to enrich the understanding of the ecological systems and natural resources important to the state and nation. [2009 c 549 § 5095; 1971 ex.s. c 109 § 1.]

43.21C.011 Finding—Preservation and conservation of agricultural lands—Rule update and review. (1) The legislature finds the state's farm and range lands are a unique natural resource that provide for the production of food, fiber, alternative fuels, and other products necessary for the continued welfare of people locally, nationally, and globally. Each year, a significant amount of the state's agricultural land is irrevocably converted from actual or potential agricultural use to nonagricultural use. The continued decrease in the state's agricultural resource land base is threatening the ability of the agricultural industry to produce safe and affordable agricultural products in sufficient quantities to meet our current and future local, regional, and national food and fiber needs, as well as the demands of our export markets.

(2) The program and project actions of state agencies, local governments, and persons, in many cases, inadvertently result in the conversion of farmland to nonagricultural uses where alternative actions would be preferred. The legislature declares that it is the policy of the state to identify and take into account the adverse effects of these actions on the preservation and conservation of agricultural lands; to consider alternative actions, as appropriate, that could lessen such adverse effects; and to assure that such actions appropriately mitigate for unavoidable impacts to agricultural resources.

(3) By December 31, 2013, the department of ecology shall conduct rule making to review and consider whether the current environmental checklist form in WAC 197-11-960 ensures consideration of potential impacts to agricultural lands of long-term commercial significance, as that term is used in chapter 36.70A RCW. The review and update shall ensure that the checklist is adequate to allow for consideration of impacts on adjacent agricultural properties, drainage patterns, agricultural soils, and normal agricultural operations. [2012 c 247 § 1.]

43.21C.020 Legislative recognitions—Declaration—Responsibility. (1) The legislature, recognizing that a human being depends on biological and physical surroundings for food, shelter, and other needs, and for cultural enrichment as well; and recognizing further the profound impact of a human being's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource utilization and exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of human beings, declares that it is the continuing policy of the state of Washington, in cooperation with federal and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to: (a) Foster and promote the general welfare; (b) create and maintain conditions under which human beings and nature can exist in productive harmony; and (c) fulfill the social, economic, and other requirements of present and future generations of Washington citizens.

(2) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the state of Washington and all agencies of the state to use all practicable means, consistent with other essential considerations of state policy,

to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) Preserve important historic, cultural, and natural aspects of our national heritage;

(e) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(f) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(g) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) The legislature recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment. [2009 c 549 § 5096; 1971 ex.s. c 109 § 2.]

43.21C.030 Guidelines for state agencies, local governments—Statements—Reports—Advice—Information. The legislature authorizes and directs that, to the fullest extent possible: (1) The policies, regulations, and laws of the state of Washington shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all branches of government of this state, including state agencies, municipal and public corporations, and counties shall:

(a) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on the environment;

(b) Identify and develop methods and procedures, in consultation with the department of ecology and the ecological commission, which will insure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations;

(c) Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

(i) the environmental impact of the proposed action;

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) alternatives to the proposed action;

(iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(d) Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any public agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate federal, province, state, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the governor, the department of ecology, the ecological commission, and the public, and shall accompany the proposal through the existing agency review processes;

(e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(f) Recognize the worldwide and long-range character of environmental problems and, where consistent with state policy, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment;

(g) Make available to the federal government, other states, provinces of Canada, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(h) Initiate and utilize ecological information in the planning and development of natural resource-oriented projects. [2010 c 8 § 7002; 1971 ex.s. c 109 § 3.]

43.21C.0301 Decisions not subject to RCW 43.21C.030. (1) Decisions made under RCW 36.70A.720 pertaining to work plans, as defined in RCW 36.70A.703, are not subject to the requirements of RCW 43.21C.030(2)(c).

(2) Decisions made by a county under RCW 36.70A.710 on whether to participate in the voluntary stewardship program established by RCW 36.70A.705 are not subject to the requirements of RCW 43.21C.030(2)(c). [2011 c 360 § 19.]

Purpose—Intent—Conflict with federal requirements—2011 c 360: See RCW 36.70A.700 and 36.70A.904.

43.21C.031 Significant impacts. (1) An environmental impact statement (the detailed statement required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for legislation and other major actions having a probable significant, adverse environmental impact. The environmental impact statement may be combined with the recommendation or report on the proposal or issued as a separate document. The substantive decisions or recommendations shall be clearly identifiable in the combined document. Actions categorically exempt under RCW 43.21C.110(1)(a) and 43.21C.450 do not require environmental review or the preparation of an environmental impact statement under this chapter.

(2) An environmental impact statement is required to analyze only those probable adverse environmental impacts which are significant. Beneficial environmental impacts may be discussed. The responsible official shall consult with agencies and the public to identify such impacts and limit the scope of an environmental impact statement. The subjects listed in RCW 43.21C.030(2)(c) need not be treated as separate sections of an environmental impact statement. Discussions of significant short-term and long-term environmental impacts, significant irrevocable commitments of natural resources, significant alternatives including mitigation mea-

sures, and significant environmental impacts which cannot be mitigated should be consolidated or included, as applicable, in those sections of an environmental impact statement where the responsible official decides they logically belong. [2012 1st sp.s. c 1 § 302; 1995 c 347 § 203; 1983 c 117 § 1.]

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

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

43.21C.033 Threshold determination to be made within ninety days after application is complete. (1) Except as provided in subsection (2) of this section, the responsible official shall make a threshold determination on a completed application within ninety days after the application and supporting documentation are complete. The applicant may request an additional thirty days for the threshold determination. The governmental entity responsible for making the threshold determination shall by rule, resolution, or ordinance adopt standards, consistent with rules adopted by the department to implement this chapter, for determining when an application and supporting documentation are complete.

(2) This section shall not apply to a city, town, or county that:

(a) By ordinance adopted prior to April 1, 1992, has adopted procedures to integrate permit and land use decisions with the requirements of this chapter; or

(b) Is planning under RCW 36.70A.040 and is subject to the requirements of *RCW 36.70B.090. [1995 c 347 § 422; 1992 c 208 § 1.]

***Reviser's note:** RCW 36.70B.090 expired June 30, 2000, pursuant to 1998 c 286 § 8.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Effective date—1992 c 208 § 1: "Section 1 of this act shall take effect September 1, 1992." [1992 c 208 § 2.]

Additional notes found at www.leg.wa.gov

43.21C.034 Use of existing documents. Lead agencies are authorized to use in whole or in part existing environmental documents for new project or nonproject actions, if the documents adequately address environmental considerations set forth in RCW 43.21C.030. The prior proposal or action and the new proposal or action need not be identical, but must have similar elements that provide a basis for comparing their environmental consequences such as timing, types of impacts, alternatives, or geography. The lead agency shall independently review the content of the existing documents and determine that the information and analysis to be used is relevant and adequate. If necessary, the lead agency may require additional documentation to ensure that all environmental impacts have been adequately addressed. [1993 c 23 § 1.]

43.21C.035 Certain irrigation projects decisions exempt from RCW 43.21C.030(2)(c). Decisions pertaining to applications for appropriation of fifty cubic feet of water per second or less for irrigation projects promulgated by any person, private firm, private corporation or private association without resort to subsidy by either state or federal government pursuant to RCW 90.03.250 through 90.03.340, as now or hereafter amended, to be used for agricultural irrigation shall not be subject to the requirements of RCW 43.21C.030(2)(c), as now or hereafter amended. [1974 ex.s. c 150 § 1.]

43.21C.036 Hazardous substance remedial actions—Procedural requirements and documents to be integrated. In conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or if conducted by the department of ecology, the department of ecology to the maximum extent practicable shall integrate the procedural requirements and documents of this chapter with the procedures and documents under chapter 70.105D RCW. Such integration shall at a minimum include the public participation procedures of chapter 70.105D RCW and the public notice and review requirements of this chapter. [1994 c 257 § 21.]

Severability—1994 c 257: See note following RCW 36.70A.270.

Additional notes found at www.leg.wa.gov

43.21C.037 Application of RCW 43.21C.030(2)(c) to forest practices. (1) Decisions pertaining to applications for Class I, II, and III forest practices, as defined by rule of the forest practices board under RCW 76.09.050, are not subject to the requirements of RCW 43.21C.030(2)(c) as now or hereafter amended.

(2) When the applicable county, city, or town requires a license in connection with any proposal involving forest practices:

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

(b) On lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, then the local government, rather than the department of natural resources, is responsible for any detailed statement required under RCW 43.21C.030(2)(c).

(3) Those forest practices determined by rule of the forest practices board to have a potential for a substantial impact on the environment, and thus to be Class IV practices, require an evaluation by the department of natural resources as to whether or not a detailed statement must be prepared pursuant to this chapter. The evaluation shall be made within ten days from the date the department receives the application. A Class IV forest practice application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. This section shall not be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action regarding a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. [2011 c 207 § 3; 1997 c 173 § 6; 1983 c 117 § 2; 1981 c 290 § 1.]

43.21C.038 Application of RCW 43.21C.030(2)(c) to school closures. Nothing in RCW 43.21C.030(2)(c) shall be construed to require the preparation of an environmental impact statement or the making of a threshold determination for any decision or any action commenced subsequent to September 1, 1982, pertaining to a plan, program, or decision for the closure of a school or schools or for the school closure portion of any broader policy, plan or program by a school district board of directors. [1983 c 109 § 1.]

43.21C.0381 Application of RCW 43.21C.030(2)(c) to decisions pertaining to air operating permits. Decisions pertaining to the issuance, renewal, reopening, or revision of an air operating permit under RCW 70.94.161 are not subject to the requirements of RCW 43.21C.030(2)(c). [1995 c 172 § 1.]

43.21C.0382 Application of RCW 43.21C.030(2)(c) to watershed restoration projects—Fish habitat enhancement projects. Decisions pertaining to watershed restoration projects as defined in RCW 89.08.460 are not subject to the requirements of RCW 43.21C.030(2)(c). Decisions pertaining to fish habitat enhancement projects meeting the criteria of *RCW 77.55.290(1) and being reviewed and approved according to the provisions of *RCW 77.55.290 are not subject to the requirements of RCW 43.21C.030(2)(c). [2003 c 39 § 23; 1998 c 249 § 12; 1995 c 378 § 12.]

***Reviser's note:** RCW 77.55.290 was recodified as RCW 77.55.181 pursuant to 2005 c 146 § 1001.

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.181.

43.21C.0383 Application of RCW 43.21C.030(2)(c) to waste discharge permits. The following waste discharge permit actions are not subject to the requirements of RCW 43.21C.030(2)(c):

(1) For existing discharges, the issuance, reissuance, or modification of a waste discharge permit that contains conditions no less stringent than federal effluent limitations and state rules;

(2) The issuance of a construction storm water general permit under chapter 90.48 RCW for a proposal disturbing less than five acres. The exemption in this subsection does not apply if, under rules adopted by the department of ecology, the proposal would otherwise be subject to the requirements of RCW 43.21C.030(2)(c). [2008 c 37 § 2; 1996 c 322 § 1.]

Intent—2008 c 37: "The legislature intends that the revised threshold adopted in 2005 for the department of ecology's construction storm water general permit should not increase the scope of projects subject to state environmental policy act review. The department of ecology should pursue rule making to achieve the intent of this act." [2008 c 37 § 1.]

43.21C.0384 Application of RCW 43.21C.030(2)(c) to wireless services facilities—Reporting requirement—Definitions. (1) Decisions pertaining to applications to site wireless service facilities are not subject to the requirements of RCW 43.21C.030(2)(c), if those facilities meet the following requirements:

(a) The collocation of new equipment, removal of equipment, or replacement of existing equipment on existing or replacement structures does not substantially change the physical dimensions of such structures; or

(b) The siting project involves constructing a wireless service tower less than sixty feet in height that is located in a commercial, industrial, manufacturing, forest, or agricultural zone. This exemption does not apply to projects within a designated critical area.

(2) The exemption authorized under subsection (1) of this section may only be applied to a project consisting of a series of actions when all actions in the series are categorically exempt and the actions together do not have a probable significant adverse environmental impact.

(3) The department of ecology shall adopt rules to create a categorical exemption for wireless service facilities that meet the conditions set forth in subsections (1) and (2) of this section.

(4) By January 1, 2020, all wireless service providers granted an exemption to RCW 43.21C.030(2)(c) must provide the legislature with the number of permits issued pertaining to wireless service facilities, the number of exemptions granted under this section, and the total dollar investment in wireless service facilities between July 1, 2013, and June 30, 2019.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Collocation" means the mounting or installation of equipment on an existing tower, building, or structure for the purpose of either transmitting or receiving, or both, radio frequency signals for communications purposes.

(b) "Existing structure" means any existing tower, pole, building, or other structure capable of supporting wireless service facilities.

(c) "Substantially change the physical dimensions" means:

(i) The mounting of equipment on a structure that would increase the height of the structure by more than ten percent, or twenty feet, whichever is greater; or

(ii) The mounting of equipment that would involve adding an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater.

(d) "Wireless service facilities" means facilities for the provision of wireless services.

(e) "Wireless services" means wireless data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations. [2013 c 317 § 1; 1996 c 323 § 2.]

Alphabetization—2013 c 317: "The code reviser is directed to put the defined terms in RCW 43.21C.0384(5) into alphabetical order." [2013 c 317 § 2.]

Findings—1996 c 323: See note following RCW 43.70.600.

43.21C.039 Metals mining and milling operations—Environmental impact statements required. Notwithstanding any provision in RCW 43.21C.030 and 43.21C.031 to the contrary, an environmental impact statement shall be prepared for any proposed metals mining and milling operation as required by RCW 78.56.050. [1994 c 232 § 25.]

Severability—1994 c 232: See RCW 78.56.900.

Effective date—1994 c 232 §§ 1-5, 9-17, and 23-31: See RCW 78.56.901.

Disclosures required with SEPA checklist, metals mining and milling operations: RCW 78.56.040.

Additional notes found at www.leg.wa.gov

43.21C.040 Examination of laws, regulations, policies by state agencies and local authorities—Report of deficiencies and corrective measures. All branches of government of this state, including state agencies, municipal and public corporations, and counties shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this chapter and shall propose to the governor not later than January 1, 1972, such measures as may be necessary to bring their authority and policies in conformity with the intent, purposes, and procedures set forth in this chapter. [1971 ex.s. c 109 § 4.]

43.21C.050 Specific statutory obligations not affected. Nothing in RCW 43.21C.030 or 43.21C.040 shall in any way affect the specific statutory obligations of any agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other public agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other public agency. [1971 ex.s. c 109 § 5.]

43.21C.060 Chapter supplementary—Conditioning or denial of governmental action. The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of all branches of government of this state, including state agencies, municipal and public corporations, and counties. Any governmental action may be conditioned or denied pursuant to this chapter: PROVIDED, That such conditions or denials shall be based upon policies identified by the appropriate governmental authority and incorporated into regulations, plans, or codes which are formally designated by the agency (or appropriate legislative body, in the case of local government) as possible bases for the exercise of authority pursuant to this chapter. Such designation shall occur at the time specified by RCW 43.21C.120. Such action may be conditioned only to mitigate specific adverse environmental impacts which are identified in the environmental documents prepared under this chapter. These conditions shall be stated in writing by the decision maker. Mitigation measures shall be reasonable and capable of being accomplished. In order to deny a proposal under this chapter, an agency must find that: (1) The proposal would result in significant adverse impacts identified in a final or supplemental environmental impact statement prepared under this chapter; and (2) reasonable mitigation measures are insufficient to mitigate the identified impact. Except for permits and variances issued pursuant to chapter 90.58 RCW, when such a governmental action, not requiring a legislative decision, is conditioned or denied by a nonelected official of a local governmental agency, the decision shall be appealable to the legislative authority of the acting local governmental agency unless that legislative authority formally eliminates such appeals. Such appeals shall be in accordance with procedures established for such appeals by the legislative authority of the acting local governmental agency. [1983 c 117 § 3; 1977 ex.s. c 278 § 2; 1971 ex.s. c 109 § 6.]

43.21C.065 Impact fees and fees for system improvements. A person required to pay an impact fee for system improvements pursuant to RCW 82.02.050 through 82.02.090 shall not be required to pay a fee pursuant to RCW 43.21C.060 for those same system improvements. [1992 c 219 § 1.]

43.21C.075 Appeals. (1) Because a major purpose of this chapter is to combine environmental considerations with public decisions, any appeal brought under this chapter shall be linked to a specific governmental action. The State Environmental Policy Act provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter. The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action.

(2) Unless otherwise provided by this section:

(a) Appeals under this chapter shall be of the governmental action together with its accompanying environmental determinations.

(b) Appeals of environmental determinations made (or lacking) under this chapter shall be commenced within the time required to appeal the governmental action which is subject to environmental review.

(3) If an agency has a procedure for appeals of agency environmental determinations made under this chapter, such procedure:

(a) Shall allow no more than one agency appeal proceeding on each procedural determination (the adequacy of a determination of significance/nonsignificance or of a final environmental impact statement);

(b) Shall consolidate an appeal of procedural issues and of substantive determinations made under this chapter (such as a decision to require particular mitigation measures or to deny a proposal) with a hearing or appeal on the underlying governmental action by providing for a single simultaneous hearing before one hearing officer or body to consider the agency decision or recommendation on a proposal and any environmental determinations made under this chapter, with the exception of:

(i) An appeal of a determination of significance;

(ii) An appeal of a procedural determination made by an agency when the agency is a project proponent, or is funding a project, and chooses to conduct its review under this chapter, including any appeals of its procedural determinations, prior to submitting an application for a project permit;

(iii) An appeal of a procedural determination made by an agency on a nonproject action; or

(iv) An appeal to the local legislative authority under RCW 43.21C.060 or other applicable state statutes;

(c) Shall provide for the preparation of a record for use in any subsequent appeal proceedings, and shall provide for any subsequent appeal proceedings to be conducted on the record, consistent with other applicable law. An adequate record consists of findings and conclusions, testimony under oath, and

taped or written transcript. An electronically recorded transcript will suffice for purposes of review under this subsection; and

(d) Shall provide that procedural determinations made by the responsible official shall be entitled to substantial weight.

(4) If a person aggrieved by an agency action has the right to judicial appeal and if an agency has an administrative appeal procedure, such person shall, prior to seeking any judicial review, use such agency procedure if any such procedure is available, unless expressly provided otherwise by state statute.

(5) Some statutes and ordinances contain time periods for challenging governmental actions which are subject to review under this chapter, such as various local land use approvals (the "underlying governmental action"). RCW 43.21C.080 establishes an optional "notice of action" procedure which, if used, imposes a time period for appealing decisions under this chapter. This subsection does not modify any such time periods. In this subsection, the term "appeal" refers to a judicial appeal only.

(a) If there is a time period for appealing the underlying governmental action, appeals under this chapter shall be commenced within such time period. The agency shall give official notice stating the date and place for commencing an appeal.

(b) If there is no time period for appealing the underlying governmental action, and a notice of action under RCW 43.21C.080 is used, appeals shall be commenced within the time period specified by RCW 43.21C.080.

(6)(a) Judicial review under subsection (5) of this section of an appeal decision made by an agency under subsection (3) of this section shall be on the record, consistent with other applicable law.

(b) A taped or written transcript may be used. If a taped transcript is to be reviewed, a record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review. A party may provide a written transcript of portions of the testimony at the party's own expense or apply to that court for an order requiring the party seeking review to pay for additional portions of the written transcript.

(c) Judicial review under this chapter shall without exception be of the governmental action together with its accompanying environmental determinations.

(7) Jurisdiction over the review of determinations under this chapter in an appeal before an agency or superior court shall upon consent of the parties be transferred in whole or part to the shorelines hearings board. The shorelines hearings board shall hear the matter and sign the final order expeditiously. The superior court shall certify the final order of the shorelines hearings board and the certified final order may only be appealed to an appellate court. In the case of an appeal under this chapter regarding a project or other matter that is also the subject of an appeal to the shorelines hearings board under chapter 90.58 RCW, the shorelines hearings board shall have sole jurisdiction over both the appeal under this section and the appeal under chapter 90.58 RCW, shall consider them together, and shall issue a final order within one hundred eighty days as provided in RCW 90.58.180.

(8) For purposes of this section and RCW 43.21C.080, the words "action", "decision", and "determination" mean substantive agency action including any accompanying procedural determinations under this chapter (except where the word "action" means "appeal" in RCW 43.21C.080(2)). The word "action" in this section and RCW 43.21C.080 does not mean a procedural determination by itself made under this chapter. The word "determination" includes any environmental document required by this chapter and state or local implementing rules. The word "agency" refers to any state or local unit of government. Except as provided in subsection (5) of this section, the word "appeal" refers to administrative, legislative, or judicial appeals.

(9) The court in its discretion may award reasonable attorneys' fees of up to one thousand dollars in the aggregate to the prevailing party, including a governmental agency, on issues arising out of this chapter if the court makes specific findings that the legal position of a party is frivolous and without reasonable basis. [1997 c 429 § 49; 1995 c 347 § 204; 1994 c 253 § 4; 1983 c 117 § 4.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

43.21C.080 Notice of action by governmental agency—How publicized—Time limitation for commencing challenge to action. (1) Notice of any action taken by a governmental agency may be publicized by the acting governmental agency, the applicant for, or the proponent of such action, in substantially the form as set forth in rules adopted under RCW 43.21C.110:

(a) By publishing notice on the same day of each week for two consecutive weeks in a legal newspaper of general circulation in the area where the property which is the subject of the action is located;

(b) By filing notice of such action with the department of ecology at its main office in Olympia prior to the date of the last newspaper publication; and

(c) Except for those actions which are of a nonproject nature, by one of the following methods which shall be accomplished prior to the date of first newspaper publication;

(i) Mailing to the latest recorded real property owners, as shown by the records of the county treasurer, who share a common boundary line with the property upon which the project is proposed through United States mail, first class, postage prepaid.

(ii) Posting of the notice in a conspicuous manner on the property upon which the project is to be constructed.

(2)(a) Except as otherwise provided in RCW 43.21C.075(5)(a), any action to set aside, enjoin, review, or otherwise challenge any such governmental action or subsequent governmental action for which notice is given as provided in subsection (1) of this section on grounds of noncompliance with the provisions of this chapter shall be commenced within twenty-one days from the date of last

newspaper publication of the notice pursuant to subsection (1) of this section, or be barred.

(b) Any subsequent governmental action on the proposal for which notice has been given as provided in subsection (1) of this section shall not be set aside, enjoined, reviewed, or otherwise challenged on grounds of noncompliance with the provisions of RCW 43.21C.030(2)(a) through (h) unless there has been a substantial change in the proposal between the time of the first governmental action and the subsequent governmental action that is likely to have adverse environmental impacts beyond the range of impacts previously analyzed, or unless the action now being considered was identified in an earlier detailed statement or declaration of nonsignificance as being one which would require further environmental evaluation. [1995 c 347 § 205; 1977 ex.s. c 278 § 1; 1974 ex.s. c 179 § 2; 1973 1st ex.s. c 179 § 2.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Purpose—1974 ex.s. c 179: "The purpose of this 1974 amendatory act is to establish methods and means of providing for full implementation of chapter 43.21C RCW (the state environmental policy act of 1971) in a manner which reduces duplicative and wasteful practices, establishes effective and uniform procedures, encourages public involvement, and promotes certainty with respect to the requirements of the act." [1974 ex.s. c 179 § 1.]

Effective date—1973 1st ex.s. c 179: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect on July 1, 1973: PROVIDED, HOWEVER, That prior thereto, the department of ecology may take such actions, including the issuing of notices and the conduct of public hearing, as are necessary to insure the implementation of section 1 of this act." [1973 1st ex.s. c 179 § 4.]

Additional notes found at www.leg.wa.gov

43.21C.087 List of filings required by RCW 43.21C.080. The department of ecology shall prepare a list of all filings required by RCW 43.21C.080 each week and shall make such list available to any interested party. The list of filings shall include a brief description of the governmental action and the project involved in such action, along with the location of where information on the project or action may be obtained. Failure of the department to include any project or action shall not affect the running of the statute of limitations provided in RCW 43.21C.080. [1974 ex.s. c 179 § 14.]

Purpose—1974 ex.s. c 179: See note following RCW 43.21C.080.

43.21C.090 Decision of governmental agency to be accorded substantial weight. In any action involving an attack on a determination by a governmental agency relative to the requirement or the absence of the requirement, or the adequacy of a "detailed statement", the decision of the governmental agency shall be accorded substantial weight. [1973 1st ex.s. c 179 § 3.]

Effective date—1973 1st ex.s. c 179: See note following RCW 43.21C.080.

Additional notes found at www.leg.wa.gov

43.21C.095 State environmental policy act rules to be accorded substantial deference. The rules adopted under RCW 43.21C.110 shall be accorded substantial deference in the interpretation of this chapter. [2012 1st sp.s. c 1 § 312; 1983 c 117 § 5.]

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

43.21C.110 Content of state environmental policy act rules. It shall be the duty and function of the department of ecology:

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

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

(b) Rules for criteria and procedures applicable to the determination of when an act of a branch of government is a major action significantly affecting the quality of the environment for which a detailed statement is required to be prepared pursuant to RCW 43.21C.030.

(c) Rules and procedures applicable to the preparation of detailed statements and other environmental documents, including but not limited to rules for timing of environmental review, obtaining comments, data and other information, and providing for and determining areas of public participation which shall include the scope and review of draft environmental impact statements.

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

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

(f) Definition of terms relevant to the implementation of this chapter including the establishment of a list of elements of the environment. Analysis of environmental considerations under RCW 43.21C.030(2) may be required only for those subjects listed as elements of the environment (or por-

tions thereof). The list of elements of the environment shall consist of the "natural" and "built" environment. The elements of the built environment shall consist of public services and utilities (such as water, sewer, schools, fire and police protection), transportation, environmental health (such as explosive materials and toxic waste), and land and shoreline use (including housing, and a description of the relationships with land use and shoreline plans and designations, including population).

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

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

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

(j) Rules for utilization of a detailed statement for more than one action and rules improving environmental analysis of nonproject proposals and encouraging better interagency coordination and integration between this chapter and other environmental laws.

(k) Rules relating to actions which shall be exempt from the provisions of this chapter in situations of emergency.

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

(m) Rules and procedures that provide for the integration of environmental review with project review as provided in RCW 43.21C.240. The rules and procedures shall be jointly developed with the department of commerce and shall be applicable to the preparation of environmental documents for actions in counties, cities, and towns planning under RCW 36.70A.040. The rules and procedures shall also include procedures and criteria to analyze planned actions under RCW 43.21C.440 and revisions to the rules adopted under this section to ensure that they are compatible with the requirements and authorizations of chapter 347, Laws of 1995, as amended by chapter 429, Laws of 1997. Ordinances or procedures adopted by a county, city, or town to implement the provisions of chapter 347, Laws of 1995 prior to the effective date of rules adopted under this subsection (1)(m) shall continue to be effective until the adoption of any new or revised ordinances or procedures that may be required. If any revisions are required as a result of rules adopted under this subsection (1)(m), those revisions shall be made within the time limits specified in RCW 43.21C.120.

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

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

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

(3) Rules adopted pursuant to this section shall be subject to the review procedures of chapter 34.05 RCW. [2012 1st sp.s. c 1 § 311; 1997 c 429 § 47; 1995 c 347 § 206; 1983 c 117 § 7; 1974 ex.s. c 179 § 6.]

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

Severability—1997 c 429: See note following RCW 36.70A.3201.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Purpose—1974 ex.s. c 179: See note following RCW 43.21C.080.

Additional notes found at www.leg.wa.gov

43.21C.120 Rules, ordinances, resolutions and regulations—Adoption—Effective dates. (1) All agencies of government of this state are directed, consistent with rules and guidelines adopted under RCW 43.21C.110, including any revisions, to adopt rules pertaining to the integration of the policies and procedures of this chapter (the state environmental policy act of 1971), into the various programs under their jurisdiction for implementation. Designation of polices [policies] under RCW 43.21C.060 and adoption of rules required under this section shall take place not later than one hundred eighty days after the effective date of rules and guidelines adopted pursuant to RCW 43.21C.110, or after the establishment of an agency, whichever shall occur later.

(2) Rules adopted by state agencies under subsection (1) of this section shall be adopted in accordance with the provisions of chapter 34.05 RCW and shall be subject to the review procedures of RCW *34.05.538 and 34.05.240.

(3) All public and municipal corporations, political subdivisions, and counties of this state are directed, consistent with rules and guidelines adopted under RCW 43.21C.110, including any revisions, to adopt rules, ordinances, or resolutions pertaining to the integration of the policies and procedures of this chapter (the state environmental policy act of 1971), into the various programs under their jurisdiction for implementation. Designation of policies under RCW 43.21C.060 and adoption of the rules required under this section shall take place not later than one hundred eighty days after the effective date of rules and guidelines adopted pursuant to RCW 43.21C.110, or after the establishment of the governmental entity, whichever shall occur later.

(4) Ordinances or regulations adopted prior to the effective date of rules and guidelines adopted pursuant to RCW 43.21C.110 shall continue to be effective until the adoptions of any new or revised ordinances or regulations which may be required: PROVIDED, That revisions required by this section as a result of rule changes under RCW 43.21C.110 are made within the time limits specified by this section. [1983 c 117 § 8; 1974 ex.s. c 179 § 8.]

***Reviser's note:** RCW 34.05.538 was repealed by 1989 c 175 § 185, effective July 1, 1989.

Purpose—1974 ex.s. c 179: See note following RCW 43.21C.080.

43.21C.130 Model ordinances. The department of ecology, in consultation with concerned state agencies, shall with the assistance of the associations of county prosecutors and city attorneys, the association of county elected officials,

the Washington state association of counties, and the association of cities, draft model ordinances for use by counties, cities and towns in drafting their ordinances under this chapter. [1974 ex.s. c 179 § 10.]

Purpose—1974 ex.s. c 179: See note following RCW 43.21C.080.

43.21C.135 Authority of local governmental units to adopt rules, guidelines and model ordinances by reference. (1) All public and municipal corporations, political subdivisions, and counties of the state are authorized to adopt rules, ordinances, and resolutions which incorporate any of the following by reference to the appropriate sections of the Washington Administrative Code:

(a) Rules and guidelines adopted under RCW 43.21C.110(1) in accordance with the administrative procedure act, chapter 34.05 RCW;

(b) Model ordinances adopted by the department of ecology under RCW 43.21C.130 in accordance with the administrative procedure act, chapter 34.05 RCW.

(2) If any rule, ordinance, or resolution is adopted by reference pursuant to subsection (1) of this section, any publication of such rule, ordinance, or resolution shall be accompanied by a summary of the contents of the sections of the Washington Administrative Code referred to. Such summaries shall be provided to the adopting units of local government by the department of ecology: PROVIDED, That any proposal for a rule, ordinance or resolution which would adopt by reference rules and guidelines or model ordinances pursuant to this section shall be accompanied by the full text of the material to be adopted which need not be published but shall be maintained on file for public use and examination.

(3) Whenever any rule, ordinance, or resolution is adopted by reference pursuant to subsection (1) of this section, the corporation, political subdivision, or county of the state adopting the rule, ordinance, or resolution shall maintain on file for public use and examination not less than three copies of the sections of the Washington Administrative Code referred to. [1975-'76 2nd ex.s. c 99 § 1.]

43.21C.150 RCW 43.21C.030(2)(c) inapplicable when statement previously prepared pursuant to national environmental policy act. The requirements of RCW 43.21C.030(2)(c) pertaining to the preparation of a detailed statement by branches of government shall not apply when an adequate detailed statement has been previously prepared pursuant to the national environmental policy act of 1969, in which event said prepared statement may be utilized in lieu of a separately prepared statement under RCW 43.21C.030(2)(c). [1975 1st ex.s. c 206 § 1; 1974 ex.s. c 179 § 12.]

Purpose—1974 ex.s. c 179: See note following RCW 43.21C.080.

43.21C.160 Utilization of statement prepared under RCW 43.21C.030 to implement *chapter 90.62 RCW—Utilization of *chapter 90.62 RCW procedures to satisfy RCW 43.21C.030(2)(c). In the implementation of *chapter 90.62 RCW (the Environmental Coordination Procedures Act of 1973), the department of ecology, consistent with guidelines adopted by the council shall adopt rules which insure that one detailed statement prepared under RCW 43.21C.030 may be utilized by all branches of government participating in the processing of a master application. Whenever the procedures established pursuant to *chapter 90.62 RCW are used, those procedures shall be utilized wherever possible to satisfy the procedural requirements of RCW 43.21C.030(2)(c). The time limits for challenges provided for in RCW 43.21C.080(2) shall be applicable when such procedures are so utilized. [1974 ex.s. c 179 § 13.]

***Reviser's note:** Chapter 90.62 RCW was repealed by 1995 c 347 § 619.

Purpose—1974 ex.s. c 179: See note following RCW 43.21C.080.

43.21C.170 Council on environmental policy. The legislature may establish a council on environmental policy to review and assist in the implementation of this chapter. [1983 c 117 § 6; 1974 ex.s. c 179 § 4. Formerly RCW 43.21C.100.]

43.21C.175 Council on environmental policy—Personnel. The council may employ such personnel as are necessary for the performances of its duties. [1974 ex.s. c 179 § 5. Formerly RCW 43.21C.105.]

43.21C.210 Certain actions during state of emergency exempt from chapter. This chapter does not apply to actions authorized by RCW 43.37.215 and 43.37.220 which are undertaken during a state of emergency declared by the governor under RCW 43.06.210. [1981 c 278 § 4.]

43.21C.220 Incorporation of city or town exempt from chapter. The incorporation of a city or town is exempted from compliance with this chapter. [1982 c 220 § 6.]

Severability—1982 c 220: See note following RCW 36.93.100.

Incorporation proceedings exempt from chapter: RCW 36.93.170.

Additional notes found at www.leg.wa.gov

43.21C.222 Annexation by city or town exempt from chapter. Annexation of territory by a city or town is exempted from compliance with this chapter. [1994 c 216 § 19.]

Effective date—1994 c 216: See note following RCW 35.02.015.

Additional notes found at www.leg.wa.gov

43.21C.225 Consolidation and annexation of cities and towns exempt from chapter. Consolidations of cities or towns, and the annexations of all of a city or town by another city or town, are exempted from compliance with this chapter. [1985 c 281 § 29.]

Severability—1985 c 281: See RCW 35.10.905.

Additional notes found at www.leg.wa.gov

43.21C.227 Disincorporation of a city or town or reduction of city or town limits exempt from chapter. (1) The disincorporation of a city or town is exempt from compliance with this chapter.

(2) The reduction of city or town limits is exempt from compliance with this chapter. [2002 c 93 § 2.]

Intent—2002 c 93: "Incorporations and annexations are exempt from the state environmental policy act. However, there are no comparable exemptions for reductions of city limits or disincorporations. It is the legisla-

ture's intent to provide that a reduction in city limits or disincorporation is not subject to the state environmental policy act." [2002 c 93 § 1.]

43.21C.229 Infill development—Categorical exemptions from chapter. (1) In order to accommodate infill development and thereby realize the goals and policies of comprehensive plans adopted according to chapter 36.70A RCW, a city or county planning under RCW 36.70A.040 is authorized by this section to establish categorical exemptions from the requirements of this chapter. An exemption adopted under this section applies even if it differs from the categorical exemptions adopted by rule of the department under RCW 43.21C.110(1)(a). An exemption may be adopted by a city or county under this section if it meets the following criteria:

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

(i) Residential development;

(ii) Mixed-use development; or

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

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

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

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

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

(2) Any categorical exemption adopted by a city or county under this section shall be subject to the rules of the department adopted according to RCW 43.21C.110(1)(a) that provide exceptions to the use of categorical exemptions adopted by the department. [2012 1st sp.s. c 1 § 304; 2003 c 298 § 1.]

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

Severability—2003 c 298: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 298 § 3.]

43.21C.230 Development and adoption of plan under chapter 43.180 RCW exempt from chapter. This chapter does not apply to the development or adoption of the plan required to be developed and adopted under chapter 43.180 RCW. [1983 c 161 § 29.]

Severability—Effective dates—1983 c 161: See RCW 43.180.903 and 43.180.904.

Additional notes found at www.leg.wa.gov

43.21C.240 Project review under the growth management act. (1) If the requirements of subsection (2) of this section are satisfied, a county, city, or town reviewing a project action shall determine that the requirements for environmental analysis, protection, and mitigation measures in the county, city, or town's development regulations and comprehensive plans adopted under chapter 36.70A RCW, and in other applicable local, state, or federal laws and rules provide adequate analysis of and mitigation for the specific adverse environmental impacts of the project action to which the requirements apply. Rules adopted by the department according to RCW 43.21C.110 regarding project specific impacts that may not have been adequately addressed apply to any determination made under this section. In these situations, in which all adverse environmental impacts will be mitigated below the level of significance as a result of mitigation measures included by changing, clarifying, or conditioning of the proposed action and/or regulatory requirements of development regulations adopted under chapter 36.70A RCW or other local, state, or federal laws, a determination of nonsignificance or a mitigated determination of nonsignificance is the proper threshold determination.

(2) A county, city, or town shall make the determination provided for in subsection (1) of this section if:

(a) In the course of project review, including any required environmental analysis, the local government considers the specific probable adverse environmental impacts of the proposed action and determines that these specific impacts are adequately addressed by the development regulations or other applicable requirements of the comprehensive plan, subarea plan element of the comprehensive plan, or other local, state, or federal rules or laws; and

(b) The local government bases or conditions its approval on compliance with these requirements or mitigation measures.

(3) If a county, city, or town's comprehensive plans, subarea plans, and development regulations adequately address a project's probable specific adverse environmental impacts, as determined under subsections (1) and (2) of this section, the county, city, or town shall not impose additional mitigation under this chapter during project review. Project review shall be integrated with environmental analysis under this chapter.

(4) A comprehensive plan, subarea plan, or development regulation shall be considered to adequately address an impact if the county, city, or town, through the planning and environmental review process under chapter 36.70A RCW and this chapter, has identified the specific adverse environmental impacts and:

(a) The impacts have been avoided or otherwise mitigated; or

(b) The legislative body of the county, city, or town has designated as acceptable certain levels of service, land use designations, development standards, or other land use planning required or allowed by chapter 36.70A RCW.

(5) In deciding whether a specific adverse environmental impact has been addressed by an existing rule or law of another agency with jurisdiction with environmental expertise with regard to a specific environmental impact, the county, city, or town shall consult orally or in writing with that agency and may expressly defer to that agency. In making this deferral, the county, city, or town shall base or condition its project approval on compliance with these other existing rules or laws.

(6) Nothing in this section limits the authority of an agency in its review or mitigation of a project to adopt or otherwise rely on environmental analyses and requirements under other laws, as provided by this chapter.

(7) This section shall apply only to a county, city, or town planning under RCW 36.70A.040. [2003 c 298 § 2; 1995 c 347 § 202.]

Severability—2003 c 298: See note following RCW 43.21C.229.

Findings—Intent—1995 c 347 § 202: "(1) The legislature finds in adopting RCW 43.21C.240 that:

(a) Comprehensive plans and development regulations adopted by counties, cities, and towns under chapter 36.70A RCW and environmental laws and rules adopted by the state and federal government have addressed a wide range of environmental subjects and impacts. These plans, regulations, rules, and laws often provide environmental analysis and mitigation measures for project actions without the need for an environmental impact statement or further project mitigation.

(b) Existing plans, regulations, rules, or laws provide environmental analysis and measures that avoid or otherwise mitigate the probable specific adverse environmental impacts of proposed projects should be integrated with, and should not be duplicated by, environmental review under chapter 43.21C RCW.

(c) Proposed projects should continue to receive environmental review, which should be conducted in a manner that is integrated with and does not duplicate other requirements. Project-level environmental review should be used to: (i) Review and document consistency with comprehensive plans and development regulations; (ii) provide prompt and coordinated review by government agencies and the public on compliance with applicable environmental laws and plans, including mitigation for specific project impacts that have not been considered and addressed at the plan or development regulation level; and (iii) ensure accountability by local government to applicants and the public for requiring and implementing mitigation measures.

(d) When a project permit application is filed, an agency should analyze the proposal's environmental impacts, as required by applicable regulations and the environmental review process required by this chapter, in one project review process. The project review process should include land use, environmental, public, and governmental review, as provided by the applicable regulations and the rules adopted under this chapter, so that documents prepared under different requirements can be reviewed together by the public and other agencies. This project review will provide an agency with the information necessary to make a decision on the proposed project.

(e) Through this project review process: (i) If the applicable regulations require studies that adequately analyze all of the project's specific probable adverse environmental impacts, additional studies under this chapter will not be necessary on those impacts; (ii) if the applicable regulations require measures that adequately address such environmental impacts, additional measures would likewise not be required under this chapter; and (iii) if the applicable regulations do not adequately analyze or address a proposal's specific probable adverse environmental impacts, this chapter provides the authority and procedures for additional review.

(2) The legislature intends that a primary role of environmental review under chapter 43.21C RCW is to focus on the gaps and overlaps that may exist in applicable laws and requirements related to a proposed action. The review of project actions conducted by counties, cities, and towns planning under RCW 36.70A.040 should integrate environmental review with project review. Chapter 43.21C RCW should not be used as a substitute for other land use planning and environmental requirements." [1995 c 347 § 201.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

43.21C.250 Forest practices board—Emergency rules—Exempt from chapter. The duration and process for adopting emergency rules by the forest practices board pertaining to forest practices and the protection of aquatic resources as provided in RCW 76.09.055 are exempt from the procedural requirements of this chapter. [1999 sp.s. c 4 § 203.]

Effective date—1999 sp.s. c 4 §§ 201, 202, and 203: See note following RCW 76.09.055.

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

Additional notes found at www.leg.wa.gov

43.21C.260 Certain actions not subject to RCW 43.21C.030(2)(c)—Threshold determination on a watershed analysis. (1) Decisions pertaining to the following kinds of actions under chapter 4, Laws of 1999 sp. sess. are not subject to any procedural requirements implementing RCW 43.21C.030(2)(c): (a) Approval of forest road maintenance and abandonment plans under chapter 76.09 RCW and *RCW 77.55.100; (b) approval by the department of natural resources of future timber harvest schedules involving eastside clear cuts under rules implementing chapter 76.09 RCW; (c) acquisitions of forest lands in stream channel migration zones under RCW 76.09.040; and (d) acquisitions of conservation easements pertaining to forest lands in riparian zones under RCW 76.13.120.

(2) For purposes of the department's threshold determination on a watershed analysis, the department shall not make a determination of significance unless the prescriptions themselves, compared to rules or prescriptions in place prior to the analysis, will cause probable significant adverse impact on elements of the environment other than those addressed in the watershed analysis process. Nothing in this subsection shall be construed to effect the outcome of pending litigation regarding the department's authority in making a threshold determination on a watershed analysis. [2003 c 39 § 24; 1999 sp.s. c 4 § 1201.]

***Reviser's note:** RCW 77.55.100 was repealed by 2005 c 146 § 1006.

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

Additional notes found at www.leg.wa.gov

43.21C.300 Workshops—Handbook. The department of ecology shall conduct annual statewide workshops and publish an annual state environmental policy act handbook or supplement to assist persons in complying with the provisions of this chapter and the implementing rules. The workshops and handbook shall include, but not be limited to, measures to assist in preparation, processing, and review of environmental documents, relevant court decisions affecting this chapter or rules adopted under this chapter, legislative changes to this chapter, administrative changes to the rules, and any other information which will assist in orderly implementation of this chapter and rules.

The department shall develop the handbook and conduct the workshops in cooperation with, but not limited to, state agencies, the association of Washington cities, the Washington association of counties, educational institutions, and other groups or associations interested in the state environmental policy act. [1983 c 117 § 9.]

43.21C.400 Unfinished nuclear power projects—Council action exempt from this chapter. Council actions pursuant to the transfer of the site or portions of the site under RCW 80.50.300 are exempt from the provisions of this chapter. [1996 c 4 § 4.]

Severability—Effective date—1996 c 4: See RCW 80.50.903 and 80.50.904.

Energy facility site evaluation council: RCW 80.50.030.

Additional notes found at www.leg.wa.gov

43.21C.410 Battery charging and exchange station installation. (1) The installation of individual battery charging stations and battery exchange stations, which individually are categorically exempt under the rules adopted under RCW 43.21C.110, may not be disqualified from such categorically exempt status as a result of their being parts of a larger proposal that includes other such facilities and related utility networks under the rules adopted under RCW 43.21C.110.

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

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540. [2009 c 459 § 8.]

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.

Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

43.21C.420 Comprehensive plans and development regulations—Optional elements—Nonproject environmental impact statements—Subarea plans—Transfer of development rights program—Recovery of expenses. (1) Cities with a population greater than five thousand, in accordance with their existing comprehensive planning and development regulation authority under chapter 36.70A RCW, and in accordance with this section, may adopt optional elements of their comprehensive plans and optional development regulations that apply within specified subareas of the cities, that are either:

(a) Areas designated as mixed-use or urban centers in a land use or transportation plan adopted by a regional transportation planning organization; or

(b) Areas within one-half mile of a major transit stop that are zoned to have an average minimum density of fifteen dwelling units or more per gross acre.

(2) Cities located on the east side of the Cascade mountains and located in a county with a population of two hundred thirty thousand or less, in accordance with their existing comprehensive planning and development regulation authority under chapter 36.70A RCW, and in accordance with this section, may adopt optional elements of their comprehensive plans and optional development regulations that apply within the mixed-use or urban centers. The optional elements of their comprehensive plans and optional development regulations must enhance pedestrian, bicycle, transit, or other nonvehicular transportation methods.

(3) A major transit stop is defined as:

(a) A stop on a high capacity transportation service funded or expanded under the provisions of chapter 81.104 RCW;

(b) Commuter rail stops;

(c) Stops on rail or fixed guideway systems, including transitways;

(d) Stops on bus rapid transit routes or routes that run on high occupancy vehicle lanes; or

(e) Stops for a bus or other transit mode providing fixed route service at intervals of at least thirty minutes during the peak hours of operation.

(4)(a) A city that elects to adopt such an optional comprehensive plan element and optional development regulations shall prepare a nonproject environmental impact statement, pursuant to RCW 43.21C.030, assessing and disclosing the probable significant adverse environmental impacts of the optional comprehensive plan element and development regulations and of future development that is consistent with the plan and regulations.

(b) At least one community meeting must be held on the proposed subarea plan before the scoping notice for such a nonproject environmental impact statement is issued. Notice of scoping for such a nonproject environmental impact statement and notice of the community meeting required by this section must be mailed to all property owners of record within the subarea to be studied, to all property owners within one hundred fifty feet of the boundaries of such a subarea, to all affected federally recognized tribal governments whose ceded area is within one-half mile of the boundaries of the subarea, and to agencies with jurisdiction over the future development anticipated within the subarea.

(c) In cities with over five hundred thousand residents, notice of scoping for such a nonproject environmental impact statement and notice of the community meeting required by this section must be mailed to all small businesses as defined in RCW 19.85.020, and to all community preservation and development authorities established under chapter 43.167 RCW, located within the subarea to be studied or within one hundred fifty feet of the boundaries of such subarea. The process for community involvement must have the goal of fair treatment and meaningful involvement of all people with respect to the development and implementation of the subarea planning process.

(d) The notice of the community meeting must include general illustrations and descriptions of buildings generally representative of the maximum building envelope that will be allowed under the proposed plan and indicate that future appeals of proposed developments that are consistent with the plan will be limited. Notice of the community meeting must include signs located on major travel routes in the subarea. If the building envelope increases during the process, another notice complying with the requirements of this section must be issued before the next public involvement opportunity.

(e) Any person that has standing to appeal the adoption of this subarea plan or the implementing regulations under

RCW 36.70A.280 has standing to bring an appeal of the nonproject environmental impact statement required by this subsection.

(f) Cities with over five hundred thousand residents shall prepare a study that accompanies or is appended to the nonproject environmental impact statement, but must not be part of that statement, that analyzes the extent to which the proposed subarea plan may result in the displacement or fragmentation of existing businesses, existing residents, including people living with poverty, families with children, and intergenerational households, or cultural groups within the proposed subarea plan. The city shall also discuss the results of the analysis at the community meeting.

(g) As an incentive for development authorized under this section, a city shall consider establishing a transfer of development rights program in consultation with the county where the city is located, that conserves county-designated agricultural and forest land of long-term commercial significance. If the city decides not to establish a transfer of development rights program, the city must state in the record the reasons for not adopting the program. The city's decision not to establish a transfer of development rights program is not subject to appeal. Nothing in this subsection (4)(g) may be used as a basis to challenge the optional comprehensive plan or subarea plan policies authorized under this section.

(5)(a) Until July 1, 2018, a proposed development that is consistent with the optional comprehensive plan or subarea plan policies and development regulations adopted under subsection (1) or (2) of this section and that is environmentally reviewed under subsection (4) of this section may not be challenged in administrative or judicial appeals for noncompliance with this chapter as long as a complete application for such a development that vests the application or would later lead to vested status under city or state law is submitted to the city within a time frame established by the city, but not to exceed ten years from the date of issuance of the final environmental impact statement.

(b) After July 1, 2018, the immunity from appeals under this chapter of any application that vests or will vest under this subsection or the ability to vest under this subsection is still valid, provided that the final subarea environmental impact statement is issued by July 1, 2018. After July 1, 2018, a city may continue to collect reimbursement fees under subsection (6) of this section for the proportionate share of a subarea environmental impact statement issued prior to July 1, 2018.

(6) It is recognized that a city that prepares a nonproject environmental impact statement under subsection (4) of this section must endure a substantial financial burden. A city may recover its reasonable expenses of preparation of a nonproject environmental impact statement prepared under subsection (4) of this section through access to financial assistance under RCW 36.70A.490 or funding from private sources. In addition, a city is authorized to recover a portion of its reasonable expenses of preparation of such a nonproject environmental impact statement by the assessment of reasonable and proportionate fees upon subsequent development that is consistent with the plan and development regulations adopted under subsection (5) of this section, as long as the development makes use of and benefits [from], as described in subsection (5) of this section, from the nonproject environmental impact statement prepared by the city. Any assessment fees collected from subsequent development may be used to reimburse funding received from private sources. In order to collect such fees, the city must enact an ordinance that sets forth objective standards for determining how the fees to be imposed upon each development will be proportionate to the impacts of each development and to the benefits accruing to each development from the nonproject environmental impact statement. Any disagreement about the reasonableness or amount of the fees imposed upon a development may not be the basis for delay in issuance of a project permit for that development. The fee assessed by the city may be paid with the written stipulation "paid under protest" and if the city provides for an administrative appeal of its decision on the project for which the fees are imposed, any dispute about the amount of the fees must be resolved in the same administrative appeal process.

(7) If a proposed development is inconsistent with the optional comprehensive plan or subarea plan policies and development regulations adopted under subsection (1) of this section, the city shall require additional environmental review in accordance with this chapter. [2010 c 153 § 2.]

Intent—2010 c 153: "It is the intent of the legislature to encourage high-density, compact, in-fill development and redevelopment within existing urban areas in order to further existing goals of chapter 36.70A RCW, the growth management act, to promote the use of public transit and encourage further investment in transit systems, and to contribute to the reduction of greenhouse gas emissions by: (1) Encouraging local governments to adopt plans and regulations that authorize compact, high-density urban development as defined in section 2 of this act; (2) providing for the funding and preparation of environmental impact statements that comprehensively examine the impacts of such development at the time that the plans and regulations are adopted; and (3) encouraging development that is consistent with such plans and regulations by precluding appeals under chapter 43.21C RCW." [2010 c 153 § 1.]

43.21C.428 Recovery of expenses of nonproject environmental impact statements—Fees for subsequent development. (1) A county, city, or town may recover its reasonable expenses of preparation of a nonproject environmental impact statement prepared under RCW 43.21C.229 and 43.21C.440:

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

(b) With funding from private sources; and

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

(2)(a) A county, city, or town is authorized to assess a fee upon subsequent development that will make use of and benefit from: (i) The analysis in an environmental impact statement prepared for the purpose of compliance with RCW 43.21C.440 regarding planned actions; or (ii) the reduction in environmental analysis requirements resulting from the exercise of authority under RCW 43.21C.229 regarding infill development.

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

(c) Counties, cities, and towns are not authorized by this section to assess fees for general comprehensive plan amendments or updates.

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

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

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

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

(7) The county, city, or town shall refund fees collected where a court of competent jurisdiction determines that the environmental review conducted under RCW 43.21C.440, regarding planned actions, or under RCW 43.21C.229, regarding infill development, was not sufficient to comply with the requirements of this chapter regarding the proposed development activity for which the fees were collected. The applicant and the county, city, or town may mutually agree to a partial refund or to waive the refund in the interest of resolving any dispute regarding compliance with this chapter. [2013 c 243 § 1.]

43.21C.430 Certain fish protection standards exempt from compliance with chapter. The incorporation of fish protection standards adopted under chapter 77.55 RCW into the forest practices rules as required under RCW 76.09.040(3) is exempt from compliance with this chapter. [2012 1st sp.s. c 1 § 213.]

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

43.21C.440 Planned action—Defined—Authority of a county, city, or town—Community meetings. (1) For purposes of this chapter, a planned action means one or more types of development or redevelopment that meet the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

was specifically deferred, are subject to the type of administrative appeal that the county, city, or town provides for the proposal itself consistent with RCW 36.70B.060.

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

(a) All property owners of record within the county, city, or town;

(b) All affected federally recognized tribal governments; and

(c) All agencies with jurisdiction over the future development anticipated for the planned action. [2012 1st sp.s. c 1 § 303.]

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

43.21C.450 Nonproject actions exempt from requirements of chapter. The following nonproject actions are categorically exempt from the requirements of this chapter:

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

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

(3) Amendments to development regulations that, upon implementation of a project action, will provide increased environmental protection, limited to the following:

(a) Increased protections for critical areas, such as enhanced buffers or setbacks;

(b) Increased vegetation retention or decreased impervious surface areas in shoreline jurisdiction; and

(c) Increased vegetation retention or decreased impervious surface areas in critical areas;

(4) Amendments to technical codes adopted by a county, city, or town to ensure consistency with minimum standards contained in state law, including the following:

(a) Building codes required by chapter 19.27 RCW;

(b) Energy codes required by chapter 19.27A RCW; and

(c) Electrical codes required by chapter 19.28 RCW. [2012 1st sp.s. c 1 § 307.]

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

43.21C.460 Environmental checklist—Authority of lead agency—Limitations of section. (1) The lead agency for an environmental review under this chapter utilizing an environmental checklist developed by the department of ecology pursuant to RCW 43.21C.110 may identify within the checklist provided to applicants instances where questions on the checklist are adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority.

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

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

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

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

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

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

(8) Nothing in this section modifies existing rules for determining the lead agency, as defined in WAC 197-11-922 through 197-11-948, nor does it modify agency procedures for complying with the state environmental policy act when an agency other than a local government is serving as the lead agency. [2012 1st sp.s. c 1 § 308.]

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

43.21C.900 Short title. This chapter shall be known and may be cited as the "State Environmental Policy Act" or "SEPA". [1995 c 347 § 207; 1971 ex.s. c 109 § 7.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

43.21C.910 Severability—1974 ex.s. c 179. If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 179 § 16.]

43.21C.911 Section headings not part of law—1983 c 117. Section headings as used in this act do not constitute any part of the law. [1983 c 117 § 14.]

43.21C.912 Applicability—1983 c 117. Sections 3 and 4 of this act apply to agency decisions and to appeal proceedings prospectively only and not retrospectively. Sections 1, 5, 6, 7, and 8 of this act may be applied by agencies retrospectively. [1983 c 117 § 15.]

43.21C.913 Severability—1983 c 117. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 117 § 16.]

43.21C.914 Effective dates—1983 c 117. (1) Sections 1, 2, and 4 through 16 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [April 23, 1983].

(2) Section 3 of this act shall take effect one hundred eighty days after the remainder of this act goes into effect under subsection (1) of this section. [1983 c 117 § 17.]

43.30.385 Park land trust revolving fund. (1) The park land trust revolving fund is to be utilized by the department for the purpose of acquiring real property, including all reasonable costs associated with these acquisitions, as a replacement for the property transferred to the state parks and recreation commission, as directed by the legislature in order to maintain the land base of the affected trusts or under RCW 79.22.060 and to receive voluntary contributions for the purpose of operating and maintaining public use and recreation facilities, including trails, managed by the department.

(2) In addition to the other purposes identified in this section, the park land trust revolving fund may be utilized by the department to hold funding for future acquisition of lands for the community forest trust program from willing sellers under RCW 79.155.040.

(3)(a) Proceeds from transfers of real property to the state parks and recreation commission or other proceeds identified from transfers of real property as directed by the legislature shall be deposited in the park land trust revolving fund.

(b) Except as otherwise provided in this subsection, the proceeds from real property transferred or disposed under RCW 79.22.060 must be used solely to purchase replacement forest land, that must be actively managed as a working forest, within the same county as the property transferred or disposed. If the real property was transferred under RCW 79.22.060 (1)(c) and (2)(c) from within a county participating in the state forest land pool created under RCW 79.22.140, replacement forest land may be located within any county participating in the land pool.

(c) Disbursement from the park land trust revolving fund to acquire replacement property and for operating and maintaining public use and recreation facilities shall be on the authorization of the department.

(d) The proceeds from the recreation access pass account created in RCW 79A.80.090 must be solely used for the purpose of operating and maintaining public use and recreation facilities, including trails, managed by the department.

(4) In order to maintain an effective expenditure and revenue control, the park land trust revolving fund is subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditures and payment of obligations from the fund.

(5) The department is authorized to solicit and receive voluntary contributions for the purpose of operating and maintaining public use and recreation facilities, including trails, managed by the department. The department may seek voluntary contributions from individuals and organizations for this purpose. Voluntary contributions will be deposited into the park land trust revolving fund and used solely for the purpose of public use and recreation facilities operations and maintenance. Voluntary contributions are not considered a fee for use of these facilities. [2012 c 166 § 8. Prior: 2011 c 320 § 21; 2011 c 216 § 14; 2009 c 354 § 9; 2004 c 103 § 1; 2003 c 334 § 106; 2000 c 148 § 4; 1995 c 211 § 5. Formerly RCW 43.30.115.]

Findings—Intent—2012 c 166: See note following RCW 79.02.010.

Effective date—2011 c 320: See note following RCW 79A.80.005.

Findings—Intent—2011 c 320: See RCW 79A.80.005.

Finding—Intent—2009 c 354: See note following RCW 84.33.140.

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—Intent—Effective date—Severability—1995 c 211: See notes following RCW 79A.05.070.

43.41.130 Passenger motor vehicles owned or operated by state agencies—Duty to establish policies as to acquisition, operation, authorized use—Strategies to reduce fuel consumption and vehicle emissions—Implementation of fuel economy standards—Reports—Definitions. (1) The director of financial management, after consultation with other interested or affected state agencies, shall establish overall policies governing the acquisition, operation, management, maintenance, repair, and disposal of all motor vehicles owned or operated by any state agency. These policies shall include but not be limited to a definition of what constitutes authorized use of a state owned or controlled passenger motor vehicle and other motor vehicles on official state business. The definition shall include, but not be limited to, the use of state-owned motor vehicles for commuter ride sharing so long as the entire capital depreciation and operational expense of the commuter ride-sharing arrangement is paid by the commuters. Any use other than such defined use shall be considered as personal use.

(2)(a) By June 15, 2010, the director of the *department of general administration, in consultation with the office and other interested or affected state agencies, shall develop strategies to assist state agencies in reducing fuel consumption and emissions from all classes of vehicles.

(b) In an effort to achieve lower overall emissions for all classes of vehicles, state agencies should, when financially comparable over the vehicle's useful life, consider purchasing or converting to ultra-low carbon fuel vehicles.

(3) State agencies shall phase in fuel economy standards for motor pools and leased petroleum-based fuel vehicles to achieve an average fuel economy standard of thirty-six miles per gallon for passenger vehicle fleets by 2015.

(4) After June 15, 2010, state agencies shall:

(a) When purchasing new petroleum-based fuel vehicles for vehicle fleets: (i) Achieve an average fuel economy of forty miles per gallon for light duty passenger vehicles; and (ii) achieve an average fuel economy of twenty-seven miles per gallon for light duty vans and sports utility vehicles; or

(b) Purchase ultra-low carbon fuel vehicles.

(5) State agencies must report annually on the progress made to achieve the goals under subsections (3) and (4) of this section beginning October 31, 2011.

(6) The *department of general administration, in consultation with the office and other affected or interested agencies, shall develop a separate fleet fuel economy standard for all other classes of petroleum-based fuel vehicles and report the progress made toward meeting the fuel consumption and emissions goals established by this section to the governor and the relevant legislative committees by December 1, 2012.

(7) The following vehicles are excluded from the average fuel economy goals established in subsections (3) and (4) of this section: Emergency response vehicles, passenger vans with a gross vehicle weight of eight thousand five hundred pounds or greater, vehicles that are purchased for off-pavement use, ultra-low carbon fuel vehicles, and vehicles that are driven less than two thousand miles per year.

(8) Average fuel economy calculations used under this section for petroleum-based fuel vehicles must be based upon the current United States environmental protection agency composite city and highway mile per gallon rating.

(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Petroleum-based fuel vehicle" means a vehicle that uses, as a fuel source, more than ten percent gasoline or diesel fuel.

(b) "Ultra-low carbon fuel vehicle" means a vehicle that uses, as a fuel source, at least ninety percent natural gas, hydrogen, biomethane, or electricity. [2010 c 159 § 1; 2009 c 519 § 6; 1982 c 163 § 13; 1980 c 169 § 1; 1979 c 111 § 12; 1975 1st ex.s. c 167 § 5.]

***Reviser's note:** The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

Findings—2009 c 519: See RCW 43.21M.900.

Severability—Effective date—1982 c 163: See notes following RCW 2.10.052.

Severability—1979 c 111: See note following RCW 46.74.010.

Severability—1975 1st ex.s. c 167: See note following RCW 43.19.560.

Commuter ride sharing: Chapter 46.74 RCW.

Motor vehicle management and transportation: RCW 43.19.500 through 43.19.635.

Additional notes found at www.leg.wa.gov

43.42.005 Findings—Intent. (1) The legislature finds that: The health and safety of its citizens and environment are of vital interest to the state's long-term quality of life; Washington state is a national leader in protecting its environment; and Washington state has a vibrant and diverse economy that is dependent on the state maintaining high environmental standards. Further, the legislature finds that a complex and confusing network of environmental and land use laws and business regulations can create obstacles to sustainable growth.

It is the intent of the legislature to promote accountability, timeliness, and predictability for citizens, business, and state, federal, and local permitting agencies, and to provide information and assistance on the regulatory process through the creation of the office of regulatory assistance in the governor's office.

(2) The office of regulatory assistance is created to work to continually improve the function of environmental and business regulatory processes by identifying conflicts and overlap in the state's rules, statutes, and operational practices; the office is to provide project proponents and business owners with active assistance for all permitting, licensing, and other regulatory procedures required for completion of specific projects; and the office is to ensure that citizens, businesses, and local governments have access to, and clear information regarding, regulatory processes for permitting and business regulation, including state rules, permit and license requirements, and agency rule-making processes.

(3) The legislature declares that the purpose of this chapter is to provide direction, practical resources, and a range of innovative and optional service delivery options for improving the regulatory process and for providing assistance through the regulatory process on individual projects in furtherance of the state's goals of governmental transparency and accountability.

(4) The legislature intends that establishing an office of regulatory assistance will provide these services without abrogating or limiting the authority of any agency to make decisions on permits, licenses, regulatory requirements, or agency rule making. The legislature further intends that the office of regulatory assistance shall have authority to provide services but shall not have any authority to make decisions on permits. [2010 c 162 § 1; 2009 c 97 § 1; 2007 c 94 § 1; 2003 c 71 § 1; 2002 c 153 § 1.]

Effective date—2010 c 162: See note following RCW 43.42.090.

43.42.010 Office created—Appointment of director—Duties. (1) The office of regulatory assistance is created in the office of financial management and must be administered by the office of the governor to help improve the regulatory system and assist citizens, businesses, and project proponents.

(2) The governor must appoint a director. The director may employ a deputy director and a confidential secretary and such staff as are necessary, or contract with another state agency pursuant to chapter 39.34 RCW for support in carrying out the purposes of this chapter.

(3) The office must offer to:

(a) Act as the central point of contact for the project proponent in communicating about defined issues;

(b) Conduct project scoping as provided in RCW 43.42.050;

(c) Verify that the project proponent has all the information needed to correctly apply for all necessary permits;

(d) Provide general coordination services;

(e) Coordinate the efficient completion among participating agencies of administrative procedures, such as collecting fees or providing public notice;

(f) Maintain contact with the project proponent and the permit agencies to promote adherence to agreed schedules;

(g) Assist in resolving any conflict or inconsistency among permit requirements and conditions;

(h) Coordinate, to the extent practicable, with relevant federal permit agencies and tribal governments;

(i) Facilitate meetings;

(j) Manage a fully coordinated permit process, as provided in RCW 43.42.060; and

(k) Help local jurisdictions comply with the requirements of chapter 36.70B RCW.

(4) The office must also:

(a) Provide information to local jurisdictions about best permitting practices, methods to improve communication with, and solicit early involvement of, state agencies when needed, and effective means of assessing and communicating expected project timelines and costs;

(b) Maintain and furnish information as provided in RCW 43.42.040; and

(c) Provide the following by September 1, 2009, and biennially thereafter, to the governor and the appropriate committees of the legislature:

(i) A performance report including:

(A) Information regarding use of the office's voluntary cost-reimbursement services as provided in RCW 43.42.070;

(B) The number and type of projects or initiatives where the office provided services including the key agencies with which the office partnered;

(C) Specific information on any difficulty encountered in providing services or implementing programs, processes, or assistance tools; and

(D) Trend reporting that allows comparisons between statements of goals and performance targets and the achievement of those goals and targets; and

(ii) Recommendations on system improvements including, but not limited to, recommendations on improving environmental permitting by making it more time efficient and cost-effective for all participants in the process. [2012 c 196 § 1; 2011 c 149 § 2; 2009 c 97 § 4. Prior: 2007 c 231 § 5; 2007 c 94 § 2; 2003 c 71 § 2; 2002 c 153 § 2.]

Effective date—2011 c 149: "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 29, 2011." [2011 c 149 § 4.]

Findings—Recommendations—Reports encouraged—2007 c 231: See note following RCW 43.155.070.

Effective date—2003 c 71 § 2: "Section 2 of 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 immediately [April 18, 2003]." [2003 c 71 § 7.]

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

(1) "Director" means the director of the office of regulatory assistance.

(2) "Fully coordinated permit process" means a comprehensive coordinated permitting assistance approach supported by a written agreement between the project proponent, the office of regulatory assistance, and the agencies participating in the fully coordinated permit process.

(3) "General coordination services" means services that bring interested parties together to explore opportunities for cooperation and to resolve conflicts. General coordination services may be provided as a stand-alone event or as an element of broader project assistance, nonproject-related interagency coordination, or policy and planning teamwork.

(4) "Office" means the office of regulatory assistance established in RCW 43.42.010.

(5) "Permit" means any permit, license, certificate, use authorization, or other form of governmental review or approval required in order to construct, expand, or operate a project in the state of Washington.

(6) "Permit agency" means any state, local, or federal agency authorized by law to issue permits.

(7) "Project" means any activity, the conduct of which requires a permit or permits from one or more permit agencies.

(8) "Project proponent" means a citizen, business, or any entity applying for or seeking a permit or permits in the state of Washington.

(9) "Project scoping" means the identification of relevant issues and information needs of a project proponent and the permitting agencies, and reaching a common understanding regarding the process, timing, and sequencing for obtaining applicable permits. [2009 c 97 § 3; 2007 c 94 § 4; 2003 c 71 § 3; 2002 c 153 § 4.]

43.42.040 Maintaining and furnishing information—Contact point—Service center—Web site. (1) The office shall assist citizens, businesses, and project proponents by maintaining and furnishing information, including, but not limited to:

(a) To the extent possible, compiling and periodically updating one or more handbooks containing lists and explanations of permit laws, including all relevant local, state, federal, and tribal laws. In providing this information, the office shall seek the cooperation of relevant local, state, and federal agencies and tribal governments;

(b) Establishing and providing notice of a point of contact for obtaining information;

(c) Working closely and cooperatively with business license centers to provide efficient and nonduplicative service; and

(d) Developing a service center and a web site.

(2) The office shall coordinate among state agencies to develop an office web site that is linked through the office of the governor's web site and that contains information regarding permitting and regulatory requirements for businesses and citizens in Washington state. At a minimum, the web site shall provide information or links to information on:

(a) Federal, state, and local rule-making processes and permitting and regulatory requirements applicable to Washington businesses and citizens;

(b) Federal, state, and local licenses, permits, and approvals necessary to start and operate a business or develop real property in Washington;

(c) State and local building codes;

(d) Federal, state, and local economic development programs that may be available to businesses in Washington; and

(e) State and local agencies regulating or providing assistance to citizens and businesses operating a business or developing real property in Washington.

(3) This section does not create an independent cause of action, affect any existing cause of action, or create any new cause of action regarding the application of regulatory or permit requirements. [2007 c 94 § 5; 2003 c 71 § 4; 2002 c 153 § 5.]

43.42.050 Project scoping—Factors. (1) Upon request of a project proponent, the office must determine the level of project scoping needed by the project proponent, taking into consideration the complexity of the project and the experi-

ence of those expected to be involved in the project application and review process. The director may require the attendance at a scoping meeting of any state or local agency.

(2) Project scoping must consider the complexity, size, and needs for assistance of the project and must address as appropriate:

(a) The permits that are required for the project;

(b) The permit application forms and other application requirements of the participating permit agencies;

(c) The specific information needs and issues of concern of each participant and their significance;

(d) Any statutory or regulatory conflicts that might arise from the differing authorities and roles of the permit agencies;

(e) Any natural resources, including federal or state listed species, that might be adversely affected by the project and might cause an alteration of the project or require mitigation; and

(f) The anticipated time required for permit decisions by each participating permit agency, including the estimated time required to determine if the permit application is complete, to conduct environmental review, and to review and process the application. In determining the estimated time required, full consideration must be given to achieving the greatest possible efficiencies through any concurrent studies and any consolidated applications, hearings, and comment periods.

(3) The outcome of the project scoping must be documented in writing, furnished to the project proponent, and be made available to the public.

(4) The project scoping must be completed prior to the passage of sixty days of the project proponent's request for a project scoping unless the director finds that better results can be obtained by delaying the project scoping meeting or meetings to ensure full participation.

(5) Upon completion of the project scoping, the participating permit agencies must proceed under their respective authorities. The agencies may remain in communication with the office as needed.

(6) This section does not create an independent cause of action, affect any existing cause of action, or establish time limits for purposes of RCW 64.40.020. [2012 c 196 § 2; 2009 c 97 § 5; 2007 c 94 § 6; 2003 c 54 § 4; 2002 c 153 § 6.]

43.42.060 Fully coordinated permit process—Requirements—Procedure. (1) A project proponent may submit a written request to the director of the office for participation in a fully coordinated permit process. Designation as a fully coordinated project requires that:

(a) The project proponent enters into a cost-reimbursement agreement pursuant to RCW 43.42.070;

(b) The project has a designation under chapter 43.157 RCW; or

(c) The director determine that (i)(A) the project raises complex coordination, permit processing, or substantive permit review issues; or (B) if completed, the project would provide substantial benefits to the state; and (ii) the office, as well as the participating permit review agencies, have sufficient capacity within existing resources to undertake the full coordination process without reimbursement and without seriously affecting other services.

(2) A project proponent who requests designation as a fully coordinated permit process project must provide the office with a full description of the project. The office may request any information from the project proponent that is necessary to make the designation under this section, and may convene a scoping meeting or a work plan meeting of the likely participating permit agencies.

(3) When a project is designated for the fully coordinated permit process, the office must serve as the main point of contact for the project proponent and participating agencies with regard to the permit process for the project as a whole. Each participating agency must designate a single point of contact for coordinating with the office. The office must keep an up-to-date project management log and schedule illustrating required procedural steps in the permitting process, and highlighting substantive issues as appropriate that must be resolved in order for the project to move forward. In carrying out these responsibilities, the office must:

(a) Ensure that the project proponent has been informed of all the information needed to apply for the permits that are included in the coordinated permit process;

(b) Coordinate the timing of review for those permits by the respective participating permit agencies;

(c) Facilitate communication between project proponents, consultants, and agency staff to promote timely permit decisions;

(d) Assist in resolving any conflict or inconsistency among the permit requirements and conditions that are expected to be imposed by the participating permit agencies; and

(e) Make contact, at least once, with any local, tribal, or federal jurisdiction that is responsible for issuing a permit for the project and invite them to participate in the coordinated permit process or to receive periodic updates in the project.

(4) Within thirty days, or longer with agreement of the project proponent, of the date that the office designates a project for the fully coordinated permit process, it shall convene a work plan meeting with the project proponent and the participating permit agencies to develop a coordinated permit process schedule. The meeting agenda may include any of the following:

(a) Review of the permits that are required for the project;

(b) A review of the permit application forms and other application requirements of the agencies that are participating in the coordinated permit process;

(c) An estimation of the timelines that will be used by each participating permit agency to make permit decisions, including the estimated time periods required to determine if the permit applications are complete and to review or respond to each application or submittal of new information.

(i) The estimation must also include the estimated number of revision cycles for the project, or the typical number of revision cycles for projects of similar size and complexity.

(ii) In the development of this timeline, full attention must be given to achieving the maximum efficiencies possible through concurrent studies and consolidated applications, hearings, and comment periods.

(iii) Estimated action or response times for activities of the office that are required before or trigger further action by a participant must also be included;

(d) Available information regarding the timing of any public hearings that are required to issue permits for the project and a determination of the feasibility of coordinating or consolidating any of those required public hearings; and

(e) A discussion of fee arrangements for the coordinated permit process, including an estimate of the costs allowed by statute, any reimbursable agency costs, and billing schedules, if applicable.

(5) Each agency must send at least one representative qualified to discuss the applicability and timelines associated with all permits administered by that agency or jurisdiction. At the request of the project proponent, the office must notify any relevant local or federal agency or federally recognized Indian tribe of the date of the meeting and invite that agency's participation in the process.

(6) Any accelerated time period for the consideration of a permit application must be consistent with any statute, rule, or regulation, or adopted state policy, standard, or guideline that requires the participation of other agencies, federally recognized Indian tribes, or interested persons in the application process.

(7) If a permit agency or the project proponent foresees, at any time, that it will be unable to meet the estimated timelines or other obligations under the agreement, it must notify the office of the reasons for the problem and offer potential solutions or an amended timeline for resolving the problem. The office must notify the participating permit agencies and the project proponent and, upon agreement of all parties, adjust the schedule, or, if necessary, schedule another work plan meeting.

(8) The project proponent may withdraw from the coordinated permit process by submitting to the office a written request that the process be terminated. Upon receipt of the request, the office must notify each participating permit agency that a coordinated permit process is no longer applicable to the project. [2012 c 196 § 3. Prior: 2009 c 421 § 8; 2009 c 97 § 6; 2007 c 94 § 7; 2003 c 54 § 5; 2002 c 153 § 7.]

Effective date—2009 c 421: See note following RCW 43.157.005.

43.62.035 Determining population—Projections. The office of financial management shall determine the population of each county of the state annually as of April 1st of each year and on or before July 1st of each year shall file a certificate with the secretary of state showing its determination of the population for each county. The office of financial management also shall determine the percentage increase in population for each county over the preceding ten-year period, as of April 1st, and shall file a certificate with the secretary of state by July 1st showing its determination. At least once every five years or upon the availability of decennial census data, whichever is later, the office of financial management shall prepare twenty-year growth management planning population projections required by RCW 36.70A.110 for each county that adopts a comprehensive plan under RCW 36.70A.040 and shall review these projections with such counties and the cities in those counties before final adoption. The county and its cities may provide to the office such information as they deem relevant to the office's projection, and the office shall consider and comment on such information before adoption. Each projection shall be expressed as a reasonable range developed within the standard state high and low projection. The middle range shall represent the office's estimate of the most likely population projection for the county. If any city or county believes that a projection will not accurately reflect actual population growth in a county, it may petition the office to revise the projection accordingly. The office shall complete the first set of ranges for every county by December 31, 1995.

A comprehensive plan adopted or amended before December 31, 1995, shall not be considered to be in noncompliance with the twenty-year growth management planning population projection if the projection used in the comprehensive plan is in compliance with the range later adopted under this section. [1997 c 429 § 26; 1995 c 162 § 1; 1991 sp.s. c 32 § 30; 1990 1st ex.s. c 17 § 32.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

Effective date—1995 c 162: "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 27, 1995]." [1995 c 162 § 2.]

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

43.63A.215 Accessory apartments—Development and placement—Local governments. (1) The department shall, in consultation with the affordable housing advisory board created in RCW 43.185B.020, report to the legislature on the development and placement of accessory apartments. The department shall produce a written report by December 15, 1993, which:

(a) Identifies local governments that allow the siting of accessory apartments in areas zoned for single-family residential use; and

(b) Makes recommendations to the legislature designed to encourage the development and placement of accessory apartments in areas zoned for single-family residential use.

(2) The recommendations made under subsection (1) of this section shall not take effect before ninety days following adjournment of the 1994 regular legislative session.

(3) Unless provided otherwise by the legislature, by December 31, 1994, local governments shall incorporate in their development regulations, zoning regulations, or official controls the recommendations contained in subsection (1) of this section. The accessory apartment provisions shall be part of the local government's development regulation, zoning regulation, or official control. To allow local flexibility, the recommendations shall be subject to such regulations, conditions, procedures, and limitations as determined by the local legislative authority.

(4) As used in this section, "local government" means:

(a) A city or code city with a population that exceeds twenty thousand;

(b) A county that is required to or has elected to plan under the state growth management act; and

(c) A county with a population that exceeds one hundred twenty-five thousand. [1993 c 478 § 7.]

43.63A.510 Affordable housing—Inventory of state-owned land. (1) The department shall work with the departments of natural resources, transportation, social and health

services, corrections, and *general administration to identify and catalog under-utilized, state-owned land and property suitable for the development of affordable housing for very low-income, low-income or moderate-income households. The departments of natural resources, transportation, social and health services, corrections, and *general administration shall provide an inventory of real property that is owned or administered by each agency and is available for lease or sale. The inventories shall be provided to the department by November 1, 1993, with inventory revisions provided each November 1 thereafter.

(2) Upon written request, the department shall provide a copy of the inventory of state-owned and publicly owned lands and buildings to parties interested in developing the sites for affordable housing.

(3) As used in this section:

(a) "Affordable housing" means residential housing that is rented or owned by a person who qualifies as a very low-income, low-income, or moderate-income household or who is from a special needs population, and whose monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household's monthly income.

(b) "Very low-income household" means a single person, family, or unrelated persons living together whose income is at or below fifty percent of the median income, adjusted for household size, for the county where the affordable housing is located.

(c) "Low-income household" means a single person, family, or unrelated persons living together whose income is more than fifty percent but is at or below eighty percent of the median income where the affordable housing is located.

(d) "Moderate-income household" means a single person, family, or unrelated persons living together whose income is more than eighty percent but is at or below one hundred fifteen percent of the median income where the affordable housing is located. [1993 c 461 § 2; 1990 c 253 § 6.]

***Reviser's note:** The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

Finding—1993 c 461: "(1) The legislature finds that:

(a) The lack of affordable housing for very low-income, low-income, or moderate-income households and special needs populations is intensified by the rising cost of land and construction; and

(b) There are publicly owned land and buildings which may be suitable to be marketed, sold, leased, or exchanged for the development of affordable housing.

(2) The legislature declares that the purpose of this act is to:

(a) Provide for an analysis of the inventory of state-owned lands and buildings prepared by the departments of natural resources, transportation, corrections, and *general administration;

(b) Identify other publicly owned land and buildings that may be suitable for the development of affordable housing for very-low income, low-income, or moderate-income households and special needs populations;

(c) Provide a central location of inventories of state and publicly owned land and buildings that may be suitable to be marketed, sold, leased, or exchanged for the development of affordable housing; and

(d) Encourage an effective use of publicly owned surplus and underutilized land and buildings suitable for the development of affordable housing for very low-income, low-income, or moderate-income households and special needs populations." [1993 c 461 § 1.]

***Reviser's note:** The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

Legislative finding and purpose—1990 c 253: See note following RCW 43.70.340.

43.63A.550 Growth management—Inventorying and collecting data. (1) The department shall assist in the process of inventorying and collecting data on public and private land for the acquisition of data describing land uses, demographics, infrastructure, critical areas, transportation corridors physical features, housing, and other information useful in managing growth throughout the state. For this purpose the department may contract with the consolidated technology services agency and shall form an advisory group consisting of representatives from state, local, and federal agencies, colleges and universities, and private firms with expertise in land planning, and geographic information systems.

(2) The department shall establish a sequence for acquiring data, giving priority to rapidly growing areas. The data shall be retained in a manner to facilitate its use in preparing maps, aggregating with data from multiple jurisdictions, and comparing changes over time. Data shall further be retained in a manner which permits its access via computer.

(3) The department shall work with other state agencies, local governments, and private organizations that are inventorying public and private lands to ensure close coordination and to ensure that duplication of efforts does not occur. [2011 1st sp.s. c 43 § 814; 1998 c 245 § 71; 1990 1st ex.s. c 17 § 21.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

43.63A.660 Housing—Technical assistance and information, affordable housing. The department shall provide technical assistance and information to state agencies and local governments to assist in the identification and removal of regulatory barriers to the development and placement of affordable housing. In providing assistance the department may:

(1) Analyze the costs and benefits of state legislation, rules, and administrative actions and their impact on the development and placement of affordable housing;

(2) Analyze the costs and benefits of local legislation, rules, and administrative actions and their impact on the development and placement of affordable housing;

(3) Assist state agencies and local governments in determining the impact of existing and anticipated actions, legislation, and rules on the development and placement of affordable housing;

(4) Investigate techniques and opportunities for reducing the life-cycle housing costs through regulatory reform;

(5) Develop model standards and ordinances designed to reduce regulatory barriers to affordable housing and assisting in their adoption and use at the state and local government level;

(6) Provide technical assistance and information to state agencies and local governments for implementation of legislative and administrative reform programs to remove barriers to affordable housing;

(7) Prepare state regulatory barrier removal strategies;

(8) Provide staffing to the affordable housing advisory board created in RCW 43.185B.020; and

(9) Perform other activities as the director deems necessary to assist the state, local governments, and the housing industry in meeting the affordable housing needs of the state. [1993 c 478 § 14.]

43.88.010 Purpose—Intent. It is the purpose of this chapter to establish an effective state budgeting, accounting, and reporting system for all activities of the state government, including both capital and operating expenditures; to prescribe the powers and duties of the governor as these relate to securing such fiscal controls as will promote effective budget administration; and to prescribe the responsibilities of agencies of the executive branch of the state government.

It is the intent of the legislature that the powers conferred by this chapter, as amended, shall be exercised by the executive in cooperation with the legislature and its standing, special, and interim committees in its status as a separate and coequal branch of state government. [1986 c 215 § 1; 1981 c 270 § 1; 1973 1st ex.s. c 100 § 1; 1965 c 8 § 43.88.010. Prior: 1959 c 328 § 1.]

Effective date—1981 c 270: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 c 270 § 18.]

Severability—1981 c 270: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 270 § 17.]

Additional notes found at www.leg.wa.gov

43.88.0301 Capital budget instructions—Additional information—Staff support from office of community development. (1) The office of financial management must include in its capital budget instructions, beginning with its instructions for the 2003-05 capital budget, a request for "yes" or "no" answers for the following additional informational questions from capital budget applicants for all proposed major capital construction projects valued over five million dollars and required to complete a predesign:

(a) For proposed capital projects identified in this subsection that are located in or serving city or county planning under RCW 36.70A.040:

(i) Whether the proposed capital project is identified in the host city or county comprehensive plan, including the capital facility plan, and implementing rules adopted under chapter 36.70A RCW;

(ii) Whether the proposed capital project is located within an adopted urban growth area:

(A) If at all located within an adopted urban growth area boundary, whether a project facilitates, accommodates, or attracts planned population and employment growth;

(B) If at all located outside an urban growth area boundary, whether the proposed capital project may create pressures for additional development;

(b) For proposed capital projects identified in this subsection that are requesting state funding:

(i) Whether there was regional coordination during project development;

(ii) Whether local and additional funds were leveraged;

(iii) Whether environmental outcomes and the reduction of adverse environmental impacts were examined.

(2) For projects subject to subsection (1) of this section, the office of financial management shall request the required information be provided during the predesign process of major capital construction projects to reduce long-term costs and increase process efficiency.

(3) The office of financial management, in fulfilling its duties under *RCW 43.88.030(3) to create a capital budget document, must take into account information gathered under subsections (1) and (2) of this section in an effort to promote state capital facility expenditures that minimize unplanned or uncoordinated infrastructure and development costs, support economic and quality of life benefits for existing communities, and support local government planning efforts.

(4) The office of community development must provide staff support to the office of financial management and affected capital budget applicants to help collect data required by subsections (1) and (2) of this section. [2002 c 312 § 1.]

***Reviser's note:** RCW 43.88.030 was amended by 2005 c 386 § 3, changing subsection (3) to subsection (5).

43.88.110 Expenditure programs—Allotments—Reserves—Monitor capital appropriations—Predesign review for major capital construction. This section sets forth the expenditure programs and the allotment and reserve procedures to be followed by the executive branch for public funds.

(1) Allotments of an appropriation for any fiscal period shall conform to the terms, limits, or conditions of the appropriation.

(2) The director of financial management shall provide all agencies with a complete set of operating and capital instructions for preparing a statement of proposed expenditures at least thirty days before the beginning of a fiscal period. The set of instructions need not include specific appropriation amounts for the agency.

(3) Within forty-five days after the beginning of the fiscal period or within forty-five days after the governor signs the omnibus biennial appropriations act, whichever is later, all agencies shall submit to the governor a statement of proposed expenditures at such times and in such form as may be required by the governor.

(4) The office of financial management shall develop a method for monitoring capital appropriations and expenditures that will capture at least the following elements:

(a) Appropriations made for capital projects including transportation projects;

(b) Estimates of total project costs including past, current, ensuing, and future biennial costs;

(c) Comparisons of actual costs to estimated costs;

(d) Comparisons of estimated construction start and completion dates with actual dates;

(e) Documentation of fund shifts between projects.

This data may be incorporated into the existing accounting system or into a separate project management system, as deemed appropriate by the office of financial management.

(5) The office of financial management, prior to approving allotments for major capital construction projects valued over five million dollars, shall institute procedures for reviewing such projects at the predesign stage that will reduce long-term costs and increase facility efficiency. The

procedures shall include, but not be limited to, the following elements:

(a) Evaluation of facility program requirements and consistency with long-range plans;

(b) Utilization of a system of cost, quality, and performance standards to compare major capital construction projects; and

(c) A requirement to incorporate value-engineering analysis and constructability review into the project schedule.

(6) No expenditure may be incurred or obligation entered into for such major capital construction projects including, without exception, land acquisition, site development, predesign, design, construction, and equipment acquisition and installation, until the allotment of the funds to be expended has been approved by the office of financial management. This limitation does not prohibit the continuation of expenditures and obligations into the succeeding biennium for projects for which allotments have been approved in the immediate prior biennium.

(7) If at any time during the fiscal period the governor projects a cash deficit in a particular fund or account as defined by RCW 43.88.050, the governor shall make across-the-board reductions in allotments for that particular fund or account so as to prevent a cash deficit, unless the legislature has directed the liquidation of the cash deficit over one or more fiscal periods. Except for the legislative and judicial branches and other agencies headed by elective officials, the governor shall review the statement of proposed operating expenditures for reasonableness and conformance with legislative intent. The governor may request corrections of proposed allotments submitted by the legislative and judicial branches and agencies headed by elective officials if those proposed allotments contain significant technical errors. Once the governor approves the proposed allotments, further revisions may at the request of the office of financial management or upon the agency's initiative be made on a quarterly basis and must be accompanied by an explanation of the reasons for significant changes. However, changes in appropriation level authorized by the legislature, changes required by across-the-board reductions mandated by the governor, changes caused by executive increases to spending authority, and changes caused by executive decreases to spending authority for failure to comply with the provisions of chapter 36.70A RCW may require additional revisions. Revisions shall not be made retroactively. However, the governor may assign to a reserve status any portion of an agency appropriation withheld as part of across-the-board reductions made by the governor and any portion of an agency appropriation conditioned on a contingent event by the appropriations act. The governor may remove these amounts from reserve status if the across-the-board reductions are subsequently modified or if the contingent event occurs. The director of financial management shall enter approved statements of proposed expenditures into the state budgeting, accounting, and reporting system within forty-five days after receipt of the proposed statements from the agencies. If an agency or the director of financial management is unable to meet these requirements, the director of financial management shall provide a timely explanation in writing to the legislative fiscal committees.

(8) It is expressly provided that all agencies shall be required to maintain accounting records and to report thereon in the manner prescribed in this chapter and under the regulations issued pursuant to this chapter. Within ninety days of the end of the fiscal year, all agencies shall submit to the director of financial management their final adjustments to close their books for the fiscal year. Prior to submitting fiscal data, written or oral, to committees of the legislature, it is the responsibility of the agency submitting the data to reconcile it with the budget and accounting data reported by the agency to the director of financial management.

(9) The director of financial management may exempt certain public funds from the allotment controls established under this chapter if it is not practical or necessary to allot the funds. Allotment control exemptions expire at the end of the fiscal biennium for which they are granted. The director of financial management shall report any exemptions granted under this subsection to the legislative fiscal committees. [2009 c 518 § 3; 2003 c 206 § 1; 1997 c 96 § 6; 1994 c 219 § 5. Prior: 1991 sp.s. c 32 § 27; 1991 c 358 § 2; 1987 c 502 § 5; 1986 c 215 § 4; 1984 c 138 § 8; 1983 1st ex.s. c 47 § 1; 1982 2nd ex.s. c 15 § 1; 1981 c 270 § 5; 1979 c 151 § 138; 1975 1st ex.s. c 293 § 6; 1965 c 8 § 43.88.110; prior: 1959 c 328 § 11.]

Effective date—2003 c 206: "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 July 1, 2003." [2003 c 206 § 2.]

Findings—Purpose—1997 c 96: See note following RCW 43.82.150.

Finding—1994 c 219: See note following RCW 43.88.030.

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Effective date—1991 c 358: See note following RCW 43.88.030.

Severability—1982 2nd ex.s. c 15: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 2nd ex.s. c 15 § 5.]

Effective date—Severability—1981 c 270: See notes following RCW 43.88.010.

Exception: RCW 43.88.265.

Additional notes found at www.leg.wa.gov

43.155.050 Public works assistance account. The public works assistance account is hereby established in the state treasury. Money may be placed in the public works assistance account from the proceeds of bonds when authorized by the legislature or from any other lawful source. Money in the public works assistance account shall be used to make loans and to give financial guarantees to local governments for public works projects. Moneys in the account may also be appropriated to provide for state match requirements under federal law for projects and activities conducted and financed by the board under the drinking water assistance account. Not more than fifteen percent of the biennial capital budget appropriation to the public works board from this account may be expended or obligated for preconstruction loans, emergency loans, or loans for capital facility planning under this chapter; of this amount, not more than ten percent of the biennial capital budget appropriation may be expended for emergency loans and not more than one percent of the biennial capital budget appropriation may be expended for capital facility planning loans. During the 2011-2013 and 2013-2015 fiscal biennium, the legislature may transfer from the public works assistance account to the general fund, the

water pollution control revolving account, and the drinking water assistance account such amounts as reflect the excess fund balance of the account. During the 2011-2013 fiscal biennium, the legislature may appropriate moneys from the account for economic development, innovation, and export grants, including brownfields; main street improvement grants; and the loan program consolidation board. During the 2013-2015 fiscal biennium, the legislature may transfer from the public works assistance account to the education legacy trust account such amounts as specified by the legislature. [2013 2nd sp.s. c 4 § 983; 2012 2nd sp.s. c 2 § 6004; 2011 1st sp.s. c 50 § 951. Prior: 2010 1st sp.s. c 37 § 932; 2010 1st sp.s. c 36 § 6007; (2009 c 564 § 940 expired June 30, 2011); (2008 c 328 § 6002 expired June 30, 2011); 2007 c 520 § 6037; (2007 c 520 § 6036 expired June 30, 2011); prior: 2005 c 488 § 925; (2005 c 425 § 4 expired June 30, 2011); 2001 c 131 § 2; prior: 1995 2nd sp.s. c 18 § 918; 1995 c 376 § 11; 1993 sp.s. c 24 § 921; 1985 c 471 § 8.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 2: "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 immediately [April 23, 2012]." [2012 2nd sp.s. c 2 § 6013.]

Effective date—2011 1st sp.s. c 50 § 951: "Section 951 of this act takes effect June 30, 2011." [2011 1st sp.s. c 50 § 952.]

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2010 1st sp.s. 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 takes effect immediately [May 4, 2010]." [2010 1st sp.s. c 36 § 6018.]

Expiration date—2009 c 564 § 940: "Section 940 of this act expires June 30, 2011." [2009 c 564 § 962.]

Effective date—2009 c 564: See note following RCW 2.68.020.

Expiration date—2008 c 328 § 6002: "Section 6002 of this act expires June 30, 2011." [2008 c 328 § 6018.]

Part headings not law—2008 c 328: "Part headings in this act are not any part of the law." [2008 c 328 § 6020.]

Severability—2008 c 328: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 328 § 6021.]

Effective date—2008 c 328: "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 immediately [April 1, 2008]." [2008 c 328 § 6022.]

Expiration date—2007 c 520 § 6036: "Section 6036 of this act expires June 30, 2011." [2007 c 520 § 6039.]

Part headings not law—Severability—Effective dates—2007 c 520: See notes following RCW 43.19.125.

Part headings not law—Severability—Effective dates—2005 c 488: See notes following RCW 28B.50.360.

Finding—2005 c 425: "The legislature has and continues to recognize the vital importance of economic development to the health and prosperity of Washington state as indicated in RCW 43.160.010, 43.155.070(4)(g), 43.163.005, and 43.168.010. The legislature finds that current economic development programs and funding, which are primarily low-interest loan programs, can be enhanced by creating a grant program to assist with public infrastructure projects that directly stimulate community and economic development by supporting the creation of new jobs or the retention of existing jobs." [2005 c 425 § 1.]

Expiration date—2005 c 425: "This act expires June 30, 2011." [2005 c 425 § 6.]

Severability—2005 c 425: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 425 § 7.]

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Findings—1995 c 376: See note following RCW 70.116.060.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.310.020.

Severability—Effective date—1985 c 471: See notes following RCW 82.04.260.

Additional notes found at www.leg.wa.gov

43.155.070 Eligibility, priority, limitations, and exceptions. (1) To qualify for financial assistance under this chapter the board must determine that a local government meets all of the following conditions:

(a) The city or county must be imposing a tax under chapter 82.46 RCW at a rate of at least one-quarter of one percent;

(b) The local government must have developed a capital facility plan; and

(c) The local government must be using all local revenue sources which are reasonably available for funding public works, taking into consideration local employment and economic factors.

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 may not receive financial assistance under this chapter unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting or receiving financial assistance under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 that has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 may apply for and receive financial assistance under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before executing a contractual agreement for financial assistance with the board.

(3) In considering awarding financial assistance for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, the board must consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(4) The board must develop a priority process for public works projects as provided in this section. The intent of the priority process is to maximize the value of public works projects accomplished with assistance under this chapter. The board must attempt to assure a geographical balance in assigning priorities to projects. The board must consider at least the following factors in assigning a priority to a project:

(a) Whether the local government receiving assistance has experienced severe fiscal distress resulting from natural disaster or emergency public works needs;

(b) Except as otherwise conditioned by RCW 43.155.110, whether the entity receiving assistance is a Puget Sound partner, as defined in RCW 90.71.010;

(c) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310;

(d) Whether the project is critical in nature and would affect the health and safety of a great number of citizens;

(e) Whether the applicant's permitting process has been certified as streamlined by the office of regulatory assistance;

(f) Whether the applicant has developed and adhered to guidelines regarding its permitting process for those applying for development permits consistent with section 1(2), chapter 231, Laws of 2007;

(g) The cost of the project compared to the size of the local government and amount of loan money available;

(h) The number of communities served by or funding the project;

(i) Whether the project is located in an area of high unemployment, compared to the average state unemployment;

(j) Whether the project is the acquisition, expansion, improvement, or renovation by a local government of a public water system that is in violation of health and safety standards, including the cost of extending existing service to such a system;

(k) Except as otherwise conditioned by RCW 43.155.120, and effective one calendar year following the development of model evergreen community management plans and ordinances under RCW 35.105.050, whether the entity receiving assistance has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in RCW 35.105.030;

(l) The relative benefit of the project to the community, considering the present level of economic activity in the community and the existing local capacity to increase local economic activity in communities that have low economic growth; and

(m) Other criteria that the board considers advisable.

(5) For the 2013-2015 fiscal biennium, in place of the criteria, ranking, and submission processes for construction loan lists provided in subsections (4) and (7) of this section:

(a) The board must develop a process for numerically ranking applications for construction loans submitted by local governments. The board must consider, at a minimum and in any order, the following factors in assigning a numerical ranking to a project:

(i) Whether the project is critical in nature and would affect the health and safety of many people;

(ii) The extent to which the project leverages nonstate funds;

(iii) The extent to which the project is ready to proceed to construction;

(iv) Whether the project is located in an area of high unemployment, compared to the average state unemployment;

(v) Whether the project promotes the sustainable use of resources and environmental quality;

(vi) Whether the project consolidates or regionalizes systems;

(vii) Whether the project encourages economic development through mixed-use and mixed income development consistent with chapter 36.70A RCW;

(viii) Whether the system is being well-managed in the present and for long-term sustainability;

(ix) Achieving equitable distribution of funds by geography and population;

(x) The extent to which the project meets the following state policy objectives:

(A) Efficient use of state resources;

(B) Preservation and enhancement of health and safety;

(C) Abatement of pollution and protection of the environment;

(D) Creation of new, family wage jobs, and avoidance of shifting existing jobs from one Washington state community to another;

(E) Fostering economic development consistent with chapter 36.70A RCW;

(F) Efficiency in delivery of goods and services, public transit, and transportation;

(G) Avoidance of additional costs to state and local governments that adversely impact local residents and small businesses; and

(H) Reduction of the overall cost of public infrastructure; and

(xi) Other criteria that the board considers necessary to achieve the purposes of this chapter.

(b) Before November 1, 2014, the board must develop and submit to the appropriate fiscal committees of the senate and house of representatives a ranked list of qualified public works projects which have been evaluated by the board and are recommended for funding by the legislature. The maximum amount of funding that the board may recommend for any jurisdiction is ten million dollars per biennium. For each project on the ranked list, as well as for eligible projects not recommended for funding, the board must document the numerical ranking that was assigned.

(6) Existing debt or financial obligations of local governments may not be refinanced under this chapter. Each local government applicant must provide documentation of attempts to secure additional local or other sources of funding for each public works project for which financial assistance is sought under this chapter.

(7) Before November 1st of each even-numbered year, the board must develop and submit to the appropriate fiscal committees of the senate and house of representatives a description of the loans made under RCW 43.155.065, 43.155.068, and subsection (10) of this section during the preceding fiscal year and a prioritized list of projects which are recommended for funding by the legislature, including one copy to the staff of each of the committees. The list must include, but not be limited to, a description of each project and recommended financing, the terms and conditions of the loan or financial guarantee, the local government jurisdiction and unemployment rate, demonstration of the jurisdiction's critical need for the project and documentation of local funds being used to finance the public works project. The list must also include measures of fiscal capacity for each jurisdiction recommended for financial assistance, compared to authorized limits and state averages, including local government sales taxes; real estate excise taxes; property taxes; and

charges for or taxes on sewerage, water, garbage, and other utilities.

(8) The board may not sign contracts or otherwise financially obligate funds from the public works assistance account before the legislature has appropriated funds for a specific list of public works projects. The legislature may remove projects from the list recommended by the board. The legislature may not change the order of the priorities recommended for funding by the board.

(9) Subsection (8) of this section does not apply to loans made under RCW 43.155.065, 43.155.068, and subsection (10) of this section.

(10) Loans made for the purpose of capital facilities plans are exempted from subsection (8) of this section.

(11) To qualify for loans or pledges for solid waste or recycling facilities under this chapter, a city or county must demonstrate that the solid waste or recycling facility is consistent with and necessary to implement the comprehensive solid waste management plan adopted by the city or county under chapter 70.95 RCW.

(12) After January 1, 2010, any project designed to address the effects of storm water or wastewater on Puget Sound may be funded under this section only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(13) During the 2013-2015 fiscal biennium, for projects involving repair, replacement, or improvement of a wastewater treatment plant or other public works facility for which an investment grade efficiency audit is obtainable, the public works board must require as a contract condition that the project sponsor undertake an investment grade efficiency audit. The project sponsor may finance the costs of the audit as part of its public works assistance account program loan.

(14)(a) For public works assistance account application rounds conducted during the 2013-2015 fiscal biennium, the board must implement policies and procedures designed to maximize local government use of federally funded drinking water and clean water state revolving funds operated by the state departments of health and ecology. The board, department of ecology, and department of health must jointly develop evaluation criteria and application procedures that will increase access of eligible drinking water and wastewater projects to the public works assistance account for short-term preconstruction financing and to the federally funded state revolving funds for construction financing. The procedures must also strengthen coordinated funding of preconstruction and construction projects.

(b) For all construction loan projects proposed to the legislature for funding during the 2013-2015 fiscal biennium, the board must base interest rates on the average daily market interest rate for tax-exempt municipal bonds as published in the bond buyer's index for the period from sixty to thirty days before the start of the application cycle. For projects with a repayment period between five and twenty years, the rate must be sixty percent of the market rate. For projects with a repayment period under five years, the rate must be thirty percent of the market rate. The board must also provide reduced interest rates, extended repayment periods, or forgivable principal loans for projects that meet financial hardship criteria as measured by the affordability index or similar standard measure of financial hardship.

(c) By December 1, 2013, the board must recommend to the appropriate committees of the legislature statutory language to make permanent these new criteria, procedures, and financing policies. [2013 2nd sp.s. c 19 § 7032; 2013 c 275 § 3; 2012 c 196 § 9; 2009 c 518 § 16; 2008 c 299 § 25. Prior: 2007 c 341 § 24; 2007 c 231 § 2; 2001 c 131 § 5; 1999 c 164 § 602; 1997 c 429 § 29; 1996 c 168 § 3; 1995 c 363 § 3; 1993 c 39 § 1; 1991 sp.s. c 32 § 23; 1990 1st ex.s. c 17 § 82; 1990 c 133 § 6; 1988 c 93 § 3; 1987 c 505 § 40; 1985 c 446 § 12.]

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Short title—2008 c 299: See note following RCW 35.105.010.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Findings—Recommendations—Reports encouraged—2007 c 231: "(1) The legislature finds that permit programs have been legislatively established to protect the health, welfare, economy, and environment of Washington's citizens and to provide a fair, competitive opportunity for business innovation and consumer confidence. The legislature also finds that uncertainty in government processes to permit an activity by a citizen of Washington state is undesirable and erodes confidence in government. The legislature further finds that in the case of projects that would further economic development in the state, information about the permitting process is critical for an applicant's planning and financial assessment of the proposed project. The legislature also finds that applicants have a responsibility to provide complete and accurate information.

(2) The legislature recommends that applicants be provided with the following information when applying for a development permit from a city, county, or state agency:

(a) The minimum and maximum time an agency will need to make a decision on a permit, including public comment requirements;

(b) The minimum amount of information required for an agency to make a decision on a permit;

(c) When an agency considers an application complete for processing;

(d) The minimum and maximum costs in agency fees that will be incurred by the permit applicant; and

(e) The reasons for a denial of a permit in writing.

(3) In providing this information to applicants, an agency should base estimates on the best information available about the permitting program and prior applications for similar permits, as well as on the information provided by the applicant. New information provided by the applicant subsequent to the agency estimates may change the information provided by an agency per subsection (2) of this section. Project modifications by an applicant may result in more time, more information, or higher fees being required for permit processing.

(4) This section does not create an independent cause of action, affect any existing cause of action, or establish time limits for purposes of RCW 64.40.020.

(5) City, county, and state agencies issuing development permits are encouraged to track the progress in providing the information to applicants per subsection (2) of this section by preparing an annual report of its performance for the preceding fiscal year. The report should be posted on its web site [and] made available and provided to the appropriate standing committees of the senate and house of representatives." [2007 c 231 § 1.]

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Savings—1999 c 164 §§ 301-303, 305, 306, and 601-603: See note following RCW 82.60.020.

Effective date—1997 c 429 §§ 29, 30: "Sections 29 and 30 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 19, 1997]." [1997 c 429 § 55.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

Finding—Purpose—1995 c 363: See note following RCW 43.155.068.

Effective date—1993 c 39: "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 July 1, 1993." [1993 c 39 § 2.]

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Intent—1990 1st ex.s. c 17: See note following RCW 43.210.010.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

Additional notes found at www.leg.wa.gov

Chapter 43.157 RCW
PROJECTS OF STATEWIDE SIGNIFICANCE

Sections

43.157.005 Declaration.
43.157.010 Definitions.
43.157.020 Expediting completion of projects of statewide significance—Requirements of agreements.
43.157.030 Application for designation—Project facilitator or coordinator.

43.157.005 Declaration. The legislature declares that certain investments, such as investments for industrial development, environmental improvement, and innovation activities, merit special designation and treatment by governmental bodies when they are proposed. Such investments bolster the economies of their locale and impact the economy of the state as a whole. It is the intention of the legislature to recognize projects of statewide significance and to encourage local governments and state agencies to expedite their completion. [2009 c 421 § 1; 1997 c 369 § 1.]

Effective date—2009 c 421: "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 immediately [May 8, 2009]." [2009 c 421 § 11.]

43.157.010 Definitions. The definitions in this section apply throughout this chapter and RCW 28A.525.166, *28B.76.210, **28C.18.080, 43.21A.350, and 90.58.100, unless the context requires otherwise:

(1) "Applicant" means a person applying to the department for designation of a development project as a project of statewide significance.

(2) "Aviation biofuels production facility" means a facility primarily for the processing of nonfossil biogenic feedstocks to produce aviation fuels that meet the fuel quality technical standards of the American society for testing materials for aviation fuels and coproducts.

(3) "Department" means the department of commerce.

(4) "Manufacturing" shall have the meaning assigned it in RCW 82.62.010.

(5)(a) "Project of statewide significance" means:

(i) A border crossing project that involves both private and public investments carried out in conjunction with adjacent states or provinces;

(ii) A development project that will provide a net environmental benefit;

(iii) A development project in furtherance of the commercialization of innovations;

(iv) A private industrial development with private capital investment in manufacturing or research and development; or

(v) An aviation biofuels production facility.

(b) To qualify for designation under RCW 43.157.030 as a project of statewide significance:

(i) The project must be completed after January 1, 2009;

(ii) The applicant must submit an application to the department for designation as a project of statewide significance to the department of commerce; and

(iii) Except for an aviation biofuels production facility, the project must have:

(A) In counties with a population less than or equal to twenty thousand, a capital investment of five million dollars;

(B) In counties with a population greater than twenty thousand but no more than fifty thousand, a capital investment of ten million dollars;

(C) In counties with a population greater than fifty thousand but no more than one hundred thousand, a capital investment of fifteen million dollars;

(D) In counties with a population greater than one hundred thousand but no more than two hundred thousand, a capital investment of twenty million dollars;

(E) In counties with a population greater than two hundred thousand but no more than four hundred thousand, a capital investment of thirty million dollars;

(F) In counties with a population greater than four hundred thousand but no more than one million, a capital investment of forty million dollars;

(G) In counties with a population greater than one million, a capital investment of fifty million dollars;

(H) In rural counties as defined by RCW 82.14.370, projected full-time employment positions after completion of construction of fifty or greater;

(I) In counties other than rural counties as defined by RCW 82.14.370, projected full-time employment positions after completion of construction of one hundred or greater; or

(J) Been qualified by the director of the department as a project of statewide significance either because:

(I) The economic circumstances of the county merit the additional assistance such designation will bring;

(II) The impact on a region due to the size and complexity of the project merits such designation;

(III) The project resulted from or is in furtherance of innovation activities at a public research institution in the state or is in or resulted from innovation activities within an innovation partnership zone; or

(IV) The project will provide a net environmental benefit as evidenced by plans for design and construction under green building standards or for the creation of renewable energy technology or components or under other environmental criteria established by the director in consultation with the director of the department of ecology.

A project may be qualified under this subsection (5)(b)(iii)(J) only after consultation on the availability of staff resources of the office of regulatory assistance.

(6) "Research and development" shall have the meaning assigned it in RCW 82.62.010. [2012 c 63 § 2. Prior: 2009 c 565 § 34; 2009 c 421 § 2; 2004 c 275 § 63; 2003 c 54 § 1; 1997 c 369 § 2.]

Reviser's note: *(1) RCW 28B.76.210 was recodified as RCW 28B.77.070 by 2012 c 229 § 904.

**(2) RCW 28C.18.080 was amended by 2009 c 151 § 7, deleting the phrase "projects of statewide significance."

(3) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—2012 c 63: "The legislature finds that Washington is becoming a leader in the development and commercialization of aviation biofuels due to its strong tradition of market innovation, a concentrated

demand for sustainable aviation fuels, leading expertise and research capacity, an established aviation manufacturing sector, and the availability of a diverse range of feedstocks for the production of biofuels. The legislature also finds that the development of aviation biofuels has the potential to reduce dependence on foreign sources of fossil fuels, reduce greenhouse gas emissions, and promote economic development and jobs in Washington. The legislature intends to support the development of commercial-scale aviation biofuels production facilities in Washington by facilitating and streamlining the permitting process for new facilities and the expansion of existing facilities and by providing access to low-cost financing through the issuance of revenue bonds.

The legislature finds that the 2012 Washington state energy strategy calls for a targeted, strategic policy focus on sustainable aviation biofuels to encourage the realization of Washington's potential. The legislature also finds that a regional stakeholder effort to explore the opportunities and challenges surrounding the production of sustainable aviation fuels, known as sustainable aviation biofuels northwest, urged policymakers in the Northwest to develop supportive public policies that will jump start the industry, attract investment, and accelerate industry growth. In order to provide focus and develop policy recommendations to support the sustainable aviation biofuels sector in Washington, the legislature intends to establish a sustainable aviation biofuels work group. Additionally, the legislature intends Innovate Washington, designated in 2011 as the lead agency for coordinating clean energy-related initiatives targeted at growing the clean energy sector, to convene the appropriate stakeholders and facilitate the opportunity for the state to realize the full economic growth impact to the state's economy." [2012 c 63 § 1.]

Effective date—2009 c 421: See note following RCW 43.157.005.

Part headings not law—2004 c 275: See note following RCW 28B.76.090.

43.157.020 Expediting completion of projects of statewide significance—Requirements of agreements. Counties and cities with development projects designated as projects of statewide significance within their jurisdictions shall enter into an agreement with the office of regulatory assistance and the project managers of projects of statewide significance for expediting the completion of projects of statewide significance. The agreement shall require:

(1) Expedited permit processing for the design and construction of the project;

(2) Expedited environmental review processing;

(3) Expedited processing of requests for street, right-of-way, or easement vacations necessary for the construction of the project;

(4) Participation of local officials on the team assembled under the requirements of RCW 43.157.030(2)(b); and

(5) Such other actions or items as are deemed necessary by the office of regulatory assistance for the design and construction of the project. [2009 c 421 § 3; 2003 c 54 § 2; 1997 c 369 § 3.]

Effective date—2009 c 421: See note following RCW 43.157.005.

43.157.030 Application for designation—Project facilitator or coordinator. (1) The *department of community, trade, and economic development shall:

(a) Develop an application for designation of development projects as projects of statewide significance. The application must be accompanied by a letter of approval from the legislative authority of any jurisdiction that will have the proposed project of statewide significance within its boundaries. No designation of a project as a project of statewide significance shall be made without such letter of approval. The letter of approval must state that the jurisdiction joins in the request for the designation of the project as one of statewide significance and has or will hire the professional staff that will be required to expedite the processes necessary to the completion of a project of statewide significance. The development project proponents may provide the funding necessary for the jurisdiction to hire the professional staff that will be required to so expedite. The application shall contain information regarding the location of the project, the applicant's average employment in the state for the prior year, estimated new employment related to the project, estimated wages of employees related to the project, estimated time schedules for completion and operation, and other information required by the department; and

(b) Designate a development project as a project of statewide significance if the department determines:

(i) After review of the application under criteria adopted by rule, the development project will provide significant economic benefit to the local or state economy, or both, the project is aligned with the state's comprehensive plan for economic development under RCW 43.162.020, and, by its designation, the project will not prevent equal consideration of all categories of proposals under RCW 43.157.010; and

(ii) The development project meets or will meet the requirements of RCW 43.157.010 regarding designation as a project of statewide significance.

(2) The office of regulatory assistance shall assign a project facilitator or coordinator to each project of statewide significance to:

(a) Assist in the scoping and coordinating functions provided for in chapter 43.42 RCW;

(b) Assemble a team of state and local government and private officials to help meet the planning, permitting, and development needs of each project, which team shall include those responsible for planning, permitting and licensing, infrastructure development, workforce development services including higher education, transportation services, and the provision of utilities; and

(c) Work with each team member to expedite their actions in furtherance of the project. [2009 c 421 § 4; 2003 c 54 § 3; 1997 c 369 § 4.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Effective date—2009 c 421: See note following RCW 43.157.005.

43.160.010 Findings. (1) The legislature finds that it is the public policy of the state of Washington to direct financial resources toward the fostering of economic development through the stimulation of investment and job opportunities and the retention of sustainable existing employment for the general welfare of the inhabitants of the state. Reducing unemployment and reducing the time citizens remain jobless is important for the economic welfare of the state. A valuable means of fostering economic development is the construction of public facilities which contribute to the stability and growth of the state's economic base. Expenditures made for these purposes as authorized in this chapter are declared to be in the public interest, and constitute a proper use of public funds. A community economic revitalization board is needed which shall aid the development of economic opportunities. The general objectives of the board should include:

(a) Strengthening the economies of areas of the state which have experienced or are expected to experience chron-

ically high unemployment rates or below average growth in their economies;

(b) Encouraging the diversification of the economies of the state and regions within the state in order to provide greater seasonal and cyclical stability of income and employment;

(c) Encouraging wider access to financial resources for both large and small industrial development projects;

(d) Encouraging new economic development or expansions to maximize employment;

(e) Encouraging the retention of viable existing firms and employment;

(f) Providing incentives for expansion of employment opportunities for groups of state residents that have been less successful relative to other groups in efforts to gain permanent employment; and

(g) Enhancing job and business growth through facility development and other improvements in innovation partnership zones designated under RCW 43.330.270.

(2) The legislature also finds that the state's economic development efforts can be enhanced by, in certain instances, providing funds to improve state highways, county roads, or city streets for industries considering locating or expanding in this state.

(3) The legislature finds it desirable to provide a process whereby the need for diverse public works improvements necessitated by planned economic development can be addressed in a timely fashion and with coordination among all responsible governmental entities.

(4) The legislature also finds that the state's economic development efforts can be enhanced by, in certain instances, providing funds to assist development of telecommunications infrastructure that supports business development, retention, and expansion in the state.

(5) The legislature also finds that the state's economic development efforts can be enhanced by providing funds to improve markets for those recyclable materials representing a large fraction of the waste stream. The legislature finds that public facilities which result in private construction of processing or remanufacturing facilities for recyclable materials are eligible for consideration from the board.

(6) The legislature finds that sharing economic growth statewide is important to the welfare of the state. The ability of communities to pursue business and job retention, expansion, and development opportunities depends on their capacity to ready necessary economic development project plans, sites, permits, and infrastructure for private investments. Project-specific planning, predevelopment, and infrastructure are critical ingredients for economic development. It is, therefore, the intent of the legislature to increase the amount of funding available through the community economic revitalization board and to authorize flexibility for available resources in these areas to help fund planning, predevelopment, and construction costs of infrastructure and facilities and sites that foster economic vitality and diversification. [2012 c 225 § 2; 2008 c 327 § 1. Prior: 1999 c 164 § 101; 1999 c 94 § 5; 1996 c 51 § 1; 1991 c 314 § 21; 1989 c 431 § 61; 1987 c 422 § 1; 1984 c 257 § 1; 1982 1st ex.s. c 40 § 1.]

Effective date—2008 c 327 §§ 1, 2, 4-11, 17: "Sections 1, 2, 4 through 11, and 17 of this act take effect July 1, 2009." [2008 c 327 § 18.]

Findings—Intent—1999 c 164: "The legislature finds that while Washington's economy is currently prospering, economic growth continues to be uneven, particularly as between metropolitan and rural areas. This has created in effect two Washingtons. One afflicted by inadequate infrastructure to support and attract investment, another suffering from congestion and soaring housing prices. In order to address these problems, the legislature intends to use resources strategically to build on our state's strengths while addressing threats to our prosperity." [1999 c 164 § 1.]

Part headings and subheadings not law—1999 c 164: "Part headings and subheadings used in this act are not any part of the law." [1999 c 164 § 801.]

Effective date—1999 c 164: "This act takes effect August 1, 1999." [1999 c 164 § 802.]

Severability—1999 c 164: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 164 § 804.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Severability—1996 c 51: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 51 § 11.]

Effective dates—1996 c 51: "(1) Sections 1 through 9 and 11 of this act shall take effect July 1, 1996.

(2) Section 10 of this act shall take effect June 30, 1997." [1996 c 51 § 12.]

Findings—1991 c 314: See note following RCW 43.160.020.

Severability—Section captions not law—1989 c 431: See RCW 70.95.901 and 70.95.902.

Additional notes found at www.leg.wa.gov

43.160.060 Loans and grants to political subdivisions and federally recognized Indian tribes for public facilities authorized—Application—Requirements for financial assistance. (1) The board is authorized to make direct loans to political subdivisions of the state and to federally recognized Indian tribes for the purposes of assisting the political subdivisions and federally recognized Indian tribes in financing the cost of public facilities, including development of land and improvements for public facilities, project-specific environmental, capital facilities, land use, permitting, feasibility, and marketing studies and plans; project design, site planning, and analysis; project debt and revenue impact analysis; as well as the construction, rehabilitation, alteration, expansion, or improvement of the facilities. A grant may also be authorized for purposes designated in this chapter, but only when, and to the extent that, a loan is not reasonably possible, given the limited resources of the political subdivision or the federally recognized Indian tribe and the finding by the board that financial circumstances require grant assistance to enable the project to move forward. However, no more than twenty-five percent of all financial assistance approved by the board in any biennium may consist of grants to political subdivisions and federally recognized Indian tribes.

(2) Application for funds must be made in the form and manner as the board may prescribe. In making grants or loans the board must conform to the following requirements:

(a) The board may not provide financial assistance:

(i) For a project the primary purpose of which is to facilitate or promote a retail shopping development or expansion.

(ii) For any project that evidence exists would result in a development or expansion that would displace existing jobs in any other community in the state.

(iii) For a project the primary purpose of which is to facilitate or promote gambling.

(iv) For a project located outside the jurisdiction of the applicant political subdivision or federally recognized Indian tribe.

(b) The board may only provide financial assistance:

(i) For a project demonstrating convincing evidence that a specific private development or expansion is ready to occur and will occur only if the public facility improvement is made that:

(A) Results in the creation of significant private sector jobs or significant private sector capital investment as determined by the board and is consistent with the state comprehensive economic development plan developed by the Washington economic development commission pursuant to chapter 43.162 RCW, once the plan is adopted; and

(B) Will improve the opportunities for the successful maintenance, establishment, or expansion of industrial or commercial plants or will otherwise assist in the creation or retention of long-term economic opportunities;

(ii) For a project that cannot meet the requirement of (b)(i) of this subsection but is a project that:

(A) Results in the creation of significant private sector jobs or significant private sector capital investment as determined by the board and is consistent with the state comprehensive economic development plan developed by the Washington economic development commission pursuant to chapter 43.162 RCW, once the plan is adopted;

(B) Is part of a local economic development plan consistent with applicable state planning requirements;

(C) Can demonstrate project feasibility using standard economic principles; and

(D) Is located in a rural community as defined by the board, or a rural county;

(iii) For site-specific plans, studies, and analyses that address environmental impacts, capital facilities, land use, permitting, feasibility, marketing, project engineering, design, site planning, and project debt and revenue impacts, as grants not to exceed fifty thousand dollars.

(c) The board must develop guidelines for local participation and allowable match and activities.

(d) An application must demonstrate local match and local participation, in accordance with guidelines developed by the board.

(e) An application must be approved by the political subdivision and supported by the local associate development organization or local workforce development council or approved by the governing body of the federally recognized Indian tribe.

(f) The board may allow de minimis general system improvements to be funded if they are critically linked to the viability of the project.

(g) An application must demonstrate convincing evidence that the median hourly wage of the private sector jobs created after the project is completed will exceed the countywide median hourly wage.

(h) The board must prioritize each proposed project according to:

(i) The relative benefits provided to the community by the jobs the project would create, not just the total number of jobs it would create after the project is completed, but also giving consideration to the unemployment rate in the area in which the jobs would be located;

(ii) The rate of return of the state's investment, including, but not limited to, the leveraging of private sector investment, anticipated job creation and retention, and expected increases in state and local tax revenues associated with the project;

(iii) Whether the proposed project offers a health insurance plan for employees that includes an option for dependents of employees;

(iv) Whether the public facility investment will increase existing capacity necessary to accommodate projected population and employment growth in a manner that supports infill and redevelopment of existing urban or industrial areas that are served by adequate public facilities. Projects should maximize the use of existing infrastructure and provide for adequate funding of necessary transportation improvements;

(v) Whether the applicant's permitting process has been certified as streamlined by the office of regulatory assistance; and

(vi) Whether the applicant has developed and adhered to guidelines regarding its permitting process for those applying for development permits consistent with section 1(2), chapter 231, Laws of 2007.

(i) A responsible official of the political subdivision or the federally recognized Indian tribe must be present during board deliberations and provide information that the board requests.

(3) Before any financial assistance application is approved, the political subdivision or the federally recognized Indian tribe seeking the assistance must demonstrate to the community economic revitalization board that no other timely source of funding is available to it at costs reasonably similar to financing available from the community economic revitalization board. [2012 c 196 § 10; 2008 c 327 § 5; 2007 c 231 § 3; 2004 c 252 § 3. Prior: 2002 c 242 § 4; 2002 c 239 § 1; 1999 c 164 § 103; 1996 c 51 § 5; 1993 c 320 § 4; 1990 1st ex.s. c 17 § 73; 1989 c 431 § 62; 1987 c 422 § 5; 1985 c 446 § 3; 1983 1st ex.s. c 60 § 3; 1982 1st ex.s. c 40 § 6.]

Effective date—2008 c 327 §§ 1, 2, 4-11, 17: See note following RCW 43.160.010.

Findings—Recommendations—Reports encouraged—2007 c 231: See note following RCW 43.155.070.

Findings—Intent—2002 c 242: See note following RCW 43.84.092.

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Severability—Effective dates—1996 c 51: See notes following RCW 43.160.010.

Intent—1990 1st ex.s. c 17: See note following RCW 43.210.010.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Severability—Section captions not law—1989 c 431: See RCW 70.95.901 and 70.95.902.

Additional notes found at www.leg.wa.gov

43.160.900 Community economic revitalization board—Evaluations of financial assistance—Reporting

of evaluations. (1) The community economic revitalization board shall conduct biennial outcome-based evaluations of the financial assistance provided under this chapter. The evaluations shall include information on the number of applications for community economic revitalization board assistance; the number and types of projects approved; the grant or loan amount awarded each project; the projected number of jobs created or retained by each project; the actual number and cost of jobs created or retained by each project; the wages and health benefits associated with the jobs; the amount of state funds and total capital invested in projects; the number and types of businesses assisted by funded projects; the location of funded projects; the transportation infrastructure available for completed projects; the local match and local participation obtained; the number of delinquent loans; and the number of project terminations. The evaluations may also include additional performance measures and recommendations for programmatic changes.

(2)(a) By September 1st of each even-numbered year, the board shall forward its draft evaluation to the Washington state economic development commission for review and comment, as required in *section 10 of this act. The board shall provide any additional information as may be requested by the commission for the purpose of its review.

(b) Any written comments or recommendations provided by the commission as a result of its review shall be included in the board's completed evaluation. The evaluation must be presented to the governor and appropriate committees of the legislature by December 31st of each even-numbered year. The initial evaluation must be submitted by December 31, 2010. [2008 c 327 § 9; 1993 c 320 § 8; 1987 c 422 § 10; 1985 c 446 § 25; 1982 1st ex.s. c 40 § 10.]

***Reviser's note:** Section 10 of this act was vetoed by the governor.

Effective date—2008 c 327 §§ 1, 2, 4-11, 17: See note following RCW 43.160.010.

Effective date—1993 c 320 § 8: "Section 8 of 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 [May 12, 1993]." [1993 c 320 § 12.]

Additional notes found at www.leg.wa.gov

Chapter 43.185A RCW
AFFORDABLE HOUSING PROGRAM

Sections

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43.185A.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affordable housing" means residential housing for rental occupancy which, as long as the same is occupied by low-income households, requires payment of monthly housing costs, including utilities other than telephone, of no more than thirty percent of the family's income. The department must adopt policies for residential homeownership housing, occupied by low-income households, which specify the percentage of family income that may be spent on monthly housing costs, including utilities other than telephone, to qualify as affordable housing.

(2) "Contracted amount" has the same meaning as provided in RCW 43.185.020.

(3) "Department" means the department of commerce.

(4) "Director" means the director of the department of commerce.

(5) "First-time home buyer" means an individual or his or her spouse or domestic partner who have not owned a home during the three-year period prior to purchase of a home.

(6) "Low-income household" means a single person, family or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the project is located. [2013 c 145 § 4; 2009 c 565 § 38; 2008 c 6 § 301; 2000 c 255 § 9; 1995 c 399 § 102; 1991 c 356 § 10.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Severability—Effective date—2000 c 255: See RCW 59.28.901 and 59.28.902.

Additional notes found at www.leg.wa.gov

43.185A.020 Affordable housing program—Purpose—Input. The affordable housing program is created in the department for the purpose of developing and coordinating public and private resources targeted to meet the affordable housing needs of low-income households in the state of Washington. The program shall be developed and administered by the department with advice and input from the affordable housing advisory board established in RCW 43.185B.020. [1995 c 399 § 103; 1993 c 478 § 16; 1991 c 356 § 11.]

43.185A.030 Activities eligible for assistance. (1) Using moneys specifically appropriated for such purpose, the department shall finance in whole or in part projects that will provide housing for low-income households.

(2) Activities eligible for assistance include, but are not limited to:

(a) New construction, rehabilitation, or acquisition of housing for low-income households;

(b) Rent subsidies in new construction or rehabilitated multifamily units;

(c) Down payment or closing costs assistance for first-time home buyers;

(d) Mortgage subsidies for new construction or rehabilitation of eligible multifamily units; and

(e) Mortgage insurance guarantee or payments for eligible projects.

(3) Legislative appropriations from capital bond proceeds may be used only for the costs of projects authorized under subsection (2)(a), (c), (d), and (e) of this section, and not for the administrative costs of the department.

(4) Moneys from repayment of loans from appropriations from capital bond proceeds may be used for all activities necessary for the proper functioning of the affordable housing program except for activities authorized under subsection (2)(b) of this section.

(5) Administrative costs associated with application, distribution, and project development activities of the department may not exceed three percent of the annual funds available for the affordable housing program. Reappropriations must not be included in the calculation of the annual funds available for determining the administrative costs.

(6) Administrative costs associated with compliance and monitoring activities of the department may not exceed one-quarter of one percent annually of the contracted amount of state investment in the affordable housing program. [2013 c 145 § 5; 2011 1st sp.s. c 50 § 954. Prior: 2005 c 518 § 1803; 2005 c 219 § 3; 1994 c 160 § 3; 1991 c 356 § 12.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

43.185A.040 Eligible organizations. Organizations that may receive assistance from the department under this chapter are local governments, local housing authorities, nonprofit community or neighborhood-based organizations, federally recognized Indian tribes in the state of Washington, and regional or statewide nonprofit housing assistance organizations.

Eligibility for assistance from the department under this chapter also requires compliance with the revenue and taxation laws, as applicable to the recipient, at the time the grant is made. [1994 c 160 § 4; 1991 c 356 § 13.]

43.185A.050 Grant and loan application process—Report. (1) During each calendar year in which funds are available for use by the department for the affordable housing program, the department must announce to all known interested parties, and through major media throughout the state, a grant and loan application period of at least ninety days' duration. This announcement must be made as often as the director deems appropriate for proper utilization of resources. The department must then promptly grant as many applications as will utilize available funds less appropriate administrative costs of the department as provided in RCW 43.185A.030.

(2) Until June 30, 2013, for applications submitted for funding under RCW 43.185A.030(2)(a), the department must consider total cost and per-unit cost of each project compared to similar housing projects constructed or renovated within the same geographic area.

(3) The department must develop, with advice and input from the affordable housing advisory board established in RCW 43.185B.020, or a subcommittee of the affordable housing advisory board:

(a) Additional criteria to evaluate applications for assistance under this chapter; and

(b) Recommendations for awarding funds under RCW 43.185A.030(2)(a) in a cost-effective manner, including an implementation plan, timeline, and any other items the department identifies as important to consider. The department must submit a report with the recommendations to the legislature by December 1, 2012. [2013 c 145 § 6; 2012 c 235 § 2; 1991 c 356 § 14.]

43.185A.110 Affordable housing land acquisition revolving loan fund program. (1) The affordable housing land acquisition revolving loan fund program is created in the department to assist eligible organizations, described under RCW 43.185A.040, to purchase land for affordable housing development. The department shall contract with the Washington state housing finance commission to administer the affordable housing land acquisition revolving loan fund program. Within this program, the Washington state housing finance commission shall establish and administer the Washington state housing finance commission land acquisition revolving loan fund.

(2) As used in this chapter, "market rate" means the current average market interest rate that is determined at the time any individual loan is closed upon using a widely recognized current market interest rate measurement to be selected for use by the Washington state housing finance commission with the department's approval. This interest rate must be noted in an attachment to the closing documents for each loan.

(3) Under the affordable housing land acquisition revolving loan fund program:

(a) Loans may be made to purchase land on which to develop affordable housing. In addition to affordable housing, facilities intended to provide supportive services to affordable housing residents and low-income households in the nearby community may be developed on the land.

(b) Eligible organizations applying for a loan must include in the loan application a proposed affordable housing development plan indicating the number of affordable housing units planned, a description of any other facilities being considered for the property, and an estimated timeline for completion of the development. The Washington state housing finance commission may require additional information from loan applicants and may consider the efficient use of land, project readiness, organizational capacity, and other factors as criteria in awarding loans.

(c) Forty percent of the loans shall go to eligible applicants operating homeownership programs for low-income households in which the households participate in the construction of their homes. Sixty percent of loans shall go to other eligible organizations. If the entire forty percent for applicants operating self-help homeownership programs cannot be lent to these types of applicants, the remainder shall be lent to other eligible organizations.

(d) Within five years of receiving a loan, a loan recipient must present the Washington state housing finance commission with an updated development plan, including a proposed development design, committed and anticipated additional financial resources to be dedicated to the development, and an estimated development schedule, which indicates completion of the development within eight years of loan receipt. This updated development plan must be substantially consis-

tent with the development plan submitted as part of the original loan application as required in (b) of this subsection.

(e) Within eight years of receiving a loan, a loan recipient must develop affordable housing on the property for which the loan was made and place the affordable housing into service.

(f) A loan recipient must preserve the affordable rental housing developed on the property acquired under this section as affordable housing for a minimum of thirty years.

(4) If a loan recipient does not place affordable housing into service on a property for which a loan has been received under this section within the eight-year period specified in subsection (3)(e) of this section, or if a loan recipient fails to use the property for the intended affordable housing purpose consistent with the loan recipient's original affordable housing development plan, then the loan recipient must pay to the Washington state housing finance commission an amount consisting of the principal of the original loan plus compounded interest calculated at the current market rate. The Washington state housing finance commission shall develop guidelines for the time period in which this repayment must take place, which must be noted in the original loan agreement. The Washington state housing finance commission may grant a partial or total exemption from this repayment requirement if it determines that a development is substantially complete or that the property has been substantially used in keeping with the original affordable housing purpose of the loan. Any repayment funds received as a result of noncompliance with loan requirements shall be deposited into the Washington state housing finance commission land acquisition revolving loan fund for the purposes of the affordable housing land acquisition revolving loan fund program.

(5) The Washington state housing finance commission, with approval from the department, may adopt guidelines and requirements that are necessary to administer the affordable housing land acquisition revolving loan fund program.

(6) Interest rates on property loans granted under this section may not exceed one percent. All loan repayment moneys received shall be deposited into the Washington state housing finance commission affordable housing land acquisition revolving loan fund for the purposes of the affordable housing land acquisition revolving loan fund program.

(7) The Washington state housing finance commission must develop performance measures for the program, which must be approved by the department, including, at a minimum, measures related to:

(a) The ability of eligible organizations to access land for affordable housing development;

(b) The total number of dwelling units by housing type and the total number of low-income households and persons served; and

(c) The financial efficiency of the program as demonstrated by factors, including the cost per unit developed for affordable housing units in different areas of the state and a measure of the effective use of funds to produce the greatest number of units for low-income households.

(8) By December 1st of each year, beginning in 2007, the Washington state housing finance commission shall report to the department and the appropriate committees of the legislature using, at a minimum, the performance measures developed under subsection (7) of this section. [2008 c 112 § 1; 2007 c 428 § 2.]

Findings—2007 c 428: "The legislature finds that protecting the public health, safety, and welfare by providing affordable housing resources to needy or vulnerable persons is a fundamental purpose of government. The legislature further finds that assisting eligible organizations to purchase land for affordable housing development and related supportive services facilities confers a valuable benefit on the public that constitutes consideration for financing assistance to eligible organizations in the form of low-interest loans, subject to restrictions that provide continued protection of the public interest." [2007 c 428 § 1.]

Contingency—2007 c 428: "If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2007, in the omnibus appropriations act, this act is null and void." [2007 c 428 § 3.] Funding was provided in 2007 c 520 § 1044 (capital budget).

43.185A.120 Affordable housing and community facilities rapid response loan program. (1) The affordable housing and community facilities rapid response loan program is created in the department to assist eligible organizations, described under RCW 43.185A.040, to purchase land or real property for affordable housing and community facilities preservation or development in rapidly gentrifying neighborhoods or communities with a significant low-income population that is threatened with displacement by such gentrification. The department shall contract with the Washington state housing finance commission to establish and administer the program.

(2) Loans or grants may be made through the affordable housing and community facilities rapid response loan program to purchase land or real property for the preservation or development of affordable housing or community facilities, including reasonable costs and fees.

(3) The Washington state housing finance commission, with approval from the department, may adopt guidelines and requirements that are necessary to administer the affordable housing and community facilities rapid response loan program.

(4) A loan or grant recipient must preserve affordable rental housing acquired or developed under this section as affordable housing for a minimum of thirty years.

(5) Interest rates on loans made under this section may be as low as zero percent but may not exceed three percent. All loan repayment moneys received must be deposited into a program account established by the Washington state housing finance commission for the purpose of making new loans and grants under this section.

(6) By December 1st of each year, beginning in 2008, the Washington state housing finance commission shall report to the department and the appropriate committees of the legislature: The number of loans and grants that were made in the program; for what purposes the loans and grants were made; to whom the loans and grants were made; and when the loans are expected to be paid back. [2008 c 112 § 2.]

43.210.010 Findings. The legislature finds:

(1) The exporting of goods and services from Washington to international markets is an important economic stimulus to the growth, development, and stability of the state's businesses in both urban and rural areas, and that these economic activities create needed jobs for Washingtonians.

(2) Impediments to the entry of many small and medium-sized businesses into export markets have restricted growth in exports from the state.

(3) Particularly significant impediments for many small and medium-sized businesses are the lack of easily accessible information about export opportunities and financing alternatives.

(4) There is a need for a small business export finance assistance center which will specialize in providing export assistance to small and medium-sized businesses throughout the state in acquiring information about export opportunities and financial alternatives for exporting. [1990 1st ex.s. c 17 § 65; 1985 c 231 § 1; 1983 1st ex.s. c 20 § 1.]

Intent—1990 1st ex.s. c 17: "The legislature finds that the Puget Sound region is experiencing economic prosperity and the challenges associated with rapid growth; much of the rest of the state is not experiencing economic prosperity, and faces challenges associated with slow economic growth. It is the intent of the legislature to encourage economic prosperity and balanced economic growth throughout the state.

In order to accomplish this goal, growth must be managed more effectively in the Puget Sound region, and rural areas must build local capacity to accommodate additional economic activity in their communities. Where possible, rural economies and low-income areas should be linked with prosperous urban economies to share economic growth for the benefit of all areas and the state.

To accomplish this goal it is the intent of the legislature to: (1) Assure equitable opportunities to secure prosperity for distressed areas, rural communities, and disadvantaged populations by promoting urban-rural economic links, and by promoting value-added product development, business networks, and increased exports from rural areas; (2) improve the economic development service delivery system to be better able to serve these areas, communities, and populations; (3) redirect the priorities of the state's economic development programs to focus economic development efforts into areas and sectors of the greatest need; (4) build local capacity so that communities are better able to plan for growth and achieve self-reliance; (5) administer grant programs to promote new feasibility studies and project development on projects of interest to rural areas or areas outside of the Puget Sound region; and (6) develop a coordinated economic investment strategy involving state economic development programs, businesses, educational and vocational training institutions, local governments and local economic development organizations, ports, and others." [1990 1st ex.s. c 17 § 64.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

43.210.020 Small business export finance assistance center authorized—Purposes. A nonprofit corporation, to be known as the small business export finance assistance center, and branches subject to its authority, may be formed under chapter 24.03 RCW for the following public purposes:

(1) To assist small and medium-sized businesses in both urban and rural areas in the financing of export transactions.

(2) To provide, singly or in conjunction with other organizations, information and assistance to these businesses about export opportunities and financing alternatives. [1998 c 109 § 1; 1990 1st ex.s. c 17 § 66; 1985 c 231 § 2; 1983 1st ex.s. c 20 § 2.]

Intent—1990 1st ex.s. c 17: See note following RCW 43.210.010.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Transfer of property—1985 c 231: "All reports, documents, surveys, books, records, files, papers, or written material in the possession of the export assistance center shall be delivered to the custody of the small business export finance assistance center. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the export assistance center shall be made available to the small business export finance assistance center. All funds, credits, or other assets held by the export assistance center shall be assigned to the small business export finance assistance center.

Whenever any question arises as to the transfer of any funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned." [1985 c 231 § 7.]

Existing contracts—1985 c 231: "All existing contracts and obligations shall remain in full force and shall be performed by the small business export finance assistance center." [1985 c 231 § 8.]

Savings—1985 c 231: "The transfer of the powers, duties, and functions of the export assistance center shall not affect the validity of any act performed prior to May 10, 1985." [1985 c 231 § 9.]

Additional notes found at www.leg.wa.gov

43.330.005 Findings. The legislature finds that the long-term economic health of the state and its citizens depends upon the strength and vitality of its communities and businesses. It is the intent of this chapter to create a department of commerce that fosters new partnerships for strong and sustainable communities. The mission of the department is to grow and improve jobs in Washington and facilitate innovation. To carry out its mission, the department will bring together focused efforts to: Streamline access to business assistance and economic development services by providing them through sector-based, cluster-based, and regional partners; provide focused and flexible responses to changing economic conditions; generate greater local capacity to respond to both economic growth and environmental challenges; increase accountability to the public, the executive branch, and the legislature; manage growth and achieve sustainable development; diversify the state's economy and export goods and services; provide greater access to economic opportunity; stimulate private sector investment and entrepreneurship; provide stable family-wage jobs and meet the diverse needs of families; provide affordable housing and housing services; and construct public infrastructure.

The legislature further finds that as a result of the rapid pace of global social and economic change, the state and local communities will require coordinated and creative responses by every segment of the community. The state can play a role in assisting such local efforts by reorganizing state assistance efforts to promote such partnerships. The department has a primary responsibility to provide financial and technical assistance to the communities of the state, to assist in improving the delivery of federal, state, and local programs, and to provide communities with opportunities for productive and coordinated development beneficial to the well-being of communities and their residents. It is the intent of the legislature in creating the department to maximize the use of local expertise and resources in the delivery of community and economic development services. [2010 c 271 § 2; 1993 c 280 § 1.]

Purpose—2010 c 271: "In 2009, the legislature changed the name of the department of community, trade, and economic development to the department of commerce and directed the agency to, among other things, develop a report with recommendations on statutory changes to ensure that the department's efforts: Are organized around a concise core mission and aligned with the state's comprehensive plan for economic development; generate greater local capacity; maximize results through partnerships and the use of intermediaries; and provide transparency and increased accountability. Recommendations for creating or consolidating programs deemed important to meeting the department's core mission and recommendations for terminating or transferring specific programs if they are not consistent

with the department's core mission were to be included in the report.

In accordance with that legislation, chapter 565, Laws of 2009, in November 2009 the department of commerce submitted a plan that establishes a mission of growing and improving jobs in the state and recognizes the need for an innovation-driven economy. The plan also outlines agency priorities, efficiencies, and program transfers that will help to advance the new mission.

The primary purpose of this act is to implement portions of the department of commerce plan by transferring certain programs from the department of commerce to other state agencies whose missions are more closely aligned with the core functions of those programs. This act also directs additional efficiencies in state government and directs development of a statewide clean energy strategy, which will better enable the department of commerce to focus on its new mission." [2010 c 271 § 1.]

Effective date—2010 c 271: "This act takes effect July 1, 2010." [2010 c 271 § 803.]

43.330.050 Community and economic development responsibilities. The department shall be responsible for promoting community and economic development within the state by assisting the state's communities to increase the quality of life of their citizens and their economic vitality, and by assisting the state's businesses to maintain and increase their economic competitiveness, while maintaining a healthy environment. Community and economic development efforts shall include: Efforts to increase economic opportunity; local planning to manage growth; the promotion and provision of affordable housing and housing-related services; providing public infrastructure; business and trade development; assisting firms and industrial sectors to increase their competitiveness; fostering the development of minority and women-owned businesses; facilitating technology development, transfer, and diffusion; community services and advocacy for low-income persons; and public safety efforts. The department shall have the following general functions and responsibilities:

(1) Provide advisory assistance to the governor, other state agencies, and the legislature on community and economic development matters and issues;

(2) Assist the governor in coordinating the activities of state agencies that have an impact on local government and communities;

(3) Cooperate with the Washington state economic development commission, the legislature, and the governor in the development and implementation of strategic plans for the state's community and economic development efforts;

(4) Solicit private and federal grants for economic and community development programs and administer such programs in conjunction with other programs assigned to the department by the governor or the legislature;

(5) Cooperate with and provide technical and financial assistance to local governments, businesses, and community-based organizations serving the communities of the state for the purpose of aiding and encouraging orderly, productive, and coordinated development of the state, and, unless stipulated otherwise, give additional consideration to local communities and individuals with the greatest relative need and the fewest resources;

(6) Participate with other states or subdivisions thereof in interstate programs and assist cities, counties, municipal corporations, governmental conferences or councils, and regional planning commissions to participate with other states and provinces or their subdivisions;

(7) Hold public hearings and meetings to carry out the purposes of this chapter;

(8) Conduct research and analysis in furtherance of the state's economic and community development efforts including maintenance of current information on market, demographic, and economic trends as they affect different industrial sectors, geographic regions, and communities with special economic and social problems in the state; and

(9) Develop a schedule of fees for services where appropriate. [2005 c 136 § 12; 1993 c 280 § 7.]

Savings—Effective date—2005 c 136: See notes following RCW 43.168.020.

43.330.060 Trade and business responsibilities. (1) The department shall (a) assist in expanding the state's role as an international center of trade, culture, and finance; (b) promote and market the state's products and services both nationally and internationally; (c) work in close cooperation with other private and public international trade efforts; (d) act as a centralized location for the assimilation and distribution of trade information; and (e) establish and operate foreign offices promoting overseas trade and commerce.

(2) The department shall identify and work with Washington businesses that can use local, state, and federal assistance to increase domestic and foreign exports of goods and services.

(3) The department shall work generally with small businesses and other employers to facilitate resolution of siting, regulatory, expansion, and retention problems. This assistance shall include but not be limited to assisting in workforce training and infrastructure needs, identifying and locating suitable business sites, and resolving problems with government licensing and regulatory requirements. The department shall identify gaps in needed services and develop steps to address them including private sector support and purchase of these services.

(4) The department shall work to increase the availability of capital to small businesses by developing new and flexible investment tools; by assisting in targeting and improving the efficiency of existing investment mechanisms; and by assisting in the procurement of managerial and technical assistance necessary to attract potential investors.

(5) The department shall assist women and minority-owned businesses in overcoming barriers to entrepreneurial success. The department shall contract with public and private agencies, institutions, and organizations to conduct entrepreneurial training courses for minority and women-owned businesses. The instruction shall be intensive, practical training courses in financing, marketing, managing, accounting, and recordkeeping for a small business, with an emphasis on federal, state, local, or private programs available to assist small businesses. Instruction shall be offered in major population centers throughout the state at times and locations that are convenient for minority and women small business owners.

(6)(a) Subject to the availability of amounts appropriated for this specific purpose, by December 1, 2010, the department, in conjunction with the small business development center, must prepare and present to the governor and appropriate legislative committees a specific, actionable plan to increase access to capital and technical assistance to small

businesses and entrepreneurs beginning with the 2011-2013 biennium. In developing the plan, the department and the center may consult with the Washington state microenterprise association, and with other government, nonprofit, and private organizations as necessary. The plan must identify:

(i) Existing sources of capital and technical assistance for small businesses and entrepreneurs;

(ii) Critical gaps and barriers to availability of capital and delivery of technical assistance to small businesses and entrepreneurs;

(iii) Workable solutions to filling the gaps and removing barriers identified in (a)(ii) of this subsection; and

(iv) The financial resources and statutory changes necessary to put the plan into effect beginning with the 2011-2013 biennium.

(b) With respect to increasing access to capital, the plan must identify specific, feasible sources of capital and practical mechanisms for expanding access to it.

(c) The department and the center must include, within the analysis and recommendations in (a) of this subsection, any specific gaps, barriers, and solutions related to rural and low-income communities and small manufacturers interested in exporting. [2010 c 165 § 2; 2005 c 136 § 13; 1993 c 280 § 9.]

Findings—Intent—2010 c 165: "The legislature finds that small businesses and entrepreneurs are a fundamental source of economic and community vitality for our state. They employ state residents, pay state taxes, purchase goods and services from local and regional companies, and contribute to our communities in many other ways. The legislature finds that small businesses and entrepreneurs need increased access to capital and technical assistance in order to maximize their potential. The legislature intends that the department of commerce and the small business development center each build upon their existing relevant statutory missions and authorities by collaborating on a specific plan to expand services to small businesses and entrepreneurs beginning in the 2011-2013 biennium." [2010 c 165 § 1.]

Savings—Effective date—2005 c 136: See notes following RCW 43.168.020.

Tacoma world trade center—1993 c 134: "The legislature recognizes that export opportunities for small and medium-sized businesses stimulates economic growth. Within current resources, the department of trade and economic development shall work with the Tacoma world trade center, to assist small and medium-sized businesses with export opportunities." [1993 c 134 § 1.]

Additional notes found at www.leg.wa.gov

43.330.070 Local development capacity—Training and technical assistance. (1) The department shall work closely with local communities to increase their capacity to respond to economic, environmental, and social problems and challenges. The department shall coordinate the delivery of development services and technical assistance to local communities or regional areas. It shall promote partnerships between the public and private sectors and between state and local officials to encourage appropriate economic growth and opportunity in communities throughout the state. The department shall promote appropriate local development by: Supporting the ability of communities to develop and implement strategic development plans; assisting businesses to start up, maintain, or expand their operations; encouraging public infrastructure investment and private and public capital investment in local communities; supporting efforts to manage growth and provide affordable housing and housing services; providing for the identification and preservation of the state's historical and cultural resources; and expanding employment opportunities.

(2) The department shall define a set of services including training and technical assistance that it will make available to local communities, community-based nonprofit organizations, regional areas, or businesses. The department shall simplify access to these programs by providing more centralized and user-friendly information and referral. The department shall coordinate community and economic development efforts to minimize program redundancy and maximize accessibility. The department shall develop a set of criteria for targeting services to local communities.

(3) The department shall develop a coordinated and systematic approach to providing training to community-based nonprofit organizations, local communities, and businesses. The approach shall be designed to increase the economic and community development skills available in local communities by providing training and funding for training for local citizens, nonprofit organizations, and businesses. The department shall emphasize providing training in those communities most in need of state assistance. [1993 c 280 § 10.]

43.330.100 Local infrastructure and public facilities—Grants and loans. (1) The department shall support the development and maintenance of local infrastructure and public facilities and provide local communities with flexible sources of funding. The department shall coordinate grant and loan programs that provide infrastructure and investment in local communities. This shall include coordinating funding for eligible projects with other federal, state, local, private, and nonprofit funding sources.

(2) At a minimum, the department shall provide coordinated procedures for applying for and tracking grants and loans among and between the community economic revitalization board, the public works trust fund, and community development block grants. [1993 c 280 § 13.]

43.330.120 Growth management. (1) The department shall serve as the central coordinator for state government in the implementation of the growth management act, chapter 36.70A RCW. The department shall work closely with all Washington communities planning for future growth and responding to the pressures of urban sprawl. The department shall ensure coordinated implementation of the growth management act by state agencies.

(2) The department shall offer technical and financial assistance to cities and counties planning under the growth management act. The department shall help local officials interpret and implement the different requirements of the act through workshops, model ordinances, and information materials.

(3) The department shall provide alternative dispute resolution to jurisdictions and organizations to mediate disputes and to facilitate consistent implementation of the growth management act. The department shall review local governments compliance with the requirements of the growth management act and make recommendations to the governor. [1993 c 280 § 15.]

43.330.125 Assistance to counties and cities. The department of commerce shall provide training and technical

assistance to counties and cities to assist them in fulfilling the requirements of chapter 36.70B RCW. [2009 c 565 § 7; 1995 c 347 § 430.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

43.330.250 Economic development strategic reserve account—Authorized expenditures—Transfer of excess funds to the education construction account. (1) The economic development strategic reserve account is created in the state treasury to be used only for the purposes of this section.

(2) Only the governor, with the recommendation of the director of the department of commerce and the economic development commission, may authorize expenditures from the account.

(3) Expenditures from the account shall be made in an amount sufficient to fund a minimum of one staff position for the economic development commission and to cover any other operational costs of the commission.

(4) During the 2009-2011 and 2011-2013 fiscal biennia, moneys in the account may also be transferred into the state general fund.

(5) Expenditures from the account may be made to prevent closure of a business or facility, to prevent relocation of a business or facility in the state to a location outside the state, or to recruit a business or facility to the state. Expenditures may be authorized for:

(a) Workforce development;

(b) Public infrastructure needed to support or sustain the operations of the business or facility;

(c) Other lawfully provided assistance, including, but not limited to, technical assistance, environmental analysis, relocation assistance, and planning assistance. Funding may be provided for such assistance only when it is in the public interest and may only be provided under a contractual arrangement ensuring that the state will receive appropriate consideration, such as an assurance of job creation or retention; and

(d) The joint center for aerospace technology innovation.

(6) The funds shall not be expended from the account unless:

(a) The circumstances are such that time does not permit the director of the department of commerce or the business or facility to secure funding from other state sources;

(b) The business or facility produces or will produce significant long-term economic benefits to the state, a region of the state, or a particular community in the state;

(c) The business or facility does not require continuing state support;

(d) The expenditure will result in new jobs, job retention, or higher incomes for citizens of the state;

(e) The expenditure will not supplant private investment; and

(f) The expenditure is accompanied by private investment.

(7) No more than three million dollars per year may be expended from the account for the purpose of assisting an individual business or facility pursuant to the authority specified in this section.

(8) If the account balance in the strategic reserve account exceeds fifteen million dollars at any time, the amount in excess of fifteen million dollars shall be transferred to the education construction account. [2013 2nd sp.s. c 24 § 1; 2011 1st sp.s. c 50 § 956. Prior: 2009 c 565 § 13; 2009 c 564 § 943; 2008 c 329 § 914; 2005 c 427 § 1.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

43.330.270 Innovation partnership zone program. (1) The department must design and implement an innovation partnership zone program through which the state will encourage and support research institutions, workforce training organizations, and globally competitive companies to work cooperatively in close geographic proximity to create commercially viable products and jobs.

(2) The director must designate innovation partnership zones on the basis of the following criteria:

(a) Innovation partnership zones must have three types of institutions operating within their boundaries, or show evidence of planning and local partnerships that will lead to dense concentrations of these institutions:

(i) Research capacity in the form of a university or community college fostering commercially valuable research, nonprofit institutions creating commercially applicable innovations, or a national laboratory;

(ii) An industry cluster as defined in RCW 43.330.090. The cluster must include a dense proximity of globally competitive firms in a research-based industry or industries or individual firms with innovation strategies linked to (a)(i) of this subsection. A globally competitive firm may be signified through international organization for standardization 9000 or 1400 certification, or evidence of sales in international markets; and

(iii) Training capacity either within the zone or readily accessible to the zone. The training capacity requirement may be met by the same institution as the research capacity requirement, to the extent both are associated with an educational institution in the proposed zone.

(b) The support of a local jurisdiction, a research institution, an educational institution, an industry or cluster association, a workforce development council, and an associate development organization, port, or chamber of commerce;

(c) Identifiable boundaries for the zone within which the applicant will concentrate efforts to connect innovative researchers, entrepreneurs, investors, industry associations or clusters, and training providers. The geographic area defined should lend itself to a distinct identity and have the capacity to accommodate firm growth;

(d) The innovation partnership zone administrator must be an economic development council, port, workforce development council, city, or county.

(3) With respect solely to the research capacity required in subsection (2)(a)(i) of this section, the director may waive the requirement that the research institution be located within the zone. To be considered for such a waiver, an applicant must provide a specific plan that demonstrates the research institution's unique qualifications and suitability for the zone, and the types of jointly executed activities that will be used to

ensure ongoing, face-to-face interaction and research collaboration among the zone's partners.

(4) On October 1st of each odd-numbered year, the director must designate innovation partnership zones on the basis of applications that meet the legislative criteria, estimated economic impact of the zone, evidence of forward planning for the zone, and other criteria as developed by the department in consultation with the Washington state economic development commission. Estimated economic impact must include evidence of anticipated private investment, job creation, innovation, and commercialization. The director must require evidence that zone applicants will promote commercialization, innovation, and collaboration among zone residents.

(5) Innovation partnership zones are eligible for funds and other resources as provided by the legislature or at the discretion of the governor.

(6) If the innovation partnership zone meets the other requirements of the fund sources, then the zone is eligible for the following funds relating to:

(a) The local infrastructure financing tools program;

(b) The sales and use tax for public facilities in rural counties;

(c) Job skills;

(d) Local improvement districts; and

(e) Community economic revitalization board projects under chapter 43.160 RCW.

(7) An innovation partnership zone must be designated as a zone for a four-year period. At the end of the four-year period, the zone must reapply for the designation through the department.

(8) If the director finds that an applicant does not meet all of the statutory criteria or additional criteria recommended by the department in consultation with the Washington state economic development commission to be designated as an innovation partnership zone, the department must:

(a) Identify the deficiencies in the proposal and recommended steps for the applicant to take to strengthen the proposal;

(b) Provide the applicant with the opportunity to appeal the decision to the director; and

(c) Allow the applicant to reapply for innovation partnership designation on October 1st of the following calendar year or during any subsequent application cycle.

(9) If the director finds at any time after the initial year of designation that an innovation partnership zone is failing to meet the performance standards required in its contract with the department, the director may withdraw such designation and cease state funding of the zone.

(10) The department must convene annual information sharing events for innovation partnership zone administrators and other interested parties.

(11) An innovation partnership zone must annually provide performance measures as required by the director, including but not limited to private investment measures, job creation measures, and measures of innovation such as licensing of ideas in research institutions, patents, or other recognized measures of innovation.

(12) The department must compile a biennial report on the innovation partnership zone program by December 1st of every even-numbered year. The report must provide information for each zone on its: Objectives; funding, tax incentives, and other support obtained from public sector sources; major activities; partnerships; performance measures; and outcomes achieved since the inception of the zone or since the previous biennial report. The Washington state economic development commission must review the department's draft report and make recommendations on ways to increase the effectiveness of individual zones and the program overall. The department must submit the report, including the commission's recommendations, to the governor and legislature beginning December 1, 2010. [2012 c 225 § 1; 2009 c 72 § 1; 2007 c 227 § 1.]

Chapter 43.362 RCW
REGIONAL TRANSFER OF DEVELOPMENT RIGHTS PROGRAM

Sections

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43.362.005 Findings. (1) The legislature finds that current concern over the rapid and increasing loss of rural, agricultural, and forested land has led to the exploration of creative approaches to preserving these important lands, and that the creation of a regional transfer of development rights marketplace will assist in conserving these lands.

(2) A transfer of development rights is a market-based exchange mechanism that encourages the voluntary transfer of development rights from sending areas with lower population densities to receiving areas with higher population densities. When development rights are transferred through a transfer of development rights exchange, permanent deed restrictions are placed on the sending area properties to ensure that the land will be used only for approved activities, activities that may include farming, forest management, conservation, or passive recreation. Additionally, in a transfer of development rights exchange, the costs of purchasing the recorded development restrictions are borne by the developers who receive the transferred right in the form of a building credit or bonus.

(3) The legislature further finds that a successful transfer of development rights program must consider housing affordable to all economic segments of the population, and economic development programs and policies in designated receiving areas. Counties, cities, and towns that decide to participate in the regional transfer of development rights program for central Puget Sound are encouraged to adopt comprehensive plan policies and development regulations to implement the program that do not compete or conflict with comprehensive plan policies and development regulations that require or encourage affordable housing. Participating cities and towns are also encouraged to use the development

of receiving areas to maximize opportunities for economic development that supports the creation or retention of jobs.

(4) Participation in a regional transfer of development rights program by counties, cities, and towns should be as simple as possible.

(5) Accordingly, the legislature has determined that it is good public policy to build upon existing transfer of development rights programs, pilot projects, and private initiatives that foster effective use of transferred development rights through the creation of a market-based program that focuses on the central Puget Sound region. A regional transfer of development rights program in the central Puget Sound should be voluntary, incentive-driven, and separate, but compatible with existing local transfer of development rights programs. [2009 c 474 § 1; 2007 c 482 § 1.]

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

(1) "By-right permitting" means that project applications for permits that use transferable development rights would be subject to administrative review. Administrative review allows a local planning official to approve a project without noticed public hearings.

(2) "Department" means the department of commerce.

(3) "Nongovernmental entities" includes nonprofit or membership organizations with experience or expertise in transferring development rights.

(4) "Receiving area ratio" means the number or character of development rights that are assigned to a development right for use in a receiving area. Development rights in a receiving area may be used at the discretion of the receiving area jurisdiction, including but not limited to additional residential density, additional building height, additional commercial floor area, or to meet regulatory requirements.

(5) "Receiving areas" are lands within and designated by a city or town in which transferable development rights from the regional program established by this chapter may be used.

(6) "Regional transfer of development rights program" or "regional program" means the regional transfer of development rights program established by RCW 43.362.030 in central Puget Sound, including King, Pierce, Kitsap, and Snohomish counties and the cities and towns within these counties.

(7) "Sending area" includes those lands that meet conservation criteria as described in RCW 43.362.040.

(8) "Sending area ratio" means the number of development rights that a sending area landowner can sell per acre.

(9) "Transfer of development rights" includes methods for protecting land from development by voluntarily removing the development rights from a sending area and transferring them to a receiving area for the purpose of increasing development density or intensity in the receiving area.

(10) "Transferable development right" means a right to develop one or more residential units in a sending area that can be sold and transferred for use consistent with a receiving ratio adopted for development in a designated receiving area consistent with the regional program. [2009 c 565 § 45; 2009 c 474 § 2; 2007 c 482 § 2.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2009 c 474 § 2 and by 2009 c 565 § 45, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

43.362.020 Regional transfer of development rights program. Subject to the availability of amounts appropriated for this specific purpose, the department shall fund a process to develop a regional transfer of development rights program that comports with chapter 36.70A RCW that:

(1) Encourages King, Kitsap, Pierce, and Snohomish counties, and the cities within these counties, to participate in the development and implementation of regional frameworks and mechanisms that make transfer of development rights programs viable and successful. The department shall encourage and embrace the efforts in any of these counties or cities to develop local transfer of development rights programs. In fulfilling the requirements of this chapter, the department shall work with the Puget Sound regional council and its growth management policy board to develop a process that satisfies the requirements of this chapter. In the development of a process to create a regional transfer of development rights program, the Puget Sound regional council and its growth management policy board shall develop policies to discourage, or prohibit if necessary, the transfer of development rights from a sending area that would negatively impact the future economic viability of the sending area. The department shall also work with an advisory committee to develop a regional transfer of development rights marketplace that includes, but is not limited to, supporting strategies for financing infrastructure and conservation. The department shall establish an advisory committee of nine stakeholders with representatives of the following interests:

(a) Two qualified nongovernmental organizations with expertise in the transfer of development rights. At least one organization must have a statewide expertise in growth management planning and in the transfer of development rights and at least one organization must have a local perspective on market-based conservation strategies and transfer of development rights;

(b) Two representatives from real estate and development;

(c) One representative with a county government perspective;

(d) Two representatives from cities of different sizes and geographic areas within the four-county region; and

(e) Two representatives of the agricultural industry; and

(2) Allows the department to utilize recommendations of the interested local governments, nongovernmental entities, and the Puget Sound regional council to develop recommendations and strategies for a regional transfer of development rights marketplace with supporting strategies for financing infrastructure and conservation that represents the consensus of the governmental and nongovernmental parties engaged in the process. However, if agreement between the parties cannot be reached, the department shall make recommendations to the legislature that seek to balance the needs and interests of the interested governmental and nongovernmental parties. The department may contract for expertise to accomplish any of the following tasks. Recommendations developed under this subsection must:

(a) Identify opportunities for cities, counties, and the state to achieve significant benefits through using transfer of development rights programs and the value in modifying criteria by which capital budget funds are allocated, including but not limited to, existing state grant programs to provide incentives for local governments to implement transfer of development rights programs;

(b) Address challenges to the creation of an efficient and transparent transfer of development rights market, including the creation of a transfer of development rights bank, brokerage, or direct buyer-seller exchange;

(c) Address issues of certainty to buyers and sellers of development rights that address long-term environmental benefits and perceived inequities in land values and permitting processes;

(d) Address the means for assuring that appropriate values are recognized and updated, as well as specifically addressing the need to maintain the quality of life in receiving neighborhoods and the protection of environmental values over time;

(e) Identify opportunities and challenges that, if resolved, would result in cities throughout the Puget Sound region participating in a transfer of development rights market;

(f) Compare the uses of a regional transfer of development rights program to other existing land conservation strategies to protect rural and resource lands and implement the growth management act; and

(g) Identify appropriate sending areas so as to protect future growth and economic development needs of the sending areas. [2007 c 482 § 3.]

43.362.030 Program established in central Puget Sound. (1) Subject to the availability of funds appropriated for this specific purpose or another source of funding made available for this specific purpose, the department shall establish a regional transfer of development rights program in central Puget Sound, including King, Kitsap, Snohomish, and Pierce counties and the cities and towns within these counties. The program must be guided by the Puget Sound regional council's multicounty planning policies adopted under RCW 36.70A.210(7).

(2) The purpose of the program is to foster voluntary county, city, and town participation in the program so that interjurisdictional transfers occur between the counties, cities, and towns, including transfers from counties to cities and towns in other counties. Private transactions between buyers and sellers of transferable development rights are allowed and encouraged under this program. In fulfilling the requirements of this chapter, the department shall work with the Puget Sound regional council to implement a regional program.

(3) The department shall encourage participation by the cities, towns, and counties in the regional program. The regional program shall not be implemented in a manner that negatively impacts existing local programs. The department shall encourage and work to enhance the efforts in any of these counties, cities, or towns to develop local transfer of development rights programs or enhance existing programs.

(4) Subject to the availability of funds appropriated for this specific purpose or another source of funding made available for this specific purpose, the department shall do the following to implement a regional transfer of development rights program in central Puget Sound:

(a) Serve as the central coordinator for state government in the implementation of RCW 43.362.030 through 43.362.070.

(b) Offer technical assistance to cities, towns, and counties planning for participation in the regional transfer of development rights program. The department's technical assistance shall:

(i) Include written guidance for local development and implementation of the regional transfer of development rights program;

(ii) Include guidance for and encourage permitting or environmental review incentives for developers to participate. Activities may include, but are not limited to, provision for by-right permitting, substantial environmental review of a subarea plan for the receiving area that includes the use of transferable development rights, adoption of a categorical exemption for infill under RCW 43.21C.229 for a receiving area, or adoption of a planned action under RCW 43.21C.240;

(iii) Provide guidance to counties, cities, and towns to negotiate receiving area ratios and foster private transactions;

(iv) Provide guidance and encourage planning for receiving areas that do not compete or conflict with comprehensive plan policies and development regulations that require or encourage affordable housing; and

(v) Provide guidance and encourage planning for receiving areas that maximizes opportunities for economic development through the creation or retention of jobs.

(c) Work with counties, cities, and towns to inform elected officials, planning commissions, and the public regarding the regional transfer of development rights program. The information provided by the department shall discuss the importance of preserving farmland and farming, and forest land and forestry, to cities and towns and the local economy.

(d) Based on information provided by the counties, cities, and towns, post on a web site information regarding transfer of development rights transactions and a list of interested buyers and sellers of transferable development rights.

(e) Coordinate with and provide resources to state and local agencies and stakeholders to provide public outreach. [2009 c 474 § 3.]

43.362.040 Designation of sending and receiving areas—Inclusion of certain lands in programs for agricultural or forest land conservation. (1) Counties shall use the following criteria to guide the designation of sending areas for participation in the regional transfer of development rights program:

(a) Land designated as agricultural or forest land of long-term commercial significance;

(b) Land designated rural that is being farmed or managed for forestry;

(c) Land whose conservation meets other state and regionally adopted priorities; and

(d) Land that is in current use as a manufactured/mobile home park as defined in chapter 59.20 RCW.

Nothing in these criteria limits a county's authority to designate additional lands as a sending area for conservation under a local county transfer of development rights program.

(2) Upon purchase of a transferable development right from land designated rural that is being farmed or managed for forestry, a county must include the land from which the right was purchased in any programs it administers for conservation of agricultural land or forest land.

(3) The designation of receiving areas is limited to incorporated cities or towns. Prior to designating a receiving area, a city or town should have adequate infrastructure planned and funding identified for development in the receiving area at densities or intensities consistent with what can be achieved under the local transfer of development rights program. Nothing in this subsection limits a city's, town's, or county's authority to designate additional lands for a receiving area under a local intrajurisdictional transfer of development rights program that is not part of the regional program.

(4) Cities and towns participating in the regional transfer of development rights program shall have discretion to determine which sending areas they receive development rights from to be used in their designated receiving areas.

(5) Designation of sending and receiving areas should include a process for public outreach consistent with the public participation requirements in chapter 36.70A RCW. [2009 c 474 § 4.]

43.362.050 Interlocal agreement for transfers of development rights—Rules. (1) To facilitate participation, the department shall develop and adopt by rule terms and conditions of an interlocal agreement for transfers of development rights between counties, cities, and towns. Counties, cities, and towns participating in the regional program have the option of adopting the rule by reference to transfer development rights across jurisdictional boundaries as an alternative to entering into an interlocal agreement under chapter 39.34 RCW.

(2) This section and the rules adopted under this section shall be deemed to provide an alternative method for the implementation of a regional transfer of development rights program, and shall not be construed as imposing any additional condition upon the exercise of any other powers vested in municipalities.

(3) Nothing in this section prohibits a county, city, or town from entering into an interlocal agreement under chapter 39.34 RCW to transfer development rights under the regional program. [2009 c 474 § 5.]

43.362.060 Participation in regional transfer of development rights program—Requirements—Incentives for developers. (1) Counties, cities, and towns that choose to participate in the regional transfer of development rights program must:

(a) Enter into an interlocal agreement or adopt a resolution adopting by reference the provisions in the department rule authorized in RCW 43.362.050; and

(b) Adopt transfer of development rights policies or implement development regulations that:

(i) Comply with chapter 36.70A RCW;

(ii) Designate sending or receiving areas consistent with RCW 43.362.030 through 43.362.070; and

(iii) Adopt a sending or receiving area ratio in cooperation with the sending or receiving jurisdiction.

(2) Cities and towns that choose to participate in the regional transfer of development rights program are encouraged to provide permitting or environmental review incentives for developers to participate. Such incentives may include, but are not limited to, provision for by-right permitting, substantial environmental review of a subarea plan for the receiving area that includes the use of transferable development rights, adoption of a categorical exemption for infill under RCW 43.21C.229 for a receiving area, or adoption of a planned action under RCW 43.21C.240. [2009 c 474 § 6.]

43.362.070 Quantitative and qualitative performance measures—Reporting—Posting on web site. The department will develop quantitative and qualitative performance measures for monitoring the regional transfer of development rights program. The performance measures may address conservation of land and creation of compact communities, as well as other measures identified by the department. The department may require cities, towns, and counties to report on these performance measures biannually. The department shall compile any performance measure information that has been reported by the counties, cities, and towns and post it on a web site. [2009 c 474 § 7.]

47.01.075 Transportation policy development. (1) The transportation commission shall provide a public forum for the development of transportation policy in Washington state to include coordination with regional transportation planning organizations, transportation stakeholders, counties, cities, and citizens. At least every five years, the commission shall convene regional forums to gather citizen input on transportation issues. The commission shall consider the input gathered at the forums as it establishes the statewide transportation plan under RCW 47.01.071(4).

(2) In fulfilling its responsibilities under this section, the commission may create ad hoc committees or other such committees of limited duration as necessary.

(3) In order to promote a better transportation system, the commission may offer policy guidance and make recommendations to the governor and the legislature in key issue areas, including but not limited to:

(a) Transportation finance;

(b) Preserving, maintaining, and operating the statewide transportation system;

(c) Transportation infrastructure needs;

(d) Promoting best practices for adoption and use by transportation-related agencies and programs;

(e) Transportation efficiencies that will improve service delivery and/or coordination;

(f) Improved planning and coordination among transportation agencies and providers; and

(g) Use of intelligent transportation systems and other technology-based solutions. [2007 c 516 § 5; 2006 c 334 § 4; 2005 c 319 § 6.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Effective date—2006 c 334: See note following RCW 47.01.051.

Transfers—2005 c 319: "(1)(a) All reports, documents, surveys, books, records, files, papers, or written material relating to the conduct of performance reviews and audits in the possession of the legislative transpor-

tation committee must be delivered to the custody of the transportation commission. Any remaining documents, books, records, files, papers, and written materials must be delivered to the custody of the joint transportation committee. All funds, credits, or other assets held by the legislative transportation committee for the purposes of staffing the transportation performance audit board are assigned to the transportation commission. Any remaining funds, credits, or other assets held by the legislative transportation committee are assigned to the joint transportation committee.

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

(2) All employees of the legislative transportation committee are transferred to the jurisdiction of the transportation commission for the support of the transportation performance audit board. However, the commission may, if staffing needs warrant, assign the employees to other commission functions." [2005 c 319 § 15.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

47.04.260 Latecomer fees. The department of transportation may impose and collect latecomer fees on behalf of another entity for infrastructure improvement projects initially funded partially or entirely by private sources. However, there must be an agreement in place between the department of transportation and the entity, before the imposition and collection of any such fees, that specifies (1) the collection process, (2) the maximum amount that may be collected, and (3) the period of time during which the collection may occur. [2005 c 317 § 30.]

47.05.021 Functional classification of highways. (1) The department shall conduct periodic analyses of the entire state highway system and report to the office of financial management and the chairs of the transportation committees of the senate and house of representatives, any subsequent recommendations to subdivide, classify, and subclassify all designated state highways into the following three functional classes:

(a) The "principal arterial system" shall consist of a connected network of rural arterial routes with appropriate extensions into and through urban areas, including all routes designated as part of the interstate system, which serve corridor movements having travel characteristics indicative of substantial statewide and interstate travel;

(b) The "minor arterial system" shall, in conjunction with the principal arterial system, form a rural network of arterial routes linking cities and other activity centers which generate long distance travel, and, with appropriate extensions into and through urban areas, form an integrated network providing interstate and interregional service; and

(c) The "collector system" shall consist of routes which primarily serve the more important intercounty, intracounty, and intraurban travel corridors, collect traffic from the system of local access roads and convey it to the arterial system, and on which, regardless of traffic volume, the predominant travel distances are shorter than on arterial routes.

(2) The department shall adopt a functional classification of highways. The department shall consider comments from the public and local municipalities. The department shall give consideration to criteria consistent with this section and federal regulations relating to the functional classification of highways, including but not limited to the following:

(a) Urban population centers within and without the state stratified and ranked according to size;

(b) Important traffic generating economic activities, including but not limited to recreation, agriculture, government, business, and industry;

(c) Feasibility of the route, including availability of alternate routes within and without the state;

(d) Directness of travel and distance between points of economic importance;

(e) Length of trips;

(f) Character and volume of traffic;

(g) Preferential consideration for multiple service which shall include public transportation;

(h) Reasonable spacing depending upon population density; and

(i) System continuity.

(3) The department or the legislature shall designate state highways of statewide significance under RCW 47.06.140. If the department designates a state highway of statewide significance, it shall submit a list of such facilities for adoption by the legislature. This statewide system shall include at a minimum interstate highways and other statewide principal arterials that are needed to connect major communities across the state and support the state's economy.

(4) The department shall designate a freight and goods transportation system. This statewide system shall include state highways, county roads, and city streets. The department, in cooperation with cities and counties, shall review and make recommendations to the legislature regarding policies governing weight restrictions and road closures which affect the transportation of freight and goods. [2006 c 334 § 8; 2005 c 319 § 8; 2002 c 56 § 301. Prior: 1998 c 245 § 95; 1998 c 171 § 5; 1993 c 490 § 2; 1987 c 505 § 50; 1979 ex.s. c 122 § 1; 1977 ex.s. c 130 § 1.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

Severability—1979 ex.s. c 122: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 122 § 10.]

Effective dates—1977 ex.s. c 130: "Section 1 of this 1977 act modifying the functional classification of state highways shall apply to the long range plan for highway improvements and to the six year program for highway construction commencing July 1, 1979 and to the preparation thereof and shall take effect July 1, 1977. Section 2 of this 1977 act shall take effect July 1, 1979." [1977 ex.s. c 130 § 3.]

Additional notes found at www.leg.wa.gov

47.05.030 Ten-year programs—Investments, improvements, preservation. (1) The office of financial management shall propose a comprehensive ten-year investment program for the preservation and improvement programs defined in this section, consistent with the policy goals described under RCW 47.04.280. The proposed ten-year investment program must be forwarded as a recommendation by the office of financial management to the legislature, and must be based upon the needs identified in the statewide transportation plan established under RCW 47.01.071(4).

(2) The preservation program consists of those investments necessary to preserve the existing state highway system and to restore existing safety features, giving consideration to lowest life cycle costing.

(3) The improvement program consists of investments needed to address identified deficiencies on the state highway system to meet the goals established in RCW 47.04.280. [2007 c 516 § 7; 2006 c 334 § 45; 2005 c 319 § 9; 2002 c 5 § 402; 1998 c 171 § 6; 1993 c 490 § 3; 1987 c 179 § 2; 1979 ex.s. c 122 § 2; 1977 ex.s. c 151 § 44; 1975 1st ex.s. c 143 § 1; 1973 2nd ex.s. c 12 § 4; 1969 ex.s. c 39 § 3; 1965 ex.s. c 170 § 33; 1963 c 173 § 3.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Effective date—2006 c 334: See note following RCW 47.01.051.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Effective date—2002 c 5 §§ 401-404: See note following RCW 47.05.010.

Captions not law—Severability—2002 c 5: See notes following RCW 47.04.280.

Severability—1979 ex.s. c 122: See note following RCW 47.05.021.

Additional notes found at www.leg.wa.gov

47.06.140 Transportation facilities and services of statewide significance—Level of service standards. (1) The legislature declares the following transportation facilities and services to be of statewide significance: Highways of statewide significance as designated by the legislature under chapter 47.05 RCW, the interstate highway system, interregional state principal arterials including ferry connections that serve statewide travel, intercity passenger rail services, intercity high-speed ground transportation, major passenger intermodal terminals excluding all airport facilities and services, the freight railroad system, the Columbia/Snake navigable river system, marine port facilities and services that are related solely to marine activities affecting international and interstate trade, key freight transportation corridors serving these marine port facilities, and high capacity transportation systems serving regions as defined in RCW 81.104.015. The department, in cooperation with regional transportation planning organizations, counties, cities, transit agencies, public ports, private railroad operators, and private transportation providers, as appropriate, shall plan for improvements to transportation facilities and services of statewide significance in the statewide multimodal transportation plan. Improvements to facilities and services of statewide significance identified in the statewide multimodal transportation plan, or to highways of statewide significance designated by the legislature under chapter 47.05 RCW, are essential state public facilities under RCW 36.70A.200.

(2) The department of transportation, in consultation with local governments, shall set level of service standards for state highways and state ferry routes of statewide significance. Although the department shall consult with local governments when setting level of service standards, the department retains authority to make final decisions regarding level of service standards for state highways and state ferry routes of statewide significance. In establishing level of service standards for state highways and state ferry routes of statewide significance, the department shall consider the necessary balance between providing for the free interjurisdictional movement of people and goods and the needs of local communities using these facilities. When setting the level of service standards under this section for state ferry routes, the department may allow for a standard that is adjustable for seasonality. [2009 c 514 § 3. Prior: 2007 c 516 § 11; 2007 c 512 § 2; 1998 c 171 § 7.]

Findings—Intent—2009 c 514: See note following RCW 36.70A.085.

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Finding—Intent—2007 c 512: "The legislature finds from the 2006 Washington state ferries financing study that the state has limited information on state ferry users and markets. Accurate user and market information is vital in order to find ways to maximize the ferry systems' current capacity and to make the most efficient use of citizens' tax dollars. Therefore, it is the intent of the legislature that Washington state ferries be given the tools necessary to maximize the utilization of existing capacity and to make the most efficient use of existing assets and tax dollars. Furthermore, it is the intent of the legislature that the department of transportation adopt adaptive management practices in its operating and capital programs so as to keep the costs of the Washington state ferries system as low as possible while continuously improving the quality and timeliness of service." [2007 c 512 § 1.]

Highways of statewide significance: RCW 47.05.022.

47.80.010 Findings—Declaration. The legislature finds that while the transportation system in Washington is owned and operated by numerous public jurisdictions, it should function as one interconnected and coordinated system. Transportation planning, at all jurisdictional levels, should be coordinated with local comprehensive plans. Further, local jurisdictions and the state should cooperate to achieve both statewide and local transportation goals. To facilitate this coordination and cooperation among state and local jurisdictions, the legislature declares it to be in the state's interest to establish a coordinated planning program for regional transportation systems and facilities throughout the state. [1990 1st ex.s. c 17 § 53.]

47.80.011 Legislative intent. The legislature recognizes that recent legislative enactments have significantly added to the complexity of and to the potential for benefits from integrated transportation and comprehensive planning and that there is currently a unique opportunity for integration of local comprehensive plans and regional goals with state and local transportation programs. Further, approaches to transportation demand management initiatives and local and state transportation funding can be better coordinated to insure an efficient, effective transportation system that insures mobility and accessibility, and addresses community needs.

The legislature further finds that transportation and land use share a critical relationship that policymakers can better utilize to address regional strategies.

Prudent and cost-effective investment by the state and by local governments in highway facilities, local streets and arterials, rail facilities, marine facilities, nonmotorized transportation facilities and systems, public transit systems, transportation system management, transportation demand management, and the development of high capacity transit systems can help to effectively address mobility needs. Such investment can also enhance local and state objectives for effective comprehensive planning, economic development strategies, and clean air policies.

The legislature finds that addressing public initiatives regarding transportation and comprehensive planning neces-

sitates an innovative approach. Improved integration between transportation and comprehensive planning among public institutions, particularly in the state's largest metropolitan areas is considered by the state to be imperative, and to have significant benefit to the citizens of Washington. [1994 c 158 § 1.]

47.80.020 Regional transportation planning organizations authorized. The legislature hereby authorizes creation of regional transportation planning organizations within the state. Each regional transportation planning organization shall be formed through the voluntary association of local governments within a county, or within geographically contiguous counties. Each organization shall:

(1) Encompass at least one complete county;

(2) Have a population of at least one hundred thousand, or contain a minimum of three counties; and

(3) Have as members all counties within the region, and at least sixty percent of the cities and towns within the region representing a minimum of seventy-five percent of the cities' and towns' population.

The state department of transportation must verify that each regional transportation planning organization conforms with the requirements of this section.

In urbanized areas, the regional transportation planning organization is the same as the metropolitan planning organization designated for federal transportation planning purposes. [1990 1st ex.s. c 17 § 54.]

47.80.023 Duties. Each regional transportation planning organization shall have the following duties:

(1) Prepare and periodically update a transportation strategy for the region. The strategy shall address alternative transportation modes and transportation demand management measures in regional corridors and shall recommend preferred transportation policies to implement adopted growth strategies. The strategy shall serve as a guide in preparation of the regional transportation plan.

(2) Prepare a regional transportation plan as set forth in RCW 47.80.030 that is consistent with countywide planning policies if such have been adopted pursuant to chapter 36.70A RCW, with county, city, and town comprehensive plans, and state transportation plans.

(3) Certify by December 31, 1996, that the transportation elements of comprehensive plans adopted by counties, cities, and towns within the region reflect the guidelines and principles developed pursuant to RCW 47.80.026, are consistent with the adopted regional transportation plan, and, where appropriate, conform with the requirements of RCW 36.70A.070.

(4) Where appropriate, certify that countywide planning policies adopted under RCW 36.70A.210 and the adopted regional transportation plan are consistent.

(5) Develop, in cooperation with the department of transportation, operators of public transportation services and local governments within the region, a six-year regional transportation improvement program which proposes regionally significant transportation projects and programs and transportation demand management measures. The regional transportation improvement program shall be based on the programs, projects, and transportation demand management measures of regional significance as identified by transit agencies, cities, and counties pursuant to RCW 35.58.2795, 35.77.010, and 36.81.121, respectively, and any recommended programs or projects identified by the agency council on coordinated transportation, as provided in *chapter 47.06B RCW, that advance special needs coordinated transportation as defined in *RCW 47.06B.012. The program shall include a priority list of projects and programs, project segments and programs, transportation demand management measures, and a specific financial plan that demonstrates how the transportation improvement program can be funded. The program shall be updated at least every two years for the ensuing six-year period.

(6) Include specific opportunities and projects to advance special needs coordinated transportation, as defined in *RCW 47.06B.012, in the coordinated transit-human services transportation plan, after providing opportunity for public comment.

(7) Designate a lead planning agency to coordinate preparation of the regional transportation plan and carry out the other responsibilities of the organization. The lead planning agency may be a regional organization, a component county, city, or town agency, or the appropriate Washington state department of transportation district office.

(8) Review level of service methodologies used by cities and counties planning under chapter 36.70A RCW to promote a consistent regional evaluation of transportation facilities and corridors.

(9) Work with cities, counties, transit agencies, the department of transportation, and others to develop level of service standards or alternative transportation performance measures.

(10) Submit to the agency council on coordinated transportation, as provided in *chapter 47.06B RCW, beginning on July 1, 2007, and every four years thereafter, an updated plan that includes the elements identified by the council. Each regional transportation planning organization must submit to the council every two years a prioritized regional human service and transportation project list. [2009 c 515 § 15; 2007 c 421 § 5; 1998 c 171 § 8; 1994 c 158 § 2.]

***Reviser's note:** Chapter 47.06B RCW was repealed by 2011 c 60 § 51.

47.80.026 Comprehensive plans, transportation guidelines, and principles. Each regional transportation planning organization, with cooperation from component cities, towns, and counties, shall establish guidelines and principles by July 1, 1995, that provide specific direction for the development and evaluation of the transportation elements of comprehensive plans, where such plans exist, and to assure that state, regional, and local goals for the development of transportation systems are met. These guidelines and principles shall address at a minimum the relationship between transportation systems and the following factors: Concentration of economic activity, residential density, development corridors and urban design that, where appropriate, supports high capacity transit, freight transportation and port access, development patterns that promote pedestrian and nonmotorized transportation, circulation systems, access to regional systems, effective and efficient highway systems, the ability of transportation facilities and programs to retain existing and

attract new jobs and private investment and to accommodate growth in demand, transportation demand management, joint and mixed use developments, present and future railroad right-of-way corridor utilization, and intermodal connections.

Examples shall be published by the organization to assist local governments in interpreting and explaining the requirements of this section. [1994 c 158 § 3.]

47.80.030 Regional transportation plan—Contents, review, use. (1) Each regional transportation planning organization shall develop in cooperation with the department of transportation, providers of public transportation and high capacity transportation, ports, and local governments within the region, adopt, and periodically update a regional transportation plan that:

(a) Is based on a least cost planning methodology that identifies the most cost-effective facilities, services, and programs;

(b) Identifies existing or planned transportation facilities, services, and programs, including but not limited to major roadways including state highways and regional arterials, transit and nonmotorized services and facilities, multimodal and intermodal facilities, marine ports and airports, railroads, and noncapital programs including transportation demand management that should function as an integrated regional transportation system, giving emphasis to those facilities, services, and programs that exhibit one or more of the following characteristics:

(i) Crosses member county lines;

(ii) Is or will be used by a significant number of people who live or work outside the county in which the facility, service, or project is located;

(iii) Significant impacts are expected to be felt in more than one county;

(iv) Potentially adverse impacts of the facility, service, program, or project can be better avoided or mitigated through adherence to regional policies;

(v) Transportation needs addressed by a project have been identified by the regional transportation planning process and the remedy is deemed to have regional significance; and

(vi) Provides for system continuity;

(c) Establishes level of service standards for state highways and state ferry routes, with the exception of transportation facilities of statewide significance as defined in RCW 47.06.140. These regionally established level of service standards for state highways and state ferries shall be developed jointly with the department of transportation, to encourage consistency across jurisdictions. In establishing level of service standards for state highways and state ferries, consideration shall be given for the necessary balance between providing for the free interjurisdictional movement of people and goods and the needs of local commuters using state facilities;

(d) Includes a financial plan demonstrating how the regional transportation plan can be implemented, indicating resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommending any innovative financing techniques to finance needed facilities, services, and programs;

(e) Assesses regional development patterns, capital investment and other measures necessary to:

(i) Ensure the preservation of the existing regional transportation system, including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit, railroad systems and corridors, and nonmotorized facilities; and

(ii) Make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods;

(f) Sets forth a proposed regional transportation approach, including capital investments, service improvements, programs, and transportation demand management measures to guide the development of the integrated, multimodal regional transportation system. For regional growth centers, the approach must address transportation concurrency strategies required under RCW 36.70A.070 and include a measurement of vehicle level of service for off-peak periods and total multimodal capacity for peak periods; and

(g) Where appropriate, sets forth the relationship of high capacity transportation providers and other public transit providers with regard to responsibility for, and the coordination between, services and facilities.

(2) The organization shall review the regional transportation plan biennially for currency and forward the adopted plan along with documentation of the biennial review to the state department of transportation.

(3) All transportation projects, programs, and transportation demand management measures within the region that have an impact upon regional facilities or services must be consistent with the plan and with the adopted regional growth and transportation strategies. [2005 c 328 § 2; 1998 c 171 § 9; 1994 c 158 § 4; 1990 1st ex.s. c 17 § 55.]

47.80.040 Transportation policy boards. Each regional transportation planning organization shall create a transportation policy board. Transportation policy boards shall provide policy advice to the regional transportation planning organization and shall allow representatives of major employers within the region, the department of transportation, transit districts, port districts, and member cities, towns, and counties within the region to participate in policy making. Any members of the house of representatives or the state senate whose districts are wholly or partly within the boundaries of the regional transportation planning organization are considered ex officio, nonvoting policy board members of the regional transportation planning organization. This does not preclude legislators from becoming full-time, voting board members. [2003 c 351 § 1; 1990 1st ex.s. c 17 § 56.]

47.80.050 Allocation of regional transportation planning funds. Biennial appropriations to the department of transportation to carry out the regional transportation planning program shall set forth the amounts to be allocated as follows:

(1) A base amount per county for each county within each regional transportation planning organization, to be distributed to the lead planning agency;

(2) An amount to be distributed to each lead planning agency on a per capita basis; and

(3) An amount to be administered by the department of transportation as a discretionary grant program for special regional planning projects, including grants to allow counties which have significant transportation interests in common with an adjoining region to also participate in that region's planning efforts. [1990 1st ex.s. c 17 § 57.]

47.80.090 Regional transportation planning organizations—Electric vehicle infrastructure. (1) A regional transportation planning organization containing any county with a population in excess of one million in collaboration with representatives from the department of ecology, the department of commerce, local governments, and the office of regulatory assistance must seek federal or private funding for the planning for, deployment of, or regulations concerning electric vehicle infrastructure. These efforts should include:

(a) Development of short-term and long-term plans outlining how state, regional, and local government construction may include electric vehicle infrastructure in publicly available off-street parking and government fleet vehicle parking, including what ratios of charge spots to parking may be appropriate based on location or type of facility or building;

(b) Consultations with the state building code council and the department of labor and industries to coordinate the plans with state standards for new residential, commercial, and industrial buildings to ensure that the appropriate electric circuitry is installed to support electric vehicle infrastructure;

(c) Consultation with the workforce development council and the student achievement council to ensure the development of appropriate educational and training opportunities for citizens of the state in support of the transition of some portion of vehicular transportation from combustion to electric vehicles;

(d) Development of an implementation plan for counties with a population greater than five hundred thousand with the goal of having public and private parking spaces, in the aggregate, be ten percent electric vehicle ready by December 31, 2018; and

(e) Development of model ordinances and guidance for local governments for siting and installing electric vehicle infrastructure, in particular battery charging stations, and appropriate handling, recycling, and storage of electric vehicle batteries and equipment.

(2) These plans and any recommendations developed as a result of the consultations required by this section must be submitted to the legislature by December 31, 2010, or as soon as reasonably practicable after the securing of any federal or private funding. Priority will be given to the activities in subsection (1)(e) of this section and any ordinances or guidance that is developed will be submitted to the legislature, the department of commerce, and affected local governments prior to December 31, 2010, if completed.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540. [2012 c 229 § 592; 2009 c 459 § 2.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Finding—Purpose—2009 c 459: "The legislature finds the development of electric vehicle infrastructure to be a critical step in creating jobs, fostering economic growth, reducing greenhouse gas emissions, reducing our reliance on foreign fuels, and reducing the pollution of Puget Sound attributable to the operation of petroleum-based vehicles on streets and highways. Limited driving distance between battery charges is a fundamental disadvantage and obstacle to broad consumer adoption of vehicles powered by electricity. In order to eliminate this fundamental disadvantage and dramatically increase consumer acceptance and usage of electric vehicles, it is essential that an infrastructure of convenient electric vehicle charging opportunities be developed. The purpose of this act is to encourage the transition to electric vehicle use and to expedite the establishment of a convenient, cost-effective, electric vehicle infrastructure that such a transition necessitates. The state's success in encouraging this transition will serve as an economic stimulus to the creation of short-term and long-term jobs as the entire automobile industry and its associated direct and indirect jobs transform over time from combustion to electric vehicles." [2009 c 459 § 1.]

48.18.120 Standard forms. (1) The commissioner shall, after hearing, from time to time promulgate such rules and regulations as may be necessary to define and effect reasonable uniformity in all basic contracts of fire insurance which are commonly known as the standard form fire policies and may be so referred to in this code, and the usual supplemental coverages, riders, or endorsements thereon or thereto, to the end that such definitions shall be applied in the construction of the various sections of this code wherein such terms are used and that there be a reasonable concurrency of contract where two or more insurers insure the same subject and risk. All such forms heretofore approved by the commissioner and for use as of immediately prior to the effective date of this code, may continue to be so used until the further order of the commissioner made pursuant to this subsection or pursuant to any other provision of this code.

(2) The commissioner may from time to time, after hearing, promulgate such rules and regulations as he or she deems necessary to establish reasonable minimum standard conditions and terminology for basic benefits to be provided by

disability insurance contracts which are subject to chapters 48.20 and 48.21 RCW, for the purpose of expediting his or her approval of such contracts pursuant to this code. No such promulgation shall be inconsistent with standard provisions as required pursuant to RCW 48.18.130, nor contain requirements inconsistent with requirements relative to the same benefit provision as formulated or approved by the National Association of Insurance Commissioners. [2009 c 549 § 7068; 1957 c 193 § 10; 1947 c 79 § .18.12; Rem. Supp. 1947 § 45.18.12.]

52.04.141 Annexation of contiguous territory not in same county. Any attempted annexation in 1987 and thereafter by a fire protection district of contiguous territory, that is located in a county other than the county in which the fire protection district was located, is validated where the annexation would have occurred if the territory had been located in the same county as the fire protection district. The effective date of such annexations occurring in 1987 shall be February 1, 1988, for purposes of establishing the boundaries of taxing districts for purposes of imposing property taxes as provided in RCW 84.09.030.

Any reference to a county official of the county in which a fire protection district is located or proposed to be located shall be deemed to refer to the appropriate county official of each county in which the fire protection district is located or proposed to be located. [1988 c 274 § 12.]

Purpose—Severability—1988 c 274: See notes following RCW 84.52.010.

52.04.161 Newly incorporated city or town deemed annexed by district—Withdrawal. If the area of a newly incorporated city or town is located in one or more fire protection districts, the city or town is deemed to have been annexed by the fire protection district or districts effective immediately on the city's or town's official date of incorporation, unless the city or town council adopts a resolution during the interim transition period precluding the annexation of the newly incorporated city or town by the fire protection district or districts. The newly incorporated city or town shall remain annexed to the fire protection district or districts for the remainder of the year of the city's or town's official date of incorporation, or through the following year if such extension is approved by resolution adopted by the city or town council and by the board or boards of fire commissioners, and shall be withdrawn from the fire protection district or districts at the end of this period, unless a ballot proposition is adopted by the voters providing for annexation of the city or town to one fire protection district or providing for the fire protection district or districts to annex only that area of the city or town located within the district. Such election shall be held pursuant to RCW 52.04.071 where possible, provided that in annexations to more than one fire protection district, the qualified elector shall reside within the boundaries of the appropriate fire protection district or in that area of the city located within the district.

If the city or town is withdrawn from the fire protection district or districts, the maximum rate of the first property tax levy that is imposed by the city or town after the withdrawal is calculated as if the city or town never had been annexed by the fire protection district or districts. [2003 c 253 § 1; 1993 c 262 § 1.]

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

(1) "Commission" means the Washington utilities and transportation commission.

(2) "Rural port district" means a port district formed under chapter 53.04 RCW and located in a county with an average population density of fewer than one hundred persons per square mile.

(3) "Telecommunications" has the same meaning as contained in RCW 80.04.010.

(4) "Telecommunications facilities" means lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property, and routes used, operated, owned, or controlled by any entity to facilitate the provision of telecommunications services.

(5) "Wholesale telecommunications services" means the provision of telecommunications services or facilities for resale by an entity authorized to provide telecommunications services to the general public and internet service providers. [2000 c 81 § 6.]

Findings—2000 c 81: "The legislature makes the following findings:

(1) Access to telecommunications facilities and services is essential to the economic well-being of both rural and urban areas.

(2) Many persons and entities, particularly in rural areas, do not have adequate access to telecommunications facilities and services.

(3) Public utility districts and rural port districts may be well-positioned to construct and operate telecommunications facilities." [2000 c 81 § 1.]

53.08.010 Acquisition of property—Levy of assessments. A port district may acquire by purchase, for cash or on deferred payments for a period not exceeding twenty years, or by condemnation, or both, all lands, property, property rights, leases, or easements necessary for its purposes and may exercise the right of eminent domain in the acquirement or damaging of all such lands, property, and property rights, and may levy and collect assessments upon property for the payment of all damages and compensation in carrying out its purposes, and such right shall be exercised in the same manner and by the same procedure as provided for cities of the first class insofar as consistent with this title, and in connection therewith the county treasurer shall perform the duties of the treasurers of such cities. [1983 c 24 § 1; 1955 c 65 § 2. Prior: 1953 c 171 § 1; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9).

Eminent domain by cities: Chapter 8.12 RCW.

53.08.040 Improvement of lands for industrial and commercial purposes—Providing sewer and water utilities—Providing pollution control facilities. (1) A district may improve its lands by dredging, filling, bulkheading, providing waterways or otherwise developing such lands for industrial and commercial purposes. A district may also acquire, construct, install, improve, and operate sewer and water utilities to serve its own property and other property

owners under terms, conditions, and rates to be fixed and approved by the port commission. A district may also acquire, by purchase, construction, lease, or in any other manner, and may maintain and operate other facilities for the control or elimination of air, water, or other pollution, including, but not limited to, facilities for the treatment and/or disposal of industrial wastes, and may make such facilities available to others under terms, conditions and rates to be fixed and approved by the port commission. Such conditions and rates shall be sufficient to reimburse the port for all costs, including reasonable amortization of capital outlays caused by or incidental to providing such other pollution control facilities. However, no part of such costs of providing any pollution control facility to others shall be paid out of any tax revenues of the port and no port shall enter into an agreement or contract to provide sewer and/or water utilities or pollution control facilities if substantially similar utilities or facilities are available from another source (or sources) which is able and willing to provide such utilities or facilities on a reasonable and nondiscriminatory basis unless such other source (or sources) consents thereto.

(2) In the event that a port elects to make such other pollution control facilities available to others, it shall do so by lease, lease purchase agreement, or other agreement binding such user to pay for the use of said facilities for the full term of the revenue bonds issued by the port for the acquisition of said facilities, and said payments shall at least fully reimburse the port for all principal and interest paid by it on said bonds and for all operating or other costs, if any, incurred by the port in connection with said facilities. However, where there is more than one user of any such facilities, each user shall be responsible for its pro rata share of such costs and payment of principal and interest. Any port intending to provide pollution control facilities to others shall first survey the port district to ascertain the potential users of such facilities and the extent of their needs. The port shall conduct a public hearing upon the proposal and shall give each potential user an opportunity to participate in the use of such facilities upon equal terms and conditions.

(3) "Pollution control facility," as used in this section and RCW 53.08.041, does not include air quality improvement equipment that provides emission reductions for engines, vehicles, and vessels. [2007 c 348 § 103; 1989 c 298 § 1; 1972 ex.s. c 54 § 1; 1967 c 131 § 1; 1955 c 65 § 5. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Findings—Part headings not law—2007 c 348: See RCW 43.325.005 and 43.325.903.

Severability—1972 ex.s. c 54: "If any provision of this 1972 amendatory act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this 1972 amendatory act are declared to be severable." [1972 ex.s. c 54 § 5.]

Assessments and charges against state lands: Chapter 79.44 RCW.

Additional notes found at www.leg.wa.gov

54.04.035 Annexation of territory. In addition to other powers authorized in Title 54 RCW, public utility districts may annex territory as provided in this section.

The boundaries of a public utility district may be enlarged and new contiguous territory added pursuant to the procedures for annexation by cities and towns provided in RCW 35.13.015 through 35.13.110. The provisions of these sections concerning community municipal corporations, review boards, and comprehensive plans, however, do not apply to public utility district annexations. For purposes of conforming with such procedures, the public utility district is deemed to be the city or town and the board of commissioners is deemed to be the city or town legislative body.

Annexation procedures provided in this section may only be used to annex territory that is both: (1) Contiguous to the annexing public utility district; and (2) located within the service area of the annexing public utility district. As used in this section, a public utility district's "service area" means those areas whether located within or outside of the annexing public utility district's boundaries that were generally served with electrical energy by the annexing public utility district on January 1, 1987. Such service area may, or may not, have been recognized in an agreement made under chapter 54.48 RCW, but no area may be included within such service area that was generally served with electrical energy on January 1, 1987, by another public utility as defined in RCW 54.48.010. An area proposed to be annexed may be located in the same or a different county as the annexing public utility district.

If an area proposed to be annexed is located within the boundaries of another public utility district, annexation may be initiated only upon petition of registered voters residing in the area in accordance with RCW 35.13.020 and adoption by the boards of commissioners of both districts of identical resolutions stating (a) the boundaries of the area to be annexed, (b) a determination that annexation is in the public interest of the residents of the area to be annexed as well as the public interest of their respective districts, (c) approval of annexation by the board, (d) the boundaries of the districts after annexation, (e) the disposition of any assets of the districts in the area to be annexed, (f) the obligations to be assumed by the annexing district, (g) apportionment of election costs, and (h) that voters in the area to be annexed will be advised of lawsuits that may impose liability on the annexed territory and the possible impact of annexation on taxes and utility rates.

If annexation is approved, the area annexed shall cease to be a part of the one public utility district at the same time that it becomes a part of the other district. The annexing public utility district shall assume responsibility for providing the area annexed with the services provided by the other public utility district in the area annexed. [1987 c 292 § 2; 1983 c 101 § 1.]

Consolidation and annexation: Chapter 54.32 RCW.

57.16.010 General comprehensive plan of improvements—Approval of engineer, director of health, and city, town, or county—Amendments. Before ordering any improvements or submitting to vote any proposition for incurring any indebtedness, the district commissioners shall adopt a general comprehensive plan for the type or types of facilities the district proposes to provide. A district may prepare a separate general comprehensive plan for each of these services and other services that districts are permitted to pro-

vide, or the district may combine any or all of its comprehensive plans into a single general comprehensive plan.

(1) For a general comprehensive plan of a water supply system, the commissioners shall investigate the several portions and sections of the district for the purpose of determining the present and reasonably foreseeable future needs thereof; shall examine and investigate, determine, and select a water supply or water supplies for such district suitable and adequate for present and reasonably foreseeable future needs thereof; and shall consider and determine a general system or plan for acquiring such water supply or water supplies, and the lands, waters, and water rights and easements necessary therefor, and for retaining and storing any such waters, and erecting dams, reservoirs, aqueducts, and pipe lines to convey the same throughout such district. There may be included as part of the system the installation of fire hydrants at suitable places throughout the district. The commissioners shall determine a general comprehensive plan for distributing such water throughout such portion of the district as may then reasonably be served by means of subsidiary aqueducts and pipe lines, and a long-term plan for financing the planned projects and the method of distributing the cost and expense thereof, including the creation of local improvement districts or utility local improvement districts, and shall determine whether the whole or part of the cost and expenses shall be paid from revenue or general obligation bonds.

(2) For a general comprehensive plan for a sewer system, the commissioners shall investigate all portions and sections of the district and select a general comprehensive plan for a sewer system for the district suitable and adequate for present and reasonably foreseeable future needs thereof. The general comprehensive plan shall provide for treatment plants and other methods and services, if any, for the prevention, control, and reduction of water pollution and for the treatment and disposal of sewage and industrial and other liquid wastes now produced or which may reasonably be expected to be produced within the district and shall, for such portions of the district as may then reasonably be served, provide for the acquisition or construction and installation of laterals, trunk sewers, intercepting sewers, syphons, pumping stations or other sewage collection facilities, septic tanks, septic tank systems or drainfields, and systems for the transmission and treatment of wastewater. The general comprehensive plan shall provide a long-term plan for financing the planned projects and the method of distributing the cost and expense of the sewer system and services, including the creation of local improvement districts or utility local improvement districts; and provide whether the whole or some part of the cost and expenses shall be paid from revenue or general obligation bonds.

(3) For a general comprehensive plan for a reclaimed water system, the commissioners shall investigate all portions and sections of the district and select a general comprehensive plan for a reclaimed water system for the district suitable and adequate for present and reasonably foreseeable future needs thereof. The general comprehensive plan must provide for treatment plants or the use of existing treatment plants and other methods and services, if any, for reclaiming water and must, for such portions of the district as may then reasonably be served, provide for a general system or plan for acquiring the lands and easements necessary therefor, including retaining and storing reclaimed water, and for the acquisition or construction and installation of mains, transmission mains, pumping stations, hydrants, or other facilities and systems for the reclamation and transmission of reclaimed water throughout such district for such uses, public and private, as authorized by law. The general comprehensive plan must provide a long-term plan for financing the planned projects and the method of distributing the cost and expense of the reclaimed water system and services, including the creation of local improvement districts or utility local improvement districts; and provide whether the whole or some part of the cost and expenses must be paid from revenue or general obligation bonds.

(4) For a general comprehensive plan for a drainage system, the commissioners shall investigate all portions and sections of the district and adopt a general comprehensive plan for a drainage system for the district suitable and adequate for present and future needs thereof. The general comprehensive plan shall provide for a system to collect, treat, and dispose of storm water or surface waters, including use of natural systems and the construction or provision of culverts, storm water pipes, ponds, and other systems. The general comprehensive plan shall provide for a long-term plan for financing the planned projects and provide for a method of distributing the cost and expense of the drainage system, including local improvement districts or utility local improvement districts, and provide whether the whole or some part of the cost and expenses shall be paid from revenue or general obligation bonds.

(5) For a general comprehensive plan for street lighting, the commissioners shall investigate all portions and sections of the district and adopt a general comprehensive plan for street lighting for the district suitable and adequate for present and future needs thereof. The general comprehensive plan shall provide for a system or systems of street lighting, provide for a long-term plan for financing the planned projects, and provide for a method of distributing the cost and expense of the street lighting system, including local improvement districts or utility local improvement districts, and provide whether the whole or some part of the cost and expenses shall be paid from revenue or general obligation bonds.

(6) The commissioners may employ such engineering and legal service as in their discretion is necessary in carrying out their duties.

(7) Any general comprehensive plan or plans shall be adopted by resolution and submitted to an engineer designated by the legislative authority of the county in which fifty-one percent or more of the area of the district is located, and to the director of health of the county in which the district or any portion thereof is located, and must be approved in writing by the engineer and director of health, except that a comprehensive plan relating to street lighting shall not be submitted to or approved by the director of health. The general comprehensive plan shall be approved, conditionally approved, or rejected by the director of health and by the designated engineer within sixty days of their respective receipt of the plan. However, this sixty-day time limitation may be extended by the director of health or engineer for up to an additional sixty days if sufficient time is not available to review adequately the general comprehensive plans.

Before becoming effective, the general comprehensive plan shall also be submitted to, and approved by resolution of, the legislative authority of every county within whose boundaries all or a portion of the district lies. The general comprehensive plan shall be approved, conditionally approved, or rejected by each of the county legislative authorities pursuant to the criteria in RCW 57.02.040 for approving the formation, reorganization, annexation, consolidation, or merger of districts. The resolution, ordinance, or motion of the legislative body that rejects the comprehensive plan or a part thereof shall specifically state in what particular the comprehensive plan or part thereof rejected fails to meet these criteria. The general comprehensive plan shall not provide for the extension or location of facilities that are inconsistent with the requirements of RCW 36.70A.110. Nothing in this chapter shall preclude a county from rejecting a proposed plan because it is in conflict with the criteria in RCW 57.02.040. Each general comprehensive plan shall be deemed approved if the county legislative authority fails to reject or conditionally approve the plan within ninety days of the plan's submission to the county legislative authority or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority. However, a county legislative authority may extend this ninety-day time limitation by up to an additional ninety days where a finding is made that ninety days is insufficient to review adequately the general comprehensive plan. In addition, the commissioners and the county legislative authority may mutually agree to an extension of the deadlines in this section.

If the district includes portions or all of one or more cities or towns, the general comprehensive plan shall be submitted also to, and approved by resolution of, the legislative authorities of the cities and towns before becoming effective. The general comprehensive plan shall be deemed approved by the city or town legislative authority if the city or town legislative authority fails to reject or conditionally approve the plan within ninety days of the plan's submission to the city or town or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority. However, a city or town legislative authority may extend this time limitation by up to an additional ninety days where a finding is made that insufficient time exists to adequately review the general comprehensive plan within these time limitations. In addition, the commissioners and the city or town legislative authority may mutually agree to an extension of the deadlines in this section.

Before becoming effective, the general comprehensive plan shall be approved by any state agency whose approval may be required by applicable law. Before becoming effective, any amendment to, alteration of, or addition to, a general comprehensive plan shall also be subject to such approval as if it were a new general comprehensive plan. However, only if the amendment, alteration, or addition affects a particular city or town, shall the amendment, alteration, or addition be subject to approval by such particular city or town governing body. [2009 c 253 § 4; 1997 c 447 § 18; 1996 c 230 § 501; 1990 1st ex.s. c 17 § 35; 1989 c 389 § 10; 1982 c 213 § 2; 1979 c 23 § 2; 1977 ex.s. c 299 § 3; 1959 c 108 § 6; 1959 c 18 § 6. Prior: 1939 c 128 § 2, part; 1937 c 177 § 1; 1929 c 114 § 10, part; RRS § 11588. Cf. 1913 c 161 § 10.]

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

57.24.210 Annexation of certain unincorporated territory with boundaries contiguous to two municipal corporations providing water or sewer service—Procedure. When there is unincorporated territory containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to two municipal corporations providing either water or sewer service, one of which is a water-sewer district, the legislative authority of either of the contiguous municipal corporations may resolve to annex such territory to that municipal corporation, provided a majority of the legislative authority of the other contiguous municipal corporation concurs. In such event, the municipal corporation resolving to annex such territory may proceed to effect the annexation by complying with RCW 57.24.170 through 57.24.190. For purposes of this section, "municipal corporation" means a water-sewer district, city, or town. [2002 c 76 § 1; 1996 c 230 § 912; 1995 c 279 § 2; 1987 c 449 § 17.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Additional notes found at www.leg.wa.gov

58.08.040 Deposit to cover anticipated taxes and assessments. Prior to any person recording a plat, replat, or altered plat subsequent to May 31st in any year and prior to the date of the collection of taxes in the ensuing year, the person shall deposit with the county treasurer a sum equal to the product of the county assessor's latest valuation on the property less improvements in such subdivision multiplied by the current year's dollar rate increased by twenty-five percent on the property platted. The treasurer's receipt shall be evidence of the payment. The treasurer shall appropriate so much of the deposit as will pay the taxes and assessments on the property when the levy rates are certified by the assessor using the value of the property at the time of filing a plat, replat, or altered plat, and in case the sum deposited is in excess of the amount necessary for the payment of the taxes and assessments, the treasurer shall return, to the party depositing, the amount of excess. [2008 c 17 § 2; 1997 c 393 § 11; 1994 c 301 § 16; 1991 c 245 § 14; 1989 c 378 § 2; 1973 1st ex.s. c 195 § 74; 1969 ex.s. c 271 § 34; 1963 c 66 § 1; 1909 c 200 § 1; 1907 c 44 § 1; 1893 c 129 § 2; RRS § 9291.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—1969 ex.s. c 271: See RCW 58.17.910.

Assessment date: RCW 84.40.020.

Property taxes—Collection of taxes: Chapter 84.56 RCW.

Additional notes found at www.leg.wa.gov

Chapter 58.17 RCW
PLATS—SUBDIVISIONS—DEDICATIONS

Sections

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58.17.010 Purpose. The legislature finds that the process by which land is divided is a matter of state concern and should be administered in a uniform manner by cities, towns, and counties throughout the state. The purpose of this chapter is to regulate the subdivision of land and to promote the public health, safety and general welfare in accordance with standards established by the state to prevent the overcrowding of land; to lessen congestion in the streets and highways; to promote effective use of land; to promote safe and convenient travel by the public on streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage, parks and recreation areas, sites for schools and schoolgrounds and other public requirements; to provide for proper ingress and egress; to provide for the expeditious review and approval of proposed subdivisions which conform to zoning standards and local plans and policies; to adequately provide for the housing and commercial needs of the citizens of the state; and to require uniform monumenting of land subdivisions and conveyancing by accurate legal description. [1981 c 293 § 1; 1969 ex.s. c 271 § 1.]

Reviser's note: Throughout this chapter, the phrase "this act" has been changed to "this chapter." "This act" [1969 ex.s. c 271] also consists of amendments to RCW 58.08.040 and 58.24.040 and the repeal of RCW 58.16.010 through 58.16.110.

Severability—1981 c 293: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 293 § 16.]

Additional notes found at www.leg.wa.gov

58.17.020 Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(1) "Subdivision" is the division or redivision of land into five or more lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership, except as provided in subsection (6) of this section.

(2) "Plat" is a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys, or other divisions and dedications.

(3) "Dedication" is the deliberate appropriation of land by an owner for any general and public uses, reserving to himself or herself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final plat or short plat showing the dedication thereon; and, the acceptance by the public shall be evidenced by the approval of such plat for filing by the appropriate governmental unit.

A dedication of an area of less than two acres for use as a public park may include a designation of a name for the park, in honor of a deceased individual of good character.

(4) "Preliminary plat" is a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdi-

vision consistent with the requirements of this chapter. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision.

(5) "Final plat" is the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in this chapter and in local regulations adopted under this chapter.

(6) "Short subdivision" is the division or redivision of land into four or fewer lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership. However, the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine. The legislative authority of any county planning under RCW 36.70A.040 that has adopted a comprehensive plan and development regulations in compliance with chapter 36.70A RCW may by ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine in any urban growth area.

(7) "Binding site plan" means a drawing to a scale specified by local ordinance which: (a) Identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations; (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the local government body having authority to approve the site plan; and (c) contains provisions making any development be in conformity with the site plan.

(8) "Short plat" is the map or representation of a short subdivision.

(9) "Lot" is a fractional part of divided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts or parcels.

(10) "Block" is a group of lots, tracts, or parcels within well defined and fixed boundaries.

(11) "County treasurer" shall be as defined in chapter 36.29 RCW or the office or person assigned such duties under a county charter.

(12) "County auditor" shall be as defined in chapter 36.22 RCW or the office or person assigned such duties under a county charter.

(13) "County road engineer" shall be as defined in chapter 36.40 RCW or the office or person assigned such duties under a county charter.

(14) "Planning commission" means that body as defined in chapter 36.70, 35.63, or 35A.63 RCW as designated by the legislative body to perform a planning function or that body assigned such duties and responsibilities under a city or county charter.

(15) "County commissioner" shall be as defined in chapter 36.32 RCW or the body assigned such duties under a county charter. [2002 c 262 § 1; 1995 c 32 § 2; 1983 c 121 § 1. Prior: 1981 c 293 § 2; 1981 c 292 § 1; 1969 ex.s. c 271 § 2.]

Severability—1981 c 293: See note following RCW 58.17.010.

Camping resort contracts—Nonapplicability of certain laws to—Resort not subdivision except under city, county powers: RCW 19.105.510.

Additional notes found at www.leg.wa.gov

58.17.030 Subdivisions to comply with chapter, local regulations. Every subdivision shall comply with the provisions of this chapter. Every short subdivision as defined in this chapter shall comply with the provisions of any local regulation adopted pursuant to RCW 58.17.060. [1974 ex.s. c 134 § 1; 1969 ex.s. c 271 § 3.]

58.17.060 Short plats and short subdivisions—Summary approval—Regulations—Requirements. (1) The legislative body of a city, town, or county shall adopt regulations and procedures, and appoint administrative personnel for the summary approval of short plats and short subdivisions or alteration or vacation thereof. When an alteration or vacation involves a public dedication, the alteration or vacation shall be processed as provided in RCW 58.17.212 or 58.17.215. Such regulations shall be adopted by ordinance and shall provide that a short plat and short subdivision may be approved only if written findings that are appropriate, as provided in RCW 58.17.110, are made by the administrative personnel, and may contain wholly different requirements than those governing the approval of preliminary and final plats of subdivisions and may require surveys and monumentations and shall require filing of a short plat, or alteration or vacation thereof, for record in the office of the county auditor: PROVIDED, That such regulations must contain a requirement that land in short subdivisions may not be further divided in any manner within a period of five years without the filing of a final plat, except that when the short plat contains fewer than four parcels, nothing in this section shall prevent the owner who filed the short plat from filing an alteration within the five-year period to create up to a total of four lots within the original short plat boundaries: PROVIDED FURTHER, That such regulations are not required to contain a penalty clause as provided in RCW 36.32.120 and may provide for wholly injunctive relief.

An ordinance requiring a survey shall require that the survey be completed and filed with the application for approval of the short subdivision.

(2) Cities, towns, and counties shall include in their short plat regulations and procedures pursuant to subsection (1) of this section provisions for considering sidewalks and other planning features that assure safe walking conditions for students who walk to and from school. [1990 1st ex.s. c 17 § 51; 1989 c 330 § 2; 1987 c 354 § 5; 1987 c 92 § 1; 1974 ex.s. c 134 § 3; 1969 ex.s. c 271 § 6.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

58.17.090 Notice of public hearing. (1) Upon receipt of an application for preliminary plat approval the administrative officer charged by ordinance with responsibility for administration of regulations pertaining to platting and subdivisions shall provide public notice and set a date for a public hearing. Except as provided in RCW 36.70B.110, at a minimum, notice of the hearing shall be given in the following manner:

(a) Notice shall be published not less than ten days prior to the hearing in a newspaper of general circulation within the county and a newspaper of general circulation in the area

where the real property which is proposed to be subdivided is located; and

(b) Special notice of the hearing shall be given to adjacent landowners by any other reasonable method local authorities deem necessary. Adjacent landowners are the owners of real property, as shown by the records of the county assessor, located within three hundred feet of any portion of the boundary of the proposed subdivision. If the owner of the real property which is proposed to be subdivided owns another parcel or parcels of real property which lie adjacent to the real property proposed to be subdivided, notice under this subsection (1)(b) shall be given to owners of real property located within three hundred feet of any portion of the boundaries of such adjacently located parcels of real property owned by the owner of the real property proposed to be subdivided.

(2) All hearings shall be public. All hearing notices shall include a description of the location of the proposed subdivision. The description may be in the form of either a vicinity location sketch or a written description other than a legal description. [1995 c 347 § 426; 1981 c 293 § 5; 1974 ex.s. c 134 § 4; 1969 ex.s. c 271 § 9.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—1981 c 293: See note following RCW 58.17.010.

Additional notes found at www.leg.wa.gov

58.17.092 Public notice—Identification of affected property. Any notice made under chapter 58.17 or 36.70B RCW that identifies affected property may identify this affected property without using a legal description of the property including, but not limited to, identification by an address, written description, vicinity sketch, or other reasonable means. [1995 c 347 § 427; 1988 c 168 § 12.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

58.17.100 Review of preliminary plats by planning commission or agency—Recommendation—Change by legislative body—Procedure—Approval. If a city, town or county has established a planning commission or planning agency in accordance with state law or local charter, such commission or agency shall review all preliminary plats and make recommendations thereon to the city, town or county legislative body to assure conformance of the proposed subdivision to the general purposes of the comprehensive plan and to planning standards and specifications as adopted by the city, town or county. Reports of the planning commission or agency shall be advisory only: PROVIDED, That the legislative body of the city, town or county may, by ordinance, assign to such commission or agency, or any department official or group of officials, such administrative functions, powers and duties as may be appropriate, including the holding of hearings, and recommendations for approval or disapproval of preliminary plats of proposed subdivisions.

Such recommendation shall be submitted to the legislative body not later than fourteen days following action by the hearing body. Upon receipt of the recommendation on any preliminary plat the legislative body shall at its next public meeting set the date for the public meeting where it shall consider the recommendations of the hearing body and may adopt or reject the recommendations of such hearing body based on the record established at the public hearing. If, after considering the matter at a public meeting, the legislative body deems a change in the planning commission's or planning agency's recommendation approving or disapproving any preliminary plat is necessary, the legislative body shall adopt its own recommendations and approve or disapprove the preliminary plat.

Every decision or recommendation made under this section shall be in writing and shall include findings of fact and conclusions to support the decision or recommendation.

A record of all public meetings and public hearings shall be kept by the appropriate city, town or county authority and shall be open to public inspection.

Sole authority to approve final plats, and to adopt or amend platting ordinances shall reside in the legislative bodies. [1995 c 347 § 428; 1981 c 293 § 6; 1969 ex.s. c 271 § 10.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—1981 c 293: See note following RCW 58.17.010.

Additional notes found at www.leg.wa.gov

58.17.110 Approval or disapproval of subdivision and dedication—Factors to be considered—Conditions for approval—Finding—Release from damages. (1) The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine: (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.

(2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. No dedication, provision of public improvements, or impact fees imposed under RCW 82.02.050 through 82.02.090 shall

be allowed that constitutes an unconstitutional taking of private property. The legislative body shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners.

(3) If the preliminary plat includes a dedication of a public park with an area of less than two acres and the donor has designated that the park be named in honor of a deceased individual of good character, the city, town, or county legislative body must adopt the designated name. [1995 c 32 § 3; 1990 1st ex.s. c 17 § 52; 1989 c 330 § 3; 1974 ex.s. c 134 § 5; 1969 ex.s. c 271 § 11.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

58.17.140 Time limitation for approval or disapproval of plats—Extensions. (1) Preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within ninety days from date of filing thereof unless the applicant consents to an extension of such time period or the ninety day limitation is extended to include up to twenty-one days as specified under RCW 58.17.095(3): PROVIDED, That if an environmental impact statement is required as provided in RCW 43.21C.030, the ninety day period shall not include the time spent preparing and circulating the environmental impact statement by the local government agency.

(2) Final plats and short plats shall be approved, disapproved, or returned to the applicant within thirty days from the date of filing thereof, unless the applicant consents to an extension of such time period.

(3)(a) Except as provided by (b) of this subsection, a final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within seven years of the date of preliminary plat approval if the date of preliminary plat approval is on or before December 31, 2014, and within five years of the date of preliminary plat approval if the date of preliminary plat approval is on or after January 1, 2015.

(b) A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within ten years of the date of preliminary plat approval if the project is not subject to requirements adopted under chapter 90.58 RCW and the date of preliminary plat approval is on or before December 31, 2007.

(4) Nothing contained in this section shall act to prevent any city, town, or county from adopting by ordinance procedures which would allow extensions of time that may or may not contain additional or altered conditions and requirements. [2013 c 16 § 1; 2012 c 92 § 1; 2010 c 79 § 1; 1995 c 68 § 1; 1986 c 233 § 2; 1983 c 121 § 3; 1981 c 293 § 7; 1974 ex.s. c 134 § 8; 1969 ex.s. c 271 § 14.]

Applicability—1986 c 233: See note following RCW 58.17.095.

Severability—1981 c 293: See note following RCW 58.17.010.

Additional notes found at www.leg.wa.gov

58.17.180 Review of decision. Any decision approving or disapproving any plat shall be reviewable under chapter 36.70C RCW. [1995 c 347 § 717; 1983 c 121 § 5; 1969 ex.s. c 271 § 18.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

58.17.195 Approval of plat or short plat—Written finding of conformity with applicable land use controls. No plat or short plat may be approved unless the city, town, or county makes a formal written finding of fact that the proposed subdivision or proposed short subdivision is in conformity with any applicable zoning ordinance or other land use controls which may exist. [1981 c 293 § 14.]

Severability—1981 c 293: See note following RCW 58.17.010.

Additional notes found at www.leg.wa.gov

58.17.330 Hearing examiner system—Adoption authorized—Procedures—Decisions. (1) As an alternative to those provisions of this chapter requiring a planning commission to hear and issue recommendations for plat approval, the county or city legislative body may adopt a hearing examiner system and shall specify by ordinance the legal effect of the decisions made by the examiner. The legal effect of such decisions shall include one of the following:

(a) The decision may be given the effect of a recommendation to the legislative body;

(b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body; or

(c) The decision may be given the effect of a final decision of the legislative body.

The legislative authority shall prescribe procedures to be followed by a hearing examiner.

(2) Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Each final decision of a hearing examiner, unless a longer period is mutually agreed to by the applicant and the hearing examiner, shall be rendered within ten working days following conclusion of all testimony and hearings. [1995 c 347 § 429; 1994 c 257 § 6; 1977 ex.s. c 213 § 4.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—1994 c 257: See note following RCW 36.70A.270.

Severability—1977 ex.s. c 213: See note following RCW 35.63.130.

Additional notes found at www.leg.wa.gov

59.18.440 Relocation assistance for low-income tenants—Certain cities, towns, counties, municipal corporations authorized to require. (1) Any city, town, county, or municipal corporation that is required to develop a comprehensive plan under RCW 36.70A.040(1) is authorized to require, after reasonable notice to the public and a public hearing, property owners to provide their portion of reasonable relocation assistance to low-income tenants upon the demolition, substantial rehabilitation whether due to code enforcement or any other reason, or change of use of residential property, or upon the removal of use restrictions in an assisted-housing development. No city, town, county, or municipal corporation may require property owners to provide relocation assistance to low-income tenants, as defined in this chapter, upon the demolition, substantial rehabilitation, upon the change of use of residential property, or upon the removal of use restrictions in an assisted-housing devel-

opment, except as expressly authorized herein or when authorized or required by state or federal law. As used in this section, "assisted housing development" means a multifamily rental housing development that either receives government assistance and is defined as federally assisted housing in RCW 59.28.020, or that receives other federal, state, or local government assistance and is subject to use restrictions.

(2) As used in this section, "low-income tenants" means tenants whose combined total income per dwelling unit is at or below fifty percent of the median income, adjusted for family size, in the county where the tenants reside.

The *department of community, trade, and economic development shall adopt rules defining county median income in accordance with the definitions promulgated by the federal department of housing and urban development.

(3) A requirement that property owners provide relocation assistance shall include the amounts of such assistance to be provided to low-income tenants. In determining such amounts, the jurisdiction imposing the requirement shall evaluate, and receive public testimony on, what relocation expenses displaced tenants would reasonably incur in that jurisdiction including:

(a) Actual physical moving costs and expenses;

(b) Advance payments required for moving into a new residence such as the cost of first and last month's rent and security and damage deposits;

(c) Utility connection fees and deposits; and

(d) Anticipated additional rent and utility costs in the residence for one year after relocation.

(4)(a) Relocation assistance provided to low-income tenants under this section shall not exceed two thousand dollars for each dwelling unit displaced by actions of the property owner under subsection (1) of this section. A city, town, county, or municipal corporation may make future annual adjustments to the maximum amount of relocation assistance required under this subsection in order to reflect any changes in the housing component of the consumer price index as published by the United States department of labor, bureau of labor statistics.

(b) The property owner's portion of any relocation assistance provided to low-income tenants under this section shall not exceed one-half of the required relocation assistance under (a) of this subsection in cash or services.

(c) The portion of relocation assistance not covered by the property owner under (b) of this subsection shall be paid by the city, town, county, or municipal corporation authorized to require relocation assistance under subsection (1) of this section. The relocation assistance may be paid from proceeds collected from the excise tax imposed under RCW 82.46.010.

(5) A city, town, county, or municipal corporation requiring the provision of relocation assistance under this section shall adopt policies, procedures, or regulations to implement such requirement. Such policies, procedures, or regulations shall include provisions for administrative hearings to resolve disputes between tenants and property owners relating to relocation assistance or unlawful detainer actions during relocation, and shall require a decision within thirty days of a request for a hearing by either a tenant or property owner.

Judicial review of an administrative hearing decision relating to relocation assistance may be had by filing a petition, within ten days of the decision, in the superior court in the county where the residential property is located. Judicial review shall be confined to the record of the administrative hearing and the court may reverse the decision only if the administrative findings, inferences, conclusions, or decision is:

(a) In violation of constitutional provisions;

(b) In excess of the authority or jurisdiction of the administrative hearing officer;

(c) Made upon unlawful procedure or otherwise is contrary to law; or

(d) Arbitrary and capricious.

(6) Any city, town, county, or municipal corporation may require relocation assistance, under the terms of this section, for otherwise eligible tenants whose living arrangements are exempted from the provisions of this chapter under RCW 59.18.040(3) and if the living arrangement is considered to be a rental or lease not defined as a retail sale under RCW 82.04.050.

(7)(a) Persons who move from a dwelling unit prior to the application by the owner of the dwelling unit for any governmental permit necessary for the demolition, substantial rehabilitation, or change of use of residential property or prior to any notification or filing required for condominium conversion shall not be entitled to the assistance authorized by this section.

(b) Persons who move into a dwelling unit after the application for any necessary governmental permit or after any required condominium conversion notification or filing shall not be entitled to the assistance authorized by this section if such persons receive written notice from the property owner prior to taking possession of the dwelling unit that specifically describes the activity or condition that may result in their temporary or permanent displacement and advises them of their ineligibility for relocation assistance. [1997 c 452 § 17; 1995 c 399 § 151; 1990 1st ex.s. c 17 § 49.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

59.18.450 Relocation assistance for low-income tenants—Payments not considered income—Eligibility for other assistance not affected. Relocation assistance payments received by tenants under *RCW 59.18.440 shall not be considered as income or otherwise affect the eligibility for or amount of assistance paid under any government benefit program. [1990 1st ex.s. c 17 § 50.]

***Reviser's note:** The reference in 1990 1st ex.s. c 17 § 50 to "section 50 of this act" is apparently erroneous and has been translated to RCW 59.18.440, which was 1990 1st ex.s. c 17 § 49.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

64.04.130 Interests in land for purposes of conservation, protection, preservation, etc.—Ownership by certain entities—Conveyances—Definitions. A development right, easement, covenant, restriction, or other right, or any interest less than the fee simple, to protect, preserve, maintain, improve, restore, limit the future use of, or conserve for open space purposes, any land or improvement on the land, whether the right or interest be appurtenant or in gross, may be held or acquired by any state agency, federal agency, county, city, town, federally recognized Indian tribe, or metropolitan municipal corporation, nonprofit historic preservation corporation, or nonprofit nature conservancy corporation. Any such right or interest constitutes and is classified as real property. All instruments for the conveyance thereof must be substantially in the form required by law for the conveyance of any land or other real property.

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

(1) "Nonprofit historic preservation corporation" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended, and which has as one of its principal purposes the conducting or facilitating of historic preservation activities within the state, including conservation or preservation of historic sites, districts, buildings, and artifacts.

(2) "Nonprofit nature conservancy corporation" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c)(3) (of the United States Internal Revenue Code of 1954, as amended) as it existed on June 25, 1976, and which has as one of its principal purposes the conducting or facilitating of scientific research; the conserving of natural resources, including but not limited to biological resources, for the general public; or the conserving of natural areas including but not limited to wildlife or plant habitat. [2013 c 120 § 1; 1987 c 341 § 1; 1979 ex.s. c 21 § 1.]

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

Acquisition of open space, land, or rights to future development by certain entities: RCW 84.34.200 through 84.34.250.

Property tax exemption for conservation futures on agricultural land: RCW 84.36.500.

66.08.190 Liquor revolving fund—Disbursement of excess funds to border areas, counties, cities, and towns—Disbursements to the municipal research and services center. (1) Prior to making distributions described in subsection (2) of this section, amounts must be retained to support allotments under RCW 43.88.110 from any legislative appropriation for municipal research and services. The legislative appropriation for such services must be in the amount specified under RCW 66.24.065.

(2) When excess funds are distributed during the months of June, September, December, and March of each year, all moneys subject to distribution must be disbursed to border areas, counties, cities, and towns as provided in RCW 66.24.065.

(3) The amount remaining after distributions under subsections (1) and (2) of this section must be deposited into the general fund. [2012 2nd sp.s. c 5 § 8; 2011 1st sp.s. c 50 § 960; 2003 1st sp.s. c 25 § 927; 2002 c 38 § 2; 2000 c 227 § 2; 1995 c 159 § 1; 1991 sp.s. c 32 § 34; 1988 c 229 § 4; 1957 c 175 § 6. Prior: 1955 c 109 § 2; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.090.]

Effective date—2012 2nd sp.s. c 5: See note following RCW 43.135.045.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Effective date—2000 c 227: See note following RCW 43.110.030.

Effective date—1995 c 159: "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 July 1, 1995." [1995 c 159 § 6.]

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Finding—1988 c 229: "The legislature finds and declares that certain counties and municipalities near international borders are subjected to a constant volume and flow of travelers and visitors for whom local government services must be provided. The legislature further finds that it is in the public interest and for the protection of the health, property, and welfare of the residents and visitors to provide supplemental resources to augment and maintain existing levels of police protection in such areas and to alleviate the impact of such added burdens." [1988 c 229 § 2.]

Effective date—1988 c 229 §§ 2-4: "Sections 2 through 4 of this act shall take effect July 1, 1989." [1988 c 229 § 5.]

Additional notes found at www.leg.wa.gov

70.94.544 Transportation demand management—Use of funds. A portion of the funds made available for the purposes of this chapter shall be used to fund the commute trip reduction board in carrying out the responsibilities of RCW 70.94.537, and the department of transportation, including the activities authorized under RCW 70.94.541(2), and to assist regional transportation planning organizations, counties, cities, and towns implementing commute trip reduction plans. The commute trip reduction board shall determine the allocation of program funds made available for the purposes of this chapter to regional transportation planning organizations, counties, cities, and towns implementing commute trip reduction plans. If state funds for the purposes of this chapter are provided to those jurisdictions implementing voluntary commute trip reduction plans, the funds shall be disbursed based on criteria established by the commute trip reduction board under RCW 70.94.537. [2006 c 329 § 9; 2001 c 74 § 1; 1991 c 202 § 17.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

Additional notes found at www.leg.wa.gov

70.146.070 Grants or loans for water pollution control facilities—Considerations. (1) When making grants or loans for water pollution control facilities, the department shall consider the following:

(a) The protection of water quality and public health;

(b) The cost to residential ratepayers if they had to finance water pollution control facilities without state assistance;

(c) Actions required under federal and state permits and compliance orders;

(d) The level of local fiscal effort by residential ratepayers since 1972 in financing water pollution control facilities;

(e) Except as otherwise conditioned by RCW 70.146.110, whether the entity receiving assistance is a Puget Sound partner, as defined in RCW 90.71.010;

(f) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310;

(g) Except as otherwise provided in RCW 70.146.120, and effective one calendar year following the development and statewide availability of model evergreen community management plans and ordinances under RCW 35.105.050, whether the project is sponsored by an entity that has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in RCW 35.105.030;

(h) The extent to which the applicant county or city, or if the applicant is another public body, the extent to which the county or city in which the applicant public body is located, has established programs to mitigate nonpoint pollution of the surface or subterranean water sought to be protected by the water pollution control facility named in the application for state assistance; and

(i) The recommendations of the Puget Sound partnership, created in RCW 90.71.210, and any other board, council, commission, or group established by the legislature or a state agency to study water pollution control issues in the state.

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 may not receive a grant or loan for water pollution control facilities unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. A county, city, or town that has adopted a comprehensive plan and development regulations as provided in RCW 36.70A.040 may request a grant or loan for water pollution control facilities. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting a grant or loan under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 that has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 is not prohibited from receiving a grant or loan under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before the department executes a contractual agreement for the grant or loan.

(3) Whenever the department is considering awarding grants or loans for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, it shall consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(4) After January 1, 2010, any project designed to address the effects of water pollution on Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2013 c 275 § 4; 2008 c 299 § 26. Prior: 2007 c 341 § 60; 2007 c 341 § 26; 1999 c 164 § 603; 1997 c 429 § 30; 1991 sp.s. c 32 § 24; 1986 c 3 § 10.]

Short title—2008 c 299: See note following RCW 35.105.010.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Savings—1999 c 164 §§ 301-303, 305, 306, and 601-603: See note following RCW 82.60.020.

Effective date—1997 c 429 §§ 29 and 30: See note following RCW 43.155.070.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Effective dates—1986 c 3: See note following RCW 70.146.010.

Additional notes found at www.leg.wa.gov

71.09.342 Transition facilities—Siting—Local regulations preempted, when—Consideration of public safety measures. (1) After October 1, 2002, notwithstanding RCW 36.70A.103 or any other law, this section preempts and supersedes local plans, development regulations, permitting requirements, inspection requirements, and all other laws as necessary to enable the department to site, construct, renovate, occupy, and operate secure community transition facilities within the borders of the following:

(a) Any county that had five or more persons civilly committed from that county, or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause has been made, on April 1, 2001, if the department determines that the county has not met the requirements of RCW 36.70A.200 with respect to secure community transition facilities. This subsection does not apply to the county in which the secure community transition facility authorized under RCW 71.09.250(1) is located; and

(b) Any city located within a county listed in (a) of this subsection that the department determines has not met the requirements of RCW 36.70A.200 with respect to secure community transition facilities.

(2) The department's determination under subsection (1)(a) or (b) of this section is final and is not subject to appeal under chapter 34.05 or 36.70A RCW.

(3) When siting a facility in a county or city that has been preempted under this section, the department shall consider the policy guidelines established under RCW 71.09.285 and 71.09.290 and shall hold the hearings required in RCW 71.09.315.

(4) Nothing in this section prohibits the department from:

(a) Siting a secure community transition facility in a city or county that has complied with the requirements of RCW 36.70A.200 with respect to secure community transition facilities, including a city that is located within a county that has been preempted. If the department sites a secure community transition facility in such a city or county, the department shall use the process established by the city or county for siting such facilities; or

(b) Consulting with a city or county that has been preempted under this section regarding the siting of a secure community transition facility.

(5)(a) A preempted city or county may propose public safety measures specific to any finalist site to the department. The measures must be consistent with the location of the facility at that finalist site. The proposal must be made in writing by the date of:

(i) The second hearing under RCW 71.09.315(2)(a) when there are three finalist sites; or

(ii) The first hearing under RCW 71.09.315(2)(b) when there is only one site under consideration.

(b) The department shall respond to the city or county in writing within fifteen business days of receiving the proposed measures. The response shall address all proposed measures.

(c) If the city or county finds that the department's response is inadequate, the city or county may notify the department in writing within fifteen business days of the specific items which it finds inadequate. If the city or county does not notify the department of a finding that the response is inadequate within fifteen business days, the department's response shall be final.

(d) If the city or county notifies the department that it finds the response inadequate and the department does not revise its response to the satisfaction of the city or county within seven business days, the city or county may petition the governor to designate a person with law enforcement expertise to review the response under RCW 34.05.479.

(e) The governor's designee shall hear a petition filed under this subsection and shall make a determination within thirty days of hearing the petition. The governor's designee shall consider the department's response, and the effectiveness and cost of the proposed measures, in relation to the purposes of this chapter. The determination by the governor's designee shall be final and may not be the basis for any cause of action in civil court.

(f) The city or county shall bear the cost of the petition to the governor's designee. If the city or county prevails on all issues, the department shall reimburse the city or county costs incurred, as provided under chapter 34.05 RCW.

(g) Neither the department's consideration and response to public safety conditions proposed by a city or county nor the decision of the governor's designee shall affect the preemption under this section or the department's authority to site, construct, renovate, occupy, and operate the secure community transition facility at that finalist site or at any finalist site.

(6) Until June 30, 2009, the secretary shall site, construct, occupy, and operate a secure community transition facility sited under this section in an environmentally responsible manner that is consistent with the substantive objectives of chapter 43.21C RCW, and shall consult with the department of ecology as appropriate in carrying out the planning, construction, and operations of the facility. The secretary shall make a threshold determination of whether a secure community transition facility sited under this section would have a probable significant, adverse environmental impact. If the secretary determines that the secure community transition facility has such an impact, the secretary shall prepare an environmental impact statement that meets the requirements of RCW 43.21C.030 and 43.21C.031 and the rules promulgated by the department of ecology relating to such statements. Nothing in this subsection shall be the basis for any civil cause of action or administrative appeal.

(7) In no case may a secure community transition facility be sited adjacent to, immediately across a street or parking lot from, or within the line of sight of a risk potential activity or facility in existence at the time a site is listed for consideration unless the site that the department has chosen in a particular county or city was identified pursuant to a process for siting secure community transition facilities adopted by that county or city in compliance with RCW 36.70A.200. "Within the line of sight" means that it is possible to reasonably visually distinguish and recognize individuals.

(8) This section does not apply to the secure community transition facility established pursuant to RCW 71.09.250(1). [2003 c 50 § 2; 2002 c 68 § 9.]

Application—Effective date—2003 c 50: See notes following RCW 71.09.020.

Purpose—Severability—Effective date—2002 c 68: See notes following RCW 36.70A.200.

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

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

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

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

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

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

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

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

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

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

(10) "Department" means the department of natural resources.

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

(12) "Ecosystem services market" means a system in which providers of ecosystem services can access financing or market capital to protect, restore, and maintain ecological

values, including the full spectrum of regulatory, quasiregulatory, and voluntary markets.

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

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

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

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

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

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

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

(a) Road and trail construction, including forest practices hydraulic projects that include water crossing structures, and associated activities and maintenance;

(b) Harvesting, final and intermediate;

(c) Precommercial thinning;

(d) Reforestation;

(e) Fertilization;

(f) Prevention and suppression of diseases and insects;

(g) Salvage of trees; and

(h) Brush control.

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

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

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

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

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

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

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

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

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

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

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

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

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

(30) "Unconfined stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex floodplain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement. [2012 1st sp.s. c 1 § 212. Prior: 2010 c 210 § 19; 2010 c 188 § 6; prior: 2009 c 354 § 5; 2009 c 246 § 4; 2003 c 311 § 3; 2002 c 17 § 1; prior: 2001 c 102 § 1; 2001 c 97 § 2; 1999 sp.s. c 4 § 301; 1974 ex.s. c 137 § 2.]

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

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

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

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

Finding—Intent—2009 c 354: See note following RCW 84.33.140.

Findings—2003 c 311: "(1) The legislature finds that chapter 4, Laws of 1999 sp. sess. strongly encouraged the forest practices board to adopt administrative rules that were substantially similar to the recommendations presented to the legislature in the form of the forests and fish report. The rules adopted pursuant to the 1999 legislation require all forest landowners to complete a road maintenance and abandonment plan, and those rules cannot be changed by the forest practices board without either a final order from a court, direct instructions from the legislature, or a recommendation from the adaptive management process. In the time since the enactment of chapter 4, Laws of 1999 sp. sess., it has become clear that both the planning aspect and the implementation aspect of the road maintenance and abandonment plan requirement may cause an unforeseen and unintended disproportionate financial hardship on small forest landowners.

(2) The legislature further finds that the commissioner of public lands and the governor have explored solutions that minimize the hardship caused to small forest landowners by the forest road maintenance and abandonment requirements of the forests and fish law, while maintaining protection for public resources. This act represents recommendations stemming from that process.

(3) The legislature further finds that it is in the state's interest to help small forest landowners comply with the requirements of the forest practices rules in a way that does not require the landowner to spend unreasonably high and unpredictable amounts of money to complete road maintenance and abandonment plan preparation and implementation. Small forest landowners provide significant wildlife habitat and serve as important buffers between urban development and Washington's public forest landholdings." [2003 c 311 § 1.]

Effective date—2003 c 311: "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 immediately [May 14, 2003]." [2003 c 311 § 13.]

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

Additional notes found at www.leg.wa.gov

76.09.040 Forest practices rules—Adoption—Review of proposed rules—Hearings—Fish protection standards—Program for the acquisition of riparian open space. (1)(a) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall adopt forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

(i) Establish minimum standards for forest practices;

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

(iii) Set forth necessary administrative provisions;

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

(v) Allow for the development of watershed analyses.

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

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

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

(b)(i) The board shall hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW. Any county representative may propose specific forest practices rules relating to problems existing within the county at the hearings.

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

(3)(a) The board shall incorporate into the forest practices rules those fish protection standards in the rules adopted under chapter 77.55 RCW, as the rules existed on July 10, 2012, that are applicable to activities regulated under the forest practices rules. If fish protection standards are incorporated by reference, the board shall minimize administrative processes by utilizing the exception from the administrative procedures controlling significant legislative rules under RCW 34.05.328(5)(b)(iii) for the incorporation of rules adopted by other state agencies.

(b) Thereafter, the board shall incorporate into the forest practices rules any changes to those fish protection standards in the rules adopted under chapter 77.55 RCW that are: (i) Adopted consistent with RCW 77.55.361; and (ii) applicable to activities regulated under the forest practices rules. If fish protection standards are incorporated by reference, the board shall minimize administrative processes by utilizing the exception from the administrative procedures controlling significant legislative rules under RCW 34.05.328(5)(b)(iii) for the incorporation of rules adopted by other state agencies.

(c) The board shall establish and maintain technical guidance in the forest practices board manual, as provided under WAC 222-12-090 as it existed on July 10, 2012, to assist with implementation of the standards incorporated into the forest practices rules under this section. The guidance must include best management practices and standard techniques to ensure fish protection.

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

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

unreasonable in relation to the value of the lands conveyed. The rules shall provide for the management of the lands for ecological protection or fisheries enhancement. For the purposes of conservation easements entered into under this section, the following apply:

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

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

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

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

(d) Any acquired interest in qualifying lands by the state under this section shall be managed as riparian open space or critical habitat. [2012 1st sp.s. c 1 § 203; 2010 c 188 § 4; 2009 c 246 § 1; 2000 c 11 § 3; 1999 sp.s. c 4 § 701; 1997 c 173 § 1; 1994 c 264 § 48; 1993 c 443 § 2; 1988 c 36 § 46; 1987 c 95 § 8; 1974 ex.s. c 137 § 4.]

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

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

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

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

Additional notes found at www.leg.wa.gov

76.09.050 Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver. ***(Contingent expiration date.)*** (1) The board shall establish by rule which forest practices shall be included within each of the following classes:

Class I: Minimal or specific forest practices that have no direct potential for damaging a public resource and that may be conducted without submitting an application or a notification except that when the regulating authority is transferred to a local governmental entity, those Class I forest practices that involve timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, are processed as Class IV forest practices, but are not subject to environmental review under chapter 43.21C RCW;

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be

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

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

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

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

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

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

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

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

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

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

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

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

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to

the appeals board in the manner and time provided in RCW 76.09.205. In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

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

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

(12) Notwithstanding subsections (2) through (5) of this section, forest practices applications or notifications are not required for exotic insect and disease control operations conducted in accordance with RCW 76.09.060(8) where eradication can reasonably be expected. [2011 c 207 § 1; 2010 c 210 § 20; 2005 c 146 § 1003; 2003 c 314 § 4; 2002 c 121 § 1; 1997 c 173 § 2; 1994 c 264 § 49; 1993 c 443 § 3; 1990 1st ex.s. c 17 § 61; 1988 c 36 § 47; 1987 c 95 § 9; 1975 1st ex.s. c 200 § 2; 1974 ex.s. c 137 § 5.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Findings—2003 c 314: See note following RCW 17.24.220.

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

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

76.09.050 Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver. ***(Contingent effective date.)*** (1) The board shall establish by rule which forest practices shall be included within each of the following classes:

Class I: Minimal or specific forest practices that have no direct potential for damaging a public resource and that may be conducted without submitting an application or a notification except that when the regulating authority is transferred to a local governmental entity, those Class I forest practices that involve timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, are processed as Class IV forest practices, but are not subject to environmental review under chapter 43.21C RCW;

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

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

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

(c) Excluded from Class II by the board; or

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

Class III: Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department according to the following timelines; however, the applicant may not begin work on the forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department:

(a) Within thirty calendar days from the date the department receives the application if the application is not subject to concurrence review by the department of fish and wildlife under RCW 76.09.490; and

(b) Within thirty days of the completion of the concurrence review by the department of fish and wildlife if the application is subject to concurrence review by the department of fish and wildlife under RCW 76.09.490;

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

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

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

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

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

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

(d) Which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within the timelines established in RCW 43.21C.037; however, nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. Unless the application is subject to concurrence review by the department of fish and wildlife under RCW 76.09.490, a Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application. If a Class IV application is subject to concurrence review by the department of fish and wildlife under RCW 76.09.490, then the application must be approved or disapproved by the department within thirty calendar days from the completion of the concurrence review by the department of fish and wildlife. However, the department

may extend the timelines applicable to the approval or disapproval of the application an additional thirty calendar days if the department determines that a detailed statement must be made, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such a period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

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

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

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

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

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

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

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

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

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

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

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

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.205. In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

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

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

(12) Notwithstanding subsections (2) through (5) of this section, forest practices applications or notifications are not required for exotic insect and disease control operations conducted in accordance with RCW 76.09.060(8) where eradication can reasonably be expected. [2012 1st sp.s. c 1 § 205; 2011 c 207 § 1; 2010 c 210 § 20; 2005 c 146 § 1003; 2003 c 314 § 4; 2002 c 121 § 1; 1997 c 173 § 2; 1994 c 264 § 49; 1993 c 443 § 3; 1990 1st ex.s. c 17 § 61; 1988 c 36 § 47; 1987 c 95 § 9; 1975 1st ex.s. c 200 § 2; 1974 ex.s. c 137 § 5.]

Contingent effective date—2012 1st sp.s. c 1 §§ 202 and 205: See note following RCW 76.09.490.

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

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Findings—2003 c 314: See note following RCW 17.24.220.

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

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

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

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

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

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

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

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

(f) For an application or notification submitted on or after July 10, 2012, that includes a forest practices hydraulic project, plans and specifications for the forest practices hydraulic project to ensure the proper protection of fish life;

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

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

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

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

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

(l) All necessary application or notification fees.

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

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

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

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

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

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

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

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

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

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

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

(d) Conversion to a use other than commercial forest product operations within six years after approval of the forest practices application or notification without the consent of

the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had stated an intent to convert.

(e) Land that is the subject of a notice of conversion to a nonforestry use produced by the department and sent to the department of ecology and a local government under this subsection is subject to the development prohibition and conditions provided in RCW 76.09.460.

(f) Landowners who have not stated an intent to convert the land covered by an application or notification and who decide to convert the land to a nonforestry use within six years of receiving an approved application or notification must do so in a manner consistent with RCW 76.09.470.

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

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

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

(6)(a) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of three years from the date of approval or notification.

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

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

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

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

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

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

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

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

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

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

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

(g) The exemption from obtaining approved forest practices applications or notifications does not apply to forest practices conducted after the governor, the director of the department of agriculture, or the commissioner of public lands have declared that an emergency no longer exists because control objectives have been met, that there is no longer an imminent threat, or that there is no longer a good likelihood of control. [2012 1st sp.s. c 1 § 206. Prior: 2007 c 480 § 11; 2007 c 106 § 1; 2005 c 274 § 357; 2003 c 314 § 5; prior: 1997 c 290 § 3; 1997 c 173 § 3; 1993 c 443 § 4; 1992 c 52 § 22; 1990 1st ex.s. c 17 § 62; 1975 1st ex.s. c 200 § 3; 1974 ex.s. c 137 § 6.]

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

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Findings—2003 c 314: See note following RCW 17.24.220.

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

Effective date—1992 c 52 § 22: "Section 22 of this act shall take effect August 1, 1992." [1992 c 52 § 27.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

76.09.065 Fee for applications and notifications related to the commercial harvest of timber—Forest practices application account—Creation—Applications submitted to a local governmental entity. (1) An applicant shall pay an application fee, if applicable, at the time an application or notification is submitted to the department or to the local governmental entity as provided in this chapter.

(2)(a) If RCW 77.55.361, 76.09.490, 76.09.040, and 76.09.060 are not enacted into law by June 30, 2012, then the fee for applications and notifications submitted to the department shall be fifty dollars for class II, III, and IV forest practices applications or notifications relating to the commercial harvest of timber. However, the fee shall be five hundred dollars for class IV forest practices applications on lands being converted to other uses or on lands which are not to be reforested because of the likelihood of future conversion to urban development or on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except the fee shall be fifty dollars on those lands where the forest landowner provides:

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

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

(b)(i) If RCW 77.55.361, 76.09.490, 76.09.040, and 76.09.060 are enacted into law by June 30, 2012, then:

(A) The fee for applications and notifications relating to the commercial harvest of timber submitted to the department shall be one hundred dollars for class II applications and notifications, class III applications, and class IV forest practices that have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW, when the application or notification is submitted by a landowner who satisfies the definition of small forest landowner provided in RCW 76.09.450 and the application or notification applies to a single contiguous ownership consisting of one or more parcels;

(B) The fee for applications and notifications relating to the commercial harvest of timber submitted to the department shall be one hundred fifty dollars for class II applications and notifications, class III applications, and class IV forest practices that have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW, when the application or notification is submitted by a landowner who does not satisfy the criteria for a reduced application fee as provided in (b)(i)(A) of this subsection (2); and

(C) The fee shall be one thousand five hundred dollars for class IV forest practices applications on lands being converted to other uses or on lands that are not to be reforested because of the likelihood of future conversion to urban development or on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW, except the fee shall be the same as for a class III forest practices application where the forest landowner provides:

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

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

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

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

(4) For applications submitted to a local governmental entity as provided in this chapter, the fee shall be determined, collected, and retained by the local governmental entity. [2012 1st sp.s. c 1 § 209; 2000 c 11 § 5; 1997 c 173 § 4; 1993 c 443 § 5.]

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

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

Additional notes found at www.leg.wa.gov

76.09.240 Forest practices—County, city, or town to regulate—When—Adoption of development regulations—Enforcement—Technical assistance—Exceptions and limitations—Verification that land not subject to a notice of conversion to nonforestry uses—Reporting of information to the department of revenue. (1)(a) Counties planning under RCW 36.70A.040 with a population greater than one hundred thousand, and the cities and towns within those counties, where more than a total of twenty-five Class IV forest practices applications, as defined in RCW 76.09.050(1) Class IV (a) through (d), have been filed with the department between January 1, 2003, and December 31, 2005, shall adopt and enforce ordinances or regulations as provided in subsection (2) of this section for the following:

(i) Forest practices classified as Class I, II, III, and IV that are within urban growth areas designated under RCW 36.70A.110, except for forest practices on ownerships of contiguous forest land equal to or greater than twenty acres where the forest landowner provides, to the department and the county, city, or town, a written statement of intent, signed by the forest landowner, not to convert to a use other than growing commercial timber for ten years. This statement must be accompanied by either:

(A) A written forest management plan acceptable to the department; or

(B) Documentation that the land is enrolled as forest land of long-term commercial significance under the provisions of chapter 84.33 RCW; and

(ii) Forest practices classified as Class IV, outside urban growth areas designated under RCW 36.70A.110, involving either timber harvest or road construction, or both on:

(A) Forest lands that are being converted to another use; or

(B) Lands which, under RCW 76.09.070, are not to be reforested because of the likelihood of future conversion to urban development;

(b) Counties planning under RCW 36.70A.040, and the cities and towns within those counties, not included in (a) of this subsection, may adopt and enforce ordinances or regulations as provided in (a) of this subsection; and

(c) Counties not planning under RCW 36.70A.040, and the cities and towns within those counties, may adopt and enforce ordinances or regulations as provided in subsection (2) of this section for forest practices classified as Class IV involving either timber harvest or road construction, or both on:

(i) Forest lands that are being converted to another use; or

(ii) Lands which, under RCW 76.09.070, are not to be reforested because of the likelihood of future conversion to urban development.

(2) Before a county, city, or town may regulate forest practices under subsection (1) of this section, it shall ensure that its critical areas and development regulations are in compliance with RCW 36.70A.130 and, if applicable, RCW 36.70A.215. The county, city, or town shall notify the department and the department of ecology in writing sixty days prior to adoption of the development regulations required in this section. The transfer of jurisdiction shall not occur until the county, city, or town has notified the department, the department of revenue, and the department of ecology in writing of the effective date of the regulations. Ordinances and regulations adopted under subsection (1) of this section and this subsection must be consistent with or supplement development regulations that protect critical areas pursuant to RCW 36.70A.060, and shall at a minimum include:

(a) Provisions that require appropriate approvals for all phases of the conversion of forest lands, including land clearing and grading; and

(b) Procedures for the collection and administration of permit and recording fees.

(3) Activities regulated by counties, cities, or towns as provided in subsections (1) and (2) of this section shall be administered and enforced by those counties, cities, or towns. The department shall not regulate these activities under this chapter.

(4) The board shall continue to adopt rules and the department shall continue to administer and enforce those rules in each county, city, or town for all forest practices as provided in this chapter until such a time as the county, city, or town has updated its development regulations as required by RCW 36.70A.130 and, if applicable, RCW 36.70A.215, and has adopted ordinances or regulations under subsections (1) and (2) of this section. However, counties, cities, and towns that have adopted ordinances or regulations regarding forest practices prior to July 22, 2011, are not required to readopt their ordinances or regulations in order to satisfy the requirements of this section except as necessary to ensure consistency with Class IV forest practices as defined in RCW 76.09.050.

(5) Upon request, the department shall provide technical assistance to all counties, cities, and towns while they are in the process of adopting the regulations required by this section, and after the regulations become effective.

(6) For those forest practices over which the board and the department maintain regulatory authority no county, city, municipality, or other local or regional governmental entity shall adopt or enforce any law, ordinance, or regulation pertaining to forest practices, except that to the extent otherwise permitted by law, such entities may exercise any:

(a) Land use planning or zoning authority: PROVIDED, That exercise of such authority may regulate forest practices only where the application submitted under RCW 76.09.060 as now or hereafter amended indicates that the lands are being converted to a use other than commercial forest product production: PROVIDED, That no permit system solely for forest practices shall be allowed; that any additional or more stringent regulations shall not be inconsistent with the forest practices regulations enacted under this chapter; and such local regulations shall not unreasonably prevent timber harvesting;

(b) Taxing powers;

(c) Regulatory authority with respect to public health; and

(d) Authority granted by chapter 90.58 RCW, the "Shoreline Management Act of 1971."

(7) All counties and cities adopting or enforcing regulations or ordinances under this section shall include in the regulation or ordinance a requirement that a verification accompany every permit issued for forest land by that county or city associated with the conversion to a use other than commercial timber operation, as that term is defined in RCW 76.09.020, that verifies that the land in question is not or has not been subject to a notice of conversion to nonforestry uses under RCW 76.09.060 during the six-year period prior to the submission of a permit application.

(8) To improve the administration of the forest excise tax created in chapter 84.33 RCW, a county, city, or town that regulates forest practices under this section shall report permit information to the department of revenue for all approved forest practices permits. The permit information shall be reported to the department of revenue no later than sixty days after the date the permit was approved and shall be in a form and manner agreed to by the county, city, or town and the department of revenue. Permit information includes the land-

owner's legal name, address, telephone number, and parcel number. [2011 c 207 § 2; 2010 c 219 § 1. Prior: 2007 c 236 § 1; 2007 c 106 § 6; 2002 c 121 § 2; 1997 c 173 § 5; 1975 1st ex.s. c 200 § 11; 1974 ex.s. c 137 § 24.]

76.13.110 Small forest landowner office—Establishment—Duties—Advisory committee—Report to the legislature. (1) The department of natural resources shall establish and maintain a small forest landowner office. The small forest landowner office shall be a resource and focal point for small forest landowner concerns and policies, and shall have significant expertise regarding the management of small forest holdings, governmental programs applicable to such holdings, and the forestry riparian easement program.

(2) The small forest landowner office shall administer the provisions of the forestry riparian easement program created under RCW 76.13.120.

(3) The small forest landowner office shall assist in the development of small landowner options through alternate management plans or alternate harvest restrictions appropriate to small landowners. The small forest landowner office shall develop criteria to be adopted by the forest practices board in rules and a manual for alternate management plans or alternate harvest restrictions. These alternate plans or alternate harvest restrictions shall meet riparian functions while requiring less costly regulatory prescriptions. At the landowner's option, alternate plans or alternate harvest restrictions may be used to further meet riparian functions.

The small forest landowner office shall evaluate the cumulative impact of such alternate management plans or alternate harvest restrictions on essential riparian functions at the subbasin or watershed level. The small forest landowner office shall adjust future alternate management plans or alternate harvest restrictions in a manner that will minimize the negative impacts on essential riparian functions within a subbasin or watershed.

(4) An advisory committee is established to assist the small forest landowner office in developing policy and recommending rules to the forest practices board. The advisory committee shall consist of seven members, including a representative from the department of ecology, the department of fish and wildlife, and a tribal representative. Four additional committee members shall be small forest landowners who shall be appointed by the commissioner of public lands from a list of candidates submitted by the board of directors of the Washington farm forestry association or its successor organization. The association shall submit more than one candidate for each position. The commissioner shall designate two of the initial small forest landowner appointees to serve five-year terms and the other two small forest landowner appointees to serve four-year terms. Thereafter, appointees shall serve for a term of four years. The small forest landowner office shall review draft rules or rule concepts with the committee prior to recommending such rules to the forest practices board. The office shall reimburse nongovernmental committee members for reasonable expenses associated with attending committee meetings as provided in RCW 43.03.050 and 43.03.060.

(5) By December 1, 2002, the small forest landowner office shall provide a report to the board and the legislature containing:

(a) Estimates of the amounts of nonindustrial forests and woodlands in holdings of twenty acres or less, twenty-one to one hundred acres, one hundred to one thousand acres, and one thousand to five thousand acres, in western Washington and eastern Washington, and the number of persons having total nonindustrial forest and woodland holdings in those size ranges;

(b) Estimates of the number of parcels of nonindustrial forests and woodlands held in contiguous ownerships of twenty acres or less, and the percentages of those parcels containing improvements used: (i) As primary residences for half or more of most years; (ii) as vacation homes or other temporary residences for less than half of most years; and (iii) for other uses;

(c) The watershed administrative units in which significant portions of the riparian areas or total land area are nonindustrial forests and woodlands;

(d) Estimates of the number of forest practices applications and notifications filed per year for forest road construction, silvicultural activities to enhance timber growth, timber harvest not associated with conversion to nonforest land uses, with estimates of the number of acres of nonindustrial forests and woodlands on which forest practices are conducted under those applications and notifications; and

(e) Recommendations on ways the board and the legislature could provide more effective incentives to encourage continued management of nonindustrial forests and woodlands for forestry uses in ways that better protect salmon, other fish and wildlife, water quality, and other environmental values.

(6) By December 1, 2004, and every four years thereafter, the small forest landowner office shall provide to the board and the legislature an update of the report described in subsection (5) of this section, containing more recent information and describing:

(a) Trends in the items estimated under subsection (5)(a) through (d) of this section;

(b) Whether, how, and to what extent the forest practices act and rules contributed to those trends; and

(c) Whether, how, and to what extent: (i) The board and legislature implemented recommendations made in the previous report; and (ii) implementation of or failure to implement those recommendations affected those trends. [2002 c 120 § 1; 2001 c 280 § 1; 2000 c 11 § 12; 1999 sp.s. c 4 § 503.]

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

Additional notes found at www.leg.wa.gov

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

(2) The definitions in this subsection apply throughout this section and RCW 76.13.100, 76.13.110, 76.13.140, and 76.13.160 unless the context clearly requires otherwise.

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

(b) "Qualifying small forest landowner" means a landowner meeting all of the following characteristics as of the date the department offers compensation for a forestry riparian easement:

(i) Is a small forest landowner as defined in (d) of this subsection; and

(ii) Is an individual, partnership, corporation, or other nongovernmental for-profit legal entity.

(c) "Qualifying timber" means those forest trees for which the small forest landowner is willing to grant the state a forestry riparian easement and must meet all of the following:

(i) The forest trees are covered by a forest practices application that the small forest landowner is required to leave unharvested under the rules adopted under RCW 76.09.055 and 76.09.370 or that is made uneconomic to harvest by those rules;

(ii) The forest trees are within or bordering a commercially reasonable harvest unit as determined under rules adopted by the forest practices board, or for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules;

(iii) The forest trees are located within, or affected by forest practices rules pertaining to any one, or all, of the following:

(A) Riparian or other sensitive aquatic areas;

(B) Channel migration zones; or

(C) Areas of potentially unstable slopes or landforms, verified by the department, and must meet all of the following:

(I) Are addressed in a forest practices application;

(II) Are adjacent to a commercially reasonable harvest area; and

(III) Have the potential to deliver sediment or debris to a public resource or threaten public safety.

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

(i) A forest landowner as defined in RCW 76.09.020 whose interest in the land and timber is in fee or who has rights to the timber to be included in the forestry riparian easement that extend at least fifty years from the date the completed forestry riparian easement application associated with the easement is submitted;

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

(iii) An entity that certifies at the time of application that it does not expect to harvest from its own lands more than the volume allowed by RCW 84.33.035 during the ten years following application. If a landowner's prior three-year average harvest exceeds the limit of RCW 84.33.035, or the landowner expects to exceed this limit during the ten years following application, and that landowner establishes to the department's reasonable satisfaction that the harvest limits were or will be exceeded to raise funds to pay estate taxes or equally compelling and unexpected obligations such as court-ordered judgments or extraordinary medical expenses, the landowner shall be deemed to be a small forest landowner. For purposes of determining whether a person qualifies as a small forest landowner, the small forest landowner office, created in RCW 76.13.110, shall evaluate the landowner under this definition, pursuant to RCW 76.13.160, as of the date that the forest practices application is submitted and the date that the department offers compensation for the forestry riparian easement. A small forest landowner can include an individual, partnership, corporation, or other nongovernmental legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still qualify as a small forest landowner under this section. If a landowner is unable to obtain an approved forest practices application for timber harvest for any of his or her land because of restrictions under the forest practices rules, the landowner may still qualify as a small forest landowner under this section.

(e) "Completion of harvest" means that the trees have been harvested from an area and that further entry into that area by mechanized logging or slash treating equipment is not expected.

(3) The department is authorized and directed to accept and hold in the name of the state of Washington forestry riparian easements granted by qualifying small forest landowners covering qualifying timber and to pay compensation to such landowners in accordance with this section. The department may not transfer the easements to any entity other than another state agency.

(4) Forestry riparian easements shall be effective for fifty years from the date of the completed forestry riparian easement application, unless the easement is voluntarily terminated earlier by the department, based on a determination that termination is in the best interest of the state, or under the terms of a termination clause in the easement.

(5) Forestry riparian easements shall be restrictive only, and shall preserve all lawful uses of the easement premises by the landowner that are consistent with the terms of the easement and the requirement to protect riparian functions during the term of the easement, subject to the restriction that the leave trees required by the rules to be left on the easement premises may not be cut during the term of the easement. No right of public access to or across, or any public use of the easement premises is created by this statute or by the easement. Forestry riparian easements shall not be deemed to trigger the compensating tax of or otherwise disqualify land from being taxed under chapter 84.33 or 84.34 RCW.

(6) The small forest landowner office shall determine what constitutes a completed application for a forestry riparian easement. Such an application shall, at a minimum, include documentation of the owner's status as a qualifying small forest landowner, identification of location and the types of qualifying timber, and notification of completion of harvest, if applicable.

(7) Upon receipt of the qualifying small forest landowner's forestry riparian easement application, and subject to the availability of amounts appropriated for this specific purpose, the following must occur:

(a) The small forest landowner office shall determine the compensation to be offered to the qualifying small forest landowner for qualifying timber after the department accepts the completed forestry riparian easement application and the

landowner has completed marking the boundary of the area containing the qualifying timber. The legislature recognizes that there is not readily available market transaction evidence of value for easements of the nature required by this section, and thus establishes the methodology provided in this subsection to ascertain the value for forestry riparian easements. Values so determined may not be considered competent evidence of value for any other purpose.

(b) The small forest landowner office, subject to the availability of amounts appropriated for this specific purpose, is responsible for assessing the volume of qualifying timber. However, no more than fifty percent of the total amounts appropriated for the forestry riparian easement program may be applied to determine the volume of qualifying timber for completed forestry riparian easement applications. Based on the volume established by the small forest landowner office and using data obtained or maintained by the department of revenue under RCW 84.33.074 and 84.33.091, the small forest landowner office shall attempt to determine the fair market value of the qualifying timber as of the date the complete forestry riparian easement application is received. Removal of any qualifying timber before the expiration of the easement must be in accordance with the forest practices rules and the terms of the easement. There shall be no reduction in compensation for reentry.

(8)(a) Except as provided in subsection (9) of this section and subject to the availability of amounts appropriated for this specific purpose, the small forest landowner office shall offer compensation for qualifying timber to the qualifying small forest landowner in the amount of fifty percent of the value determined by the small forest landowner office, plus the compliance and reimbursement costs as determined in accordance with RCW 76.13.140. However, compensation for any qualifying small forest landowner for qualifying timber located on potentially unstable slopes or landforms may not exceed a total of fifty thousand dollars during any biennial funding period.

(b) If the landowner accepts the offer for qualifying timber, the department shall pay the compensation promptly upon:

(i) Completion of harvest in the area within a commercially reasonable harvest unit with which the forestry riparian easement is associated under an approved forest practices application, unless an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules;

(ii) Verification that the landowner has no outstanding violations under chapter 76.09 RCW or any associated rules; and

(iii) Execution and delivery of the easement to the department.

(c) Upon donation or payment of compensation, the department may record the easement.

(9) For approved forest practices applications for which the regulatory impact is greater than the average percentage impact for all small forest landowners as determined by an analysis by the department under the regulatory fairness act, chapter 19.85 RCW, the compensation offered will be increased to one hundred percent for that portion of the regulatory impact that is in excess of the average. Regulatory impact includes all trees identified as qualifying timber. A separate average or high impact regulatory threshold shall be established for western and eastern Washington. Criteria for these measurements and payments shall be established by the small forest landowner office.

(10) The forest practices board shall adopt rules under the administrative procedure act, chapter 34.05 RCW, to implement the forestry riparian easement program, including the following:

(a) A standard version of a forestry riparian easement application as well as all additional documents necessary or advisable to create the forestry riparian easements as provided for in this section;

(b) Standards for descriptions of the easement premises with a degree of precision that is reasonable in relation to the values involved;

(c) Methods and standards for cruises and valuation of forestry riparian easements for purposes of establishing the compensation. The department shall perform the timber cruises of forestry riparian easements required under this chapter and chapter 76.09 RCW. Timber cruises are subject to amounts appropriated for this purpose. However, no more than fifty percent of the total appropriated funding for the forestry riparian easement program may be applied to determine the volume of qualifying timber for completed forestry riparian easement applications. Any rules concerning the methods and standards for valuations of forestry riparian easements shall apply only to the department, qualifying small forest landowners, and the small forest landowner office;

(d) A method to determine that a forest practices application involves a commercially reasonable harvest, and adopt criteria for entering into a forestry riparian easement where a commercially reasonable harvest is not possible or a forest practices application that has been submitted cannot be approved because of restrictions under the forest practices rules;

(e) A method to address blowdown of qualified timber falling outside the easement premises;

(f) A formula for sharing of proceeds in relation to the acquisition of qualified timber covered by an easement through the exercise or threats of eminent domain by a federal or state agency with eminent domain authority, based on the present value of the department's and the landowner's relative interests in the qualified timber;

(g) High impact regulatory thresholds;

(h) A method to determine timber that is qualifying timber because it is rendered uneconomic to harvest by the rules adopted under RCW 76.09.055 and 76.09.370;

(i) A method for internal department review of small forest landowner office compensation decisions under this section; and

(j) Consistent with RCW 76.13.180, a method to collect reimbursement from landowners who received compensation for a forestry riparian easement and who, within the first ten years after receipt of compensation for a forestry riparian easement, sells the land on which an easement is located to a nonqualifying landowner. [2011 c 218 § 1; 2004 c 102 § 1; 2002 c 120 § 2; 2001 c 280 § 2; 2000 c 11 § 13; 1999 sp.s. c 4 § 504.]

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

Additional notes found at www.leg.wa.gov

77.55.021 Permit. (1) Except as provided in RCW 77.55.031, 77.55.051, 77.55.041, and 77.55.361, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

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

(a) General plans for the overall project;

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

(c) Complete plans and specifications for the proper protection of fish life;

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

(e) Payment of all applicable application fees charged by the department under RCW 77.55.321.

(3) The department may establish direct billing accounts or other funds transfer methods with permit applicants to satisfy the fee payment requirements of RCW 77.55.321.

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

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

(6) Except as provided for emergency permits in subsection (12) of this section, the department may not proceed with permit review until all fees are paid in full as required in RCW 77.55.321.

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

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

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

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or

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

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

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

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

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

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

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

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

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

(10) The department may, after consultation with the permittee, modify a permit due to changed conditions. A modification under this subsection is not subject to the fees provided under RCW 77.55.321. The modification is appealable as provided in subsection (8) of this section. For a hydraulic project that diverts water for agricultural irrigation or stock watering purposes, when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

(11) A permittee may request modification of a permit due to changed conditions. The request must be processed within forty-five calendar days of receipt of the written request and payment of applicable fees under RCW 77.55.321. A decision by the department is appealable as provided in subsection (8) of this section. For a hydraulic project that diverts water for agricultural irrigation or stock watering purposes, when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the bur-

den is on the permittee to show that changed conditions warrant the requested modification and that such a modification will not impair fish life.

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

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

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

(d) The department may not charge a person requesting an emergency permit any of the fees authorized by RCW 77.55.321 until after the emergency permit is issued and reduced to writing.

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

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

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

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

(16) The department may issue an expedited written permit in those instances where normal permit processing would result in significant hardship for the applicant or unacceptable damage to the environment. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection. [2012 1st sp.s. c 1 § 102; 2010 c 210 § 27; 2008 c 272 § 1; 2005 c 146 § 201.]

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

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Part headings not law—2005 c 146: See note following RCW 77.55.011.

80.50.010 Legislative finding—Policy—Intent. The legislature finds that the present and predicted growth in energy demands in the state of Washington requires the development of a procedure for the selection and utilization of sites for energy facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.

It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods, that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.

It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. Such action will be based on these premises:

(1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.

(2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.

(3) To provide abundant energy at reasonable cost.

(4) To avoid costs of complete site restoration and demolition of improvements and infrastructure at unfinished nuclear energy sites, and to use unfinished nuclear energy facilities for public uses, including economic development, under the regulatory and management control of local governments and port districts.

(5) To avoid costly duplication in the siting process and ensure that decisions are made timely and without unnecessary delay. [2001 c 214 § 1; 1996 c 4 § 1; 1975-'76 2nd ex.s. c 108 § 29; 1970 ex.s. c 45 § 1.]

Severability—2001 c 214: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 214 § 33.]

Effective date—2001 c 214: "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 immediately [May 8, 2001]." [2001 c 214 § 34.]

Findings—2001 c 214: See note following RCW 39.35.010.

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

Nuclear power facilities, joint operation: Chapter 54.44 RCW.

State energy office: Chapter 43.21F RCW.

Additional notes found at www.leg.wa.gov

81.104.015 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "High capacity transportation corridor area" means a quasi-municipal corporation and independent taxing authority within the meaning of Article VII, section 1 of the state Constitution, and a taxing district within the meaning of Article VII, section 2 of the state Constitution, created by a transit agency governing body.

(2) "High capacity transportation system" means a system of public transportation services within an urbanized region operating principally on exclusive rights-of-way, and the supporting services and facilities necessary to implement such a system, including interim express services and high occupancy vehicle lanes, which taken as a whole, provides a substantially higher level of passenger capacity, speed, and service frequency than traditional public transportation systems operating principally in general purpose roadways.

(3) "Rail fixed guideway system" means a light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or other fixed rail guideway component of a high capacity transportation system that is not regulated by the Federal Railroad Administration, or its successor. "Rail fixed guideway system" does not mean elevators, moving sidewalks or stairs, and vehicles suspended from aerial cables, unless they are an integral component of a station served by a rail fixed guideway system.

(4) "Regional transit system" means a high capacity transportation system under the jurisdiction of one or more transit agencies except where a regional transit authority created under chapter 81.112 RCW exists, in which case "regional transit system" means the high capacity transportation system under the jurisdiction of a regional transit authority.

(5) "Transit agency" means city-owned transit systems, county transportation authorities, metropolitan municipal corporations, and public transportation benefit areas. [2009 c 280 § 1; 1999 c 202 § 9; 1992 c 101 § 19.]

Effective date—1999 c 202: See note following RCW 35.21.228.

Additional notes found at www.leg.wa.gov

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

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

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

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

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

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

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements

required by chapter 43.21C RCW, including reasonable fees that are consistent with RCW 43.21C.420(6), 43.21C.428, and beginning July 1, 2014, RCW 35.91.020.

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

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

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

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

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

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

This section does not apply to special purpose districts formed and acting pursuant to Title 54, 57, or 87 RCW, nor is the authority conferred by these titles affected. [2013 c 243 § 4; 2010 c 153 § 3; 2009 c 535 § 1103; 2008 c 113 § 2; 2006 c 149 § 3; 2005 c 502 § 5; 1997 c 452 § 21; 1996 c 230 § 1612; 1990 1st ex.s. c 17 § 42; 1988 c 179 § 6; 1987 c 327 § 17; 1982 1st ex.s. c 49 § 5; 1979 ex.s. c 196 § 3; 1970 ex.s. c 94 § 8; 1967 c 236 § 16; 1961 c 15 § 82.02.020. Prior: (i) 1935 c 180 § 29; RRS § 8370-29. (ii) 1949 c 228 § 28; 1939 c 225 § 22; 1937 c 227 § 24; Rem. Supp. 1949 § 8370-219. Formerly RCW 82.32.370.]

Intent—2010 c 153: See note following RCW 43.21C.420.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Application—Effective date—2008 c 113: See notes following RCW 64.34.440.

Findings—Construction—2006 c 149: See notes following RCW 36.70A.540.

Effective date—2005 c 502: See note following RCW 1.12.070.

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Severability—Prospective application—Section captions—1988 c 179: See RCW 39.92.900 and 39.92.901.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

Severability—1970 ex.s. c 94: See RCW 82.14.900.

Additional notes found at www.leg.wa.gov

82.02.050 Impact fees—Intent—Limitations. (1) It is the intent of the legislature:

(a) To ensure that adequate facilities are available to serve new growth and development;

(b) To promote orderly growth and development by establishing standards by which counties, cities, and towns may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve new growth and development; and

(c) To ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicative fees for the same impact.

(2) Counties, cities, and towns that are required or choose to plan under RCW 36.70A.040 are authorized to impose impact fees on development activity as part of the financing for public facilities, provided that the financing for system improvements to serve new development must provide for a balance between impact fees and other sources of public funds and cannot rely solely on impact fees.

(3) The impact fees:

(a) Shall only be imposed for system improvements that are reasonably related to the new development;

(b) Shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and

(c) Shall be used for system improvements that will reasonably benefit the new development.

(4) Impact fees may be collected and spent only for the public facilities defined in RCW 82.02.090 which are addressed by a capital facilities plan element of a comprehensive land use plan adopted pursuant to the provisions of RCW 36.70A.070 or the provisions for comprehensive plan adoption contained in chapter 36.70, 35.63, or 35A.63 RCW. After the date a county, city, or town is required to adopt its development regulations under chapter 36.70A RCW, continued authorization to collect and expend impact fees shall be contingent on the county, city, or town adopting or revising a comprehensive plan in compliance with RCW 36.70A.070, and on the capital facilities plan identifying:

(a) Deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated within a reasonable period of time;

(b) Additional demands placed on existing public facilities by new development; and

(c) Additional public facility improvements required to serve new development.

If the capital facilities plan of the county, city, or town is complete other than for the inclusion of those elements which are the responsibility of a special district, the county, city, or town may impose impact fees to address those public facility needs for which the county, city, or town is responsible. [1994 c 257 § 24; 1993 sp.s. c 6 § 6; 1990 1st ex.s. c 17 § 43.]

Severability—1994 c 257: See note following RCW 36.70A.270.

Effective date—1993 sp.s. c 6: See note following RCW 36.70A.040.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

SEPA: RCW 43.21C.065.

Additional notes found at www.leg.wa.gov

82.02.060 Impact fees—Local ordinances—Required provisions. The local ordinance by which impact fees are imposed:

(1) Shall include a schedule of impact fees which shall be adopted for each type of development activity that is subject to impact fees, specifying the amount of the impact fee to be imposed for each type of system improvement. The schedule shall be based upon a formula or other method of calculating such impact fees. In determining proportionate share, the formula or other method of calculating impact fees shall incorporate, among other things, the following:

(a) The cost of public facilities necessitated by new development;

(b) An adjustment to the cost of the public facilities for past or future payments made or reasonably anticipated to be made by new development to pay for particular system improvements in the form of user fees, debt service payments, taxes, or other payments earmarked for or proratable to the particular system improvement;

(c) The availability of other means of funding public facility improvements;

(d) The cost of existing public facilities improvements; and

(e) The methods by which public facilities improvements were financed;

(2) May provide an exemption for low-income housing, and other development activities with broad public purposes, from these impact fees, provided that the impact fees for such development activity shall be paid from public funds other than impact fee accounts;

(3) May provide an exemption from impact fees for low-income housing. Local governments that grant exemptions for low-income housing under this subsection (3) may either: Grant a partial exemption of not more than eighty percent of impact fees, in which case there is no explicit requirement to pay the exempted portion of the fee from public funds other than impact fee accounts; or provide a full waiver, in which case the remaining percentage of the exempted fee must be paid from public funds other than impact fee accounts. An exemption for low-income housing granted under subsection (2) of this section or this subsection (3) must be conditioned upon requiring the developer to record a covenant that, except as provided otherwise by this subsection, prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and that if the property is converted to a use other than for low-income housing, the property owner must pay the applicable impact fees in effect at the time of conversion. Covenants required by this subsection must be recorded with the applicable county auditor or recording officer. A local government granting an exemption under subsection (2) of this section or this subsection (3) for low-income housing may not collect revenue lost through granting an exemption by increasing impact fees unrelated to the exemption. A school district who receives school impact fees must approve any exemption under subsection (2) of this section or this subsection (3);

(4) Shall provide a credit for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities that are identified in the capital facilities plan and that are required by the county, city, or town as a condition of approving the development activity;

(5) Shall allow the county, city, or town imposing the impact fees to adjust the standard impact fee at the time the fee is imposed to consider unusual circumstances in specific cases to ensure that impact fees are imposed fairly;

(6) Shall include a provision for calculating the amount of the fee to be imposed on a particular development that permits consideration of studies and data submitted by the developer to adjust the amount of the fee;

(7) Shall establish one or more reasonable service areas within which it shall calculate and impose impact fees for various land use categories per unit of development; and

(8) May provide for the imposition of an impact fee for system improvement costs previously incurred by a county, city, or town to the extent that new growth and development will be served by the previously constructed improvements provided such fee shall not be imposed to make up for any system improvement deficiencies.

For purposes of this section, "low-income housing" means housing with a monthly housing expense, that is no greater than thirty percent of eighty percent of the median family income adjusted for family size, for the county where the project is located, as reported by the United States department of housing and urban development. [2012 c 200 § 1; 1990 1st ex.s. c 17 § 44.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

82.02.070 Impact fees—Retained in special accounts—Limitations on use—Administrative appeals. (1) Impact fee receipts shall be earmarked specifically and retained in special interest-bearing accounts. Separate accounts shall be established for each type of public facility for which impact fees are collected. All interest shall be retained in the account and expended for the purpose or purposes for which the impact fees were imposed. Annually, each county, city, or town imposing impact fees shall provide a report on each impact fee account showing the source and amount of all moneys collected, earned, or received and system improvements that were financed in whole or in part by impact fees.

(2) Impact fees for system improvements shall be expended only in conformance with the capital facilities plan element of the comprehensive plan.

(3)(a) Except as provided otherwise by (b) of this subsection, impact fees shall be expended or encumbered for a permissible use within ten years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than ten years. Such extraordinary or compelling reasons shall be identified in written findings by the governing body of the county, city, or town.

(b) School impact fees must be expended or encumbered for a permissible use within ten years of receipt, unless there

exists an extraordinary and compelling reason for fees to be held longer than ten years. Such extraordinary or compelling reasons shall be identified in written findings by the governing body of the county, city, or town.

(4) Impact fees may be paid under protest in order to obtain a permit or other approval of development activity.

(5) Each county, city, or town that imposes impact fees shall provide for an administrative appeals process for the appeal of an impact fee; the process may follow the appeal process for the underlying development approval or the county, city, or town may establish a separate appeals process. The impact fee may be modified upon a determination that it is proper to do so based on principles of fairness. The county, city, or town may provide for the resolution of disputes regarding impact fees by arbitration. [2011 c 353 § 8; 2009 c 263 § 1; 1990 1st ex.s. c 17 § 46.]

Intent—2011 c 353: See note following RCW 36.70A.130.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

82.02.080 Impact fees—Refunds. (1) The current owner of property on which an impact fee has been paid may receive a refund of such fees if the county, city, or town fails to expend or encumber the impact fees within ten years of when the fees were paid or other such period of time established pursuant to RCW 82.02.070(3) on public facilities intended to benefit the development activity for which the impact fees were paid. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out basis. The county, city, or town shall notify potential claimants by first-class mail deposited with the United States postal service at the last known address of claimants.

The request for a refund must be submitted to the county, city, or town governing body in writing within one year of the date the right to claim the refund arises or the date that notice is given, whichever is later. Any impact fees that are not expended within these time limitations, and for which no application for a refund has been made within this one-year period, shall be retained and expended on the indicated capital facilities. Refunds of impact fees under this subsection shall include interest earned on the impact fees.

(2) When a county, city, or town seeks to terminate any or all impact fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded pursuant to this section. Upon the finding that any or all fee requirements are to be terminated, the county, city, or town shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first-class mail to the last known address of claimants. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the local government, but must be expended for the indicated public facilities. This notice requirement shall not apply if there are no unexpended or unencumbered balances within an account or accounts being terminated.

(3) A developer may request and shall receive a refund, including interest earned on the impact fees, when the developer does not proceed with the development activity and no impact has resulted. [2011 c 353 § 9; 1990 1st ex.s. c 17 § 47.]

Intent—2011 c 353: See note following RCW 36.70A.130.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

82.02.090 Impact fees—Definitions. Unless the context clearly requires otherwise, the following definitions shall apply in RCW 82.02.050 through 82.02.090:

(1) "Development activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land, that creates additional demand and need for public facilities. "Development activity" does not include buildings or structures constructed by a regional transit authority.

(2) "Development approval" means any written authorization from a county, city, or town which authorizes the commencement of development activity.

(3) "Impact fee" means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee.

(4) "Owner" means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property if the contract is recorded.

(5) "Project improvements" mean site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility included in a capital facilities plan approved by the governing body of the county, city, or town shall be considered a project improvement.

(6) "Proportionate share" means that portion of the cost of public facility improvements that are reasonably related to the service demands and needs of new development.

(7) "Public facilities" means the following capital facilities owned or operated by government entities: (a) Public streets and roads; (b) publicly owned parks, open space, and recreation facilities; (c) school facilities; and (d) fire protection facilities.

(8) "Service area" means a geographic area defined by a county, city, town, or intergovernmental agreement in which a defined set of public facilities provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles.

(9) "System improvements" mean public facilities that are included in the capital facilities plan and are designed to provide service to service areas within the community at large, in contrast to project improvements. [2010 c 86 § 1; 2008 c 42 § 1; 1990 1st ex.s. c 17 § 48.]

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

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

82.02.100 Impact fees—Exception, mitigation fees paid under chapter 43.21C RCW. (1) A person required to pay a fee pursuant to RCW 43.21C.060 for system improvements shall not be required to pay an impact fee under RCW 82.02.050 through 82.02.090 for those same system improvements.

(2) A person installing a residential fire sprinkler system in a single-family home shall not be required to pay the fire operations portion of the impact fee. The exempted fire operations impact fee shall not include the proportionate share related to the delivery of emergency medical services. [2011 c 331 § 3; 1992 c 219 § 2.]

Intent—2011 c 331: "The legislature recognizes that fire sprinkler systems in private residences may prevent catastrophic losses of life and property, but that financial, technical, and other issues often discourage property owners from installing these protective systems.

It is the intent of the legislature to eradicate barriers that prevent the voluntary installation of sprinkler systems in private residences by promoting education regarding the effectiveness of residential fire sprinklers, and by providing financial and regulatory incentives to homeowners, builders, and water purveyors for voluntarily installing the systems. It is the further intent of the legislature to fully preserve the rulings of *Fisk v. City of Kirkland,* 164 Wn.2d 891 (2008), *Stiefel v. City of Kent,* 132 Wn. App.523 (2006), and similar cases." [2011 c 331 § 1.]

82.02.110 Impact fees—Extending use of school impact fees. Criteria must be developed by the office of the superintendent of public instruction for extending the use of school impact fees from six to ten years and this extension must require an evaluation for each respective school board of the appropriateness of the extension. [2009 c 263 § 2.]

Chapter 82.04 RCW
BUSINESS AND OCCUPATION TAX

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Admission tax
cities: RCW 35.21.280.
counties: Chapter 36.38 RCW.

Commute trip reduction incentives: Chapter 82.70 RCW.

Housing authorities, tax exemption: Chapter 35.82 RCW.

Public utility districts, privilege taxes: Chapter 54.28 RCW.

82.04.240 Tax on manufacturers. ***(Contingent expiration date.)*** Upon every person engaging within this state in business as a manufacturer, except persons taxable as manufacturers under other provisions of this chapter; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, manufactured, multiplied by the rate of 0.484 percent.

The measure of the tax is the value of the products, including byproducts, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state. [2004 c 24 § 4; 1998 c 312 § 3; 1993 sp.s. c 25 § 102; 1981 c 172 § 1; 1979 ex.s. c 196 § 1; 1971 ex.s. c 281 § 3; 1969 ex.s. c 262 § 34; 1967 ex.s. c 149 § 8; 1965 ex.s. c 173 § 5; 1961 c 15 § 82.04.240. Prior: 1959 c 211 § 1; 1955 c 389 § 44; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

Effective date—Savings—1998 c 312: See notes following RCW 82.04.332.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Effective dates—1981 c 172: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981, except section 9 of this act shall take effect September 1, 1981, sections 7 and 8 of this act shall take effect October 1, 1981, and section 10 of this act shall take effect July 1, 1983." [1981 c 172 § 12.]

Effective date—1979 ex.s. c 196: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1979." [1979 ex.s. c 196 § 15.]

Additional notes found at www.leg.wa.gov

82.04.240 Tax on manufacturers. ***(Contingent effective date; contingent expiration of subsection.)*** (1) Upon every person engaging within this state in business as a manufacturer, except persons taxable as manufacturers under other provisions of this chapter; as to such persons the amount of the tax with respect to such business is equal to the value of the products, including byproducts, manufactured, multiplied by the rate of 0.484 percent.

(2)(a) Upon every person engaging within this state in the business of manufacturing semiconductor materials, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or, in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.275 percent. For the purposes of this subsection "semiconductor materials" means silicon crystals, silicon ingots, raw polished semiconductor wafers, compound semiconductors, integrated circuits, and microchips.

(b) A person reporting under the tax rate provided in this subsection (2) must file a complete annual report with the department under RCW 82.32.534.

(c) This subsection (2) expires twelve years after *the effective date of this act.

(3) The measure of the tax is the value of the products, including byproducts, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state. [2010 c 114 § 104; 2003 c 149 § 3; 1998 c 312 § 3; 1993 sp.s. c 25 § 102; 1981 c 172 § 1; 1979 ex.s. c 196 § 1; 1971 ex.s. c 281 § 3; 1969 ex.s. c 262 § 34; 1967 ex.s. c 149 § 8; 1965 ex.s. c 173 § 5; 1961 c 15 § 82.04.240. Prior: 1959 c 211 § 1; 1955 c 389 § 44; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

***Contingent effective date—2010 c 114:** See RCW 82.32.790.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

Effective date—Savings—1998 c 312: See notes following RCW 82.04.332.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Effective dates—1981 c 172: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981, except section 9 of this act shall take effect September 1, 1981, sections 7 and 8 of this act shall take effect October 1, 1981, and section 10 of this act shall take effect July 1, 1983." [1981 c 172 § 12.]

Effective date—1979 ex.s. c 196: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1979." [1979 ex.s. c 196 § 15.]

Additional notes found at www.leg.wa.gov

82.08.180 Apportionment and distribution from liquor excise tax fund—Withholding for noncompliance. The governor may notify and direct the state treasurer to withhold the revenues to which the counties, cities, and towns are entitled under RCW 82.08.170 if the counties, cities, or towns are found to be in noncompliance pursuant to RCW 36.70A.340. [1991 sp.s. c 32 § 36.]

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Additional notes found at www.leg.wa.gov

Chapter 82.14 RCW
LOCAL RETAIL SALES AND USE TAXES

Sections

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82.14.080 Deposit of tax prior to due date—Credit against future tax or assessment—When fund designation permitted—Use of tax revenues received in connection with large construction projects.
82.14.090 Payment of tax prior to taxable event—When permitted—Deposit with treasurer—Credit against future tax—When fund designation permitted.
82.14.212 Transfer of funds pursuant to government service agreement.
82.14.215 Apportionment and distribution—Withholding revenue for noncompliance.
82.14.220 Figures for apportionments and distributions under RCW 82.14.200 and 82.14.210.
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82.14.820 Warehouse and grain elevators and distribution centers—Exemption does not apply.
82.14.900 Severability—1970 ex.s. c 94.

Changes in tax law—Liability: RCW 82.08.064, 82.14.055, and 82.32.430.

Direct pay permits: RCW 82.32.087.

High capacity transportation systems—Sales and use tax: RCW 81.104.170.

82.14.215 Apportionment and distribution—Withholding revenue for noncompliance. The governor may notify and direct the state treasurer to withhold the revenues to which the county or city is entitled under this chapter if a county or city is found to be in noncompliance pursuant to RCW 36.70A.340. [1991 sp.s. c 32 § 35.]

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Additional notes found at www.leg.wa.gov

82.14.370 Sales and use tax for public facilities in rural counties. (1) The legislative authority of a rural county may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax may not exceed 0.09 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax, except that for rural counties with population densities between sixty and one hundred persons per square mile, the rate shall not exceed 0.04 percent before January 1, 2000.

(2) The tax imposed under subsection (1) of this section must be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue must perform the collection of such taxes on behalf of the county at no cost to the county.

(3)(a) Moneys collected under this section may only be used to finance public facilities serving economic development purposes in rural counties and finance personnel in economic development offices. The public facility must be listed as an item in the officially adopted county overall economic development plan, or the economic development sec-

tion of the county's comprehensive plan, or the comprehensive plan of a city or town located within the county for those counties planning under RCW 36.70A.040. For those counties that do not have an adopted overall economic development plan and do not plan under the growth management act, the public facility must be listed in the county's capital facilities plan or the capital facilities plan of a city or town located within the county.

(b) In implementing this section, the county must consult with cities, towns, and port districts located within the county and the associate development organization serving the county to ensure that the expenditure meets the goals of chapter 130, Laws of 2004 and the requirements of (a) of this subsection. Each county collecting money under this section must report, as follows, to the office of the state auditor, within one hundred fifty days after the close of each fiscal year: (i) A list of new projects begun during the fiscal year, showing that the county has used the funds for those projects consistent with the goals of chapter 130, Laws of 2004 and the requirements of (a) of this subsection; and (ii) expenditures during the fiscal year on projects begun in a previous year. Any projects financed prior to June 10, 2004, from the proceeds of obligations to which the tax imposed under subsection (1) of this section has been pledged may not be deemed to be new projects under this subsection. No new projects funded with money collected under this section may be for justice system facilities.

(c) The definitions in this section apply throughout this section.

(i) "Public facilities" means bridges, roads, domestic and industrial water facilities, sanitary sewer facilities, earth stabilization, storm sewer facilities, railroads, electrical facilities, natural gas facilities, research, testing, training, and incubation facilities in innovation partnership zones designated under RCW 43.330.270, buildings, structures, telecommunications infrastructure, transportation infrastructure, or commercial infrastructure, and port facilities in the state of Washington.

(ii) "Economic development purposes" means those purposes which facilitate the creation or retention of businesses and jobs in a county.

(iii) "Economic development office" means an office of a county, port districts, or an associate development organization as defined in RCW 43.330.010, which promotes economic development purposes within the county.

(4) No tax may be collected under this section before July 1, 1998.

(a) Except as provided in (b) of this subsection, no tax may be collected under this section by a county more than twenty-five years after the date that a tax is first imposed under this section.

(b) For counties imposing the tax at the rate of 0.09 percent before August 1, 2009, the tax expires on the date that is twenty-five years after the date that the 0.09 percent tax rate was first imposed by that county.

(5) For purposes of this section, "rural county" means a county with a population density of less than one hundred persons per square mile or a county smaller than two hundred twenty-five square miles as determined by the office of financial management and published each year by the department for the period July 1st to June 30th. [2012 c 225 § 4; 2009 c 511 § 1. Prior: 2007 c 478 § 1; 2007 c 250 § 1; 2004 c 130 § 2; 2002 c 184 § 1; 1999 c 311 § 101; 1998 c 55 § 6; 1997 c 366 § 3.]

Effective date—2007 c 478: "This act takes effect August 1, 2007." [2007 c 478 § 2.]

Intent—2004 c 130: "It is the intent of the legislature in enacting this 2004 act to reaffirm the original goals of the 1997 act which first provided distressed counties with the local option sales and use tax contained in RCW 82.14.370. The local option tax is now available to all rural counties and the continuing legislative goal for RCW 82.14.370 is to promote the creation, attraction, expansion, and retention of businesses and provide for family wage jobs." [2004 c 130 § 1.]

Finding—Intent—1999 c 311: "The legislature finds that while Washington's economy is currently prospering, economic growth continues to be uneven, particularly as between metropolitan and rural areas. This has created in effect two Washingtons: One afflicted by inadequate infrastructure to support and attract investment, another suffering from congestion and soaring housing prices. In order to address these problems, the legislature intends to use resources strategically to build on our state's strengths while addressing threats to our prosperity." [1999 c 311 § 1.]

Part headings and subheadings not law—1999 c 311: "Part headings and subheadings used in this act are not any part of the law." [1999 c 311 § 601.]

Effective date—1999 c 311: "Sections 1, 101, 201, 301 through 305, 401, 402, 601, and 605 of this act take effect August 1, 1999." [1999 c 311 § 604.]

Severability—1999 c 311: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 311 § 606.]

Intent—1997 c 366: "The legislature recognizes the economic hardship that rural distressed areas throughout the state have undergone in recent years. Numerous rural distressed areas across the state have encountered serious economic downturns resulting in significant job loss and business failure. In 1991 the legislature enacted two major pieces of legislation to promote economic development and job creation, with particular emphasis on worker training, income, and emergency services support, along with community revitalization through planning services and infrastructure assistance. However even though these programs have been of assistance, rural distressed areas still face serious economic problems including: Above-average unemployment rates from job losses and below-average employment growth; low rate of business start-ups; and persistent erosion of vitally important resource-driven industries.

The legislature also recognizes that rural distressed areas in Washington have an abiding ability and consistent will to overcome these economic obstacles by building upon their historic foundations of business enterprise, local leadership, and outstanding work ethic.

The legislature intends to assist rural distressed areas in their ongoing efforts to address these difficult economic problems by providing a comprehensive and significant array of economic tools, necessary to harness the persistent and undaunted spirit of enterprise that resides in the citizens of rural distressed areas throughout the state.

The further intent of this act is to provide:

(1) A strategically designed plan of assistance, emphasizing state, local, and private sector leadership and partnership;

(2) A comprehensive and significant array of business assistance, services, and tax incentives that are accountable and performance driven;

(3) An array of community assistance including infrastructure development and business retention, attraction, and expansion programs that will provide a competitive advantage to rural distressed areas throughout Washington; and

(4) Regulatory relief to reduce and streamline zoning, permitting, and regulatory requirements in order to enhance the capability of businesses to grow and prosper in rural distressed areas." [1997 c 366 § 1.]

Goals—1997 c 366: "The primary goals of chapter 366, Laws of 1997 are to:

(1) Promote the ongoing operation of business in rural distressed areas;

(2) Promote the expansion of existing businesses in rural distressed areas;

(3) Attract new businesses to rural distressed areas;

(4) Assist in the development of new businesses from within rural distressed areas;

(5) Provide family wage jobs to the citizens of rural distressed areas;

and

(6) Promote the development of communities of excellence in rural distressed areas." [1997 c 366 § 2.]

Severability—1997 c 366: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 366 § 11.]

Captions and part headings not law—1997 c 366: "Section captions and part headings used in this act are not any part of the law." [1997 c 366 § 12.]

Additional notes found at www.leg.wa.gov

82.14.475 Sales and use tax for the local infrastructure financing tool program. ***(Expires June 30, 2044.)*** (1) A sponsoring local government, and any cosponsoring local government, that has been approved by the board to use local infrastructure financing may impose a sales and use tax in accordance with the terms of this chapter and subject to the criteria set forth in this section. Except as provided in this section, the tax is in addition to other taxes authorized by law and is collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the sponsoring local government or cosponsoring local government.

(2) The tax authorized under subsection (1) of this section is credited against the state taxes imposed under RCW 82.08.020(1) and 82.12.020 at the rate provided in RCW 82.08.020(1). The department must perform the collection of such taxes on behalf of the sponsoring local government or cosponsoring local government at no cost to the sponsoring local government or cosponsoring local government and must remit the taxes as provided in RCW 82.14.060.

(3) The aggregate rate of tax imposed by the sponsoring local government, and any cosponsoring local government, must not exceed the lesser of:

(a) The rate provided in RCW 82.08.020(1) less:

(i) The aggregate rates of all other local sales and use taxes imposed by any taxing authority on the same taxable events;

(ii) The aggregate rates of all taxes under RCW 82.14.465 and this section that are authorized to be imposed on the same taxable events but have not yet been imposed by a sponsoring local government or cosponsoring local government that has been approved by the department or the community economic revitalization board to receive a state contribution under chapter 39.100 or 39.102 RCW; and

(iii) The percentage amount of distributions required under RCW 82.08.020(5) multiplied by the rate of state taxes imposed under RCW 82.08.020(1); and

(b) The rate, as determined by the sponsoring local government, and any cosponsoring local government, in consultation with the department, reasonably necessary to receive the state contribution over ten months.

(4) Sponsoring local governments that have been approved before October 1, 2008, by the community economic revitalization board for a state contribution must select the rate of tax under this section no later than September 1, 2009.

(5) The department, upon request, must assist a sponsoring local government and cosponsoring local government in establishing their tax rate in accordance with subsection (3) of this section. Once the rate of tax is selected, it may not be increased.

(6)(a) No tax may be imposed under the authority of this section:

(i) Before July 1st of the second calendar year following the year approval by the board under RCW 39.102.040 was made; and

(ii) Until a sponsoring local government reports to the board and the department as required by RCW 39.102.140 that the state has benefited through the receipt of state excise tax allocation revenues or state property tax allocation revenues, or both.

(b) The tax imposed under this section expires when all indebtedness issued under the authority of RCW 39.102.150 is retired and all other contractual obligations relating to the financing of public improvements under chapter 39.102 RCW are satisfied, but not more than twenty-five years after the tax is first imposed.

(7) An ordinance adopted by the legislative authority of a sponsoring local government or cosponsoring local government imposing a tax under this section must provide that:

(a) The tax is first imposed on the first day of a fiscal year;

(b) The cumulative amount of tax received by the sponsoring local government, and any cosponsoring local government, in any fiscal year may not exceed the amount of the state contribution;

(c) The tax will cease to be distributed for the remainder of any fiscal year in which either:

(i) The amount of tax received by the sponsoring local government, and any cosponsoring local government, equals the amount of the state contribution;

(ii) The amount of revenue from taxes imposed under this section by all sponsoring and cosponsoring local governments equals the annual state contribution limit; or

(iii) The amount of tax received by the sponsoring local government equals the amount of project award granted in the approval notice described in RCW 39.102.040;

(d) Neither the local excise tax allocation revenues nor the local property tax allocation revenues may constitute more than eighty percent of the total local funds as described in RCW 39.102.020(29)(b). This requirement applies beginning January 1st of the fifth calendar year after the calendar year in which the sponsoring local government begins allocating local excise tax allocation revenues under RCW 39.102.110;

(e) The tax must be distributed again, should it cease to be distributed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(f) Any revenue generated by the tax in excess of the amounts specified in (c) of this subsection belongs to the state of Washington.

(8) If a county and city cosponsor a revenue development area, the combined amount of distributions received by both the city and county may not exceed the state contribution.

(9) The department must determine the amount of tax receipts distributed to each sponsoring local government, and any cosponsoring local government, imposing sales and use tax under this section and shall advise a sponsoring or

cosponsoring local government when tax distributions for the fiscal year equal the amount of state contribution for that fiscal year as provided in subsection (11) of this section. Determinations by the department of the amount of tax distributions attributable to each sponsoring or cosponsoring local government are final and may not be used to challenge the validity of any tax imposed under this section. The department must remit any tax receipts in excess of the amounts specified in subsection (7)(c) of this section to the state treasurer who must deposit the money in the general fund.

(10) If a sponsoring or cosponsoring local government fails to comply with RCW 39.102.140, no tax may be distributed in the subsequent fiscal year until such time as the sponsoring or cosponsoring local government complies and the department calculates the state contribution amount for such fiscal year.

(11) Each year, the amount of taxes approved by the department for distribution to a sponsoring or cosponsoring local government in the next fiscal year must be equal to the state contribution and may be no more than the total local funds as described in RCW 39.102.020(29)(b). The department must consider information from reports described in RCW 39.102.140 when determining the amount of state contributions for each fiscal year. The department's determination of the amount of the state contribution is final and conclusive, and may not be changed once such determination is made and such contribution is distributed to the sponsoring or cosponsoring local government, unless the department subsequently determines that local revenue information contained in a report described in RCW 39.102.140 differs from the actual dedicated local revenue. If a discrepancy is found, the department must adjust its determination accordingly. A sponsoring or cosponsoring local government may not receive, in any fiscal year, more revenues from taxes imposed under the authority of this section than the amount approved annually by the department. The department may not approve the receipt of more distributions of sales and use tax under this section to a sponsoring or cosponsoring local government than is authorized under subsection (7) of this section.

(12) The amount of tax distributions received from taxes imposed under the authority of this section by all sponsoring and cosponsoring local governments is limited annually to not more than seven million five hundred thousand dollars.

(13) The definitions in RCW 39.102.020 apply to this section unless the context clearly requires otherwise.

(14) If a sponsoring local government is a federally recognized Indian tribe, the distribution of the sales and use tax authorized under this section must be authorized through an interlocal agreement pursuant to chapter 39.34 RCW.

(15) Subject to RCW 39.102.195, the tax imposed under the authority of this section may be applied either to provide for the payment of debt service on bonds issued under RCW 39.102.150 by the sponsoring local government or to pay public improvement costs on a pay-as-you-go basis, or both.

(16) The tax imposed under the authority of this section must cease to be imposed if the sponsoring local government or cosponsoring local government fails to commence construction on public improvements by June 30, 2017.

(17) For purposes of this section, the following definitions apply:

(a) "Local sales and use taxes" means sales and use taxes imposed by cities, counties, public facilities districts, and other local governments under the authority of this chapter, chapter 67.28 or *67.40 RCW, or any other chapter, and that are credited against the state sales and use taxes.

(b) "State sales and use taxes" means the tax imposed in RCW 82.08.020(1) and the tax imposed in RCW 82.12.020 at the rate provided in RCW 82.08.020(1).

(18) This section expires June 30, 2044. [2013 2nd sp.s. c 21 § 3; 2010 c 164 § 12; 2009 c 267 § 8; 2007 c 229 § 8; 2006 c 181 § 401.]

***Reviser's note:** A majority of chapter 67.40 RCW was repealed by 2010 1st sp.s. c 15 § 14, effective November 30, 2010. RCW 67.40.020 was repealed by 2010 1st sp.s. c 15 § 15, effective December 30, 2010.

Expiration date—2010 c 164 §§ 11 and 12: See note following RCW 39.102.020.

Expiration date—2009 c 267: See note following RCW 39.102.020.

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

Captions and part headings not law—Severability—Construction—Effective date—Expiration date—2006 c 181: See RCW 39.102.900 through 39.102.904.

82.44.190 Transportation infrastructure account—Deposits and distributions—Subaccounts. The transportation infrastructure account is hereby created in the transportation fund. Public and private entities may deposit moneys in the transportation infrastructure account from federal, state, local, or private sources. Proceeds from bonds or other financial instruments sold to finance surface transportation projects from the transportation infrastructure account shall be deposited into the account. Principal and interest payments made on loans from the transportation infrastructure account shall be deposited into the account. Moneys in the account shall be available for purposes specified in RCW 82.44.195. Expenditures from the transportation infrastructure account shall be subject to appropriation by the legislature. To the extent required by federal law or regulations promulgated by the United States secretary of transportation, the state treasurer is authorized to create separate subaccounts within the transportation infrastructure account. [1996 c 262 § 2.]

Effective date—1996 c 262: "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 [March 29, 1996]." [1996 c 262 § 5.]

Additional notes found at www.leg.wa.gov

82.44.195 Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262. The legislature finds that new financing mechanisms are necessary to provide greater flexibility and additional funds for needed transportation infrastructure projects in the state. The creation of a financing mechanism, like the one contained in section 350 of the national highway system designation act of 1995, P.L. 104-59, relating to a state infrastructure bank program, will enable the state and local jurisdictions to use federal, state, local, or private funds to construct surface transportation projects for various modes of transportation. It is the intent of the legislature that accounts be created in the state treasury and dedicated funding sources be established to generate revenue to support transportation projects financed with the proceeds of bonds

or other financial instruments issued against this dedicated revenue and other revenues which may be available to these accounts. P.L. 104-59 allows the deposit of certain federal highway and transit funds into these accounts to leverage other forms of investment in transportation infrastructure by expanding the eligible uses of the federal funds. Other public and private entities may also deposit funds into these accounts to leverage transportation investments. The purpose of chapter 262, Laws of 1996 is to provide, from these accounts, authorization for loans, grants, or other means of assistance, in amounts equal to all or part of the cost, to public or private entities building surface transportation facilities in this state. It is the further intent of the legislature that projects representing critical mobility or economic development needs and involving various transportation modes and jurisdictions receive top priority in the use of these funds. Funds from the accounts created in chapter 262, Laws of 1996 may be used to support the issuance of public or private debt, to provide credit enhancement for such debt, for direct loans to public or private entities, or for other purposes necessary to facilitate investment in surface transportation facilities in this state. [1996 c 262 § 1.]

Effective date—1996 c 262: See note following RCW 82.44.190.

Additional notes found at www.leg.wa.gov

82.46.010 Tax on sale of real property authorized—Proceeds dedicated to local capital projects—Additional tax authorized—Maximum rates. (1) The legislative authority of any county or city must identify in the adopted budget the capital projects funded in whole or in part from the proceeds of the tax authorized in this section, and must indicate that such tax is intended to be in addition to other funds that may be reasonably available for such capital projects.

(2)(a) The legislative authority of any county or any city may impose an excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-quarter of one percent of the selling price. The revenues from this tax must be used by any city or county with a population of five thousand or less and any city or county that does not plan under RCW 36.70A.040 for any capital purpose identified in a capital improvements plan and local capital improvements, including those listed in RCW 35.43.040.

(b) After April 30, 1992, revenues generated from the tax imposed under this subsection (2) in counties over five thousand population and cities over five thousand population that are required or choose to plan under RCW 36.70A.040 must be used solely for financing capital projects specified in a capital facilities plan element of a comprehensive plan and housing relocation assistance under RCW 59.18.440 and 59.18.450. However, revenues (i) pledged by such counties and cities to debt retirement prior to April 30, 1992, may continue to be used for that purpose until the original debt for which the revenues were pledged is retired, or (ii) committed prior to April 30, 1992, by such counties or cities to a project may continue to be used for that purpose until the project is completed.

(3) In lieu of imposing the tax authorized in RCW 82.14.030(2), the legislative authority of any county or any city may impose an additional excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-half of one percent of the selling price.

(4) Taxes imposed under this section must be collected from persons who are taxable by the state under chapter 82.45 RCW upon the occurrence of any taxable event within the unincorporated areas of the county or within the corporate limits of the city, as the case may be.

(5) Taxes imposed under this section must comply with all applicable rules, regulations, laws, and court decisions regarding real estate excise taxes as imposed by the state under chapter 82.45 RCW.

(6) As used in this section, "city" means any city or town and "capital project" means those public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets; roads; highways; sidewalks; street and road lighting systems; traffic signals; bridges; domestic water systems; storm and sanitary sewer systems; parks; recreational facilities; law enforcement facilities; fire protection facilities; trails; libraries; administrative and/ or judicial facilities; river and/ or waterway flood control projects by those jurisdictions that, prior to June 11, 1992, have expended funds derived from the tax authorized by this section for such purposes; and, until December 31, 1995, housing projects for those jurisdictions that, prior to June 11, 1992, have expended or committed to expend funds derived from the tax authorized by this section or the tax authorized by RCW 82.46.035 for such purposes.

(7) From July 22, 2011, until December 31, 2016, a city or county may use the greater of one hundred thousand dollars or thirty-five percent of available funds under this section, but not to exceed one million dollars per year, for the operations and maintenance of existing capital projects as defined in subsection (6) of this section. [2011 c 354 § 1; 1994 c 272 § 1; 1992 c 221 § 1; 1990 1st ex.s. c 17 § 36; 1982 1st ex.s. c 49 § 11.]

Legislative declaration—1994 c 272: "The legislature declares that, in section 13, chapter 49, Laws of 1982 1st ex. sess., effective July 1, 1982, its original intent in limiting the use of the proceeds of the tax authorized in RCW 82.46.010(2) to "local capital improvements" was to include in such expenditures the acquisition of real and personal property associated with such local capital improvements. Any such expenditures made by cities, towns, and counties on or after July 1, 1982, are hereby declared to be authorized and valid." [1994 c 272 § 2.]

Expenditures prior to June 11, 1992: "All expenditures of revenues collected under RCW 82.46.010 made prior to June 11, 1992, are deemed to be in compliance with RCW 82.46.010." [1992 c 221 § 4.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Additional notes found at www.leg.wa.gov

82.46.030 Distribution of proceeds. (1) The county treasurer shall place one percent of the proceeds of the taxes imposed under this chapter in the county current expense fund to defray costs of collection.

(2) The remaining proceeds from the county tax under RCW 82.46.010(2) shall be placed in a county capital improvements fund. The remaining proceeds from city or town taxes under RCW 82.46.010(2) shall be distributed to

the respective cities and towns monthly and placed by the city treasurer in a municipal capital improvements fund.

(3) This section does not limit the existing authority of any city, town, or county to impose special assessments on property specially benefited thereby in the manner prescribed by law. [2000 c 103 § 17; 1992 c 221 § 2; 1990 1st ex.s. c 17 § 37; 1982 1st ex.s. c 49 § 13.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Additional notes found at www.leg.wa.gov

82.46.035 Additional tax—Certain counties and cities—Ballot proposition—Use limited to capital projects—Temporary rescindment for noncompliance. (1) The legislative authority of any county or city must identify in the adopted budget the capital projects funded in whole or in part from the proceeds of the tax authorized in this section, and must indicate that such tax is intended to be in addition to other funds that may be reasonably available for such capital projects.

(2) The legislative authority of any county or any city that plans under RCW 36.70A.040(1) may impose an additional excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-quarter of one percent of the selling price. Any county choosing to plan under RCW 36.70A.040(2) and any city within such a county may only adopt an ordinance imposing the excise tax authorized by this section if the ordinance is first authorized by a proposition approved by a majority of the voters of the taxing district voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters.

(3) Revenues generated from the tax imposed under subsection (2) of this section must be used by such counties and cities solely for financing capital projects specified in a capital facilities plan element of a comprehensive plan. However, revenues (a) pledged by such counties and cities to debt retirement prior to March 1, 1992, may continue to be used for that purpose until the original debt for which the revenues were pledged is retired, or (b) committed prior to March 1, 1992, by such counties or cities to a project may continue to be used for that purpose until the project is completed.

(4) Revenues generated by the tax imposed by this section must be deposited in a separate account.

(5) As used in this section, "city" means any city or town and "capital project" means those public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, bridges, domestic water systems, storm and sanitary sewer systems, and planning, construction, reconstruction, repair, rehabilitation, or improvement of parks.

(6) When the governor files a notice of noncompliance under RCW 36.70A.340 with the secretary of state and the appropriate county or city, the county or city's authority to impose the additional excise tax under this section is temporarily rescinded until the governor files a subsequent notice rescinding the notice of noncompliance.

(7) From June 30, 2012, until December 31, 2016, a city or county may use the greater of one hundred thousand dollars or thirty-five percent of available funds under this section, but not to exceed one million dollars per year, for operations and maintenance of existing capital projects as defined in subsection (5) of this section, and counties may use available funds under this section for the payment of existing debt service incurred for capital projects as defined in RCW 82.46.010. If a county uses available funds for payment of existing debt service under RCW 82.46.010, the total amount used for payment of debt service and any amounts used for operations and maintenance is subject to the limits in this subsection. [2011 c 354 § 3; (2011 c 354 § 2 expired June 30, 2012); (2009 c 211 § 1 expired June 30, 2012). Prior: 1992 c 221 § 3; 1991 sp.s. c 32 § 33; 1990 1st ex.s. c 17 § 38.]

Effective date—2011 c 354 § 3: "Section 3 of this act takes effect June 30, 2012." [2011 c 354 § 5.]

Expiration date—2011 c 354 § 2: "Section 2 of this act expires June 30, 2012." [2011 c 354 § 4.]

Expiration date—2009 c 211: "This act expires June 30, 2012." [2009 c 211 § 2.]

Sections headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Additional notes found at www.leg.wa.gov

82.46.040 Tax is lien on property—Enforcement. Any tax imposed under this chapter or RCW 82.46.070 and any interest or penalties thereon is a specific lien upon each piece of real property sold from the time of sale until the tax is paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages. [1990 1st ex.s. c 17 § 39; 1990 1st ex.s. c 5 § 4; 1982 1st ex.s. c 49 § 14.]

Reviser's note: This section was amended by 1990 1st ex.s. c 5 § 4 and by 1990 c 17 § 39, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Purpose—1990 1st ex.s. c 5: See note following RCW 36.32.570.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Additional notes found at www.leg.wa.gov

82.46.050 Tax is seller's obligation—Choice of remedies. The taxes levied under this chapter are the obligation of the seller and may be enforced through an action of debt against the seller or in the manner prescribed for the foreclosure of mortgages. Resort to one course of enforcement is not an election not to pursue the other. [1990 1st ex.s. c 17 § 40; 1982 1st ex.s. c 49 § 15.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Additional notes found at www.leg.wa.gov

82.46.060 Payment of tax—Evidence of payment—Recording. Any taxes imposed under this chapter or RCW 82.46.070 shall be paid to and collected by the treasurer of

the county within which is located the real property which was sold. The treasurer shall act as agent for any city within the county imposing the tax. The county treasurer shall cause a stamp evidencing satisfaction of the lien to be affixed to the instrument of sale or conveyance prior to its recording or to the real estate excise tax affidavit in the case of used mobile home sales. A receipt issued by the county treasurer for the payment of the tax imposed under this chapter or RCW 82.46.070 shall be evidence of the satisfaction of the lien imposed in RCW 82.46.040 and may be recorded in the manner prescribed for recording satisfactions of mortgages. No instrument of sale or conveyance evidencing a sale subject to the tax may be accepted by the county auditor for filing or recording until the tax is paid and the stamp affixed thereto; in case the tax is not due on the transfer, the instrument shall not be accepted until suitable notation of this fact is made on the instrument by the treasurer. [1990 1st ex.s. c 17 § 41; 1990 1st ex.s. c 5 § 5; 1982 1st ex.s. c 49 § 16.]

Reviser's note: This section was amended by 1990 1st ex.s. c 5 § 5 and by 1990 1st ex.s. c 17 § 41, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Purpose—1990 1st ex.s. c 5: See note following RCW 36.32.570.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Additional notes found at www.leg.wa.gov

82.46.070 Additional excise tax—Acquisition and maintenance of conservation areas. (1) Subject to subsection (2) of this section, the legislative authority of any county may impose an additional excise tax on each sale of real property in the county at a rate not to exceed one percent of the selling price. The proceeds of the tax shall be used exclusively for the acquisition and maintenance of conservation areas.

The taxes imposed under this subsection shall be imposed in the same manner and on the same occurrences, and are subject to the same conditions, as the taxes under chapter 82.45 RCW, except:

(a) The tax shall be the obligation of the purchaser; and

(b) The tax does not apply to the acquisition of conservation areas by the county.

The county may enforce the obligation through an action of debt against the purchaser or may foreclose the lien on the property in the same manner prescribed for the foreclosure of mortgages.

The tax shall take effect thirty days after the election at which the taxes are authorized.

(2) No tax may be imposed under subsection (1) of this section unless approved by a majority of the voters of the county voting thereon for a specified period and maximum rate after:

(a) The adoption of a resolution by the county legislative authority of the county proposing this action; or

(b) The filing of a petition proposing this action with the county auditor, which petition is signed by county voters at least equal in number to ten percent of the total number of voters in the county who voted at the last preceding general election.

The ballot proposition shall be submitted to the voters of the county at the next general election occurring at least sixty days after a petition is filed, or at any special election prior to this general election that has been called for such purpose by the county legislative authority.

(3) A plan for the expenditure of the excise tax proceeds shall be prepared by the county legislative authority at least sixty days before the election if the proposal is initiated by resolution of the county legislative authority, or within six months after the tax has been authorized by the voters if the proposal is initiated by petition. Prior to the adoption of this plan, the elected officials of cities located within the county shall be consulted and a public hearing shall be held to obtain public input. The proceeds of this excise tax must be expended in conformance with this plan.

(4) As used in this section, "conservation area" has the meaning given under RCW 36.32.570. [1990 1st ex.s. c 5 § 3.]

Purpose—1990 1st ex.s. c 5: See note following RCW 36.32.570.

82.60.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Department" means the department of revenue.

(3) "Eligible area" means:

(a) Through June 30, 2010, a rural county as defined in RCW 82.14.370; and

(b) Beginning July 1, 2010, a qualifying county.

(4)(a) "Eligible investment project" means an investment project that is located, as of the date the application required by RCW 82.60.030 is received by the department, in an eligible area as defined in subsection (3) of this section.

(b) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010(4), other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part, or investment projects that have already received deferrals under this chapter.

(5) "Initiation of construction" has the same meaning as in RCW 82.63.010.

(6) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(7) "Manufacturing" means the same as defined in RCW 82.04.120. "Manufacturing" also includes:

(a) Before July 1, 2010: (i) Computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined in RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; (ii) the activities performed by research and development laboratories and commercial testing laboratories; and (iii) the conditioning of vegetable seeds; and

(b) Beginning July 1, 2010: (i) The activities performed by research and development laboratories and commercial testing laboratories; and (ii) the conditioning of vegetable seeds.

(8) "Person" has the meaning given in RCW 82.04.030.

(9) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for manufacturing or research and development activities, including plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development. If a building is used partly for manufacturing or research and development and partly for other purposes, the applicable tax deferral must be determined by apportionment of the costs of construction under rules adopted by the department.

(10) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The term "entire tax year" means a full-time position that is filled for a period of twelve consecutive months. The term "full-time" means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty hours a year.

(11) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

(12) "Qualifying county" means a county that has an unemployment rate, as determined by the employment security department, which is at least twenty percent above the state average for the three calendar years immediately preceding the year in which the list of qualifying counties is established or updated, as the case may be, as provided in RCW 82.60.120.

(13) "Recipient" means a person receiving a tax deferral under this chapter.

(14) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property for sale. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars. [2010 1st sp.s. c 16 § 2; 2010 c 114 § 138; 2006 c 142 § 1; 2004 c 25 § 3; 1999 sp.s. c 9 § 2; 1999 c 164 § 301; 1996 c 290 § 4; 1995 1st sp.s. c 3 § 5. Prior: 1994 sp.s. c 7 § 704; 1994 sp.s. c 1 § 1; 1993 sp.s. c 25 § 403; 1988 c 42 § 16; 1986 c 116 § 12; 1985 c 232 § 2.]

Retroactive application—2010 1st sp.s. c 16 §§ 2 and 11: "The amendments to the definitions of "manufacturing" and "research and development" in sections 2 and 11 of this act apply retroactively as well as prospectively." [2010 1st sp.s. c 16 § 15.]

Effective date—2010 1st sp.s. c 16: See note following RCW 82.60.010.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—2006 c 142: "This act takes effect July 1, 2006." [2006 c 142 § 2.]

Effective date—2004 c 25: See note following RCW 82.04.4483.

Intent—Severability—Effective date—1999 sp.s. c 9: See notes following RCW 82.04.120.

Savings—1999 c 164 §§ 301-303, 305, 306, and 601-603: "Sections 301 through 303, 305, 306, and 601 through 603 of this act do not affect any existing right acquired or liability or obligation under the sections amended or repealed in those sections or any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [1999 c 164 § 803.]

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Severability—1988 c 42: See note following RCW 4.24.480.

Severability—1986 c 116: See RCW 82.62.900.

Additional notes found at www.leg.wa.gov

82.60.049 Additional eligible projects. (1) For the purposes of this section:

(a) "Eligible area" also means a designated community empowerment zone approved under RCW 43.31C.020.

(b) "Eligible investment project" also means an investment project in an eligible area as defined in this section.

(2) In addition to the provisions of RCW 82.60.040, the department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW, on each eligible investment project that is located in an eligible area, if the applicant establishes that at the time the project is operationally complete:

(a) The applicant will hire at least one qualified employment position for each seven hundred fifty thousand dollars of investment for which a deferral is requested; and

(b) The positions will be filled by persons who at the time of hire are residents of the community empowerment zone. As used in this subsection, "resident" means the person makes his or her home in the community empowerment zone or the county in which the zone is located. A mailing address alone is insufficient to establish that a person is a resident for the purposes of this section. The persons must be hired after the date the application is filed with the department.

(3) All other provisions and eligibility requirements of this chapter apply to applicants eligible under this section.

(4) The qualified employment position must be filled by the end of the calendar year following the year in which the project is certified as operationally complete. If a person does not meet the requirements for qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due. [2010 1st sp.s. c 16 § 7; 2004 c 25 § 5; 2000 c 106 § 8; 1999 c 164 § 304.]

Effective date—2010 1st sp.s. c 16: See note following RCW 82.60.010.

Effective date—2004 c 25: See note following RCW 82.04.4483.

Effective date—2000 c 106: See note following RCW 82.32.330.

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Additional notes found at www.leg.wa.gov

82.63.030 Sales and use tax deferral certificate—Eligible investment projects and pilot scale manufacturing. ***(Expires January 1, 2015.)*** (1) Except as provided in subsection (2) of this section, the department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project.

(2) No certificate may be issued for an investment project that has already received a deferral under chapter 82.60 RCW or this chapter, except that an investment project for qualified research and development that has already received a deferral may also receive an additional deferral certificate for adapting the investment project for use in pilot scale manufacturing.

(3) This section shall expire January 1, 2015. [2008 c 15 § 4; 2004 c 2 § 5; 1994 sp.s. c 5 § 5.]

Effective date—2008 c 15: See note following RCW 82.82.010.

Chapter 84.14 RCW
NEW AND REHABILITATED MULTIPLE-UNIT DWELLINGS IN URBAN CENTERS

Sections

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84.14.900 Severability—1995 c 375.

New and rehabilitated multiple-unit dwellings in urban centers: RCW 84.14.020.

84.14.005 Findings. The legislature finds:

(1) That in many of Washington's urban centers there is insufficient availability of desirable and convenient residential units, including affordable housing units, to meet the needs of a growing number of the public who would live in these urban centers if these desirable, convenient, attractive, affordable, and livable places to live were available;

(2) That the development of additional and desirable residential units, including affordable housing units, in these urban centers that will attract and maintain a significant increase in the number of permanent residents in these areas will help to alleviate the detrimental conditions and social liability that tend to exist in the absence of a viable mixed income residential population and will help to achieve the planning goals mandated by the growth management act under RCW 36.70A.020; and

(3) That planning solutions to solve the problems of urban sprawl often lack incentive and implementation techniques needed to encourage residential redevelopment in those urban centers lacking a sufficient variety of residential opportunities, and it is in the public interest and will benefit, provide, and promote the public health, safety, and welfare to stimulate new or enhanced residential opportunities, including affordable housing opportunities, within urban centers through a tax incentive as provided by this chapter. [2007 c 430 § 1; 1995 c 375 § 1.]

84.14.007 Purpose. It is the purpose of this chapter to encourage increased residential opportunities, including affordable housing opportunities, in cities that are required to plan or choose to plan under the growth management act within urban centers where the governing authority of the affected city has found there is insufficient housing opportunities, including affordable housing opportunities. It is further the purpose of this chapter to stimulate the construction of new multifamily housing and the rehabilitation of existing vacant and underutilized buildings for multifamily housing in urban centers having insufficient housing opportunities that will increase and improve residential opportunities, including affordable housing opportunities, within these urban centers. To achieve these purposes, this chapter provides for special valuations in residentially deficient urban centers for eligible improvements associated with multiunit housing, which includes affordable housing. It is an additional purpose of this chapter to allow certain counties to stimulate housing opportunities near college campuses to promote dense, transit-oriented, walkable college communities. [2012 c 194 § 1; 2007 c 430 § 2; 1995 c 375 § 2.]

84.14.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affordable housing" means residential housing that is rented by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household's monthly income. For the purposes of housing intended for owner occupancy, "affordable housing" means residential housing that is within the means of low or moderate-income households.

(2) "Campus facilities master plan" means the area that is defined by the University of Washington as necessary for the future growth and development of its campus facilities for branch campuses authorized under RCW 28B.45.020.

(3) "City" means either (a) a city or town with a population of at least fifteen thousand, (b) the largest city or town, if there is no city or town with a population of at least fifteen thousand, located in a county planning under the growth management act, or (c) a city or town with a population of at least five thousand located in a county subject to the provisions of RCW 36.70A.215.

(4) "County" means a county with an unincorporated population of at least three hundred fifty thousand.

(5) "Governing authority" means the local legislative authority of a city or a county having jurisdiction over the property for which an exemption may be applied for under this chapter.

(6) "Growth management act" means chapter 36.70A RCW.

(7) "High cost area" means a county where the third quarter median house price for the previous year as reported by the Washington center for real estate research at Washington State University is equal to or greater than one hundred thirty percent of the statewide median house price published during the same time period.

(8) "Household" means a single person, family, or unrelated persons living together.

(9) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below eighty percent of the median family income adjusted for family size, for the county where the project is located, as reported by the United States department of housing and urban development. For cities located in high-cost areas, "low-income household" means a household that has an income at or below one hundred percent of the median family income adjusted for family size, for the county where the project is located.

(10) "Moderate-income household" means a single person, family, or unrelated persons living together whose adjusted income is more than eighty percent but is at or below one hundred fifteen percent of the median family income adjusted for family size, for the county where the project is located, as reported by the United States department of housing and urban development. For cities located in high-cost areas, "moderate-income household" means a household that has an income that is more than one hundred percent, but at or below one hundred fifty percent, of the median family income adjusted for family size, for the county where the project is located.

(11) "Multiple-unit housing" means a building having four or more dwelling units not designed or used as transient accommodations and not including hotels and motels. Multifamily units may result from new construction or rehabilitated or conversion of vacant, underutilized, or substandard buildings to multifamily housing.

(12) "Owner" means the property owner of record.

(13) "Permanent residential occupancy" means multiunit housing that provides either rental or owner occupancy on a nontransient basis. This includes owner-occupied or rental accommodation that is leased for a period of at least one month. This excludes hotels and motels that predominately offer rental accommodation on a daily or weekly basis.

(14) "Rehabilitation improvements" means modifications to existing structures, that are vacant for twelve months or longer, that are made to achieve a condition of substantial compliance with existing building codes or modification to existing occupied structures which increase the number of multifamily housing units.

(15) "Residential targeted area" means an area within an urban center that has been designated by the governing authority as a residential targeted area in accordance with this chapter. With respect to designations after July 1, 2007, "residential targeted area" may not include a campus facilities master plan.

(16) "Substantial compliance" means compliance with local building or housing code requirements that are typically required for rehabilitation as opposed to new construction.

(17) "Urban center" means a compact identifiable district where urban residents may obtain a variety of products and services. An urban center must contain:

(a) Several existing or previous, or both, business establishments that may include but are not limited to shops, offices, banks, restaurants, governmental agencies;

(b) Adequate public facilities including streets, sidewalks, lighting, transit, domestic water, and sanitary sewer systems; and

(c) A mixture of uses and activities that may include housing, recreation, and cultural activities in association with either commercial or office, or both, use. [2012 c 194 § 2. Prior: 2007 c 430 § 3; 2007 c 185 § 1; 2002 c 146 § 1; 2000 c 242 § 1; 1997 c 429 § 40; 1995 c 375 § 3.]

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

Effective date—2007 c 185: "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 July 1, 2007." [2007 c 185 § 3.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

Additional notes found at www.leg.wa.gov

84.14.020 Exemption—Duration—Valuation. (1)(a) The value of new housing construction, conversion, and rehabilitation improvements qualifying under this chapter is exempt from ad valorem property taxation, as follows:

(i) For properties for which applications for certificates of tax exemption eligibility are submitted under chapter 84.14 RCW before July 22, 2007, the value is exempt for ten successive years beginning January 1 of the year immediately following the calendar year of issuance of the certificate; and

(ii) For properties for which applications for certificates of tax exemption eligibility are submitted under chapter 84.14 RCW on or after July 22, 2007, the value is exempt:

(A) For eight successive years beginning January 1st of the year immediately following the calendar year of issuance of the certificate; or

(B) For twelve successive years beginning January 1st of the year immediately following the calendar year of issuance of the certificate, if the property otherwise qualifies for the exemption under chapter 84.14 RCW and meets the conditions in this subsection (1)(a)(ii)(B). For the property to qualify for the twelve-year exemption under this subsection, the applicant must commit to renting or selling at least twenty percent of the multifamily housing units as affordable housing units to low and moderate-income households, and the property must satisfy that commitment and any additional affordability and income eligibility conditions adopted by the local government under this chapter. In the case of projects intended exclusively for owner occupancy, the minimum requirement of this subsection (1)(a)(ii)(B) may be satisfied solely through housing affordable to moderate-income households.

(b) The exemptions provided in (a)(i) and (ii) of this subsection do not include the value of land or nonhousing-related improvements not qualifying under this chapter.

(2) When a local government adopts guidelines pursuant to RCW 84.14.030(2) and includes conditions that must be satisfied with respect to individual dwelling units, rather than with respect to the multiple-unit housing as a whole or some minimum portion thereof, the exemption may, at the local government's discretion, be limited to the value of the qualifying improvements allocable to those dwelling units that meet the local guidelines.

(3) In the case of rehabilitation of existing buildings, the exemption does not include the value of improvements constructed prior to the submission of the application required under this chapter. The incentive provided by this chapter is in addition to any other incentives, tax credits, grants, or other incentives provided by law.

(4) This chapter does not apply to increases in assessed valuation made by the assessor on nonqualifying portions of building and value of land nor to increases made by lawful order of a county board of equalization, the department of revenue, or a county, to a class of property throughout the county or specific area of the county to achieve the uniformity of assessment or appraisal required by law.

(5) At the conclusion of the exemption period, the new or rehabilitated housing cost shall be considered as new construction for the purposes of chapter 84.55 RCW. [2007 c 430 § 4; 2002 c 146 § 2; 1999 c 132 § 1; 1995 c 375 § 5.]

84.14.030 Application—Requirements. An owner of property making application under this chapter must meet the following requirements:

(1) The new or rehabilitated multiple-unit housing must be located in a residential targeted area as designated by the city or county;

(2) The multiple-unit housing must meet guidelines as adopted by the governing authority that may include height, density, public benefit features, number and size of proposed development, parking, income limits for occupancy, limits on rents or sale prices, and other adopted requirements indicated necessary by the city or county. The required amenities should be relative to the size of the project and tax benefit to be obtained;

(3) The new, converted, or rehabilitated multiple-unit housing must provide for a minimum of fifty percent of the space for permanent residential occupancy. In the case of existing occupied multifamily development, the multifamily housing must also provide for a minimum of four additional multifamily units. Existing multifamily vacant housing that has been vacant for twelve months or more does not have to provide additional multifamily units;

(4) New construction multifamily housing and rehabilitation improvements must be completed within three years from the date of approval of the application;

(5) Property proposed to be rehabilitated must fail to comply with one or more standards of the applicable state or local building or housing codes on or after July 23, 1995. If the property proposed to be rehabilitated is not vacant, an applicant must provide each existing tenant housing of comparable size, quality, and price and a reasonable opportunity to relocate; and

(6) The applicant must enter into a contract with the city or county approved by the governing authority, or an administrative official or commission authorized by the governing authority, under which the applicant has agreed to the implementation of the development on terms and conditions satisfactory to the governing authority. [2012 c 194 § 3; 2007 c 430 § 5; 2005 c 80 § 1; 1997 c 429 § 42; 1995 c 375 § 6.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

Additional notes found at www.leg.wa.gov

84.14.040 Designation of residential targeted area—Criteria—Local designation—Hearing—Standards, guidelines. (1) The following criteria must be met before an area may be designated as a residential targeted area:

(a) The area must be within an urban center, as determined by the governing authority;

(b) The area must lack, as determined by the governing authority, sufficient available, desirable, and convenient residential housing, including affordable housing, to meet the needs of the public who would be likely to live in the urban center, if the affordable, desirable, attractive, and livable places to live were available;

(c) The providing of additional housing opportunity, including affordable housing, in the area, as determined by the governing authority, will assist in achieving one or more of the stated purposes of this chapter; and

(d) If the residential targeted area is designated by a county, the area must be located in an unincorporated area of the county that is within an urban growth area under RCW 36.70A.110 and the area must include a campus of an institution of higher education, as defined in RCW 28B.92.030, where at least one thousand two hundred students live on campus during the academic year.

(2) For the purpose of designating a residential targeted area or areas, the governing authority may adopt a resolution of intention to so designate an area as generally described in the resolution. The resolution must state the time and place of a hearing to be held by the governing authority to consider the designation of the area and may include such other information pertaining to the designation of the area as the governing authority determines to be appropriate to apprise the public of the action intended.

(3) The governing authority must give notice of a hearing held under this chapter by publication of the notice once each week for two consecutive weeks, not less than seven days, nor more than thirty days before the date of the hearing in a paper having a general circulation in the city or county where the proposed residential targeted area is located. The notice must state the time, date, place, and purpose of the hearing and generally identify the area proposed to be designated as a residential targeted area.

(4) Following the hearing, or a continuance of the hearing, the governing authority may designate all or a portion of the area described in the resolution of intent as a residential targeted area if it finds, in its sole discretion, that the criteria in subsections (1) through (3) of this section have been met.

(5) After designation of a residential targeted area, the governing authority must adopt and implement standards and guidelines to be utilized in considering applications and making the determinations required under RCW 84.14.060. The standards and guidelines must establish basic requirements for both new construction and rehabilitation, which must include:

(a) Application process and procedures;

(b) Requirements that address demolition of existing structures and site utilization; and

(c) Building requirements that may include elements addressing parking, height, density, environmental impact, and compatibility with the existing surrounding property and such other amenities as will attract and keep permanent residents and that will properly enhance the livability of the residential targeted area in which they are to be located.

(6) The governing authority may adopt and implement, either as conditions to eight-year exemptions or as conditions to an extended exemption period under RCW 84.14.020(1)(a)(ii)(B), or both, more stringent income eligibility, rent, or sale price limits, including limits that apply to a higher percentage of units, than the minimum conditions for an extended exemption period under RCW 84.14.020(1)(a)(ii)(B). For any multiunit housing located in an unincorporated area of a county, a property owner seeking tax incentives under this chapter must commit to renting or selling at least twenty percent of the multifamily housing units as affordable housing units to low and moderate-income households. In the case of multiunit housing intended exclusively for owner occupancy, the minimum requirement of this subsection (6) may be satisfied solely through housing affordable to moderate-income households. [2012 c 194 § 4; 2007 c 430 § 6; 1995 c 375 § 7.]

84.14.050 Application—Procedures. An owner of property seeking tax incentives under this chapter must complete the following procedures:

(1) In the case of rehabilitation or where demolition or new construction is required, the owner must secure from the governing authority or duly authorized representative, before commencement of rehabilitation improvements or new construction, verification of property noncompliance with applicable building and housing codes;

(2) In the case of new and rehabilitated multifamily housing, the owner must apply to the city or county on forms adopted by the governing authority. The application must contain the following:

(a) Information setting forth the grounds supporting the requested exemption including information indicated on the application form or in the guidelines;

(b) A description of the project and site plan, including the floor plan of units and other information requested;

(c) A statement that the applicant is aware of the potential tax liability involved when the property ceases to be eligible for the incentive provided under this chapter;

(3) The applicant must verify the application by oath or affirmation; and

(4) The application must be accompanied by the application fee, if any, required under RCW 84.14.080. The governing authority may permit the applicant to revise an application before final action by the governing authority. [2012 c 194 § 5; 2007 c 430 § 7; 1999 c 132 § 2; 1997 c 429 § 43; 1995 c 375 § 8.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

Additional notes found at www.leg.wa.gov

84.14.060 Approval—Required findings. (1) The duly authorized administrative official or committee of the city or county may approve the application if it finds that:

(a) A minimum of four new units are being constructed or in the case of occupied rehabilitation or conversion a minimum of four additional multifamily units are being developed;

(b) If applicable, the proposed multiunit housing project meets the affordable housing requirements as described in RCW 84.14.020;

(c) The proposed project is or will be, at the time of completion, in conformance with all local plans and regulations that apply at the time the application is approved;

(d) The owner has complied with all standards and guidelines adopted by the city or county under this chapter; and

(e) The site is located in a residential targeted area of an urban center that has been designated by the governing authority in accordance with procedures and guidelines indicated in RCW 84.14.040.

(2) An application may not be approved after July 1, 2007, if any part of the proposed project site is within a campus facilities master plan, except as provided in RCW 84.14.040(1)(d). [2012 c 194 § 6. Prior: 2007 c 430 § 8; 2007 c 185 § 2; 1995 c 375 § 9.]

Effective date—2007 c 185: See note following RCW 84.14.010.

84.14.070 Processing—Approval—Denial—Appeal. (1) The governing authority or an administrative official or commission authorized by the governing authority must approve or deny an application filed under this chapter within ninety days after receipt of the application.

(2) If the application is approved, the city or county must issue the owner of the property a conditional certificate of acceptance of tax exemption. The certificate must contain a statement by a duly authorized administrative official of the governing authority that the property has complied with the required findings indicated in RCW 84.14.060.

(3) If the application is denied by the authorized administrative official or commission authorized by the governing authority, the deciding administrative official or commission must state in writing the reasons for denial and send the notice to the applicant at the applicant's last known address within ten days of the denial.

(4) Upon denial by a duly authorized administrative official or commission, an applicant may appeal the denial to the governing authority within thirty days after receipt of the denial. The appeal before the governing authority must be based upon the record made before the administrative official with the burden of proof on the applicant to show that there was no substantial evidence to support the administrative official's decision. The decision of the governing body in denying or approving the application is final. [2012 c 194 § 7; 1995 c 375 § 10.]

84.14.080 Fees. The governing authority may establish an application fee. This fee may not exceed an amount determined to be required to cover the cost to be incurred by the governing authority and the assessor in administering this chapter. The application fee must be paid at the time the application for limited exemption is filed. If the application is approved, the governing authority shall pay the application fee to the county assessor for deposit in the county current expense fund, after first deducting that portion of the fee

attributable to its own administrative costs in processing the application. If the application is denied, the governing authority may retain that portion of the application fee attributable to its own administrative costs and refund the balance to the applicant. [1995 c 375 § 11.]

84.14.090 Filing requirements for owner upon completion—Determination by city or county—Notice of intention by city or county not to file—Extension of deadline—Appeal. (1) Upon completion of rehabilitation or new construction for which an application for a limited tax exemption under this chapter has been approved and after issuance of the certificate of occupancy, the owner must file with the city or county the following:

(a) A statement of the amount of rehabilitation or construction expenditures made with respect to each housing unit and the composite expenditures made in the rehabilitation or construction of the entire property;

(b) A description of the work that has been completed and a statement that the rehabilitation improvements or new construction on the owner's property qualify the property for limited exemption under this chapter;

(c) If applicable, a statement that the project meets the affordable housing requirements as described in RCW 84.14.020; and

(d) A statement that the work has been completed within three years of the issuance of the conditional certificate of tax exemption.

(2) Within thirty days after receipt of the statements required under subsection (1) of this section, the authorized representative of the city or county must determine whether the work completed, and the affordability of the units, is consistent with the application and the contract approved by the city or county and is qualified for a limited tax exemption under this chapter. The city or county must also determine which specific improvements completed meet the requirements and required findings.

(3) If the rehabilitation, conversion, or construction is completed within three years of the date the application for a limited tax exemption is filed under this chapter, or within an authorized extension of this time limit, and the authorized representative of the city or county determines that improvements were constructed consistent with the application and other applicable requirements, including if applicable, affordable housing requirements, and the owner's property is qualified for a limited tax exemption under this chapter, the city or county must file the certificate of tax exemption with the county assessor within ten days of the expiration of the thirty-day period provided under subsection (2) of this section.

(4) The authorized representative of the city or county must notify the applicant that a certificate of tax exemption is not going to be filed if the authorized representative determines that:

(a) The rehabilitation or new construction was not completed within three years of the application date, or within any authorized extension of the time limit;

(b) The improvements were not constructed consistent with the application or other applicable requirements;

(c) If applicable, the affordable housing requirements as described in RCW 84.14.020 were not met; or

(d) The owner's property is otherwise not qualified for limited exemption under this chapter.

(5) If the authorized representative of the city or county finds that construction or rehabilitation of multiple-unit housing was not completed within the required time period due to circumstances beyond the control of the owner and that the owner has been acting and could reasonably be expected to act in good faith and with due diligence, the governing authority or the city or county official authorized by the governing authority may extend the deadline for completion of construction or rehabilitation for a period not to exceed twenty-four consecutive months.

(6) The governing authority may provide by ordinance for an appeal of a decision by the deciding officer or authority that an owner is not entitled to a certificate of tax exemption to the governing authority, a hearing examiner, or other city or county officer authorized by the governing authority to hear the appeal in accordance with such reasonable procedures and time periods as provided by ordinance of the governing authority. The owner may appeal a decision by the deciding officer or authority that is not subject to local appeal or a decision by the local appeal authority that the owner is not entitled to a certificate of tax exemption in superior court under RCW 34.05.510 through 34.05.598, if the appeal is filed within thirty days of notification by the city or county to the owner of the decision being challenged. [2012 c 194 § 8; 2007 c 430 § 9; 1995 c 375 § 12.]

84.14.100 Report—Filing. (1) Thirty days after the anniversary of the date of the certificate of tax exemption and each year for the tax exemption period, the owner of the rehabilitated or newly constructed property must file with a designated authorized representative of the city or county an annual report indicating the following:

(a) A statement of occupancy and vacancy of the rehabilitated or newly constructed property during the twelve months ending with the anniversary date;

(b) A certification by the owner that the property has not changed use and, if applicable, that the property has been in compliance with the affordable housing requirements as described in RCW 84.14.020 since the date of the certificate approved by the city or county;

(c) A description of changes or improvements constructed after issuance of the certificate of tax exemption; and

(d) Any additional information requested by the city or county in regards to the units receiving a tax exemption.

(2) All cities or counties, which issue certificates of tax exemption for multiunit housing that conform to the requirements of this chapter, must report annually by December 31st of each year, beginning in 2007, to the department of commerce. The report must include the following information:

(a) The number of tax exemption certificates granted;

(b) The total number and type of units produced or to be produced;

(c) The number and type of units produced or to be produced meeting affordable housing requirements;

(d) The actual development cost of each unit produced;

(e) The total monthly rent or total sale amount of each unit produced;

(f) The income of each renter household at the time of initial occupancy and the income of each initial purchaser of

owner-occupied units at the time of purchase for each of the units receiving a tax exemption and a summary of these figures for the city or county; and

(g) The value of the tax exemption for each project receiving a tax exemption and the total value of tax exemptions granted. [2012 c 194 § 9; 2007 c 430 § 10; 1995 c 375 § 13.]

84.14.110 Cancellation of exemption—Notice by owner of change in use—Additional tax—Penalty—Interest—Lien—Notice of cancellation—Appeal—Correction of tax rolls. (1) If improvements have been exempted under this chapter, the improvements continue to be exempted for the applicable period under RCW 84.14.020, so long as they are not converted to another use and continue to satisfy all applicable conditions. If the owner intends to convert the multifamily development to another use, or if applicable, if the owner intends to discontinue compliance with the affordable housing requirements as described in RCW 84.14.020 or any other condition to exemption, the owner must notify the assessor within sixty days of the change in use or intended discontinuance. If, after a certificate of tax exemption has been filed with the county assessor, the authorized representative of the governing authority discovers that a portion of the property is changed or will be changed to a use that is other than residential or that housing or amenities no longer meet the requirements, including, if applicable, affordable housing requirements, as previously approved or agreed upon by contract between the city or county and the owner and that the multifamily housing, or a portion of the housing, no longer qualifies for the exemption, the tax exemption must be canceled and the following must occur:

(a) Additional real property tax must be imposed upon the value of the nonqualifying improvements in the amount that would normally be imposed, plus a penalty must be imposed amounting to twenty percent. This additional tax is calculated based upon the difference between the property tax paid and the property tax that would have been paid if it had included the value of the nonqualifying improvements dated back to the date that the improvements were converted to a nonmultifamily use;

(b) The tax must include interest upon the amounts of the additional tax at the same statutory rate charged on delinquent property taxes from the dates on which the additional tax could have been paid without penalty if the improvements had been assessed at a value without regard to this chapter; and

(c) The additional tax owed together with interest and penalty must become a lien on the land and attach at the time the property or portion of the property is removed from multifamily use or the amenities no longer meet applicable requirements, and has priority to and must be fully paid and satisfied before a recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable. The lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes. An additional tax unpaid on its due date is delinquent. From the date of delinquency until paid, interest must be charged at the same rate applied by law to delinquent ad valorem property taxes.

(2) Upon a determination that a tax exemption is to be canceled for a reason stated in this section, the governing authority or authorized representative must notify the record owner of the property as shown by the tax rolls by mail, return receipt requested, of the determination to cancel the exemption. The owner may appeal the determination to the governing authority or authorized representative, within thirty days by filing a notice of appeal with the clerk of the governing authority, which notice must specify the factual and legal basis on which the determination of cancellation is alleged to be erroneous. The governing authority or a hearing examiner or other official authorized by the governing authority may hear the appeal. At the hearing, all affected parties may be heard and all competent evidence received. After the hearing, the deciding body or officer must either affirm, modify, or repeal the decision of cancellation of exemption based on the evidence received. An aggrieved party may appeal the decision of the deciding body or officer to the superior court under RCW 34.05.510 through 34.05.598.

(3) Upon determination by the governing authority or authorized representative to terminate an exemption, the county officials having possession of the assessment and tax rolls must correct the rolls in the manner provided for omitted property under RCW 84.40.080. The county assessor must make such a valuation of the property and improvements as is necessary to permit the correction of the rolls. The value of the new housing construction, conversion, and rehabilitation improvements added to the rolls is considered as new construction for the purposes of chapter 84.55 RCW. The owner may appeal the valuation to the county board of equalization under chapter 84.48 RCW and according to the provisions of RCW 84.40.038. If there has been a failure to comply with this chapter, the property must be listed as an omitted assessment for assessment years beginning January 1 of the calendar year in which the noncompliance first occurred, but the listing as an omitted assessment may not be for a period more than three calendar years preceding the year in which the failure to comply was discovered. [2012 c 194 § 10; 2007 c 430 § 11; 2002 c 146 § 3; 2001 c 185 § 1; 1995 c 375 § 14.]

Application—2001 c 185 §§ 1-12: "Sections 1 through 12 of this act apply for [to] taxes levied in 2001 for collection in 2002 and thereafter." [2001 c 185 § 18.]

Additional notes found at www.leg.wa.gov

84.14.900 Severability—1995 c 375. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 375 § 15.]

Chapter 84.26 RCW
HISTORIC PROPERTY

Sections

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84.26.900 Severability—1985 c 449.

84.33.035 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agricultural methods" means the cultivation of trees that are grown on land prepared by intensive cultivation and tilling, such as irrigating, plowing, or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising trees such as Christmas trees and short-rotation hardwoods.

(2) "Average rate of inflation" means the annual rate of inflation as determined by the department averaged over the period of time as provided in RCW 84.33.220 (1) and (2). This rate must be published in the state register by the department not later than January 1st of each year for use in that assessment year.

(3) "Composite property tax rate" for a county means the total amount of property taxes levied upon forest lands by all taxing districts in the county other than the state, divided by the total assessed value of all forest land in the county.

(4) "Contiguous" means land adjoining and touching other property held by the same ownership. Land divided by a public road, but otherwise an integral part of a timber growing and harvesting operation, is considered contiguous. Solely for the purposes of this subsection (4), "same ownership" has the same meaning as in RCW 84.34.020(6).

(5) "Forest land" is synonymous with "designated forest land" and means any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres that is or are devoted primarily to growing and harvesting timber. Designated forest land means the land only and does not include a residential homesite. The term includes land used for incidental uses that are compatible with the growing and harvesting of timber but no more than ten percent of the land may be used for such incidental uses. It also includes the land on which appurtenances necessary for the production, preparation, or sale of the timber products exist in conjunction with land producing these products.

(6) "Harvested" means the time when in the ordinary course of business the quantity of timber by species is first definitely determined. The amount harvested must be determined by the Scribner Decimal C Scale or other prevalent measuring practice adjusted to arrive at substantially equivalent measurements, as approved by the department.

(7) "Harvester" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use. When the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, the harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in the timber. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester.

(8) "Harvesting and marketing costs" means only those costs directly associated with harvesting the timber from the land and delivering it to the buyer and may include the costs of disposing of logging residues. Any other costs that are not directly and exclusively related to harvesting and marketing of the timber, such as costs of permanent roads or costs of reforesting the land following harvest, are not harvesting and marketing costs.

(9) "Incidental use" means a use of designated forest land that is compatible with its purpose for growing and harvesting timber. An incidental use may include a gravel pit, a shed or land used to store machinery or equipment used in conjunction with the timber enterprise, and any other use that does not interfere with or indicate that the forest land is no longer primarily being used to grow and harvest timber.

(10) "Local government" means any city, town, county, water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi-municipal corporation, or other political subdivision authorized to levy special benefit assessments for sanitary or storm sewerage systems, domestic water supply or distribution systems, or road construction or improvement purposes.

(11) "Local improvement district" means any local improvement district, utility local improvement district, local utility district, road improvement district, or any similar unit created by a local government for the purpose of levying special benefit assessments against property specially benefited by improvements relating to the districts.

(12) "Owner" means the party or parties having the fee interest in land, except where land is subject to a real estate contract "owner" means the contract vendee.

(13) "Primarily" or "primary use" means the existing use of the land is so prevalent that when the characteristic use of the land is evaluated any other use appears to be conflicting or nonrelated.

(14) "Short-rotation hardwoods" means hardwood trees, such as but not limited to hybrid cottonwoods, cultivated by agricultural methods in growing cycles shorter than fifteen years.

(15) "Small harvester" means every person who from his or her own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use in an amount not exceeding two million board feet in a calendar year. When the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, not exceeding these amounts, the small harvester is the first person other than the United

States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in the timber. Small harvester does not include persons performing under contract the necessary labor or mechanical services for a harvester, and it does not include the harvesters of Christmas trees or short-rotation hardwoods.

(16) "Special benefit assessments" means special assessments levied or capable of being levied in any local improvement district or otherwise levied or capable of being levied by a local government to pay for all or part of the costs of a local improvement and which may be levied only for the special benefits to be realized by property by reason of that local improvement.

(17) "Stumpage value of timber" means the appropriate stumpage value shown on tables prepared by the department under RCW 84.33.091. However, for timber harvested from public land and sold under a competitive bidding process, stumpage value means the actual amount paid to the seller in cash or other consideration. The stumpage value of timber from public land does not include harvesting and marketing costs if the timber from public land is harvested by, or under contract for, the United States or any instrumentality of the United States, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein. Whenever payment for the stumpage includes considerations other than cash, the value is the fair market value of the other consideration. If the other consideration is permanent roads, the value of the roads must be the appraised value as appraised by the seller.

(18) "Timber" means forest trees, standing or down, on privately or publicly owned land, and except as provided in RCW 84.33.170 includes Christmas trees and short-rotation hardwoods.

(19) "Timber assessed value" for a county means the sum of: (a) The total stumpage value of timber harvested from publicly owned land in the county multiplied by the public timber ratio, plus; (b) the total stumpage value of timber harvested from privately owned land in the county multiplied by the private timber ratio. The numerator of the public timber ratio is the rate of tax imposed by the county under RCW 84.33.051 on public timber harvests for the year of the calculation. The numerator of the private timber ratio is the rate of tax imposed by the county under RCW 84.33.051 on private timber harvests for the year of the calculation. The denominator of the private timber ratio and the public timber ratio is the composite property tax rate for the county for taxes due in the year of the calculation, expressed as a percentage of assessed value. The department must use the stumpage value of timber harvested during the most recent four calendar quarters for which the information is available. The department must calculate the timber assessed value for each county before October 1st of each year.

(20) "Timber assessed value" for a taxing district means the timber assessed value for the county multiplied by a ratio. The numerator of the ratio is the total assessed value of forest land in the taxing district. The denominator is the total assessed value of forest land in the county. As used in this section, "assessed value of forest land" means the assessed value of forest land for taxes due in the year the timber assessed value for the county is calculated plus an additional value for public forest land. The additional value for public forest land is the product of the number of acres of public forest land that are available for timber harvesting determined under RCW 84.33.089 and the average assessed value per acre of private forest land in the county.

(21) "Timber management plan" means a plan prepared by a trained forester, or any other person with adequate knowledge of timber management practices, concerning the use of the land to grow and harvest timber. Such a plan includes:

(a) A legal description of the forest land;

(b) A statement that the forest land is held in contiguous ownership of twenty or more acres and is primarily devoted to and used to grow and harvest timber;

(c) A brief description of the timber on the forest land or, if the timber on the land has been harvested, the owner's plan to restock the land with timber;

(d) A statement about whether the forest land is also used to graze livestock;

(e) A statement about whether the land has been used in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW; and

(f) If the land has been recently harvested or supports a growth of brush and noncommercial type timber, a description of the owner's plan to restock the forest land within three years. [2011 c 101 § 2; 2004 c 177 § 1; 2003 c 313 § 12. Prior: 2001 c 249 § 1; 2001 c 97 § 1; 1995 c 165 § 1; 1986 c 315 § 1; 1984 c 204 § 1.]

Effective date—2004 c 177: "This act takes effect January 1, 2005." [2004 c 177 § 8.]

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Application—1995 c 165: "This act applies to taxes levied in 1995 for collection in 1996 and thereafter." [1995 c 165 § 3.]

Savings—1984 c 204: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1984 c 204 § 48.]

Effective date—1984 c 204: "This act shall take effect July 1, 1984." [1984 c 204 § 49.]

Additional notes found at www.leg.wa.gov

84.33.130 Forest land valuation—Application by owner that land be designated and valued as forest land—Hearing—Rules—Approval, denial of application—Appeal. (1) Notwithstanding any other provision of law, lands that were assessed as classified forest land before July 22, 2001, shall be designated forest land for the purposes of this chapter. The owners of previously classified forest land shall not be required to apply for designation under this chapter. As of July 22, 2001, the land and timber on such land shall be assessed and taxed in accordance with the provisions of this chapter.

(2) An owner of land desiring that it be designated as forest land and valued under RCW 84.33.140 as of January 1st of any year shall submit an application to the assessor of the county in which the land is located before January 1st of that year. The application shall be accompanied by a reasonable

processing fee when the county legislative authority has established the requirement for such a fee.

(3) No application of designation is required when publicly owned forest land is exchanged for privately owned forest land designated under this chapter. The land exchanged and received by an owner subject to ad valorem taxation shall be automatically granted designation under this chapter if the following conditions are met:

(a) The land will be used to grow and harvest timber; and

(b) The owner of the land submits a document to the assessor's office that explains the details of the forest land exchange within sixty days of the closing date of the exchange. However, if the owner fails to submit information regarding the exchange by the end of this sixty-day period, the owner must file an application for designation as forest land under this chapter and the regular application process will be followed.

(4) The application shall be made upon forms prepared by the department and supplied by the assessor, and shall include the following:

(a) A legal description of, or assessor's parcel numbers for, all land the applicant desires to be designated as forest land;

(b) The date or dates of acquisition of the land;

(c) A brief description of the timber on the land, or if the timber has been harvested, the owner's plan for restocking;

(d) A copy of the timber management plan, if one exists, for the land prepared by a trained forester or any other person with adequate knowledge of timber management practices;

(e) If a timber management plan exists, an explanation of the nature and extent to which the management plan has been implemented;

(f) Whether the land is used for grazing;

(g) Whether the land has been subdivided or a plat has been filed with respect to the land;

(h) Whether the land and the applicant are in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW;

(i) Whether the land is subject to forest fire protection assessments under RCW 76.04.610;

(j) Whether the land is subject to a lease, option, or other right that permits it to be used for any purpose other than growing and harvesting timber;

(k) A summary of the past experience and activity of the applicant in growing and harvesting timber;

(l) A summary of current and continuing activity of the applicant in growing and harvesting timber;

(m) A statement that the applicant is aware of the potential tax liability involved when the land ceases to be designated as forest land;

(n) An affirmation that the statements contained in the application are true and that the land described in the application meets the definition of forest land in RCW 84.33.035; and

(o) A description and/or drawing showing what areas of land for which designation is sought are used for incidental uses compatible with the definition of forest land in RCW 84.33.035.

(5) The assessor shall afford the applicant an opportunity to be heard if the applicant so requests.

(6) The assessor shall act upon the application with due regard to all relevant evidence and without any one or more items of evidence necessarily being determinative, except that the application may be denied for one of the following reasons, without regard to other items:

(a) The land does not contain a "merchantable stand of timber" as defined in chapter 76.09 RCW and applicable rules. This reason shall not alone be sufficient to deny the application (i) if the land has been recently harvested or supports a growth of brush or noncommercial type timber, and the application includes a plan for restocking within three years or a longer period necessitated by unavailability of seed or seedlings, or (ii) if only isolated areas within the land do not meet the minimum standards due to rock outcroppings, swamps, unproductive soil or other natural conditions;

(b) The applicant, with respect to the land, has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW; or

(c) The land abuts a body of salt water and lies between the line of ordinary high tide and a line paralleling the ordinary high tide line and two hundred feet horizontally landward from the high tide line. However, if the assessor determines that a higher and better use exists for the land but this use would not be permitted or economically feasible by virtue of any federal, state, or local law or regulation, the land shall be assessed and valued under RCW 84.33.140 without being designated as forest land.

(7) The application shall be deemed to have been approved unless, prior to May 1st of the year after the application was mailed or delivered to the assessor, the assessor notifies the applicant in writing of the extent to which the application is denied.

(8) An owner who receives notice that his or her application has been denied, in whole or in part, may appeal the denial to the county board of equalization in accordance with the provisions of RCW 84.40.038. [2003 c 170 § 4. Prior: 2001 c 249 § 2; 2001 c 185 § 4; 1994 c 301 § 32; 1986 c 100 § 57; 1981 c 148 § 8; 1974 ex.s. c 187 § 6; 1971 ex.s. c 294 § 13.]

Purpose—Intent—2003 c 170: "During the regular session of the 2001 legislature, RCW 84.33.120 was amended by section 3, chapter 185 and by section 1, chapter 305, and repealed by section 16, chapter 249, each without reference to the other. The purpose of sections 4 through 7 of this act is to resolve any uncertainty about the status of RCW 84.33.120 caused by the enactment of three changes involving RCW 84.33.120 during the 2001 regular legislative session.

(1) Chapter 249, Laws of 2001 both repealed RCW 84.33.120 and incorporated pertinent and vital parts of RCW 84.33.120 into RCW 84.33.140. The technical amendments made to RCW 84.33.120 by section 3, chapter 185, Laws of 2001 were also made to RCW 84.33.140 by section 5, chapter 185, Laws of 2001. The amendments made to RCW 84.33.120 by section 1, chapter 305, Laws of 2001 were also made to RCW 84.33.140 by section 2, chapter 305, Laws of 2001. Therefore, RCW 84.33.140 as amended during the 2001 regular legislative session embodies the pertinent and vital parts of RCW 84.33.120 and the 2001 amendments to RCW 84.33.120.

(2) The legislature intends to confirm the repeal of RCW 84.33.120, including the 2001 regular legislative session amendments to that section, as of the effective date of chapters 185, 249, and 305, Laws of 2001." [2003 c 170 § 1.]

Purpose—2003 c 170 § 4: "During the regular session of the 2001 legislature, RCW 84.33.130 was amended by section 4, chapter 185 and by sec-

tion 2, chapter 249, each without reference to the other. The purpose of section 4 of this act is to reenact and amend RCW 84.33.130 so that it reflects all amendments made by the legislature." [2003 c 170 § 2.]

Application—2001 c 185 §§ 1-12: See note following RCW 84.14.110.

Purpose—1981 c 148: "(1) One of the purposes of this act is to establish the values for ad valorem tax purposes of bare forest land which is primarily devoted to and used for growing and harvesting timber without consideration of other potential uses of the land and to provide a procedure for adjusting the values in future years to reflect economic changes which may affect the value established in this act.

(2) Chapter 294, Laws of 1971 ex. sess., as originally enacted, required the department of revenue annually to analyze forest land transactions to ascertain the market value of bare forest land purchased and used exclusively for growing and harvesting timber. Most transactions involving forest land include mature and immature timber with no segregation by the parties between the amounts paid for timber and bare land. The examination of these transactions by the department to ascertain the prices being paid for only the bare land has proven to be very difficult, time consuming, and subject to recurring legal challenge. Samples are small in relation to the total acreage of forest land involved and the administrative time and costs required for the annual analyses are excessive in relation to the changes from year to year which have been observed in the value of bare forest land. This act eliminates most of these administrative costs by establishing the current bare forest land values and by providing a procedure for periodic adjustment of the values which does not require continuing and costly analysis of the numerous forest land transactions throughout the state." [1981 c 148 § 11.]

Severability—1981 c 148: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 148 § 15.]

Effective dates—1981 c 148: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [May 14, 1981], except for section 13 of this act which shall take effect September 1, 1981." [1981 c 148 § 16.]

Severability—1974 ex.s. c 187: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 187 § 20.]

Additional notes found at www.leg.wa.gov

84.33.140 Forest land valuation—Notation of forest land designation upon assessment and tax rolls—Notice of continuance—Removal of designation—Compensating tax. (1) When land has been designated as forest land under RCW 84.33.130, a notation of the designation must be made each year upon the assessment and tax rolls. A copy of the notice of approval together with the legal description or assessor's parcel numbers for the land must, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded.

(2) In preparing the assessment roll as of January 1, 2002, for taxes payable in 2003 and each January 1st thereafter, the assessor must list each parcel of designated forest land at a value with respect to the grade and class provided in this subsection and adjusted as provided in subsection (3) of this section. The assessor must compute the assessed value of the land using the same assessment ratio applied generally in computing the assessed value of other property in the county. Values for the several grades of bare forest land are as follows:

LAND GRADE	OPERABILITY CLASS	VALUES PER ACRE
	1	$234
1	2	229
	3	217
	4	157
	1	198
2	2	190
	3	183
	4	132
	1	154
3	2	149
	3	148
	4	113
	1	117
4	2	114
	3	113
	4	86
	1	85
5	2	78
	3	77
	4	52
	1	43
6	2	39
	3	39
	4	37
	1	21
7	2	21
	3	20
	4	20
8		1

(3) On or before December 31, 2001, the department must adjust by rule under chapter 34.05 RCW, the forest land values contained in subsection (2) of this section in accordance with this subsection, and must certify the adjusted values to the assessor who will use these values in preparing the assessment roll as of January 1, 2002. For the adjustment to be made on or before December 31, 2001, for use in the 2002 assessment year, the department must:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1996, and June 30, 2001, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1995, and June 30, 2000, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(c) Adjust the forest land values contained in subsection (2) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

(4) For the adjustments to be made on or before December 31, 2002, and each succeeding year thereafter, the same procedure described in subsection (3) of this section must be

followed using harvester excise tax returns filed under RCW 84.33.074. However, this adjustment must be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values must be successively one year more recent.

(5) Land graded, assessed, and valued as forest land must continue to be so graded, assessed, and valued until removal of designation by the assessor upon the occurrence of any of the following:

(a) Receipt of notice from the owner to remove the designation;

(b) Sale or transfer to an ownership making the land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of forest land designation continuance, except transfer to an owner who is an heir or devisee of a deceased owner, does not, by itself, result in removal of designation. The signed notice of continuance must be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance must be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated under subsection (11) of this section are due and payable by the seller or transferor at time of sale. The auditor may not accept an instrument of conveyance regarding designated forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (11) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that:

(i) The land is no longer primarily devoted to and used for growing and harvesting timber. However, land may not be removed from designation if a governmental agency, organization, or other recipient identified in subsection (13) or (14) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in the designated forest land by means of a transaction that qualifies for an exemption under subsection (13) or (14) of this section. The governmental agency, organization, or recipient must annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the designated land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(ii) The owner has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW; or

(iii) Restocking has not occurred to the extent or within the time specified in the application for designation of such land.

(6) Land may not be removed from designation if there is a governmental restriction that prohibits, in whole or in part, the owner from harvesting timber from the owner's designated forest land. If only a portion of the parcel is impacted by governmental restrictions of this nature, the restrictions cannot be used as a basis to remove the remainder of the forest land from designation under this chapter. For the purposes of this section, "governmental restrictions" includes: (a) Any law, regulation, rule, ordinance, program, or other action adopted or taken by a federal, state, county, city, or other governmental entity; or (b) the land's zoning or its presence within an urban growth area designated under RCW 36.70A.110.

(7) The assessor has the option of requiring an owner of forest land to file a timber management plan with the assessor upon the occurrence of one of the following:

(a) An application for designation as forest land is submitted; or

(b) Designated forest land is sold or transferred and a notice of continuance, described in subsection (5)(c) of this section, is signed.

(8) If land is removed from designation because of any of the circumstances listed in subsection (5)(a) through (c) of this section, the removal applies only to the land affected. If land is removed from designation because of subsection (5)(d) of this section, the removal applies only to the actual area of land that is no longer primarily devoted to the growing and harvesting of timber, without regard to any other land that may have been included in the application and approved for designation, as long as the remaining designated forest land meets the definition of forest land contained in RCW 84.33.035.

(9) Within thirty days after the removal of designation as forest land, the assessor must notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038.

(10) Unless the removal is reversed on appeal a copy of the notice of removal with a notation of the action, if any, upon appeal, together with the legal description or assessor's parcel numbers for the land removed from designation must, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded and a notation of removal from designation must immediately be made upon the assessment and tax rolls. The assessor must revalue the land to be removed with reference to its true and fair value as of January 1st of the year of removal from designation. Both the assessed value before and after the removal of designation must be listed. Taxes based on the value of the land as forest land are assessed and payable up until the date of removal and taxes based on the true and fair value of the land are assessed and payable from the date of removal from designation.

(11) Except as provided in subsection (5)(c), (13), or (14) of this section, a compensating tax is imposed on land removed from designation as forest land. The compensating tax is due and payable to the treasurer thirty days after the owner is notified of the amount of this tax. As soon as possible after the land is removed from designation, the assessor must compute the amount of compensating tax and mail a

notice to the owner of the amount of compensating tax owed and the date on which payment of this tax is due. The amount of compensating tax is equal to the difference between the amount of tax last levied on the land as designated forest land and an amount equal to the new assessed value of the land multiplied by the dollar rate of the last levy extended against the land, multiplied by a number, in no event greater than nine, equal to the number of years for which the land was designated as forest land, plus compensating taxes on the land at forest land values up until the date of removal and the prorated taxes on the land at true and fair value from the date of removal to the end of the current tax year.

(12) Compensating tax, together with applicable interest thereon, becomes a lien on the land, which attaches at the time the land is removed from designation as forest land and has priority and must be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable. The lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date will thereupon become delinquent. From the date of delinquency until paid, interest is charged at the same rate applied by law to delinquent ad valorem property taxes.

(13) The compensating tax specified in subsection (11) of this section may not be imposed if the removal of designation under subsection (5) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW or approved for state natural resources conservation area purposes as defined in chapter 79.71 RCW, or for acquisition and management as a community forest trust as defined in chapter 79.155 RCW. At such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (11) of this section is imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes;

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located that disallows the present use of the land;

(f) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(g) The creation, sale, or transfer of a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(h) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under this chapter, or classified under chapter 84.34 RCW continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (13)(h); or

(i)(i) The discovery that the land was designated under this chapter in error through no fault of the owner. For purposes of this subsection (13)(i), "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of designation under this chapter or the failure of the assessor to remove the land from designation under this chapter.

(ii) For purposes of this subsection (13), the discovery that land was designated under this chapter in error through no fault of the owner is not the sole reason for removal of designation under subsection (5) of this section if an independent basis for removal exists. An example of an independent basis for removal includes the land no longer being devoted to and used for growing and harvesting timber.

(14) In a county with a population of more than six hundred thousand inhabitants or in a county with a population of at least two hundred forty-five thousand inhabitants that borders Puget Sound as defined in RCW 90.71.010, the compensating tax specified in subsection (11) of this section may not be imposed if the removal of designation as forest land under subsection (5) of this section resulted solely from:

(a) An action described in subsection (13) of this section; or

(b) A transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, to protect or enhance public resources, or to preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment, the property interest being transferred. At such time as the property interest is not used for the purposes enumerated, the compensating tax is imposed upon the current owner. [2013 2nd sp.s. c 11 § 13; 2012 c 170 § 1. Prior: 2009 c 354 § 2; 2009 c 255 § 3; 2009 c 246 § 2; 2007 c 54 § 24; 2005 c 303 § 13; 2003 c 170 § 5; prior: 2001 c 305 § 2; 2001 c 249 § 3; 2001 c 185 § 5; 1999 sp.s. c 4 § 703; 1999 c 233 § 21; 1997 c 299 § 2; 1995 c 330 § 2; 1992 c 69 § 2; 1986 c 238 § 2; 1981 c 148 § 9; 1980 c 134 § 3; 1974 ex.s. c 187 § 7; 1973 1st ex.s. c 195 § 93; 1972 ex.s. c 148 § 6; 1971 ex.s. c 294 § 14.]

Finding—Intent—2009 c 354: "(1) The legislature finds that the revenue generated from state forest lands is a vital component of the operating budget in many rural counties. The dependence on a natural resource-based economy is especially underscored in counties with lower population levels and large holdings of public land. The high cost of compliance with the federal endangered species act on state forest lands within these smaller counties is disproportionately burdensome when compared to their total county budgets.

(2) The intent of this act is to provide sustainable revenue to smaller counties that are heavily dependent on state forest land revenues while promoting long-term protection, conservation, and recovery of marbled murrelets and northern spotted owls. This act provides the necessary tools for the state to maintain long-term working forests by replacing state forest lands with endangered species-based harvest encumbrances with productive, working forest lands." [2009 c 354 § 6.]

Severability—2007 c 54: See note following RCW 82.04.050.

Effective date—2005 c 303 §§ 1-14: See note following RCW 79A.15.010.

Purpose—Intent—2003 c 170: See note following RCW 84.33.130.

Application—2001 c 185 §§ 1-12: See note following RCW 84.14.110.

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

Effective date—1999 c 233: See note following RCW 4.28.320.

Effective date—1997 c 299: "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 immediately [May 9, 1997]." [1997 c 299 § 4.]

Effective date—1995 c 330: "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 [May 11, 1995]." [1995 c 330 § 3.]

Effective date—1992 c 69: See RCW 84.34.923.

Purpose—Severability—Effective dates—1981 c 148: See notes following RCW 84.33.130.

Severability—1974 ex.s. c 187: See note following RCW 84.33.130.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Additional notes found at www.leg.wa.gov

84.33.145 Compensating tax. (1) If no later than thirty days after removal of designation the owner applies for classification under RCW 84.34.020 (1), (2), or (3), then the designated forest land may not be considered removed from designation for purposes of the compensating tax under RCW 84.33.140 until the application for current use classification under chapter 84.34 RCW is denied or the property is removed from classification under RCW 84.34.108. Upon removal of classification under RCW 84.34.108, the amount of compensating tax due under this chapter is equal to:

(a) The difference, if any, between the amount of tax last levied on the land as designated forest land and an amount equal to the new assessed valuation of the land when removed from classification under RCW 84.34.108 multiplied by the dollar rate of the last levy extended against the land, multiplied by

(b) A number equal to:

(i) The number of years the land was designated under this chapter, if the total number of years the land was designated under this chapter and classified under chapter 84.34 RCW is less than ten; or

(ii) Ten minus the number of years the land was classified under chapter 84.34 RCW, if the total number of years the land was designated under this chapter and classified under chapter 84.34 RCW is at least ten.

(2) Nothing in this section authorizes the continued designation under this chapter or defers or reduces the compensating tax imposed upon forest land not transferred to classification under subsection (1) of this section which does not meet the definition of forest land under RCW 84.33.035. Nothing in this section affects the additional tax imposed under RCW 84.34.108.

(3) In a county with a population of more than six hundred thousand inhabitants or in a county with a population of at least two hundred forty-five thousand inhabitants that borders Puget Sound as defined in RCW 90.71.010, no amount of compensating tax is due under this section if the removal from classification under RCW 84.34.108 results from a transfer of property described in RCW 84.34.108(6). [2012 c 170 § 2; 2009 c 354 § 4; 2001 c 249 § 4; 1999 sp.s. c 4 § 704; 1997 c 299 § 3; 1992 c 69 § 3; 1986 c 315 § 3.]

Finding—Intent—2009 c 354: See note following RCW 84.33.140.

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

Effective date—1997 c 299: See note following RCW 84.33.140.

Effective date—1992 c 69: See RCW 84.34.923.

Additional notes found at www.leg.wa.gov

84.34.020 Definitions. As used in this chapter, unless a different meaning is required by the context:

(1) "Open space land" means (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly, or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, or (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (v) enhance recreation opportunities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification, or (c) any land meeting the definition of farm and agricultural conservation land under subsection (8) of this section. As a condition of granting open space classification, the legislative body may not require public access on land classified under (b)(iii) of this subsection for the purpose of promoting conservation of wetlands.

(2) "Farm and agricultural land" means:

(a) Any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres:

(i) Devoted primarily to the production of livestock or agricultural commodities for commercial purposes;

(ii) Enrolled in the federal conservation reserve program or its successor administered by the United States department of agriculture; or

(iii) Other similar commercial activities as may be established by rule;

(b)(i) Any parcel of land that is five acres or more but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to, as of January 1, 1993:

(A) One hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(B) On or after January 1, 1993, two hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter;

(ii) For the purposes of (b)(i) of this subsection, "gross income from agricultural uses" includes, but is not limited to, the wholesale value of agricultural products donated to nonprofit food banks or feeding programs;

(c) Any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income as of January 1, 1993, of:

(i) One thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(ii) On or after January 1, 1993, fifteen hundred dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter. Parcels of land described in (b)(i)(A) and (c)(i) of this subsection will, upon any transfer of the property excluding a transfer to a surviving spouse or surviving state registered domestic partner, be subject to the limits of (b)(i)(B) and (c)(ii) of this subsection;

(d) Any parcel of land that is five acres or more but less than twenty acres devoted primarily to agricultural uses, which meet one of the following criteria:

(i) Has produced a gross income from agricultural uses equivalent to two hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter;

(ii) Has standing crops with an expectation of harvest within seven years, except as provided in (d)(iii) of this subsection, and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year. For the purposes of this subsection (2)(d)(ii), "standing crop" means Christmas trees, vineyards, fruit trees, or other perennial crops that: (A) Are planted using agricultural methods normally used in the commercial production of that particular crop; and (B) typically do not produce harvestable quantities in the initial years after planting; or

(iii) Has a standing crop of short rotation hardwoods with an expectation of harvest within fifteen years and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year;

(e) Any lands including incidental uses as are compatible with agricultural purposes, including wetlands preservation, provided such incidental use does not exceed twenty percent of the classified land and the land on which appurtenances necessary to the production, preparation, or sale of the agricultural products exist in conjunction with the lands producing such products. Agricultural lands also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands";

(f) The land on which housing for employees and the principal place of residence of the farm operator or owner of land classified pursuant to (a) of this subsection is sited if: The housing or residence is on or contiguous to the classified parcel; and the use of the housing or the residence is integral to the use of the classified land for agricultural purposes; or

(g) Any land that is used primarily for equestrian related activities for which a charge is made, including, but not limited to, stabling, training, riding, clinics, schooling, shows, or grazing for feed and that otherwise meet the requirements of (a), (b), or (c) of this subsection.

(3) "Timber land" means any parcel of land that is five or more acres or multiple parcels of land that are contiguous and total five or more acres which is or are devoted primarily to the growth and harvest of timber for commercial purposes. Timber land means the land only and does not include a residential homesite. The term includes land used for incidental uses that are compatible with the growing and harvesting of timber but no more than ten percent of the land may be used for such incidental uses. It also includes the land on which appurtenances necessary for the production, preparation, or sale of the timber products exist in conjunction with land producing these products.

(4) "Current" or "currently" means as of the date on which property is to be listed and valued by the assessor.

(5) "Owner" means the party or parties having the fee interest in land, except that where land is subject to real estate contract "owner" means the contract vendee.

(6)(a) "Contiguous" means land adjoining and touching other property held by the same ownership. Land divided by a public road, but otherwise an integral part of a farming operation, is considered contiguous.

(b) For purposes of this subsection (6):

(i) "Same ownership" means owned by the same person or persons, except that parcels owned by different persons are deemed held by the same ownership if the parcels are:

(A) Managed as part of a single operation; and

(B) Owned by:

(I) Members of the same family;

(II) Legal entities that are wholly owned by members of the same family; or

(III) An individual who owns at least one of the parcels and a legal entity or entities that own the other parcel or parcels if the entity or entities are wholly owned by that individual, members of his or her family, or that individual and members of his or her family.

(ii) "Family" includes only:

(A) An individual and his or her spouse or domestic partner, child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling;

(B) The spouse or domestic partner of an individual's child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling;

(C) A child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling of the individual's spouse or the individual's domestic partner; and

(D) The spouse or domestic partner of any individual described in (b)(ii)(C) of this subsection (6).

(7) "Granting authority" means the appropriate agency or official who acts on an application for classification of land pursuant to this chapter.

(8) "Farm and agricultural conservation land" means either:

(a) Land that was previously classified under subsection (2) of this section, that no longer meets the criteria of subsec-

tion (2) of this section, and that is reclassified under subsection (1) of this section; or

(b) Land that is traditional farmland that is not classified under chapter 84.33 or 84.34 RCW, that has not been irrevocably devoted to a use inconsistent with agricultural uses, and that has a high potential for returning to commercial agriculture. [2011 c 101 § 1; 2010 c 106 § 304. Prior: 2009 c 513 § 1; 2009 c 255 § 1; 2005 c 57 § 1; 2004 c 217 § 1; 2002 c 315 § 1; 2001 c 249 § 12; 1998 c 320 § 7; 1997 c 429 § 31; 1992 c 69 § 4; 1988 c 253 § 3; 1983 c 3 § 227; 1973 1st ex.s. c 212 § 2; 1970 ex.s. c 87 § 2.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Purpose—2004 c 217 § 1: "The purpose of the amendatory language in section 1 of this act is to clarify the timber land definition as it relates to tax issues. The language does not affect land use policy or law." [2004 c 217 § 2.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

Additional notes found at www.leg.wa.gov

84.34.060 Determination of true and fair value of classified land—Computation of assessed value. In determining the true and fair value of open space land and timber land, which has been classified as such under the provisions of this chapter, the assessor shall consider only the use to which such property and improvements is currently applied and shall not consider potential uses of such property. The assessed valuation of open space land shall not be less than the minimum value per acre of classified farm and agricultural land except that the assessed valuation of open space land may be valued based on the public benefit rating system adopted under RCW 84.34.055: PROVIDED FURTHER, That timber land shall be valued according to chapter 84.33 RCW. In valuing any tract or parcel of real property designated and zoned under a comprehensive plan adopted under chapter 36.70A RCW as agricultural, forest, or open space land, the appraisal shall not be based on similar sales of parcels that have been converted to nonagricultural, nonforest, or nonopen-space uses within five years after the sale. [1997 c 429 § 32; 1992 c 69 § 8; 1985 c 393 § 2; 1981 c 148 § 10; 1973 1st ex.s. c 212 § 7; 1970 ex.s. c 87 § 6.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

Purpose—Severability—Effective dates—1981 c 148: See notes following RCW 84.33.130.

Additional notes found at www.leg.wa.gov

84.34.065 Determination of true and fair value of farm and agricultural land—Definitions. The true and fair value of farm and agricultural land shall be determined by consideration of the earning or productive capacity of comparable lands from crops grown most typically in the area averaged over not less than five years, capitalized at indicative rates. The earning or productive capacity of farm and agricultural lands shall be the "net cash rental", capitalized at a "rate of interest" charged on long term loans secured by a mortgage on farm or agricultural land plus a component for property taxes. The current use value of land under *RCW 84.34.020(2)(e) shall be established as: The prior year's average value of open space farm and agricultural land used in the county plus the value of land improvements such as septic, water, and power used to serve the residence. This shall not be interpreted to require the assessor to list improvements to the land with the value of the land.

For the purposes of the above computation:

(1) The term "net cash rental" shall mean the average rental paid on an annual basis, in cash, for the land being appraised and other farm and agricultural land of similar quality and similarly situated that is available for lease for a period of at least three years to any reliable person without unreasonable restrictions on its use for production of agricultural crops. There shall be allowed as a deduction from the rental received or computed any costs of crop production charged against the landlord if the costs are such as are customarily paid by a landlord. If "net cash rental" data is not available, the earning or productive capacity of farm and agricultural lands shall be determined by the cash value of typical or usual crops grown on land of similar quality and similarly situated averaged over not less than five years. Standard costs of production shall be allowed as a deduction from the cash value of the crops.

The current "net cash rental" or "earning capacity" shall be determined by the assessor with the advice of the advisory committee as provided in RCW 84.34.145, and through a continuing internal study, assisted by studies of the department of revenue. This net cash rental figure as it applies to any farm and agricultural land may be challenged before the same boards or authorities as would be the case with regard to assessed values on general property.

(2) The term "rate of interest" shall mean the rate of interest charged by the farm credit administration and other large financial institutions regularly making loans secured by farm and agricultural lands through mortgages or similar legal instruments, averaged over the immediate past five years.

The "rate of interest" shall be determined annually by a rule adopted by the department of revenue and such rule shall be published in the state register not later than January 1 of each year for use in that assessment year. The department of revenue determination may be appealed to the state board of tax appeals within thirty days after the date of publication by any owner of farm or agricultural land or the assessor of any county containing farm and agricultural land.

(3) The "component for property taxes" shall be a figure obtained by dividing the assessed value of all property in the county into the property taxes levied within the county in the year preceding the assessment and multiplying the quotient obtained by one hundred. [2001 c 249 § 13; 2000 c 103 § 23; 1998 c 320 § 8; 1997 c 429 § 33; 1992 c 69 § 9; 1989 c 378 § 11; 1973 1st ex.s. c 212 § 10.]

***Reviser's note:** RCW 84.34.020 was amended by 2009 c 513 § 1, changing subsection (2)(e) to subsection (2)(f).

Severability—1997 c 429: See note following RCW 36.70A.3201.

Additional notes found at www.leg.wa.gov

84.34.108 Removal of classification—Factors—Notice of continuance—Additional tax—Lien—Delinquencies—Exemptions. (1) When land has once been classified under this chapter, a notation of the classification shall be made each year upon the assessment and tax rolls and the land shall be valued pursuant to RCW 84.34.060 or 84.34.065 until removal of all or a portion of the classification by the assessor upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove all or a portion of the classification;

(b) Sale or transfer to an ownership, except a transfer that resulted from a default in loan payments made to or secured by a governmental agency that intends to or is required by law or regulation to resell the property for the same use as before, making all or a portion of the land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of classification continuance, except transfer to an owner who is an heir or devisee of a deceased owner shall not, by itself, result in removal of classification. The notice of continuance shall be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all additional taxes calculated pursuant to subsection (4) of this section shall become due and payable by the seller or transferor at time of sale. The auditor shall not accept an instrument of conveyance regarding classified land for filing or recording unless the new owner has signed the notice of continuance or the additional tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (4) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that all or a portion of the land no longer meets the criteria for classification under this chapter. The criteria for classification pursuant to this chapter continue to apply after classification has been granted.

The granting authority, upon request of an assessor, shall provide reasonable assistance to the assessor in making a determination whether the land continues to meet the qualifications of RCW 84.34.020 (1) or (3). The assistance shall be provided within thirty days of receipt of the request.

(2) Land may not be removed from classification because of:

(a) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120; or

(b) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.

(3) Within thirty days after the removal of all or a portion of the land from current use classification under subsection (1) of this section, the assessor shall notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038. The removal notice must explain the steps needed to appeal the removal decision, including when a notice of appeal must be filed, where the forms may be obtained, and how to contact the county board of equalization.

(4) Unless the removal is reversed on appeal, the assessor shall revalue the affected land with reference to its true and fair value on January 1st of the year of removal from classification. Both the assessed valuation before and after the removal of classification shall be listed and taxes shall be allocated according to that part of the year to which each assessed valuation applies. Except as provided in subsection (6) of this section, an additional tax, applicable interest, and penalty shall be imposed which shall be due and payable to the treasurer thirty days after the owner is notified of the amount of the additional tax. As soon as possible, the assessor shall compute the amount of additional tax, applicable interest, and penalty and the treasurer shall mail notice to the owner of the amount thereof and the date on which payment is due. The amount of the additional tax, applicable interest, and penalty shall be determined as follows:

(a) The amount of additional tax shall be equal to the difference between the property tax paid as "open space land," "farm and agricultural land," or "timber land" and the amount of property tax otherwise due and payable for the seven years last past had the land not been so classified;

(b) The amount of applicable interest shall be equal to the interest upon the amounts of the additional tax paid at the same statutory rate charged on delinquent property taxes from the dates on which the additional tax could have been paid without penalty if the land had been assessed at a value without regard to this chapter;

(c) The amount of the penalty shall be as provided in RCW 84.34.080. The penalty shall not be imposed if the removal satisfies the conditions of RCW 84.34.070.

(5) Additional tax, applicable interest, and penalty, shall become a lien on the land which shall attach at the time the land is removed from classification under this chapter and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which the land may become charged or liable. This lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any additional tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(6) The additional tax, applicable interest, and penalty specified in subsection (4) of this section shall not be imposed if the removal of classification pursuant to subsection (1) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other land located within the state of Washington;

(b)(i) A taking through the exercise of the power of eminent domain, or (ii) sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power, said entity having manifested its intent in writing or by other official action;

(c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the landowner changing the use of the property;

(d) Official action by an agency of the state of Washington or by the county or city within which the land is located which disallows the present use of the land;

(e) Transfer of land to a church when the land would qualify for exemption pursuant to RCW 84.36.020;

(f) Acquisition of property interests by state agencies or agencies or organizations qualified under RCW 84.34.210

and 64.04.130 for the purposes enumerated in those sections. At such time as these property interests are not used for the purposes enumerated in RCW 84.34.210 and 64.04.130 the additional tax specified in subsection (4) of this section shall be imposed;

(g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(f);

(h) Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification;

(i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(j) The creation, sale, or transfer of a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(k) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under chapter 84.33 RCW, or classified under this chapter continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (6)(k); or

(l)(i) The discovery that the land was classified under this chapter in error through no fault of the owner. For purposes of this subsection (6)(l), "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of classification under this chapter or the failure of the assessor to remove the land from classification under this chapter.

(ii) For purposes of this subsection (6), the discovery that land was classified under this chapter in error through no fault of the owner is not the sole reason for removal of classification pursuant to subsection (1) of this section if an independent basis for removal exists. Examples of an independent basis for removal include the owner changing the use of the land or failing to meet any applicable income criteria required for classification under this chapter. [2009 c 513 § 2; 2009 c 354 § 3; 2009 c 255 § 2; 2009 c 246 § 3; 2007 c 54 § 25; 2003 c 170 § 6. Prior: 2001 c 305 § 3; 2001 c 249 § 14; 2001 c 185 § 7; prior: 1999 sp.s. c 4 § 706; 1999 c 233 § 22; 1999 c 139 § 2; 1992 c 69 § 12; 1989 c 378 § 35; 1985 c 319 § 1; 1983 c 41 § 1; 1980 c 134 § 5; 1973 1st ex.s. c 212 § 12.]

Reviser's note: This section was amended by 2009 c 246 § 3, 2009 c 255 § 2, 2009 c 354 § 3, and by 2009 c 513 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2009 c 354: See note following RCW 84.33.140.

Severability—2007 c 54: See note following RCW 82.04.050.

Purpose—2003 c 170 § 6: "During the regular session of the 2001 legislature, RCW 84.34.108 was amended by section 7, chapter 185, by section 14, chapter 249, and by section 3, chapter 305, each without reference to the other. The purpose of section 6 of this act is to reenact and amend RCW 84.34.108 so that it reflects all amendments made by the legislature and to clarify any misunderstanding as to how the exemption contained in chapter 305, Laws of 2001 is to be applied." [2003 c 170 § 3.]

Purpose—Intent—2003 c 170: See note following RCW 84.33.130.

Application—2001 c 185 §§ 1-12: See note following RCW 84.14.110.

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

Effective date—1999 c 233: See note following RCW 4.28.320.

Additional notes found at www.leg.wa.gov

84.34.220 Acquisition of open space, land, or rights to future development by certain entities—Developmental rights—"Conservation futures"—Acquisition—Restrictions. In accordance with the authority granted in RCW 84.34.210, a county, city, town, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association, as such are defined in RCW 84.34.250, may specifically purchase or otherwise acquire, except by eminent domain, rights in perpetuity to future development of any open space land, farm and agricultural land, and timber land which are so designated under the provisions of chapter 84.34 RCW and taxed at current use assessment as provided by that chapter. For the purposes of chapter 243, Laws of 1971 ex. sess., such developmental rights shall be termed "conservation futures". The private owner may retain the right to continue any existing open space use of the land, and to develop any other open space use, but, under the terms of purchase of conservation futures, the county, city, town, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association, as such are defined in RCW 84.34.250, may forbid or restrict building thereon, or may require that improvements cannot be made without county, city, town, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association, as such are defined in RCW 84.34.250, permission. The land may be alienated or sold and used as formerly by the new owner, subject to the terms of the agreement made by the county, city, town, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association, as such are defined in RCW 84.34.250, with the original owner. [1993 c 248 § 2; 1987 c 341 § 3; 1975-'76 2nd ex.s. c 22 § 2; 1971 ex.s. c 243 § 3.]

84.36.060 Art, scientific and historical collections and property used to maintain, etc., such collections—Property of associations engaged in production and performance of musical, dance, artistic, etc., works—Fire engines, implements, and buildings of cities, towns, or fire companies—Humane societies. (1) The following property shall be exempt from taxation:

(a) All art, scientific, or historical collections of associations maintaining and exhibiting such collections for the benefit of the general public and not for profit, together with all real and personal property of such associations used exclusively for the safekeeping, maintaining and exhibiting of such collections;

(b) All the real and personal property owned by or leased to associations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit, which real and personal property is used exclusively for this production or performance;

(c) All fire engines and other implements used for the extinguishment of fire, and the buildings used exclusively for their safekeeping, and for meetings of fire companies, as long as the property belongs to any city or town or to a fire company; and

(d) All property owned by humane societies in this state in actual use by the societies.

(2) To receive an exemption under subsection (1)(a) or (b) of this section:

(a) An organization must be organized and operated exclusively for artistic, scientific, historical, literary, musical, dance, dramatic, or educational purposes and receive a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its purpose or function) from the United States or any state or any political subdivision thereof or from direct or indirect contributions from the general public.

(b) If the property is not currently being used for an exempt purpose but will be used for an exempt purpose within a reasonable period of time, the nonprofit organization, association, or corporation claiming the exemption must submit proof that a reasonably specific and active program is being carried out to construct, remodel, or otherwise enable the property to be used for an exempt purpose. The property does not qualify for an exemption during this interim period if the property is used by, loaned to, or rented to a for-profit organization or business enterprise. Proof of a specific and active program to build or remodel the property so it may be used for an exempt purpose may include, but is not limited to:

(i) Affirmative action by the board of directors, trustees, or governing body of the nonprofit organization, association, or corporation toward an active program of construction or remodeling;

(ii) Itemized reasons for the proposed construction or remodeling;

(iii) Clearly established plans for financing the construction or remodeling; or

(iv) Building permits.

(3) The use of property exempt under subsection (1)(a) or (b) of this section by entities not eligible for a property tax exemption under this chapter, except as provided in this section, nullifies the exemption otherwise available for the property for the assessment year. The exemption is not nullified if:

(a) The property is used by entities not eligible for a property tax exemption under this chapter for periods of not more than fifty days in the calendar year;

(b) The property is not used for pecuniary gain or to promote business activities for more than fifteen of the fifty days in the calendar year; and

(c) The property is used for artistic, scientific, or historic purposes, for the production and performance of musical, dance, artistic, dramatic, or literary works, or for community gatherings or assembly, or meetings.

(4) The fifty and fifteen-day limitations in subsection (3) of this section do not include days used for setup and takedown activities preceding or following a meeting or other event by an entity using the property as provided in subsection (3) of this section. [2009 c 58 § 1; 2003 c 121 § 1; 1995 c 306 § 1; 1981 c 141 § 1; 1973 2nd ex.s. c 40 § 5; 1961 c 15 § 84.36.060. Prior: 1955 c 196 § 8; prior: 1939 c 206 § 8, part; 1933 ex.s. c 19 § 1, part; 1933 c 115 § 1, part; 1929 c 126 § 1, part; 1925 ex.s. c 130 § 7, part; 1915 c 131 § 1, part; 1903 c 178 § 1, part; 1901 c 176 § 1, part; 1899 c 141 § 2, part; 1897 c 71 §§ 1, 5, part; 1895 c 176 § 2, part; 1893 c 124 §§ 1, 5, part; 1891 c 140 §§ 1, 5, part; 1890 p 532 §§ 1, 5, part; 1886 p 47 § 1, part; Code 1881 § 2829, part; 1871 p 37 § 4, part; 1869 p 176 § 4, part; 1867 p 61 § 2, part; 1854 p 331 § 2, part; RRS § 11111, part. Formerly RCW 84.40.010.]

Applicability—1995 c 306: "The [This] act is effective for taxes levied for collection in 1995 and thereafter." [1995 c 306 § 2.]

Effective date—1995 c 306: "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 [May 9, 1995]." [1995 c 306 § 3.]

Applicability, construction—1981 c 141: "This act shall apply to taxes payable in 1982 and in subsequent years and shall be strictly construed." [1981 c 141 § 6.]

Additional notes found at www.leg.wa.gov

84.36.560 Nonprofit organizations that provide rental housing or used space to very low-income households. (1) The real and personal property owned or used by a nonprofit entity in providing rental housing for very low-income households or used to provide space for the placement of a mobile home for a very low-income household within a mobile home park is exempt from taxation if:

(a) The benefit of the exemption inures to the nonprofit entity;

(b) At least seventy-five percent of the occupied dwelling units in the rental housing or lots in a mobile home park are occupied by a very low-income household; and

(c) The rental housing or lots in a mobile home park were insured, financed, or assisted in whole or in part through one or more of the following sources:

(i) A federal or state housing program administered by the *department of community, trade, and economic development;

(ii) A federal housing program administered by a city or county government;

(iii) An affordable housing levy authorized under RCW 84.52.105; or

(iv) The surcharges authorized by RCW 36.22.178 and 36.22.179 and any of the surcharges authorized in chapter 43.185C RCW.

(2) If less than seventy-five percent of the occupied dwelling units within the rental housing or lots in the mobile home park are occupied by very low-income households, the rental housing or mobile home park is eligible for a partial exemption on the real property and a total exemption of the housing's or park's personal property as follows:

(a) A partial exemption shall be allowed for each dwelling unit in the rental housing or for each lot in a mobile home park occupied by a very low-income household.

(b) The amount of exemption shall be calculated by multiplying the assessed value of the property reasonably necessary to provide the rental housing or to operate the mobile home park by a fraction. The numerator of the fraction is the number of dwelling units or lots occupied by very low-income households as of December 31st of the first assessment year in which the rental housing or mobile home park becomes operational or on January 1st of each subsequent assessment year for which the exemption is claimed. The

denominator of the fraction is the total number of dwelling units or lots occupied as of December 31st of the first assessment year the rental housing or mobile home park becomes operational and January 1st of each subsequent assessment year for which exemption is claimed.

(3) If a currently exempt rental housing unit in a facility with ten units or fewer or mobile home lot in a mobile home park with ten lots or fewer was occupied by a very low-income household at the time the exemption was granted and the income of the household subsequently rises above fifty percent of the median income but remains at or below eighty percent of the median income, the exemption will continue as long as the housing continues to meet the certification requirements of a very low-income housing program listed in subsection (1) of this section. For purposes of this section, median income, as most recently determined by the federal department of housing and urban development for the county in which the rental housing or mobile home park is located, shall be adjusted for family size. However, if a dwelling unit or a lot becomes vacant and is subsequently rerented, the income of the new household must be at or below fifty percent of the median income adjusted for family size as most recently determined by the federal department of housing and urban development for the county in which the rental housing or mobile home park is located to remain exempt from property tax.

(4) If at the time of initial application the property is unoccupied, or subsequent to the initial application the property is unoccupied because of renovations, and the property is not currently being used for the exempt purpose authorized by this section but will be used for the exempt purpose within two assessment years, the property shall be eligible for a property tax exemption for the assessment year in which the claim for exemption is submitted under the following conditions:

(a) A commitment for financing to acquire, construct, renovate, or otherwise convert the property to provide housing for very low-income households has been obtained, in whole or in part, by the nonprofit entity claiming the exemption from one or more of the sources listed in subsection (1)(c) of this section;

(b) The nonprofit entity has manifested its intent in writing to construct, remodel, or otherwise convert the property to housing for very low-income households; and

(c) Only the portion of property that will be used to provide housing or lots for very low-income households shall be exempt under this section.

(5) To be exempt under this section, the property must be used exclusively for the purposes for which the exemption is granted, except as provided in RCW 84.36.805.

(6) The nonprofit entity qualifying for a property tax exemption under this section may agree to make payments to the city, county, or other political subdivision for improvements, services, and facilities furnished by the city, county, or political subdivision for the benefit of the rental housing. However, these payments shall not exceed the amount last levied as the annual tax of the city, county, or political subdivision upon the property prior to exemption.

(7) As used in this section:

(a) "Group home" means a single-family dwelling financed, in whole or in part, by one or more of the sources listed in subsection (1)(c) of this section. The residents of a group home shall not be considered to jointly constitute a household, but each resident shall be considered to be a separate household occupying a separate dwelling unit. The individual incomes of the residents shall not be aggregated for purposes of this exemption;

(b) "Mobile home lot" or "mobile home park" means the same as these terms are defined in RCW 59.20.030;

(c) "Occupied dwelling unit" means a living unit that is occupied by an individual or household as of December 31st of the first assessment year the rental housing becomes operational or is occupied by an individual or household on January 1st of each subsequent assessment year in which the claim for exemption is submitted. If the housing facility is comprised of three or fewer dwelling units and there are any unoccupied units on January 1st, the department shall base the amount of the exemption upon the number of occupied dwelling units as of December 31st of the first assessment year the rental housing becomes operational and on May 1st of each subsequent assessment year in which the claim for exemption is submitted;

(d) "Rental housing" means a residential housing facility or group home that is occupied but not owned by very low-income households;

(e) "Very low-income household" means a single person, family, or unrelated persons living together whose income is at or below fifty percent of the median income adjusted for family size as most recently determined by the federal department of housing and urban development for the county in which the rental housing is located and in effect as of January 1st of the year the application for exemption is submitted; and

(f) "Nonprofit entity" means a:

(i) Nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal internal revenue code;

(ii) Limited partnership where a nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal internal revenue code, a public corporation established under RCW 35.21.660, 35.21.670, or 35.21.730, a housing authority created under RCW 35.82.030 or 35.82.300, or a housing authority meeting the definition in RCW 35.82.210(2)(a) is a general partner; or

(iii) Limited liability company where a nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal internal revenue code, a public corporation established under RCW 35.21.660, 35.21.670, or 35.21.730, a housing authority established under RCW 35.82.030 or 35.82.300, or a housing authority meeting the definition in RCW 35.82.210(2)(a) is a managing member. [2007 c 301 § 1; 2001 1st sp.s. c 7 § 1; 1999 c 203 § 1.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Application—1999 c 203: "This act applies to taxes levied in 1999 for collection in 2000 and thereafter." [1999 c 203 § 4.]

Additional notes found at www.leg.wa.gov

84.40.030 Basis of valuation, assessment, appraisal—One hundred percent of true and fair value—Exceptions—Leasehold estates—Real property—Appraisal—Comparable sales. All property shall be valued at one hun-

dred percent of its true and fair value in money and assessed on the same basis unless specifically provided otherwise by law.

Taxable leasehold estates shall be valued at such price as they would bring at a fair, voluntary sale for cash without any deductions for any indebtedness owed including rentals to be paid.

The true and fair value of real property for taxation purposes (including property upon which there is a coal or other mine, or stone or other quarry) shall be based upon the following criteria:

(1) Any sales of the property being appraised or similar properties with respect to sales made within the past five years. The appraisal shall be consistent with the comprehensive land use plan, development regulations under chapter 36.70A RCW, zoning, and any other governmental policies or practices in effect at the time of appraisal that affect the use of property, as well as physical and environmental influences. An assessment may not be determined by a method that assumes a land usage or highest and best use not permitted, for that property being appraised, under existing zoning or land use planning ordinances or statutes or other government restrictions. The appraisal shall also take into account: (a) In the use of sales by real estate contract as similar sales, the extent, if any, to which the stated selling price has been increased by reason of the down payment, interest rate, or other financing terms; and (b) the extent to which the sale of a similar property actually represents the general effective market demand for property of such type, in the geographical area in which such property is located. Sales involving deed releases or similar seller-developer financing arrangements shall not be used as sales of similar property.

(2) In addition to sales as defined in subsection (1) of this section, consideration may be given to cost, cost less depreciation, reconstruction cost less depreciation, or capitalization of income that would be derived from prudent use of the property, as limited by law or ordinance. Consideration should be given to any agreement, between an owner of rental housing and any government agency, that restricts rental income, appreciation, and liquidity; and to the impact of government restrictions on operating expenses and on ownership rights in general of such housing. In the case of property of a complex nature, or being used under terms of a franchise from a public agency, or operating as a public utility, or property not having a record of sale within five years and not having a significant number of sales of similar property in the general area, the provisions of this subsection shall be the dominant factors in valuation. When provisions of this subsection are relied upon for establishing values the property owner shall be advised upon request of the factors used in arriving at such value.

(3) In valuing any tract or parcel of real property, the true and fair value of the land, exclusive of structures thereon shall be determined; also the true and fair value of structures thereon, but the valuation shall not exceed the true and fair value of the total property as it exists. In valuing agricultural land, growing crops shall be excluded. [2007 c 301 § 2; 2001 c 187 § 17; 1998 c 320 § 9. Prior: 1997 c 429 § 34; 1997 c 134 § 1; 1997 c 3 § 104 (Referendum Bill No. 47, approved November 4, 1997); 1994 c 124 § 20; 1993 c 436 § 1; 1988 c 222 § 14; 1980 c 155 § 2; prior: 1973 1st ex.s. c 195 § 96; 1973 1st ex.s. c 187 § 1; 1972 ex.s. c 125 § 2; 1971 ex.s. c 288 § 1; 1971 ex.s. c 43 § 1; 1961 c 15 § 84.40.030; prior: 1939 c 206 § 15; 1925 ex.s. c 130 § 52; 1919 c 142 § 4; 1913 c 140 § 1; 1897 c 71 § 42; 1893 c 124 § 44; 1891 c 140 § 44; 1890 p 547 § 48; RRS § 11135. FORMER PART OF SECTION: 1939 c 116 § 1, part, now codified in RCW 84.40.220.]

Contingent effective date—2001 c 187: See note following RCW 84.70.010.

Application—2001 c 187: See note following RCW 84.40.020.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Application—1997 c 3: "(1) Sections 101 through 126 of this act apply to taxes levied for collection in 1999 and thereafter.

(2) Sections 201 through 207 of this act apply to taxes levied for collection in 1998 and thereafter." [1997 c 3 § 501 (Referendum Bill No. 47, approved November 4, 1997).]

Severability—1997 c 3: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 3 § 502 (Referendum Bill No. 47, approved November 4, 1997).]

Part headings not law—1997 c 3: "Part headings used in this act are not any part of the law." [1997 c 3 § 503 (Referendum Bill No. 47, approved November 4, 1997).]

Referral to electorate—1997 c 3: "Except for section 401 of this act, the secretary of state shall submit this act to the people for their adoption and ratification, or rejection, at the next general election to be held in this state, in accordance with Article II, section 1 of the state Constitution and the laws adopted to facilitate its operation." [1997 c 3 § 504.] 1997 c 3 (this act) was adopted and ratified by the people at the November 4, 1997, general election (Referendum Bill No. 47).

Effective date—Applicability—1980 c 155: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately and shall be effective for assessments made in 1980 and years thereafter." [1980 c 155 § 8.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—Construction—1973 1st ex.s. c 187: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1973 amendatory act, or the application of the provision to other persons or circumstances is not affected: PROVIDED, That if the leasehold in lieu excise tax imposed by section 4 of this 1973 amendatory act is held invalid, the entirety of the act, except for section 3 and section 15, shall be null and void." [1973 1st ex.s. c 187 § 13.]

Severability—1972 ex.s. c 125: See note following RCW 84.40.045.

Savings—1971 ex.s. c 288: "The amendment or repeal of any statutes by this 1971 amendatory act shall not be construed as invalidating, abating or otherwise affecting any existing right acquired or any liability or obligation incurred under the provisions of the statutes amended or repealed. Such amendment or repeals shall not affect the right of any person to make a claim for exemption during the calendar year 1971 pursuant to RCW 84.36.128." [1971 ex.s. c 288 § 12.]

Severability—1971 ex.s. c 288: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 288 § 28.]

Severability—1971 ex.s. c 43: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 43 § 6.]

Additional notes found at www.leg.wa.gov

84.40.042 Valuation and assessment of divided or combined property. (1) When real property is divided in accordance with chapter 58.17 RCW, the assessor shall carefully investigate and ascertain the true and fair value of each lot and assess each lot on that same basis, unless specifically

provided otherwise by law. For purposes of this section, "lot" has the same definition as in RCW 58.17.020.

(a) For each lot on which an advance tax deposit has been paid in accordance with RCW 58.08.040, the assessor shall establish the true and fair value by October 30th of the year following the recording of the plat, replat, or altered plat. The value established shall be the value of the lot as of January 1st of the year the original parcel of real property was last revalued. An additional property tax shall not be due on the land until the calendar year following the year for which the advance tax deposit was paid if the deposit was sufficient to pay the full amount of the taxes due on the property.

(b) For each lot on which an advance tax deposit has not been paid, the assessor shall establish the true and fair value not later than the calendar year following the recording of the plat, map, subdivision, or replat. For purposes of this section, "subdivision" means a division of land into two or more lots.

(c) For each subdivision, all current year and delinquent taxes and assessments on the entire tract must be paid in full in accordance with RCW 58.17.160 and 58.08.030 except when property is being acquired by a government for public use. For purposes of this section, "current year taxes" means taxes that are collectible under RCW 84.56.010 subsequent to completing the tax roll for current year collection.

(2) When the assessor is required by law to segregate any part or parts of real property, assessed before or after July 27, 1997, as one parcel or when the assessor is required by law to combine parcels of real property assessed before or after July 27, 1997, as two or more parcels, the assessor shall carefully investigate and ascertain the true and fair value of each part or parts of the real property and each combined parcel and assess each part or parts or each combined parcel on that same basis. [2009 c 350 § 1; 2008 c 17 § 1; 2002 c 168 § 8; 1997 c 393 § 17.]

84.41.030 Revaluation program to be on continuous basis—Revaluation schedule—Effect of other proceedings on valuation. (1) Each county assessor shall maintain an active and systematic program of revaluation on a continuous basis, and shall establish a revaluation schedule which will result in revaluation of all taxable real property within the county at least once each four years and physical inspection of all taxable real property within the county at least once each six years. Each county assessor may disregard any program of revaluation, if requested by a property owner, and change, as appropriate, the valuation of real property upon the receipt of a notice of decision received under RCW 36.70B.130 or chapter 35.22, 35.63, 35A.63, or 36.70 RCW pertaining to the value of the real property.

(2) Not later than January 1, 2014, all taxable real property within a county must be revalued annually and all taxable real property within a county must be physically inspected at least once each six years. This mandate is conditional upon the department of revenue providing the necessary guidance and financial assistance to those counties that are not on an annual revaluation cycle so that they may convert to an annual revaluation cycle including, but not limited to, appropriate data collection methods and coding, neighborhood and market delineation, statistical analysis, valuation guidelines, and training. The department will provide advisory appraisals of industrial properties valued at twenty-five million dollars or more in real and personal property value when requested by the county assessor.

(3) In recognition of the need for immediate action, the department of revenue is directed to conduct a pilot project on at least one county that is prepared to move from cyclical to annual revaluation by December 31, 2009. The pilot project will develop the expertise necessary to provide counties with neighborhood and market delineation, statistical analysis, valuation guidelines, and training. The department of revenue must use the expertise gained in this pilot project to facilitate the conversion of cyclical counties to annual revaluation and ongoing refinement of assessment processes statewide. The department may contract with a local government association representing county assessors and other county elected officials in carrying out the requirements of this subsection. [2009 c 308 § 1; 1996 c 254 § 7; 1982 1st ex.s. c 46 § 1; 1971 ex.s. c 288 § 6; 1961 c 15 § 84.41.030. Prior: 1955 c 251 § 3.]

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

Additional notes found at www.leg.wa.gov

84.48.065 Cancellation and correction of erroneous assessments and assessments on property on which land use designation is changed. (1) The county assessor or treasurer may cancel or correct assessments on the assessment or tax rolls which are erroneous due to manifest errors in description, double assessments, clerical errors in extending the rolls, and such manifest errors in the listing of the property which do not involve a revaluation of property, except in the case that a taxpayer produces proof that an authorized land use authority has made a definitive change in the property's land use designation. In such a case, correction of the assessment or tax rolls may be made notwithstanding the fact that the action involves a revaluation of property. Manifest errors that do not involve a revaluation of property include the assessment of property exempted by law from taxation or the failure to deduct the exemption allowed by law to the head of a family. When the county assessor cancels or corrects an assessment, the assessor shall send a notice to the taxpayer in accordance with RCW 84.40.045, advising the taxpayer that the action has been taken and notifying the taxpayer of the right to appeal the cancellation or correction to the county board of equalization, in accordance with RCW 84.40.038. When the county assessor or treasurer cancels or corrects an assessment, a record of such action shall be prepared, setting forth therein the facts relating to the error. The record shall also set forth by legal description all property belonging exclusively to the state, any county, or any municipal corporation whose property is exempt from taxation, upon which there remains, according to the tax roll, any unpaid taxes. No manifest error cancellation or correction, including a cancellation or correction made due to a definitive change of land use designation, shall be made for any period more than three years preceding the year in which the error is discovered.

(2)(a) In the case of a definitive change of land use designation, an assessor shall make corrections that involve a revaluation of property to the assessment roll when:

(i) The assessor and taxpayer have signed an agreement as to the true and fair value of the taxpayer's property setting

forth in the agreement the valuation information upon which the agreement is based; and

(ii) The assessment roll has previously been certified in accordance with RCW 84.40.320.

(b) In all other cases, an assessor shall make corrections that involve a revaluation of property to the assessment roll when:

(i) The assessor and taxpayer have signed an agreement as to the true and fair value of the taxpayer's property setting forth in the agreement the valuation information upon which the agreement is based; and

(ii) The following conditions are met:

(A) The assessment roll has previously been certified in accordance with RCW 84.40.320;

(B) The taxpayer has timely filed a petition with the county board of equalization pursuant to RCW 84.40.038 for the current assessment year;

(C) The county board of equalization has not yet held a hearing on the merits of the taxpayer's petition.

(3) The assessor shall issue a supplementary roll or rolls including such cancellations and corrections, and the assessment and levy shall have the same force and effect as if made in the first instance, and the county treasurer shall proceed to collect the taxes due on the rolls as modified. [2001 c 187 § 23; 1997 c 3 § 110 (Referendum Bill No. 47, approved November 4, 1997); 1996 c 296 § 1; 1992 c 206 § 12; 1989 c 378 § 14; 1988 c 222 § 25.]

Contingent effective date—2001 c 187: See note following RCW 84.70.010.

Application—2001 c 187: See note following RCW 84.40.020.

Application—Severability—Part headings not law—Referral to electorate—1997 c 3: See notes following RCW 84.40.030.

Effective date—1992 c 206: See note following RCW 82.04.170.

Additional notes found at www.leg.wa.gov

84.52.105 Affordable housing levies authorized—Declaration of emergency and plan required. (1) A county, city, or town may impose additional regular property tax levies of up to fifty cents per thousand dollars of assessed value of property in each year for up to ten consecutive years to finance affordable housing for very low-income households when specifically authorized to do so by a majority of the voters of the taxing district voting on a ballot proposition authorizing the levies. If both a county, and a city or town within the county, impose levies authorized under this section, the levies of the last jurisdiction to receive voter approval for the levies shall be reduced or eliminated so that the combined rates of these levies may not exceed fifty cents per thousand dollars of assessed valuation in any area within the county. A ballot proposition authorizing a levy under this section must conform with RCW 84.52.054.

(2) The additional property tax levies may not be imposed until:

(a) The governing body of the county, city, or town declares the existence of an emergency with respect to the availability of housing that is affordable to very low-income households in the taxing district; and

(b) The governing body of the county, city, or town adopts an affordable housing financing plan to serve as the plan for expenditure of funds raised by a levy authorized under this section, and the governing body determines that the affordable housing financing plan is consistent with either the locally adopted or state-adopted comprehensive housing affordability strategy, required under the Cranston-Gonzalez national affordable housing act (42 U.S.C. Sec. 12701, et seq.), as amended.

(3) For purposes of this section, the term "very low-income household" means a single person, family, or unrelated persons living together whose income is at or below fifty percent of the median income, as determined by the United States department of housing and urban development, with adjustments for household size, for the county where the taxing district is located.

(4) The limitations in RCW 84.52.043 shall not apply to the tax levy authorized in this section. [1995 c 318 § 10; 1993 c 337 § 2.]

Effective date—1995 c 318: See note following RCW 82.04.030.

Finding—1993 c 337: "The legislature finds that:

(1) Many very low-income residents of the state of Washington are unable to afford housing that is decent, safe, and appropriate to their living needs;

(2) Recent federal housing legislation conditions funding for affordable housing on the availability of local matching funds;

(3) Current statutory debt limitations may impair the ability of counties, cities, and towns to meet federal matching requirements and, as a consequence, may impair the ability of such counties, cities, and towns to develop appropriate and effective strategies to increase the availability of safe, decent, and appropriate housing that is affordable to very low-income households; and

(4) It is in the public interest to encourage counties, cities, and towns to develop locally based affordable housing financing plans designed to expand the availability of housing that is decent, safe, affordable, and appropriate to the living needs of very low-income households of the counties, cities, and towns." [1993 c 337 § 1.]

Additional notes found at www.leg.wa.gov

84.69.020 Grounds for refunds—Determination—Payment—Report. On the order of the county treasurer, ad valorem taxes paid before or after delinquency shall be refunded if they were:

(1) Paid more than once;

(2) Paid as a result of manifest error in description;

(3) Paid as a result of a clerical error in extending the tax rolls;

(4) Paid as a result of other clerical errors in listing property;

(5) Paid with respect to improvements which did not exist on assessment date;

(6) Paid under levies or statutes adjudicated to be illegal or unconstitutional;

(7) Paid as a result of mistake, inadvertence, or lack of knowledge by any person exempted from paying real property taxes or a portion thereof pursuant to RCW 84.36.381 through 84.36.389, as now or hereafter amended;

(8) Paid as a result of mistake, inadvertence, or lack of knowledge by either a public official or employee or by any person with respect to real property in which the person paying the same has no legal interest;

(9) Paid on the basis of an assessed valuation which was appealed to the county board of equalization and ordered reduced by the board;

(10) Paid on the basis of an assessed valuation which was appealed to the state board of tax appeals and ordered reduced by the board: PROVIDED, That the amount refunded under subsections (9) and (10) of this section shall

only be for the difference between the tax paid on the basis of the appealed valuation and the tax payable on the valuation adjusted in accordance with the board's order;

(11) Paid as a state property tax levied upon property, the assessed value of which has been established by the state board of tax appeals for the year of such levy: PROVIDED, HOWEVER, That the amount refunded shall only be for the difference between the state property tax paid and the amount of state property tax which would, when added to all other property taxes within the one percent limitation of Article VII, section 2 of the state Constitution equal one percent of the assessed value established by the board;

(12) Paid on the basis of an assessed valuation which was adjudicated to be unlawful or excessive: PROVIDED, That the amount refunded shall be for the difference between the amount of tax which was paid on the basis of the valuation adjudged unlawful or excessive and the amount of tax payable on the basis of the assessed valuation determined as a result of the proceeding;

(13) Paid on property acquired under RCW 84.60.050, and canceled under RCW 84.60.050(2);

(14) Paid on the basis of an assessed valuation that was reduced under RCW 84.48.065;

(15) Paid on the basis of an assessed valuation that was reduced under RCW 84.40.039; or

(16) Abated under RCW 84.70.010.

No refunds under the provisions of this section shall be made because of any error in determining the valuation of property, except as authorized in subsections (9), (10), (11), and (12) of this section nor may any refunds be made if a bona fide purchaser has acquired rights that would preclude the assessment and collection of the refunded tax from the property that should properly have been charged with the tax. Any refunds made on delinquent taxes shall include the proportionate amount of interest and penalties paid. However, no refunds as a result of an incorrect payment authorized under subsection (8) of this section made by a third party payee shall be granted. The county treasurer may deduct from moneys collected for the benefit of the state's levy, refunds of the state levy including interest on the levy as provided by this section and chapter 84.68 RCW.

The county treasurer of each county shall make all refunds determined to be authorized by this section, and by the first Monday in February of each year, report to the county legislative authority a list of all refunds made under this section during the previous year. The list is to include the name of the person receiving the refund, the amount of the refund, and the reason for the refund. [2005 c 502 § 9; 2002 c 168 § 11; 1999 sp.s. c 8 § 2. Prior: 1998 c 306 § 2; 1997 c 393 § 18; 1996 c 296 § 2; 1994 c 301 § 55; 1991 c 245 § 31; 1989 c 378 § 17; 1981 c 228 § 1; 1975 1st ex.s. c 291 § 21; 1974 ex.s. c 122 § 2; 1972 ex.s. c 126 § 2; 1971 ex.s. c 288 § 14; 1969 ex.s. c 224 § 1; 1961 c 15 § 84.69.020; prior: 1957 c 120 § 2.]

Effective date—2005 c 502: See note following RCW 1.12.070.

Severability—Effective date—1999 sp.s. c 8: See notes following RCW 84.70.010.

Applicability—1981 c 228: "Section 1(12) of the [this] amendatory act applies to only those taxes which first become due and payable subsequent to January 1, 1981: PROVIDED, HOWEVER, That this section shall not apply to any taxes which were paid under protest and which were timely paid." [1981 c 228 § 4.]

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Purpose—1974 ex.s. c 122: "The legislature recognizes that the operation of the provisions of RCW 84.52.065 and 84.48.080, providing for adjustments in the county-determined assessed value of property for purposes of the state property tax for schools, may, with respect to certain properties, result in a total regular property tax payment in excess of the one percent limitation provided for in Article 7, section 2 (Amendment 59) of the state Constitution. The primary purpose of this 1974 amendatory act is to provide a procedure for administrative relief in such cases, such relief to be in addition to the presently existing procedure for judicial relief through a refund action provided for in RCW 84.68.020." [1974 ex.s. c 122 § 1.]

Severability—Savings—1971 ex.s. c 288: See notes following RCW 84.40.030.

Additional notes found at www.leg.wa.gov

89.10.010 Office of farmland preservation. (1) The office of farmland preservation is created and shall be located within the state conservation commission.

(2) Staff support for the office shall be provided by the state conservation commission.

(3) The office of farmland preservation may:

(a) Provide advice and assist the state conservation commission in implementing the provisions of RCW 89.08.530 and 89.08.540, including the merits of leasing or purchasing easements for fixed terms in addition to purchasing easements in perpetuity;

(b) Develop recommendations for the funding level and for the use of the agricultural conservation easements account established in RCW 89.08.540 with the guidance of the farmland preservation task force established under *RCW 89.10.020;

(c) With input from the task force created in *RCW 89.10.020, provide an analysis of the major factors that have led to past declines in the amount and use of agricultural lands in Washington and of the factors that will likely affect retention and economic viability of these lands into the future including, but not limited to, pressures to convert land to nonagricultural uses, loss of processing plants and markets, loss of profitability, productivity, and competitive advantage, urban sprawl, water availability and quality, restrictions on agricultural land use, and conversion to recreational or other uses;

(d) Develop model programs and tools, including innovative economic incentives for landowners, to retain agricultural land for agricultural production, with the guidance from the farmland preservation task force created under *RCW 89.10.020;

(e) Provide technical assistance to localities as they develop and implement programs, mechanisms, and tools to encourage the retention of agricultural lands;

(f) Develop a grant process and an eligibility certification process for localities to receive grants for local programs and tools to retain agricultural lands for agricultural production;

(g) Provide analysis and recommendations as to the continued development and implementation of the farm transition program including, but not limited to, recommending:

(i) Assistance in the preparation of business plans for the transition of business interests;

(ii) Assistance in the facilitation of transfers of existing properties and agricultural operations to interested buyers; and

(iii) Research assistance on agricultural, financial, marketing, and other related transition matters;

(h) Begin the development of a farm transition program to assist in the transition of farmland and related businesses from one generation to the next, aligning the farm transition program closely with the farmland preservation effort to assure complementary functions; and

(i) Serve as a clearinghouse for incentive programs that would consolidate and disseminate information relating to conservation programs that are accessible to landowners and assist owners of agricultural lands to secure financial assistance to implement conservation easements and other projects. [2007 c 352 § 2.]

***Reviser's note:** RCW 89.10.020 expired January 1, 2011.

Chapter 90.42 RCW
WATER RESOURCE MANAGEMENT

Sections

90.42.005 Policy—Findings.
90.42.010 Findings—Intent.
90.42.020 Definitions.
90.42.030 Contracts to finance water conservation projects—Public benefits—Trust water rights.
90.42.040 Trust water rights program—Water right certificate—Notice of creation or modification.
90.42.050 Guidelines governing trust water rights—Submission of guidelines to joint select committee.
90.42.060 Chapter 43.83B or 43.99E RCW not replaced or amended.
90.42.070 Involuntary impairment of existing water rights not authorized.
90.42.080 Trust water rights—Acquisition, donation, exercise, and transfer—Appropriation required for expenditure of funds.
90.42.090 Jurisdictional authorities not altered.
90.42.100 Water banking.
90.42.110 Water banking—Application to transfer water rights.
90.42.120 Water banking—Transfer of water rights—Requirements—Appeals.
90.42.130 Water banking—Input from affected entities—Reports.
90.42.135 Limitations of act—2003 c 144.
90.42.138 Construction—2003 c 144.
90.42.150 Recovery of department's costs associated with water service contracts with federal agencies.
90.42.160 Adoption of rules.
90.42.900 Severability—1991 c 347.

90.46.005 Findings—Coordination of efforts—Development of facilities encouraged. The legislature finds that by encouraging the use of reclaimed water while assuring the health and safety of all Washington citizens and the protection of its environment, the state of Washington will continue to use water in the best interests of present and future generations.

To facilitate the immediate use of reclaimed water for uses approved by the departments of ecology and health, the state shall expand both direct financial support and financial incentives for capital investments in water reuse and reclaimed water to effectuate the goals of this chapter. The legislature further directs the department of health and the department of ecology to coordinate efforts towards developing an efficient and streamlined process for creating and implementing processes for the use of reclaimed water.

It is hereby declared that the people of the state of Washington have a primary interest in the development of facilities to provide reclaimed water to replace potable water in nonpotable applications, to supplement existing surface and ground water supplies, and to assist in meeting the future water requirements of the state.

The legislature further finds and declares that the utilization of reclaimed water by local communities for domestic, agricultural, industrial, recreational, and fish and wildlife habitat creation and enhancement purposes, including wetland enhancement, will contribute to the peace, health, safety, and welfare of the people of the state of Washington. To the extent reclaimed water is appropriate for beneficial uses, it should be so used to preserve potable water for drinking purposes, contribute to the restoration and protection of instream flows that are crucial to preservation of the state's salmonid fishery resources, contribute to the restoration of Puget Sound by reducing wastewater discharge, provide a drought resistant source of water supply for nonpotable needs, or be a source of supply integrated into state, regional, and local strategies to respond to population growth and global warming. Use of reclaimed water constitutes the development of new basic water supplies needed for future generations and local and regional water management planning should consider coordination of infrastructure, development, storage, water reclamation and reuse, and source exchange as strategies to meet water demands associated with population growth and impacts of global warming.

The legislature further finds and declares that the use of reclaimed water is not inconsistent with the policy of antidegradation of state waters announced in other state statutes, including the water pollution control act, chapter 90.48 RCW and the water resources act, chapter 90.54 RCW.

The legislature finds that other states, including California, Florida, and Arizona, have successfully used reclaimed water to supplement existing water supplies without threatening existing resources or public health.

It is the intent of the legislature that the department of ecology and the department of health undertake the necessary steps to encourage the development of water reclamation facilities so that reclaimed water may be made available to help meet the growing water requirements of the state.

The legislature further finds and declares that reclaimed water facilities are water pollution control facilities as defined in chapter 70.146 RCW and are eligible for financial assistance as provided in chapter 70.146 RCW. The legislature finds that funding demonstration projects will ensure the future use of reclaimed water. The demonstration projects in RCW 90.46.110 are varied in nature and will provide the experience necessary to test different facets of the standards and refine a variety of technologies so that water purveyors can begin to use reclaimed water technology in a more cost-effective manner. This is especially critical in smaller cities and communities where the feasibility for such projects is great, but there are scarce resources to develop the necessary facilities.

The legislature further finds that the agricultural processing industry can play a critical and beneficial role in promoting the efficient use of water by having the opportunity to develop and reuse agricultural industrial process water from food processing. [2007 c 445 § 2; 2001 c 69 § 1; 1997 c 355 § 1; 1995 c 342 § 1; 1992 c 204 § 1.]

Findings—Intent—2007 c 445: "(1) Since the 1992 enactment of the reclaimed water act, the value of reclaimed water as a new source of supply has received increasing recognition across the state and across the nation. New information on the matters in this section has increased awareness of the need to better manage, protect, and conserve water resources and to use reclaimed water in that process. The legislature now finds the following:

(a) Global warming and climate change. Global warming has reduced the volume of glaciers in the North Cascade mountains to between eighteen to thirty-two percent since 1983, and up to seventy-five percent of the glaciers are at risk of disappearing under projected temperatures for this century. Mountain snow pack has declined at virtually every measurement location in the Pacific Northwest, reducing the proportion of annual river flow to Puget Sound during summer months by eighteen percent since 1948. Global warming has also shifted peak stream flows earlier in the year in watersheds covering much of Washington state, including the Columbia river basin, jeopardizing the state's salmon fisheries. The state's recent report on the economic impacts of climate change indicate that water resources will be one of the areas most affected, and that many utilities may need to invest major resources in new supply and conservation measures. Developing and implementing adaptation strategies, such as water conservation that includes the use of reclaimed water, can extend existing water supply systems to help address the global warming impacts. In particular, because reclaimed water uses existing sources of supply and fairly constant base flows of wastewater, it has year-round dependability, without regard to any given year's climate variability. This is particularly important during summer months, when outdoor demands peak and stream flows are critical for fish.

(b) Puget Sound. The governor has initiated a Puget Sound partnership, with a request for an initial strategy to address high priority problems. In December, the partnership delivered a strategy that includes expanded use of reclaimed water both in order to improve the Puget Sound's water quality by reducing wastewater discharges and by replacing current sources of supply for nonpotable uses that detrimentally affect stream flows and habitat.

(c) Salmon recovery. The federal fisheries services recently approved a salmon recovery plan for the Puget Sound, which was developed across multiple watersheds by numerous local governments, tribal governments, and other parties to achieve sustainable populations of salmon and other species. That plan includes an adaptive management component where continued efforts will be made to address issues, including problems with instream flows, identified as a limiting factor in virtually all the watersheds, through strategies that will be developed by regional and watershed implementation groups. A potentially significant strategy may be the substitution of reclaimed water for nonpotable uses where it will benefit streams and habitat.

(d) Water quality. Increasingly stringent federal standards for water quality are forcing a number of communities to develop strategies for wastewater treatment that, in addition to providing higher treatment levels, will reduce the quantity of discharges. For many of those communities, facilities to produce reclaimed water will be a necessary approach to achieve both water quality and water supply objectives.

(e) Watershed plans. Under the watershed planning act of 1997, approximately two-thirds of the watersheds in the state have used a bottom-up approach to developing collaborative plans for meeting future water supply needs. Many of those plans include the use of reclaimed water for meeting those needs.

(f) Columbia river water management. Pursuant to legislation and funding provided in 2006, federal, state, and local governments and agencies, along with tribal governments, user groups, environmental organizations, and others are developing a comprehensive strategy for the mainstem Columbia that will ensure supplies for future growth while protecting stream flows and fish habitat. The strategy will include multiple tools that may include the potential development of new storage, conservation measures, and water use efficiency. One pathway toward conservation and efficiency is likely to be identification and implementation of reclaimed water opportunities.

(g) Development schedule. The time frame required to plan, design, construct, and begin use of reclaimed water can be extensive due to the public information and acceptance efforts required in addition to planning, design, and environmental assessment required for infrastructure projects. This extended time frame necessitates the initiation of reclaimed water projects as soon as possible.

(2) It is therefore the intent of the legislature to:

(a) Effectuate and reinvigorate the original intent behind the reclaimed water act to expand the use of reclaimed water for nonpotable uses throughout the state;

(b) Restate and emphasize the use of reclaimed water as a matter of water resource management policy;

(c) Address current barriers to the use of reclaimed water, where changes in state law will resolve such issues;

(d) Develop information from the state agencies responsible for promoting the use of reclaimed water and address regulatory, financial, planning, and other barriers to the expanded use of reclaimed water, relying on state agency expertise and experience with reclaimed water;

(e) Facilitate achieving state, regional, and local objectives through use of reclaimed water for water supply purposes in high priority areas of the state, and in regional and local watershed and water planning;

(f) Provide planning tools to local governments to incorporate reclaimed water and related water conservation into land use plans, consistent with water planning;

(g) Expand the scope of work of the advisory committee established under chapter 279, Laws of 2006 to identify other reclaimed water issues that should be addressed; and

(h) Provide initial funding, and evaluate options for providing additional direct state funding, for reclaimed water projects." [2007 c 445 § 1.]

Construction—1995 c 342: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1995 c 342 § 10.]

Effective date—1995 c 342: "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 [May 11, 1995]." [1995 c 342 § 11.]

Additional notes found at www.leg.wa.gov

Chapter 90.58 RCW
SHORELINE MANAGEMENT ACT OF 1971

Sections

90.58.010 Short title.
90.58.020 Legislative findings—State policy enunciated—Use preference.
90.58.030 Definitions and concepts.
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90.58.920 Effective date—1971 ex.s. c 286.

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90.58.010 Short title. This chapter shall be known and may be cited as the "Shoreline Management Act of 1971". [1971 ex.s. c 286 § 1.]

90.58.020 Legislative findings—State policy enunciated—Use preference. The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefor, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

(1) Recognize and protect the statewide interest over local interest;

(2) Preserve the natural character of the shoreline;

(3) Result in long term over short term benefit;

(4) Protect the resources and ecology of the shoreline;

(5) Increase public access to publicly owned areas of the shorelines;

(6) Increase recreational opportunities for the public in the shoreline;

(7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines

and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water. [1995 c 347 § 301; 1992 c 105 § 1; 1982 1st ex.s. c 13 § 1; 1971 ex.s. c 286 § 2.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

90.58.030 Definitions and concepts. As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:

(1) Administration:

(a) "Department" means the department of ecology;

(b) "Director" means the director of the department of ecology;

(c) "Hearings board" means the shorelines hearings board established by this chapter;

(d) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to this chapter;

(e) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated.

(2) Geographical:

(a) "Extreme low tide" means the lowest line on the land reached by a receding tide;

(b) "Floodway" means the area, as identified in a master program, that either: (i) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or (ii) consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state;

(c) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining freshwater shall be the line of mean high water;

(d) "Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.

(i) Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom.

(ii) Any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforest land use, on lands subject to the provisions of this subsection (2)(d)(ii) are not subject to additional regulations under this chapter;

(e) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

(f) "Shorelines of statewide significance" means the following shorelines of the state:

(i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

(A) Nisqually Delta—from DeWolf Bight to Tatsolo Point,

(B) Birch Bay—from Point Whitehorn to Birch Point,

(C) Hood Canal—from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area—from Brown Point to Yokeko Point, and

(E) Padilla Bay—from March Point to William Point;

(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

(iv) Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

(vi) Those shorelands associated with [(f)](i), (ii), (iv), and (v) of this subsection (2)(f);

(g) "Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within the state;

(h) "Wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

(3) Procedural terms:

(a) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;

(b) "Guidelines" means those standards adopted to implement the policy of this chapter for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria to local governments and the department in developing master programs;

(c) "Master program" shall mean the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020. "Comprehensive master program update" means a master program that fully achieves the procedural and substantive requirements of the department guidelines effective January 17, 2004, as now or hereafter amended;

(d) "State master program" is the cumulative total of all master programs approved or adopted by the department of ecology;

(e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. The following shall not be considered substantial developments for the purpose of this chapter:

(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

(ii) Construction of the normal protective bulkhead common to single-family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(v) Construction or modification of navigational aids such as channel markers and anchor buoys;

(vi) Construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(vii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple-family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in freshwaters, the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter;

(viii) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now

exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater for the irrigation of lands;

(ix) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(A) The activity does not interfere with the normal public use of the surface waters;

(B) The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(C) The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(D) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(E) The activity is not subject to the permit requirements of RCW 90.58.550;

(xii) The process of removing or controlling an aquatic noxious weed, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department jointly with other state agencies under chapter 43.21C RCW. [2010 c 107 § 3; 2007 c 328 § 1; 2003 c 321 § 2; 2002 c 230 § 2; 1996 c 265 § 1. Prior: 1995 c 382 § 10; 1995 c 255 § 5; 1995 c 237 § 1; 1987 c 474 § 1; 1986 c 292 § 1; 1982 1st ex.s. c 13 § 2; 1980 c 2 § 3; 1979 ex.s. c 84 § 3; 1975 1st ex.s. c 182 § 1; 1973 1st ex.s. c 203 § 1; 1971 ex.s. c 286 § 3.]

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

Intent—Retroactive application—Effective date—2010 c 107: See notes following RCW 36.70A.480.

Finding—Intent—2003 c 321: "(1) The legislature finds that the final decision and order in *Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology*, Case No. 02-3-0009c, issued on January 9, 2003, by the central Puget Sound growth management hearings board was a case of first impression interpreting the addition of the shoreline management act into the growth management act, and that the board considered the appeal and issued its final order and decision without the benefit of shorelines guidelines to provide guidance on the implementation of the shoreline management act and the adoption of shoreline master programs.

(2) This act is intended to affirm the legislature's intent that:

(a) The shoreline management act be read, interpreted, applied, and implemented as a whole consistent with decisions of the shoreline[s] hearings board and Washington courts prior to the decision of the central Puget Sound growth management hearings board in *Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology*;

(b) The goals of the growth management act, including the goals and policies of the shoreline management act, set forth in RCW 36.70A.020 and included in RCW 36.70A.020 by RCW 36.70A.480, continue to be listed without an order of priority; and

(c) Shorelines of statewide significance may include critical areas as defined by RCW 36.70A.030(5), but that shorelines of statewide significance are not critical areas simply because they are shorelines of statewide significance.

(3) The legislature intends that critical areas within the jurisdiction of the shoreline management act shall be governed by the shoreline management act and that critical areas outside the jurisdiction of the shoreline management act shall be governed by the growth management act. The legislature further intends that the quality of information currently required by the shoreline management act to be applied to the protection of critical areas within shorelines of the state shall not be limited or changed by the provisions of the growth management act." [2003 c 321 § 1.]

Finding—Intent—2002 c 230: "The legislature finds that the dollar threshold for what constitutes substantial development under the shoreline management act has not been changed since 1986. The legislature recognizes that the effects of inflation have brought in many activities under the jurisdiction of chapter 90.58 RCW that would have been exempted under its original provisions. It is the intent of the legislature to modify the current dollar threshold for what constitutes substantial development under the shoreline management act, and to have this threshold readjusted on a five-year basis." [2002 c 230 § 1.]

Severability—Effective date—1995 c 255: See RCW 17.26.900 and 17.26.901.

Severability—1986 c 292: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 292 § 5.]

Intent—1980 c 2; 1979 ex.s. c 84: "The legislature finds that high tides and hurricane force winds on February 13, 1979, caused conditions resulting in the catastrophic destruction of the Hood Canal bridge on state route 104, a state highway on the federal-aid system; and, as a consequence, the state of Washington has sustained a sudden and complete failure of a major segment of highway system with a disastrous impact on transportation services between the counties of Washington's Olympic peninsula and the remainder of the state. The governor has by proclamation found that these conditions constitute an emergency. To minimize the economic loss and hardship to residents of the Puget Sound and Olympic peninsula regions, it is the intent of 1979 ex.s. c 84 to authorize the department of transportation to undertake immediately all necessary actions to restore interim transportation services across Hood Canal and Puget Sound and upon the Kitsap and Olympic peninsulas and to design and reconstruct a permanent bridge at the site of the original Hood Canal bridge. The department of transportation is directed to proceed with such actions in an environmentally responsible manner that would meet the substantive objectives of the state environmental policy act and the shorelines management act, and shall consult with the department of ecology in the planning process. The exemptions from the state environmental policy act and the shorelines management act contained in RCW 43.21C.032 and 90.58.030 are intended to approve and ratify the timely actions of the department of transportation taken and to be taken to restore interim transportation services and to reconstruct a permanent Hood Canal bridge without procedural delays." [1980 c 2 § 1; 1979 ex.s. c 84 § 1.]

Additional notes found at www.leg.wa.gov

90.58.040 Program applicable to shorelines of the state. The shoreline management program of this chapter shall apply to the shorelines of the state as defined in this chapter. [1971 ex.s. c 286 § 4.]

90.58.045 Environmental excellence program agreements—Effect on chapter. Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 28.]

Purpose—1997 c 381: See RCW 43.21K.005.

90.58.050 Program as cooperative between local government and state—Responsibilities differentiated. This chapter establishes a cooperative program of shoreline management between local government and the state. Local government shall have the primary responsibility for initiating the planning required by this chapter and administering the regulatory program consistent with the policy and provisions of this chapter. The department shall act primarily in a supportive and review capacity with an emphasis on providing assistance to local government and on insuring compliance with the policy and provisions of this chapter. [1995 c 347 § 303; 1971 ex.s. c 286 § 5.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

90.58.060 Review and adoption of guidelines—Public hearings, notice of—Amendments. (1) The department shall periodically review and adopt guidelines consistent with RCW 90.58.020, containing the elements specified in RCW 90.58.100 for:

(a) Development of master programs for regulation of the uses of shorelines; and

(b) Development of master programs for regulation of the uses of shorelines of statewide significance.

(2) Before adopting or amending guidelines under this section, the department shall provide an opportunity for public review and comment as follows:

(a) The department shall mail copies of the proposal to all cities, counties, and federally recognized Indian tribes, and to any other person who has requested a copy, and shall publish the proposed guidelines in the Washington state register. Comments shall be submitted in writing to the department within sixty days from the date the proposal has been published in the register.

(b) The department shall hold at least four public hearings on the proposal in different locations throughout the state to provide a reasonable opportunity for residents in all parts of the state to present statements and views on the proposed guidelines. Notice of the hearings shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in each county of the state. If an amendment to the guidelines addresses an issue limited to one geographic area, the number and location of hearings may be adjusted consistent with the intent of this subsection to assure all parties a reasonable opportunity to comment on the proposed amendment. The department shall accept written comments on the proposal during the sixty-day public comment period and for seven days after the final public hearing.

(c) At the conclusion of the public comment period, the department shall review the comments received and modify the proposal consistent with the provisions of this chapter. The proposal shall then be published for adoption pursuant to the provisions of chapter 34.05 RCW.

(3) The department may adopt amendments to the guidelines not more than once each year. Such amendments shall be limited to: (a) Addressing technical or procedural issues that result from the review and adoption of master programs under the guidelines; or (b) issues of guideline compliance with statutory provisions. [2003 c 262 § 1; 1995 c 347 § 304; 1971 ex.s. c 286 § 6.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

90.58.065 Application of guidelines and master programs to agricultural activities. (1) The guidelines adopted by the department and master programs developed or amended by local governments according to RCW 90.58.080 shall not require modification of or limit agricultural activities occurring on agricultural lands. In jurisdictions where agricultural activities occur, master programs developed or amended after June 13, 2002, shall include provisions addressing new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and development not meeting the definition of agricultural activities. Nothing in this section limits or changes the terms of the *current exception to the definition of substantial development in RCW 90.58.030(3)(e)(iv). This section applies only to this chapter, and shall not affect any other authority of local governments.

(2) For the purposes of this section:

(a) "Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation;

(b) "Agricultural products" includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including but not limited to meat, upland finfish, poultry and poultry products, and dairy products;

(c) "Agricultural equipment" and "agricultural facilities" includes, but is not limited to: (i) The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains; (ii) corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands; (iii) farm residences and associated equipment, lands, and facilities; and (iv) roadside stands and on-farm markets for marketing fruit or vegetables; and

(d) "Agricultural land" means those specific land areas on which agriculture activities are conducted.

(3) The department and local governments shall assure that local shoreline master programs use definitions consistent with the definitions in this section. [2002 c 298 § 1.]

***Reviser's note:** "Current" first appears in chapter 298, Laws of 2002.

Implementation—2002 c 298: "The provisions of this act do not become effective until the earlier of either January 1, 2004, or the date the department of ecology amends or updates chapter 173-16 or 173-26 WAC." [2002 c 298 § 2.]

Additional notes found at www.leg.wa.gov

90.58.070 Local governments to submit letters of intent—Department to act upon failure of local government. (1) Local governments are directed with regard to shorelines of the state in their various jurisdictions to submit to the director of the department, within six months from June 1, 1971, letters stating that they propose to complete an inventory and develop master programs for these shorelines as provided for in RCW 90.58.080.

(2) If any local government fails to submit a letter as provided in subsection (1) of this section, or fails to adopt a master program for the shorelines of the state within its jurisdiction in accordance with the time schedule provided in this chapter, the department shall carry out the requirements of RCW 90.58.080 and adopt a master program for the shorelines of the state within the jurisdiction of the local government. [1971 ex.s. c 286 § 7.]

90.58.080 Timetable for local governments to develop or amend master programs—Review of master programs—Grants. (1) Local governments shall develop or amend a master program for regulation of uses of the shorelines of the state consistent with the required elements of the guidelines adopted by the department in accordance with the schedule established by this section.

(2)(a) Subject to the provisions of subsections (5) and (6) of this section, each local government subject to this chapter shall develop or amend its master program for the regulation of uses of shorelines within its jurisdiction according to the following schedule:

(i) On or before December 1, 2005, for the city of Port Townsend, the city of Bellingham, the city of Everett, Snohomish county, and Whatcom county;

(ii) On or before December 1, 2009, for King county and the cities within King county greater in population than ten thousand;

(iii) Except as provided by (a)(i) and (ii) of this subsection, on or before December 1, 2011, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(iv) On or before December 1, 2012, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(v) On or before December 1, 2013, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(vi) On or before December 1, 2014, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(b) Nothing in this subsection (2) shall preclude a local government from developing or amending its master program prior to the dates established by this subsection (2).

(3)(a) Following approval by the department of a new or amended master program, local governments required to develop or amend master programs on or before December 1, 2009, as provided by subsection (2)(a)(i) and (ii) of this section, shall be deemed to have complied with the schedule established by subsection (2)(a)(iii) of this section and shall not be required to complete master program amendments until the applicable dates established by subsection (4)(b) of this section. Any jurisdiction listed in subsection (2)(a)(i) of this section that has a new or amended master program approved by the department on or after March 1, 2002, but before July 27, 2003, shall not be required to complete master program amendments until the applicable date provided by subsection (4)(b) of this section.

(b) Following approval by the department of a new or amended master program, local governments choosing to develop or amend master programs on or before December 1, 2009, shall be deemed to have complied with the schedule established by subsection (2)(a)(iii) through (vi) of this section and shall not be required to complete master program amendments until the applicable dates established by subsection (4)(b) of this section.

(4)(a) Following the updates required by subsection (2) of this section, local governments shall conduct a review of their master programs at least once every eight years as required by (b) of this subsection. Following the review required by this subsection (4), local governments shall, if necessary, revise their master programs. The purpose of the review is:

(i) To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and

(ii) To assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

(b) Counties and cities shall take action to review and, if necessary, revise their master programs as required by (a) of this subsection as follows:

(i) On or before June 30, 2019, and every eight years thereafter, for King, Pierce, and Snohomish counties and the cities within those counties;

(ii) On or before June 30, 2020, and every eight years thereafter, for Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;

(iii) On or before June 30, 2021, and every eight years thereafter, for Benton, Chelan, Cowlitz, Douglas, Grant, Kittitas, Lewis, Skamania, Spokane, and Yakima counties and the cities within those counties; and

(iv) On or before June 30, 2022, and every eight years thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(5) In meeting the update requirements of subsection (2) of this section, local governments are encouraged to begin the process of developing or amending their master programs

early and are eligible for grants from the department as provided by RCW 90.58.250, subject to available funding. Except for those local governments listed in subsection (2)(a)(i) and (ii) of this section, the deadline for completion of the new or amended master programs shall be two years after the date the grant is approved by the department. Subsequent master program review dates shall not be altered by the provisions of this subsection.

(6) In meeting the update requirements of subsection (2) of this section, the following shall apply:

(a) Grants to local governments for developing and amending master programs pursuant to the schedule established by this section shall be provided at least two years before the adoption dates specified in subsection (2) of this section. To the extent possible, the department shall allocate grants within the amount appropriated for such purposes to provide reasonable and adequate funding to local governments that have indicated their intent to develop or amend master programs during the biennium according to the schedule established by subsection (2) of this section. Any local government that applies for but does not receive funding to comply with the provisions of subsection (2) of this section may delay the development or amendment of its master program until the following biennium.

(b) Local governments with delayed compliance dates as provided in (a) of this subsection shall be the first priority for funding in subsequent biennia, and the development or amendment compliance deadline for those local governments shall be two years after the date of grant approval.

(c) Failure of the local government to apply in a timely manner for a master program development or amendment grant in accordance with the requirements of the department shall not be considered a delay resulting from the provisions of (a) of this subsection.

(7) In meeting the update requirements of subsection (2) of this section, all local governments subject to the requirements of this chapter that have not developed or amended master programs on or after March 1, 2002, shall, no later than December 1, 2014, develop or amend their master programs to comply with guidelines adopted by the department after January 1, 2003.

(8) In meeting the update requirements of subsection (2) of this section, local governments may be provided an additional year beyond the deadlines in this section to complete their master program or amendment. The department shall grant the request if it determines that the local government is likely to adopt or amend its master program within the additional year. [2011 c 353 § 13; 2007 c 170 § 1; 2003 c 262 § 2; 1995 c 347 § 305; 1974 ex.s. c 61 § 1; 1971 ex.s. c 286 § 8.]

Intent—2011 c 353: See note following RCW 36.70A.130.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

90.58.090 Approval of master program or segments or amendments—Procedure—Departmental alternatives when shorelines of statewide significance—Later adoption of master program supersedes departmental program. (1) A master program, segment of a master program, or an amendment to a master program shall become effective when approved by the department as provided in subsection (7) of this section. Within the time period provided in RCW 90.58.080, each local government shall have submitted a master program, either totally or by segments, for all shorelines of the state within its jurisdiction to the department for review and approval.

The department shall strive to achieve final action on a submitted master program within one hundred eighty days of receipt and shall post an annual assessment related to this performance benchmark on the agency web site.

(2) Upon receipt of a proposed master program or amendment, the department shall:

(a) Provide notice to and opportunity for written comment by all interested parties of record as a part of the local government review process for the proposal and to all persons, groups, and agencies that have requested in writing notice of proposed master programs or amendments generally or for a specific area, subject matter, or issue. The comment period shall be at least thirty days, unless the department determines that the level of complexity or controversy involved supports a shorter period;

(b) In the department's discretion, conduct a public hearing during the thirty-day comment period in the jurisdiction proposing the master program or amendment;

(c) Within fifteen days after the close of public comment, request the local government to review the issues identified by the public, interested parties, groups, and agencies and provide a written response as to how the proposal addresses the identified issues;

(d) Within thirty days after receipt of the local government response pursuant to (c) of this subsection, make written findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020 and the applicable guidelines, provide a response to the issues identified in (c) of this subsection, and either approve the proposal as submitted, recommend specific changes necessary to make the proposal approvable, or deny approval of the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW 90.58.020 and the applicable guidelines. The written findings and conclusions shall be provided to the local government, and made available to all interested persons, parties, groups, and agencies of record on the proposal;

(e) If the department recommends changes to the proposed master program or amendment, within thirty days after the department mails the written findings and conclusions to the local government, the local government may:

(i) Agree to the proposed changes by written notice to the department; or

(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with the purpose and intent of the changes originally submitted by the department and with this chapter it shall approve the changes and provide notice to all recipients of the written findings and conclusions. If the department determines the proposal is not consistent with the purpose and intent of the changes proposed by the department, the department may resubmit the proposal for public and agency review pursuant to this section or reject the proposal.

(3) The department shall approve the segment of a master program relating to shorelines unless it determines that the submitted segments are not consistent with the policy of RCW 90.58.020 and the applicable guidelines.

(4) The department shall approve the segment of a master program relating to critical areas as defined by RCW 36.70A.030(5) provided the master program segment is consistent with RCW 90.58.020 and applicable shoreline guidelines, and if the segment provides a level of protection of critical areas at least equal to that provided by the local government's critical areas ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2).

(5) The department shall approve those segments of the master program relating to shorelines of statewide significance only after determining the program provides the optimum implementation of the policy of this chapter to satisfy the statewide interest. If the department does not approve a segment of a local government master program relating to a shoreline of statewide significance, the department may develop and by rule adopt an alternative to the local government's proposal.

(6) In the event a local government has not complied with the requirements of RCW 90.58.070 it may thereafter upon written notice to the department elect to adopt a master program for the shorelines within its jurisdiction, in which event it shall comply with the provisions established by this chapter for the adoption of a master program for such shorelines.

Upon approval of such master program by the department it shall supersede such master program as may have been adopted by the department for such shorelines.

(7) A master program or amendment to a master program takes effect when and in such form as approved or adopted by the department. The effective date is fourteen days from the date of the department's written notice of final action to the local government stating the department has approved or rejected the proposal. For master programs adopted by rule, the effective date is governed by RCW 34.05.380. The department's written notice to the local government must conspicuously and plainly state that it is the department's final decision and that there will be no further modifications to the proposal.

(a) Shoreline master programs that were adopted by the department prior to July 22, 1995, in accordance with the provisions of this section then in effect, shall be deemed approved by the department in accordance with the provisions of this section that became effective on that date.

(b) The department shall maintain a record of each master program, the action taken on any proposal for adoption or amendment of the master program, and any appeal of the department's action. The department's approved document of record constitutes the official master program.

(8) Promptly after approval or disapproval of a local government's shoreline master program or amendment, the department shall publish a notice consistent with RCW 36.70A.290 that the shoreline master program or amendment has been approved or disapproved. This notice must be filed for all shoreline master programs or amendments. If the notice is for a local government that does not plan under RCW 36.70A.040, the department must, on the day the notice is published, notify the legislative authority of the applicable local government by telephone or electronic means, followed by written communication as necessary, to ensure that the local government has received the full written decision of the approval or disapproval. [2011 c 353 § 14; 2011 c 277 § 2; 2003 c 321 § 3; 1997 c 429 § 50; 1995 c 347 § 306; 1971 ex.s. c 286 § 9.]

Reviser's note: This section was amended by 2011 c 277 § 2 and by 2011 c 353 § 14, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2011 c 353: See note following RCW 36.70A.130.

Finding—Intent—2003 c 321: See note following RCW 90.58.030.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

90.58.100 Programs as constituting use regulations—Duties when preparing programs and amendments thereto—Program contents. (1) The master programs provided for in this chapter, when adopted or approved by the department shall constitute use regulations for the various shorelines of the state. In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible:

(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;

(b) Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;

(c) Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

(d) Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;

(e) Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

(f) Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.

(2) The master programs shall include, when appropriate, the following:

(a) An economic development element for the location and design of industries, projects of statewide significance, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state;

(b) A public access element making provision for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element;

(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;

(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;

(h) An element that gives consideration to the statewide interest in the prevention and minimization of flood damages; and

(i) Any other element deemed appropriate or necessary to effectuate the policy of this chapter.

(3) The master programs shall include such map or maps, descriptive text, diagrams and charts, or other descriptive material as are necessary to provide for ease of understanding.

(4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same.

(5) Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW 90.58.020. Any such varying shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. The concept of this subsection shall be incorporated in the rules adopted by the department relating to the establishment of a permit system as provided in RCW 90.58.140(3).

(6) Each master program shall contain standards governing the protection of single-family residences and appurtenant structures against damage or loss due to shoreline erosion. The standards shall govern the issuance of substantial development permits for shoreline protection, including structural methods such as construction of bulkheads, and nonstructural methods of protection. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single-family residences and appurtenant structures due to shoreline erosion. The standards shall provide a preference for permit issuance for measures to protect single-family residences occupied prior to January 1, 1992, where the proposed measure is designed to minimize harm to the shoreline natural environment. [2009 c 421 § 9; 1997 c 369 § 7; 1995 c 347 § 307; 1992 c 105 § 2; 1991 c 322 § 32; 1971 ex.s. c 286 § 10.]

Effective date—2009 c 421: See note following RCW 43.157.005.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

Project of statewide significance—Defined: RCW 43.157.010.

90.58.110 Development of program within two or more adjacent local government jurisdictions—Development of program in segments, when. (1) Whenever it shall appear to the director that a master program should be developed for a region of the shorelines of the state which includes lands and waters located in two or more adjacent local government jurisdictions, the director shall designate such region and notify the appropriate units of local government thereof. It shall be the duty of the notified units to develop cooperatively an inventory and master program in accordance with and within the time provided in RCW 90.58.080.

(2) At the discretion of the department, a local government master program may be adopted in segments applicable to particular areas so that immediate attention may be given to those areas of the shorelines of the state in most need of a use regulation. [1971 ex.s. c 286 § 11.]

90.58.120 Adoption of rules, programs, etc., subject to RCW 34.05.310 through 34.05.395—Public hearings, notice of—Public inspection after approval or adoption. All rules, regulations, designations, and guidelines, issued by the department, and master programs and amendments adopted by the department pursuant to RCW 90.58.070(2) or *90.58.090(4) shall be adopted or approved in accordance with the provisions of RCW 34.05.310 through 34.05.395 insofar as such provisions are not inconsistent with the provisions of this chapter. In addition:

(1) Prior to the adoption by the department of a master program, or portion thereof pursuant to RCW 90.58.070(2) or *90.58.090(4), at least one public hearing shall be held in each county affected by a program or portion thereof for the purpose of obtaining the views and comments of the public. Notice of each such hearing shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in the county in which the hearing is to be held.

(2) All guidelines, regulations, designations, or master programs adopted or approved under this chapter shall be available for public inspection at the office of the department or the appropriate county and city. The terms "adopt" and "approve" for purposes of this section, shall include modifications and rescission of guidelines. [1995 c 347 § 308; 1989 c 175 § 182; 1975 1st ex.s. c 182 § 2; 1971 ex.s. c 286 § 12.]

***Reviser's note:** RCW 90.58.090 was amended by 2003 c 321 § 3, changing subsection (4) to subsection (5).

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

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

Additional notes found at www.leg.wa.gov

90.58.130 Involvement of all persons and entities having interest, means. To insure that all persons and entities having an interest in the guidelines and master programs developed under this chapter are provided with a full opportunity for involvement in both their development and implementation, the department and local governments shall:

(1) Make reasonable efforts to inform the people of the state about the shoreline management program of this chapter and in the performance of the responsibilities provided in this chapter, shall not only invite but actively encourage participation by all persons and private groups and entities showing an interest in shoreline management programs of this chapter; and

(2) Invite and encourage participation by all agencies of federal, state, and local government, including municipal and public corporations, having interests or responsibilities relat-

ing to the shorelines of the state. State and local agencies are directed to participate fully to insure that their interests are fully considered by the department and local governments. [1971 ex.s. c 286 § 13.]

90.58.140 Development permits—Grounds for granting—Administration by local government, conditions—Applications—Notices—Rescission—Approval when permit for variance or conditional use. (1) A development shall not be undertaken on the shorelines of the state unless it is consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, rules, or master program.

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

A permit shall be granted:

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

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

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

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

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

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

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

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

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

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

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

(b)(i) In the case of any permit or decision to issue any permit to the state of Washington, department of transportation, for the replacement of the floating bridge and landings of the state route number 520 Evergreen Point bridge on or adjacent to Lake Washington, the construction may begin twenty-one days from the date of filing. Any substantial development permit granted for the floating bridge and landings is deemed to have been granted on the date that the local government's decision to grant the permit is issued. This authorization to construct is limited to only those elements of the floating bridge and landings that do not preclude the department of transportation's selection of a four-lane alternative for state route number 520 between Interstate 5 and Medina. Additionally, the Washington state department of transportation shall not engage in or contract for any construction on any portion of state route number 520 between Interstate 5 and the western landing of the floating bridge until the legislature has authorized the imposition of tolls on the Interstate 90 floating bridge and/or other funding sufficient to complete construction of the state route number 520 bridge replacement and HOV program. For the purposes of this subsection (5)(b), the "western landing of the floating bridge" means the least amount of new construction necessary to connect the new floating bridge to the existing state route number 520 and anchor the west end of the new floating bridge;

(ii) Nothing in this subsection (5)(b) precludes the shorelines hearings board from concluding that the project or any element of the project is inconsistent with the goals and policies of the shoreline management act or the local shoreline master program;

(iii) This subsection (5)(b) applies retroactively to any appeals filed after January 1, 2012, and to any appeals filed on or after March 23, 2012, and expires June 30, 2014.

(c) Except as authorized in (b) of this subsection, construction may be commenced no sooner than thirty days after the date of the appeal of the board's decision is filed if a permit is granted by the local government and (i) the granting of the permit is appealed to the shorelines hearings board within twenty-one days of the date of filing, (ii) the hearings board approves the granting of the permit by the local government or approves a portion of the substantial development for which the local government issued the permit, and (iii) an appeal for judicial review of the hearings board decision is filed pursuant to chapter 34.05 RCW. The appellant may request, within ten days of the filing of the appeal with the court, a hearing before the court to determine whether con-

struction pursuant to the permit approved by the hearings board or to a revised permit issued pursuant to the order of the hearings board should not commence. If, at the conclusion of the hearing, the court finds that construction pursuant to such a permit would involve a significant, irreversible damaging of the environment, the court shall prohibit the permittee from commencing the construction pursuant to the approved or revised permit until all review proceedings are final. Construction pursuant to a permit revised at the direction of the hearings board may begin only on that portion of the substantial development for which the local government had originally issued the permit, and construction pursuant to such a revised permit on other portions of the substantial development may not begin until after all review proceedings are terminated. In such a hearing before the court, the burden of proving whether the construction may involve significant irreversible damage to the environment and demonstrating whether such construction would or would not be appropriate is on the appellant;

(d) Except as authorized in (b) of this subsection, if the permit is for a substantial development meeting the requirements of subsection (11) of this section, construction pursuant to that permit may not begin or be authorized until twenty-one days from the date the permit decision was filed as provided in subsection (6) of this section.

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

(6) Any decision on an application for a permit under the authority of this section, whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with the department and the attorney general. This shall be accomplished by return receipt requested mail. A petition for review of such a decision must be commenced within twenty-one days from the date of filing of the decision.

(a) With regard to a permit other than a permit governed by subsection (10) of this section, "date of filing" as used in this section refers to the date of actual receipt by the department of the local government's decision.

(b) With regard to a permit for a variance or a conditional use governed by subsection (10) of this section, "date of filing" means the date the decision of the department is transmitted by the department to the local government.

(c) When a local government simultaneously transmits to the department its decision on a shoreline substantial development with its approval of either a shoreline conditional use permit or variance, or both, "date of filing" has the same meaning as defined in (b) of this subsection.

(d) The department shall notify in writing the local government and the applicant of the date of filing by telephone or electronic means, followed by written communication as necessary, to ensure that the applicant has received the full written decision.

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

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

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

(10) Any permit for a variance or a conditional use issued with approval by a local government under their approved master program must be submitted to the department for its approval or disapproval.

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

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

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

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

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

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

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

(iii) Will not extend more than twenty-five hundred linear feet within the shorelines of the state. [2012 c 84 § 2; 2011 c 277 § 3; 2010 c 210 § 36; 1995 c 347 § 309; 1992 c 105 § 3; 1990 c 201 § 2; 1988 c 22 § 1; 1984 c 7 § 386; 1977 ex.s. c 358 § 1; 1975-'76 2nd ex.s. c 51 § 1; 1975 1st ex.s. c 182 § 3; 1973 2nd ex.s. c 19 § 1; 1971 ex.s. c 286 § 14.]

Findings—2012 c 84: "In adopting the shoreline management act in 1971, the legislature declared that it is the policy of the state to provide for

the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses, to ensure the development of these shorelines in a manner that will promote and enhance the public interest, and to protect against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto. The legislature declares that the policies recognized in 1971 are still vital to the protection of shorelines of the state.

The legislature recognizes that the replacement of the Evergreen Point bridge affects shorelines of the state and shorelines of statewide significance. However, the legislature finds that the state route number 520 corridor, including the Evergreen Point bridge, is a critical component of the state highway system and of the Puget Sound region's transportation infrastructure and is essential to maintaining and improving the region's and the state's economy.

The legislature further finds that the Evergreen Point bridge and its approaches are in danger of structural failure and that it is highly likely that the bridge will sustain serious structural damage from an earthquake or windstorm over the next fifteen years. The floating span sustained serious damage during the 1993 storm, which required major repair and retrofit. Retrofitting the span has added weight, which causes the floating span to sit lower in the water, increasing the likelihood of waves breaking over the span and causing traffic hazards. The floating span cannot be further retrofitted to withstand severe windstorms. Recent storms have continued to cause damage to the floating span, including cracks in the pontoons that allow water to enter the pontoons.

The legislature further finds that replacement of the floating span and its approaches presents unique challenges in that it is subject to narrow windows in which work on Lake Washington can be performed because of weather and environmental constraints.

The legislature further finds that significant delays in replacing the floating span and east approach of the Evergreen Point bridge must be avoided in order to: Avoid the catastrophic loss of the bridge; protect the safety of the traveling public; prevent injury, loss of life, and property damage; and provide for a strong economy in the Puget Sound region and in Washington state. In the past, the legislature has only provided exemptions to the shoreline management act for bridges that have sunk, and it is the intent of the legislature to only allow this exemption to the automatic stay provision of the shoreline management act because the Evergreen Point floating bridge is in danger of further damage and sinking." [2012 c 84 § 1.]

Effective date—2012 c 84: "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 immediately [March 23, 2012]." [2012 c 84 § 3.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Finding—Intent—1990 c 201: "The legislature finds that delays in substantial development permit review for the extension of vital utility services to existing and lawful uses within the shorelines of the state have caused hardship upon existing residents without serving any of the purposes and policies of the shoreline management act. It is the intent of this act to provide a more expeditious permit review process for that limited category of utility extension activities only, while fully preserving safeguards of public review and appeal rights regarding permit applications and decisions." [1990 c 201 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

Additional notes found at www.leg.wa.gov

90.58.143 Time requirements—Substantial development permits, variances, conditional use permits. (1) The time requirements of this section shall apply to all substantial development permits and to any development authorized pursuant to a variance or conditional use permit authorized under this chapter. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and this chapter, local government may adopt different time limits from those set forth in subsections (2) and (3) of this section as a part of action on a substantial development permit.

(2) Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the substantial development permit and to the department.

(3) Authorization to conduct construction activities shall terminate five years after the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the department.

(4) The effective date of a substantial development permit shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods in subsections (2) and (3) of this section do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals. [1997 c 429 § 51; 1996 c 62 § 1.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

Additional notes found at www.leg.wa.gov

90.58.147 Substantial development permit—Exemption for projects to improve fish or wildlife habitat or fish passage. (1) A public or private project that is designed to improve fish or wildlife habitat or fish passage shall be exempt from the substantial development permit requirements of this chapter when all of the following apply:

(a) The project has been approved by the department of fish and wildlife;

(b) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW; and

(c) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

(2) Fish habitat enhancement projects that conform to the provisions of *RCW 77.55.290 are determined to be consistent with local shoreline master programs. [2003 c 39 § 49; 1998 c 249 § 4; 1995 c 333 § 1.]

***Reviser's note:** RCW 77.55.290 was recodified as RCW 77.55.181 pursuant to 2005 c 146 § 1001.

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.181.

90.58.150 Selective commercial timber cutting, when. With respect to timber situated within two hundred feet abutting landward of the ordinary high water mark

within shorelines of statewide significance, the department or local government shall allow only selective commercial timber cutting, so that no more than thirty percent of the merchantable trees may be harvested in any ten year period of time: PROVIDED, That other timber harvesting methods may be permitted in those limited instances where the topography, soil conditions or silviculture practices necessary for regeneration render selective logging ecologically detrimental: PROVIDED FURTHER, That clear cutting of timber which is solely incidental to the preparation of land for other uses authorized by this chapter may be permitted. [1971 ex.s. c 286 § 15.]

90.58.160 Prohibition against surface drilling for oil or gas, where. Surface drilling for oil or gas is prohibited in the waters of Puget Sound north to the Canadian boundary and the Strait of Juan de Fuca seaward from the ordinary high water mark and on all lands within one thousand feet landward from said mark. [1971 ex.s. c 286 § 16.]

90.58.170 Shorelines hearings board—Established—Members—Chair—Quorum for decision—Expenses of members. A shorelines hearings board sitting as a quasi-judicial body is hereby established within the environmental and land use hearings office under *RCW 43.21B.005. The shorelines hearings board shall be made up of six members: Three members shall be members of the pollution control hearings board; two members, one appointed by the association of Washington cities and one appointed by the association of county commissioners, both to serve at the pleasure of the associations; and the commissioner of public lands or his or her designee. The chair of the pollution control hearings board shall be the chair of the shorelines hearings board. Except as provided in RCW 90.58.185, a decision must be agreed to by at least four members of the board to be final. The members of the shorelines hearings board shall receive the compensation, travel, and subsistence expenses as provided in RCW 43.03.050 and 43.03.060. [2013 c 23 § 614; 1994 c 253 § 1; 1988 c 128 § 76; 1979 ex.s. c 47 § 6; 1971 ex.s. c 286 § 17.]

***Reviser's note:** RCW 43.21B.005 was amended by 2010 c 210 § 4, changing the "environmental hearings office" to the "environmental and land use hearings office", effective July 1, 2011.

Intent—1979 ex.s. c 47: See note following RCW 43.21B.005.

90.58.175 Rules and regulations. The shorelines hearings board may adopt rules and regulations governing the administrative practice and procedure in and before the board. [1973 1st ex.s. c 203 § 3.]

90.58.180 Review of granting, denying, or rescinding permits by shorelines hearings board—Board to act—Local government appeals to board—Grounds for declaring rule, regulation, or guideline invalid—Appeals to court. (1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of filing of the decision as defined in RCW 90.58.140(6).

Within seven days of the filing of any petition for review with the board as provided in this section pertaining to a final decision of a local government, the petitioner shall serve copies of the petition on the department, the office of the attorney general, and the local government. The department and the attorney general may intervene to protect the public interest and ensure that the provisions of this chapter are complied with at any time within fifteen days from the date of the receipt by the department or the attorney general of a copy of the petition for review filed pursuant to this section. The shorelines hearings board shall schedule review proceedings on the petition for review without regard as to whether the period for the department or the attorney general to intervene has or has not expired.

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

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

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

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

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

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

(c) Is arbitrary and capricious; or

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

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

(6) If the board makes a determination under subsection (5)(a) through (e) of this section, it shall enter a final decision declaring the rule, regulation, or guideline invalid, remanding the rule, regulation, or guideline to the department with a statement of the reasons in support of the determination, and directing the department to adopt, after a thorough consultation with the affected local government and any other interested party, a new rule, regulation, or guideline consistent with the board's decision.

(7) A decision of the board on the validity of a rule, regulation, or guideline shall be subject to review in superior court, if authorized pursuant to chapter 34.05 RCW. A petition for review of the decision of the shorelines hearings board on a rule, regulation, or guideline shall be filed within thirty days after the date of final decision by the shorelines hearings board. [2011 c 277 § 4; 2010 c 210 § 37; 2003 c 393 § 22; 1997 c 199 § 1; 1995 c 347 § 310; 1994 c 253 § 3; 1989 c 175 § 183; 1986 c 292 § 2; 1975-'76 2nd ex.s. c 51 § 2; 1975 1st ex.s. c 182 § 4; 1973 1st ex.s. c 203 § 2; 1971 ex.s. c 286 § 18.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

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

Severability—1986 c 292: See note following RCW 90.58.030.

Appeal under this chapter also subject of appeal under state environmental policy act: RCW 43.21C.075.

Additional notes found at www.leg.wa.gov

90.58.185 Appeals involving single-family residences, involving penalties of fifteen thousand dollars or less, or other designated cases—Composition of board—Rules to expedite appeals. (1) In the case of an appeal involving a single-family residence or appurtenance to a single-family residence, including a dock or pier designed to serve a single-family residence, appeals involving a penalty of fifteen thousand dollars or less, or other cases designated by the chair of the hearings board, the request for review may be heard by a panel of three board members, at least one and not more than two of whom shall be members of the pollution control hearings board. Two members of the three must agree to issue a final decision of the board. In designating appeals for review by panels of three hearings board members, the chair shall consider factors such as the complexity and precedential nature of the case and the efficiency and cost-effectiveness of using a short board versus a full board.

(2) The board shall define by rule alternative processes to expedite appeals, including those involving a single-family residence or appurtenance to a single-family residence, including a dock or pier designed to serve a single-family residence, or involving a penalty of fifteen thousand dollars or less. These alternatives may include: Mediation, upon agreement of all parties; submission of testimony by affidavit; or other forms that may lead to less formal and faster resolution of appeals. [2009 c 422 § 1; 2005 c 34 § 1; 1994 c 253 § 2.]

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

(2)(a) The department's final decision to approve or reject a proposed master program or master program amendment by a local government planning under RCW 36.70A.040 shall be appealed to the growth management hearings board by filing a petition as provided in RCW 36.70A.290.

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

(c) If the appeal to the growth management hearings board concerns a shoreline of statewide significance, the board shall uphold the decision by the department unless the board, by clear and convincing evidence, determines that the decision of the department is noncompliant with the policy of RCW 90.58.020 or the applicable guidelines, or chapter 43.21C RCW as it relates to the adoption of master programs and amendments under this chapter.

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

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

(3)(a) The department's final decision to approve or reject a proposed master program or master program amendment by a local government not planning under RCW 36.70A.040 shall be appealed to the shorelines hearings board by filing a petition within thirty days of the date that the department publishes notice of its final decision under RCW 90.58.090(8).

(b) In an appeal relating to shorelines, the shorelines hearings board shall review the proposed master program or master program amendment and, after full consideration of the presentations of the parties, shall determine the validity of the local government's master program or amendment in light of the policy of RCW 90.58.020 and the applicable guidelines, and chapter 43.21C RCW as it relates to the adoption of master programs and amendments under this chapter.

(c) In an appeal relating to shorelines of statewide significance, the shorelines hearings board shall uphold the decision by the department unless the board determines, by clear and convincing evidence that the decision of the department is noncompliant with the policy of RCW 90.58.020 or the applicable guidelines, or chapter 43.21C RCW as it relates to the adoption of master programs and amendments under this chapter.

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

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

(4) A master program amendment shall become effective after the approval of the department or after the decision of the growth management hearings board or shorelines hear-

ings board to uphold the master program or master program amendment, provided that either the growth management hearings board or the shorelines hearings board may remand the master program or master program amendment to the local government or the department for modification prior to the final adoption of the master program or master program amendment. [2012 c 172 § 1; 2011 c 277 § 5. Prior: 2010 c 211 § 14; 2010 c 210 § 38; 2003 c 321 § 4; 1995 c 347 § 311; 1989 c 175 § 184; 1986 c 292 § 3; 1971 ex.s. c 286 § 19.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Finding—Intent—2003 c 321: See note following RCW 90.58.030.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

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

Severability—1986 c 292: See note following RCW 90.58.030.

Additional notes found at www.leg.wa.gov

90.58.195 Shoreline master plan review—Local governments with coastal waters or coastal shorelines. (1) The department of ecology, in cooperation with other state agencies and coastal local governments, shall prepare and adopt ocean use guidelines and policies to be used in reviewing, and where appropriate, amending, shoreline master programs of local governments with coastal waters or coastal shorelines within their boundaries. These guidelines shall be finalized by April 1, 1990.

(2) After the department of ecology has adopted the guidelines required in subsection (1) of this section, counties, cities, and towns with coastal waters or coastal shorelines shall review their shoreline master programs to ensure that the programs conform with RCW 43.143.010 and 43.143.030 and with the department of ecology's ocean use guidelines. Amended master programs shall be submitted to the department of ecology for its approval under RCW 90.58.090 by June 30, 1991. [1989 1st ex.s. c 2 § 13.]

90.58.200 Rules and regulations. The department and local governments are authorized to adopt such rules as are necessary and appropriate to carry out the provisions of this chapter. [1971 ex.s. c 286 § 20.]

90.58.210 Court actions to ensure against conflicting uses and to enforce—Civil penalty—Review. (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, the attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the shorelines of the state in conflict with the provisions and programs of this chapter, and to otherwise enforce the provisions of this chapter.

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

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

(4) The person incurring the penalty may appeal within thirty days from the date of receipt of the penalty. The term "date of receipt" has the same meaning as provided in RCW 43.21B.001. Any penalty imposed pursuant to this section by the department shall be subject to review by the shorelines hearings board. Any penalty imposed pursuant to this section by local government shall be subject to review by the local government legislative authority. Any penalty jointly imposed by the department and local government shall be appealed to the shorelines hearings board. [2010 c 210 § 39; 1995 c 403 § 637; 1986 c 292 § 4; 1971 ex.s. c 286 § 21.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Severability—1986 c 292: See note following RCW 90.58.030.

Additional notes found at www.leg.wa.gov

90.58.220 General penalty. In addition to incurring civil liability under RCW 90.58.210, any person found to have wilfully engaged in activities on the shorelines of the state in violation of the provisions of this chapter or any of the master programs, rules, or regulations adopted pursuant thereto shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than twenty-five nor more than one thousand dollars or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment: PROVIDED, That the fine for the third and all subsequent violations in any five-year period shall be not less than five hundred nor more than ten thousand dollars: PROVIDED FURTHER, That fines for violations of RCW 90.58.550, or any rule adopted thereunder, shall be determined under RCW 90.58.560. [1983 c 138 § 3; 1971 ex.s. c 286 § 22.]

90.58.230 Violators liable for damages resulting from violation—Attorney's fees and costs. Any person subject to the regulatory program of this chapter who violates any provision of this chapter or permit issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The attorney general or local government attorney shall bring suit for damages under this section on behalf of the state or local governments. Private persons shall have the right to bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by a violation the court shall make provision to assure that restoration will be accomplished within a reasonable time at

the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the prevailing party. [1971 ex.s. c 286 § 23.]

90.58.240 Additional authority granted department and local governments. In addition to any other powers granted hereunder, the department and local governments may:

(1) Acquire lands and easements within shorelines of the state by purchase, lease, or gift, either alone or in concert with other governmental entities, when necessary to achieve implementation of master programs adopted hereunder;

(2) Accept grants, contributions, and appropriations from any agency, public or private, or individual for the purposes of this chapter;

(3) Appoint advisory committees to assist in carrying out the purposes of this chapter;

(4) Contract for professional or technical services required by it which cannot be performed by its employees. [1972 ex.s. c 53 § 1; 1971 ex.s. c 286 § 24.]

90.58.250 Intent—Department to cooperate with local governments—Grants for development of master programs. (1) The legislature intends to eliminate the limits on state funding of shoreline master program development and amendment costs. The legislature further intends that the state will provide funding to local governments that is reasonable and adequate to accomplish the costs of developing and amending shoreline master programs consistent with the schedule established by RCW 90.58.080. Except as specifically described herein, nothing in chapter 262, Laws of 2003 is intended to alter the existing obligation, duties, and benefits provided by chapter 262, Laws of 2003 to local governments and the department.

(2) The department is directed to cooperate fully with local governments in discharging their responsibilities under this chapter. Funds shall be available for distribution to local governments on the basis of applications for preparation of master programs and the provisions of RCW 90.58.080(7). Such applications shall be submitted in accordance with regulations developed by the department. The department is authorized to make and administer grants within appropriations authorized by the legislature to any local government within the state for the purpose of developing a master shorelines program. [2003 c 262 § 3; 1971 ex.s. c 286 § 25.]

90.58.260 State to represent its interest before federal agencies, interstate agencies and courts. The state, through the department of ecology and the attorney general, shall represent its interest before water resource regulation management, development, and use agencies of the United States, including among others, the federal power commission, environmental protection agency, corps of engineers, department of the interior, department of agriculture and the atomic energy commission, before interstate agencies and the courts with regard to activities or uses of shorelines of the state and the program of this chapter. Where federal or interstate agency plans, activities, or procedures conflict with state policies, all reasonable steps available shall be taken by the state to preserve the integrity of its policies. [1971 ex.s. c 286 § 26.]

90.58.270 Nonapplication to certain structures, docks, developments, etc., placed in navigable waters—Nonapplication to certain rights of action, authority—Floating homes must be classified as a conforming preferred use. (1) Nothing in this statute shall constitute authority for requiring or ordering the removal of any structures, improvements, docks, fills, or developments placed in navigable waters prior to December 4, 1969, and the consent and authorization of the state of Washington to the impairment of public rights of navigation, and corollary rights incidental thereto, caused by the retention and maintenance of said structures, improvements, docks, fills or developments are hereby granted: PROVIDED, That the consent herein given shall not relate to any structures, improvements, docks, fills, or developments placed on tidelands, shorelands, or beds underlying said waters which are in trespass or in violation of state statutes.

(2) Nothing in this section shall be construed as altering or abridging any private right of action, other than a private right which is based upon the impairment of public rights consented to in subsection (1) hereof.

(3) Nothing in this section shall be construed as altering or abridging the authority of the state or local governments to suppress or abate nuisances or to abate pollution.

(4) Subsection (1) of this section shall apply to any case pending in the courts of this state on June 1, 1971 relating to the removal of structures, improvements, docks, fills, or developments based on the impairment of public navigational rights.

(5)(a) A floating home permitted or legally established prior to January 1, 2011, must be classified as a conforming preferred use.

(b) For the purposes of this subsection:

(i) "Conforming preferred use" means that applicable development and shoreline master program regulations may only impose reasonable conditions and mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable.

(ii) "Floating home" means a single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed. [2011 c 212 § 2; 1971 ex.s. c 286 § 27.]

Finding—2011 c 212: "The legislature recognizes that existing floating homes, as part of our state's existing houseboat communities, are an important cultural amenity and element of our maritime history. These surviving floating home communities are a linkage to the past, when our waterways were the focus of commerce, transport, and development. In order to ensure the vitality and long-term survival of these existing floating home communities, consistent with the legislature's goal of allowing their continued use, improvement, and replacement without undue burden, the legislature finds that it is necessary to clarify their legal status." [2011 c 212 § 1.]

90.58.280 Application to all state agencies, counties, public and municipal corporations. The provisions of this chapter shall be applicable to all agencies of state government, counties, and public and municipal corporations and to

all shorelines of the state owned or administered by them. [1971 ex.s. c 286 § 28.]

90.58.290 Restrictions as affecting fair market value of property. The restrictions imposed by this chapter shall be considered by the county assessor in establishing the fair market value of the property. [1971 ex.s. c 286 § 29.]

90.58.300 Department as regulating state agency—Special authority. The department of ecology is designated the state agency responsible for the program of regulation of the shorelines of the state, including coastal shorelines and the shorelines of the inner tidal waters of the state, and is authorized to cooperate with the federal government and sister states and to receive benefits of any statutes of the United States whenever enacted which relate to the programs of this chapter. [1971 ex.s. c 286 § 30.]

90.58.310 Designation of shorelines of statewide significance by legislature—Recommendation by director, procedure. Additional shorelines of the state shall be designated shorelines of statewide significance only by affirmative action of the legislature.

The director of the department may, however, from time to time, recommend to the legislature areas of the shorelines of the state which have statewide significance relating to special economic, ecological, educational, developmental, recreational, or aesthetic values to be designated as shorelines of statewide significance.

Prior to making any such recommendation the director shall hold a public hearing in the county or counties where the shoreline under consideration is located. It shall be the duty of the county commissioners of each county where such a hearing is conducted to submit their views with regard to a proposed designation to the director at such date as the director determines but in no event shall the date be later than sixty days after the public hearing in the county. [1971 ex.s. c 286 § 31.]

90.58.320 Height limitation respecting permits. No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served. [1971 ex.s. c 286 § 32.]

90.58.340 Use policies for land adjacent to shorelines, development of. All state agencies, counties, and public and municipal corporations shall review administrative and management policies, regulations, plans, and ordinances relative to lands under their respective jurisdictions adjacent to the shorelines of the state so as the [to] achieve a use policy on said land consistent with the policy of this chapter, the guidelines, and the master programs for the shorelines of the state. The department may develop recommendations for land use control for such lands. Local governments shall, in developing use regulations for such areas, take into consideration any recommendations developed by the department as well as any other state agencies or units of local government. [1971 ex.s. c 286 § 34.]

90.58.350 Nonapplication to treaty rights. Nothing in this chapter shall affect any rights established by treaty to which the United States is a party. [1971 ex.s. c 286 § 35.]

90.58.355 Persons not required to obtain certain permits or variances. Requirements to obtain a substantial development permit, conditional use permit, or variance shall not apply to any person:

(1) Conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department must ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090; or

(2) Installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit. The department must ensure compliance with the substantive requirements of this chapter through the review of engineering reports, site plans, and other documents related to the installation of boatyard storm water treatment facilities. [2012 c 169 § 1; 1994 c 257 § 20.]

Severability—1994 c 257: See note following RCW 36.70A.270.

Additional notes found at www.leg.wa.gov

90.58.360 Existing requirements for permits, certificates, etc., not obviated. Nothing in this chapter shall obviate any requirement to obtain any permit, certificate, license, or approval from any state agency or local government. [1971 ex.s. c 286 § 36.]

90.58.370 Processing of permits or authorizations for emergency water withdrawal and facilities to be expedited. All state and local agencies with authority under this chapter to issue permits or other authorizations in connection with emergency water withdrawals and facilities authorized under RCW 43.83B.410 shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application. [1989 c 171 § 11; 1987 c 343 § 5.]

Severability—1989 c 171: See note following RCW 43.83B.400.

Severability—1987 c 343: See note following RCW 43.83B.300.

Additional notes found at www.leg.wa.gov

90.58.380 Adoption of wetland manual. The department by rule shall adopt a manual for the delineation of wetlands under this chapter that implements and is consistent with the 1987 manual in use on January 1, 1995, by the United States army corps of engineers and the United States environmental protection agency. If the corps of engineers and the environmental protection agency adopt changes to or a different manual, the department shall consider those

changes and may adopt rules implementing those changes. [1995 c 382 § 11.]

90.58.515 Watershed restoration projects—Exemption. Watershed restoration projects as defined in RCW 89.08.460 are exempt from the requirement to obtain a substantial development permit. Local government shall review the projects for consistency with the locally adopted shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving a complete consolidated application form from the applicant. No fee may be charged for accepting and processing applications for watershed restoration projects as used in this section. [1995 c 378 § 16.]

90.58.550 Oil or natural gas exploration in marine waters—Definitions—Application for permit—Requirements—Review—Enforcement. (1) Within this section the following definitions apply:

(a) "Exploration activity" means reconnaissance or survey work related to gathering information about geologic features and formations underlying or adjacent to marine waters;

(b) "Marine waters" include the waters of Puget Sound north to the Canadian border, the waters of the Strait of Juan de Fuca, the waters between the western boundary of the state and the ordinary high water mark, and related bays and estuaries;

(c) "Vessel" includes ships, boats, barges, or any other floating craft.

(2) A person desiring to perform oil or natural gas exploration activities by vessel located on or within marine waters of the state shall first obtain a permit from the department of ecology. The department may approve an application for a permit only if it determines that the proposed activity will not:

(a) Interfere materially with the normal public uses of the marine waters of the state;

(b) Interfere with activities authorized by a permit issued under RCW 90.58.140(2);

(c) Injure the marine biota, beds, or tidelands of the waters;

(d) Violate water quality standards established by the department; or

(e) Create a public nuisance.

(3) Decisions on an application under subsection (2) of this section are subject to review only by the pollution control hearings board under chapter 43.21B RCW.

(4) This section does not apply to activities conducted by an agency of the United States or the state of Washington.

(5) This section does not lessen, reduce, or modify RCW 90.58.160.

(6) The department may adopt rules necessary to implement this section.

(7) The attorney general shall enforce this section. [1983 c 138 § 1.]

Ocean resources management act: Chapter 43.143 RCW.

Transport of petroleum products or hazardous substances: Chapter 88.40 RCW.

90.58.560 Oil or natural gas exploration—Violations of RCW 90.58.550—Penalty—Appeal. (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, a person who violates RCW 90.58.550, or any rule adopted thereunder, is subject to a penalty in an amount of up to five thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty provided for in this section.

(2) The penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the director or the director's representative describing such violation with reasonable particularity.

(3) Any person incurring any penalty under this section may appeal the penalty to the hearings board as provided for in chapter 43.21B RCW. Such appeals shall be filed within thirty days from the date of receipt of the penalty. Any penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless an appeal is filed. Whenever an appeal of any penalty incurred under this section is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund. [2010 c 210 § 40; 1995 c 403 § 638; 1983 c 138 § 2.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Additional notes found at www.leg.wa.gov

90.58.570 Consultation before responding to federal coastal zone management certificates. The department of ecology shall consult with affected state agencies, local governments, Indian tribes, and the public prior to responding to federal coastal zone management consistency certifications for uses and activities occurring on the federal outer continental shelf. [1989 1st ex.s. c 2 § 15.]

Severability—1989 1st ex.s. c 2: See RCW 43.143.902.

Additional notes found at www.leg.wa.gov

90.58.580 Shoreline restoration projects—Relief from shoreline master program development standards and use regulations. (1) The local government may grant relief from shoreline master program development standards

and use regulations within urban growth areas when the following apply:

(a) A shoreline restoration project causes or would cause a landward shift in the ordinary high water mark, resulting in the following:

(i)(A) Land that had not been regulated under this chapter prior to construction of the restoration project is brought under shoreline jurisdiction; or

(B) Additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the applicable shoreline master program; and

(ii) Application of shoreline master program regulations would preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent;

(b) The proposed relief meets the following criteria:

(i) The proposed relief is the minimum necessary to relieve the hardship;

(ii) After granting the proposed relief, there is net environmental benefit from the restoration project;

(iii) Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the shoreline master program; and

(iv) Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section; and

(c) The application for relief must be submitted to the department for written approval or disapproval. This review must occur during the department's normal review of a shoreline substantial development permit, conditional use permit, or variance. If no such permit is required, then the department shall conduct its review when the local government provides a copy of a complete application and all supporting information necessary to conduct the review.

(i) Except as otherwise provided in subsection (2) of this section, the department shall provide at least twenty-days notice to parties that have indicated interest to the department in reviewing applications for relief under this section, and post the notice on their web site.

(ii) The department shall act within thirty calendar days of close of the public notice period, or within thirty days of receipt of the proposal from the local government if additional public notice is not required.

(2) The public notice requirements of subsection (1)(c) of this section do not apply if the relevant shoreline restoration project was included in a shoreline master program or shoreline restoration plan as defined in WAC 173-26-201, as follows:

(a) The restoration plan has been approved by the department under applicable shoreline master program guidelines;

(b) The shoreline restoration project is specifically identified in the shoreline master program or restoration plan or is located along a shoreline reach identified in the shoreline master program or restoration plan as appropriate for granting relief from shoreline regulations; and

(c) The shoreline master program or restoration plan includes policies addressing the nature of the relief and why, when, and how it would be applied.

(3) A substantial development permit is not required on land within urban growth areas as defined in RCW 36.70A.030 that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Shoreline restoration project" means a project designed to restore impaired ecological function of a shoreline.

(b) "Urban growth areas" has the same meaning as defined in RCW 36.70A.030. [2009 c 405 § 2.]

Finding—Intent—2009 c 405: "The legislature finds that restoration of degraded shoreline conditions is important to the ecological function of our waters. However, restoration projects that shift the location of the shoreline can inadvertently create hardships for property owners, particularly in urban areas. Hardship may occur when a shoreline restoration project shifts shoreline management act regulations into areas that had not previously been regulated under the act or shifts the location of required shoreline buffers. The legislature intends to provide relief to property owners in such cases, while protecting the viability of shoreline restoration projects." [2009 c 405 § 1.]

90.58.590 Local governments authorized to adopt moratoria—Requirements—Public hearing. (1) Local governments may adopt moratoria or other interim official controls as necessary and appropriate to implement this chapter.

(2)(a) A local government adopting a moratorium or control under this section must:

(i) Hold a public hearing on the moratorium or control;

(ii) Adopt detailed findings of fact that include, but are not limited to justifications for the proposed or adopted actions and explanations of the desired and likely outcomes;

(iii) Notify the department of the moratorium or control immediately after its adoption. The notification must specify the time, place, and date of any public hearing required by this subsection;

(iv) Provide that all lawfully existing uses, structures, or other development shall continue to be deemed lawful conforming uses and may continue to be maintained, repaired, and redeveloped, so long as the use is not expanded, under the terms of the land use and shoreline rules and regulations in place at the time of the moratorium.

(b) The public hearing required by this section must be held within sixty days of the adoption of the moratorium or control.

(3) A moratorium or control adopted under this section may be effective for up to six months if a detailed work plan for remedying the issues and circumstances necessitating the moratorium or control is developed and made available for public review. A moratorium or control may be renewed for two six-month periods if the local government complies with subsection (2)(a) of this section before each renewal. If a moratorium or control is in effect on the date a proposed master program or amendment is submitted to the department, the moratorium or control must remain in effect until the department's final action under RCW 90.58.090; however, the moratorium expires six months after the date of submittal if the department has not taken final action.

(4) Nothing in this section may be construed to modify county and city moratoria powers conferred outside this chapter. [2009 c 444 § 2.]

Intent—2009 c 444: "The legislature recognizes that cities and counties have moratoria authority granted through constitutional and statutory

provisions and that this authority, when properly exercised, is an important aspect of complying with environmental stewardship and protection requirements.

Recognizing the fundamental role and value of properly exercised moratoria, the legislature intends to establish new moratoria procedures and to affirm moratoria authority that local governments have and may exercise when implementing the shoreline management act, while recognizing the legitimate interests of existing shoreline-related developments during the period of interim moratoria." [2009 c 444 § 1.]

90.58.600 Conformance with chapter 43.97 RCW required. With respect to the National Scenic Area, as defined in the Columbia [River] Gorge National Scenic Area Act, P.L. 99-663, the exercise of any power or authority by a local government or the department of ecology pursuant to this chapter shall be subject to and in conformity with the requirements of chapter 43.97 RCW, including the management plan regulations and ordinances adopted by the Columbia River Gorge commission pursuant to the Compact. [1987 c 499 § 10.]

90.58.610 Relationship between shoreline master programs and development regulations under growth management act governed by RCW 36.70A.480. RCW 36.70A.480 governs the relationship between shoreline master programs and development regulations to protect critical areas that are adopted under chapter 36.70A RCW. [2010 c 107 § 4.]

Intent—Retroactive application—Effective date—2010 c 107: See notes following RCW 36.70A.480.

90.58.620 New or amended master programs—Authorized provisions. (1) New or amended master programs approved by the department on or after September 1, 2011, may include provisions authorizing:

(a) Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following to be considered a conforming structure: Setbacks, buffers, or yards; area; bulk; height; or density; and

(b) Redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure if it is consistent with the master program, including requirements for no net loss of shoreline ecological functions.

(2) For purposes of this section, "appurtenant structures" means garages, sheds, and other legally established structures. "Appurtenant structures" does not include bulkheads and other shoreline modifications or over-water structures.

(3) Nothing in this section: (a) Restricts the ability of a master program to limit redevelopment, expansion, or replacement of over-water structures located in hazardous areas, such as floodplains and geologically hazardous areas; or (b) affects the application of other federal, state, or local government requirements to residential structures. [2011 c 323 § 2.]

Findings—2011 c 323: "(1) The legislature recognizes that there is concern from property owners regarding legal status of existing legally developed shoreline structures under updated shoreline master programs. Significant concern has been expressed by residential property owners during shoreline master program updates regarding the legal status of existing shoreline structures that may not meet current standards for new development.

(2) Engrossed House Bill No. 1653, enacted as chapter 107, Laws of 2010 clarified the status of existing structures in the shoreline area under the growth management act prior to the update of shoreline regulations. It is in the public interest to clarify the legal status of these structures that will apply after shoreline regulations are updated.

(3) Updated shoreline master programs must include provisions to ensure that expansion, redevelopment, and replacement of existing structures will result in no net loss of the ecological function of the shoreline. Classifying existing structures as legally conforming will not create a risk of degrading shoreline natural resources." [2011 c 323 § 1.]

90.58.900 Liberal construction—1971 ex.s. c 286. This chapter is exempted from the rule of strict construction, and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted. [1971 ex.s. c 286 § 37.]

90.58.910 Severability—1971 ex.s. c 286. If any provision of this chapter, or its application to any person or legal entity or circumstances, is held invalid, the remainder of the act, or the application of the provision to other persons or legal entities or circumstances, shall not be affected. [1971 ex.s. c 286 § 40.]

90.58.911 Severability—1983 c 138. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 138 § 4.]

90.58.920 Effective date—1971 ex.s. c 286. This chapter is necessary for the immediate preservation of the public peace, health and safety, the support of the state government, and its existing institutions. This 1971 act shall take effect on June 1, 1971. The director of ecology is authorized to immediately take such steps as are necessary to insure that this 1971 act is implemented on its effective date. [1971 ex.s. c 286 § 41.]

90.74.005 Findings—Intent. (1) The legislature finds that:

(a) The state lacks a clear policy relating to the mitigation of wetlands and aquatic habitat for infrastructure development;

(b) Regulatory agencies have generally required project proponents to use compensatory mitigation only at the site of the project's impacts and to mitigate narrowly for the habitat or biological functions impacted by a project;

(c) This practice of considering traditional on-site, in-kind mitigation may provide fewer environmental benefits when compared to innovative mitigation proposals that provide benefits in advance of a project's planned impacts and that restore functions or habitat other than those impacted at a project site;

(d) Regulatory decisions on development proposals that attempt to incorporate innovative mitigation measures take an unreasonably long period of time and are subject to a great deal of uncertainty and additional expenses; and

(e) Greater environmental benefits may be achievable through compensatory environmental mitigation when the collective mitigation investments of project proponents is paired with the structure of successful state programs that are referenced in statute and are designed to enhance and preserve aquatic and riparian functions when there is a clear linkage between the environmental impacts and the goals of

the state program. Programs such as the forestry riparian easement program, the family forest fish passage program, and the riparian open space program created pursuant to RCW 76.09.040 may have a logical and physical nexus with many underlying projects, especially road projects, and are proven to create a sustained benefit in the aquatic environment.

(2) The legislature therefore declares that it is the policy of the state to authorize innovative mitigation measures by requiring state regulatory agencies to consider mitigation proposals for projects that are timed, designed, and located in a manner to provide equal or better biological functions and values compared to traditional on-site, in-kind mitigation proposals.

(3) It is the intent of the legislature to authorize local governments to accommodate the goals of this chapter. It is not the intent of the legislature to: (a) Restrict the ability of a project proponent to pursue project specific mitigation; or (b) create any new authority for regulating wetlands or aquatic habitat beyond what is specifically provided for in this chapter. [2012 c 62 § 2; 1997 c 424 § 1.]

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

(1) "Compensatory mitigation" means the restoration, creation, enhancement, or preservation of uplands, wetlands, or other aquatic resources for the purposes of compensating for unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved. "Compensatory mitigation" includes mitigation that:

(a) Occurs at the same time as, or in advance of, a project's planned environmental impacts;

(b) Is located in a site either on, near, or distant from the project's impacts; and

(c) Provides either the same or different biological functions and values as the functions and values impacted by the project.

(2) "Family forest fish passage program" means the program administered by the recreation and conservation office created pursuant to RCW 76.09.410 that provides public cost assistance to small forest landowners associated with the road maintenance and abandonment processes.

(3) "Forestry riparian easement program" means the program established in RCW 76.13.120.

(4) "Infrastructure development" means an action that is critical for the maintenance or expansion of an existing infrastructure feature such as a highway, rail line, airport, marine terminal, utility corridor, harbor area, or hydroelectric facility and is consistent with an approved land use planning process. This planning process may include the growth management act, chapter 36.70A RCW, or the shoreline management act, chapter 90.58 RCW, in areas covered by those chapters.

(5) "Mitigation" means sequentially avoiding impacts, minimizing impacts, or compensating for remaining unavoidable impacts.

(6) "Mitigation plan" means a document or set of documents developed through joint discussions between a project proponent and environmental regulatory agencies that describe the unavoidable wetland or aquatic resource impacts of a proposed infrastructure development or noninfrastructure development and the proposed compensatory mitigation for those impacts.

(7) "Noninfrastructure development" means a development project that requires the completion of compensatory mitigation that does not meet the definition of "infrastructure development" and is consistent with an approved land use planning process. This planning process may include the growth management act, chapter 36.70A RCW, or the shoreline management act, chapter 90.58 RCW, in areas covered by those chapters.

(8) "Project proponent" means a public or private entity responsible for preparing a mitigation plan.

(9) "Riparian open space program" means the program created pursuant to RCW 76.09.040.

(10) "Watershed" means an area identified as a state of Washington water resource inventory area under WAC 173-500-040 as it exists on June 7, 2012. [2012 c 62 § 3; 1997 c 424 § 2.]

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

Chapter 90.82 RCW
WATERSHED PLANNING

(Formerly: Water resource management)

Sections

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90.82.040 WRIA planning units—Watershed planning grants—Eligibility criteria—Administrative costs. (1) Once a WRIA planning unit has been initiated under RCW 90.82.060 and a lead agency has been designated, it shall notify the department and may apply to the department for funding assistance for conducting the planning and implementation. Funds shall be provided from and to the extent of appropriations made by the legislature to the department expressly for this purpose.

(2)(a) Each planning unit that has complied with subsection (1) of this section is eligible to receive watershed planning grants in the following amounts for the first three phases of watershed planning and phase four watershed plan implementation:

(i) Initiating governments may apply for an initial organizing grant of up to fifty thousand dollars for a single WRIA

or up to seventy-five thousand dollars for a multi-WRIA management area in accordance with RCW 90.82.060(4);

(ii)(A) A planning unit may apply for up to two hundred thousand dollars for each WRIA in the management area for conducting watershed assessments in accordance with RCW 90.82.070, except that a planning unit that chooses to conduct a detailed assessment or studies under (a)(ii)(B) of this subsection or whose initiating governments choose or have chosen to include an instream flow or water quality component in accordance with RCW 90.82.080 or 90.82.090 may apply for up to one hundred thousand additional dollars for each instream flow and up to one hundred thousand additional dollars for each water quality component included for each WRIA to conduct an assessment on that optional component and for each WRIA in which the assessments or studies under (a)(ii)(B) of this subsection are conducted.

(B) A planning unit may elect to apply for up to one hundred thousand additional dollars to conduct a detailed assessment of multipurpose water storage opportunities or for studies of specific multipurpose storage projects which opportunities or projects are consistent with and support the other elements of the planning unit's watershed plan developed under this chapter; and

(iii) A planning unit may apply for up to two hundred fifty thousand dollars for each WRIA in the management area for developing a watershed plan and making recommendations for actions by local, state, and federal agencies, tribes, private property owners, private organizations, and individual citizens, including a recommended list of strategies and projects that would further the purpose of the plan in accordance with RCW 90.82.060 through 90.82.100.

(b) A planning unit may request a different amount for phase two or phase three of watershed planning than is specified in (a) of this subsection, provided that the total amount of funds awarded do not exceed the maximum amount the planning unit is eligible for under (a) of this subsection. The department shall approve such an alternative allocation of funds if the planning unit identifies how the proposed alternative will meet the goals of this chapter and provides a proposed timeline for the completion of planning. However, the up to one hundred thousand additional dollars in funding for instream flow and water quality components and for water storage assessments or studies that a planning unit may apply for under (a)(ii)(A) of this subsection may be used only for those instream flow, water quality, and water storage purposes.

(c) By December 1, 2001, or within one year of initiating phase one of watershed planning, whichever occurs later, the initiating governments for each planning unit must inform the department whether they intend to have the planning unit establish or amend instream flows as part of its planning process. If they elect to have the planning unit establish or amend instream flows, the planning unit is eligible to receive one hundred thousand dollars for that purpose in accordance with (a)(ii) of this subsection. If the initiating governments for a planning unit elect not to establish or amend instream flows as part of the unit's planning process, the department shall retain one hundred thousand dollars to carry out an assessment to support establishment of instream flows and to establish such flows in accordance with RCW 90.54.020(3)(a) and chapter 90.22 RCW. The department shall not use these funds to amend an existing instream flow unless requested to do so by the initiating governments for a planning unit.

(d) In administering funds appropriated for supplemental funding for optional plan components under (a)(ii) of this subsection, the department shall give priority in granting the available funds to proposals for setting or amending instream flows.

(e) A planning unit may apply for a matching grant for phase four watershed plan implementation following approval under the provisions of RCW 90.82.130. A match of ten percent is required and may include financial contributions or in-kind goods and services directly related to coordination and oversight functions. The match can be provided by the planning unit or by the combined commitments from federal agencies, tribal governments, local governments, special districts, or other local organizations. The phase four grant may be up to one hundred thousand dollars for each planning unit for each of the first three years of implementation. At the end of the three-year period, a two-year extension may be available for up to fifty thousand dollars each year. For planning units that cover more than one WRIA, additional matching funds of up to twenty-five thousand dollars may be available for each additional WRIA per year for the first three years of implementation, and up to twelve thousand five hundred dollars per WRIA per year for each of the fourth and fifth years.

(3)(a) The department shall use the eligibility criteria in this subsection (3) instead of rules, policies, or guidelines when evaluating grant applications at each stage of the grants program.

(b) In reviewing grant applications under this subsection (3), the department shall evaluate whether:

(i) The planning unit meets all of the requirements of this chapter;

(ii) The application demonstrates a need for state planning funds to accomplish the objectives of the planning process; and

(iii) The application and supporting information evidences a readiness to proceed.

(c) In ranking grant applications submitted at each stage of the grants program, the department shall give preference to applications in the following order of priority:

(i) Applications from existing planning groups that have been in existence for at least one year;

(ii) Applications that address protection and enhancement of fish habitat in watersheds that have aquatic fish species listed or proposed to be listed as endangered or threatened under the federal endangered species act, 16 U.S.C. Sec. 1531 et seq. and for which there is evidence of an inability to supply adequate water for population and economic growth from:

(A) First, multi-WRIA planning; and

(B) Second, single WRIA planning;

(iii) Applications that address protection and enhancement of fish habitat in watersheds or for which there is evidence of an inability to supply adequate water for population and economic growth from:

(A) First, multi-WRIA planning; and

(B) Second, single WRIA planning.

(d) Except for phase four watershed plan implementation, the department may not impose any local matching fund requirement as a condition for grant eligibility or as a preference for receiving a grant.

(4) The department may retain up to one percent of funds allocated under this section to defray administrative costs.

(5) Planning under this chapter should be completed as expeditiously as possible, with the focus being on local stakeholders cooperating to meet local needs.

(6) Funding provided under this section shall be considered a contractual obligation against the moneys appropriated for this purpose. [2003 1st sp.s. c 4 § 2; 2001 c 237 § 2; 1998 c 247 § 1; 1997 c 442 § 105.]

Findings—2003 1st sp.s. c 4: "The legislature declares and reaffirms that a core principle embodied in chapter 90.82 RCW is that state agencies must work cooperatively with local citizens in a process of planning for future uses of water by giving local citizens and the governments closest to them the ability to determine the management of water in the WRIA or WRIAs being planned.

The legislature further finds that this process of local planning must have all the tools necessary to accomplish this task and that it is essential for the legislature to provide a clear statutory process for implementation so that the locally developed plan will be the adopted and implemented plan to the greatest extent possible." [2003 1st sp.s. c 4 § 1.]

Finding—Intent—2001 c 237: "The legislature is committed to meeting the needs of a growing population and a healthy economy statewide; to meeting the needs of fish and healthy watersheds statewide; and to advancing these two principles together, in increments over time.

The legislature finds that improved management of the state's water resources, clarifying the authorities, requirements, and timelines for establishing instream flows, providing timely decisions on water transfers, clarifying the authority of water conservancy boards, and enhancing the flexibility of our water management system to meet both environmental and economic goals are important steps to providing a better future for our state.

The need for these improvements is particularly urgent as we are faced with drought conditions. The failure to act now will only increase the potential negative effects on both the economy and the environment, including fisheries resources.

Deliberative action over several legislative sessions and interim periods between sessions will be required to address the long-term goal of improving the responsiveness of the state water code to meet the diverse water needs of the state's citizenry. It is the intent of the legislature to begin this work now by providing tools to enable the state to respond to imminent drought conditions and other immediate problems relating to water resources management. It is also the legislature's intent to lay the groundwork for future legislation for addressing the state's long-term water problems." [2001 c 237 § 1.]

Severability—2001 c 237: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 237 § 33.]

Effective date—2001 c 237: "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 immediately [May 10, 2001]." [2001 c 237 § 34.]

Intent—2001 c 237: See note following RCW 90.66.065.

Additional notes found at www.leg.wa.gov

90.82.080 Instream flow component—Rules—Report. (1)(a) If the initiating governments choose, by majority vote, to include an instream flow component, it shall be accomplished in the following manner:

(i) If minimum instream flows have already been adopted by rule for a stream within the management area, unless the members of the local governments and tribes on the planning unit by a recorded unanimous vote request the department to modify those flows, the minimum instream flows shall not be modified under this chapter. If the members of local governments and tribes request the planning unit to modify instream flows and unanimous approval of the decision to modify such flow is not achieved, then the instream flows shall not be modified under this section;

(ii) If minimum stream flows have not been adopted by rule for a stream within the management area, setting the minimum instream flows shall be a collaborative effort between the department and members of the planning unit. The department must attempt to achieve consensus and approval among the members of the planning unit regarding the minimum flows to be adopted by the department. Approval is achieved if all government members and tribes that have been invited and accepted on the planning unit present for a recorded vote unanimously vote to support the proposed minimum instream flows, and all nongovernmental members of the planning unit present for the recorded vote, by a majority, vote to support the proposed minimum instream flows.

(b) The department shall undertake rule making to adopt flows under (a) of this subsection. The department may adopt the rules either by the regular rules adoption process provided in chapter 34.05 RCW, the expedited rules adoption process as set forth in RCW 34.05.353, or through a rules adoption process that uses public hearings and notice provided by the county legislative authority to the greatest extent possible. Such rules do not constitute significant legislative rules as defined in RCW 34.05.328, and do not require the preparation of small business economic impact statements.

(c) If approval is not achieved within four years of the date the planning unit first receives funds from the department for conducting watershed assessments under RCW 90.82.040, the department may promptly initiate rule making under chapter 34.05 RCW to establish flows for those streams and shall have two additional years to establish the instream flows for those streams for which approval is not achieved.

(2)(a) Notwithstanding RCW 90.03.345, minimum instream flows set under this section for rivers or streams that do not have existing minimum instream flow levels set by rule of the department shall have a priority date of two years after funding is first received from the department under RCW 90.82.040, unless determined otherwise by a unanimous vote of the members of the planning unit but in no instance may it be later than the effective date of the rule adopting such flow.

(b) Any increase to an existing minimum instream flow set by rule of the department shall have a priority date of two years after funding is first received for planning in the WRIA or multi-WRIA area from the department under RCW 90.82.040 and the priority date of the portion of the minimum instream flow previously established by rule shall retain its priority date as established under RCW 90.03.345.

(c) Any existing minimum instream flow set by rule of the department that is reduced shall retain its original date of priority as established by RCW 90.03.345 for the revised amount of the minimum instream flow level.

(3) Before setting minimum instream flows under this section, the department shall engage in government-to-government consultation with affected tribes in the management area regarding the setting of such flows.

(4) Nothing in this chapter either: (a) Affects the department's authority to establish flow requirements or other conditions under RCW 90.48.260 or the federal clean water act (33 U.S.C. Sec. 1251 et seq.) for the licensing or relicensing of a hydroelectric power project under the federal power act (16 U.S.C. Sec. 791 et seq.); or (b) affects or impairs existing instream flow requirements and other conditions in a current license for a hydroelectric power project licensed under the federal power act.

(5) If the planning unit is unable to obtain unanimity under subsection (1) of this section, the department may adopt rules setting such flows.

(6) The department shall report annually to the appropriate legislative standing committees on the progress of instream flows being set under this chapter, as well as progress toward setting instream flows in those watersheds not being planned under this chapter. The report shall be made by December 1, 2003, and by December 1st of each subsequent year. [2003 1st sp.s. c 4 § 4; 1998 c 247 § 4.]

Findings—2003 1st sp.s. c 4: See note following RCW 90.82.040.

90.82.130 Plan approval—Public notice and hearing—Revisions. (1)(a) Upon completing its proposed watershed plan, the planning unit may approve the proposal by consensus of all of the members of the planning unit or by consensus among the members of the planning unit appointed to represent units of government and a majority vote of the nongovernmental members of the planning unit.

(b) If the proposal is approved by the planning unit, the unit shall submit the proposal to the counties with territory within the management area. If the planning unit has received funding beyond the initial organizing grant under RCW 90.82.040, such a proposal approved by the planning unit shall be submitted to the counties within four years of the date that funds beyond the initial funding are first drawn upon by the planning unit.

(c) If the watershed plan is not approved by the planning unit, the planning unit may submit the components of the plan for which agreement is achieved using the procedure under (a) of this subsection, or the planning unit may terminate the planning process.

(2)(a) With the exception of a county legislative authority that chooses to opt out of watershed planning as provided in (c) of this subsection, the legislative authority of each of the counties with territory in the management area shall provide public notice of and conduct at least one public hearing on the proposed watershed plan submitted under this section. After the public hearings, the legislative authorities of these counties shall convene in joint session to consider the proposal. The counties may approve or reject the proposed watershed plan for the management area, but may not amend it. Approval of such a proposal shall be made by a majority vote of the members of each of the counties with territory in the management area.

(b) If a proposed watershed plan is not approved, it shall be returned to the planning unit with recommendations for revisions. Approval of such a revised proposal by the planning unit and the counties shall be made in the same manner provided for the original watershed plan. If approval of the revised plan is not achieved, the process shall terminate.

(c) A county legislative authority may choose to opt out of watershed planning under this chapter and the public hearing processes under (a) and (b) of this subsection if the county's affected territory within a particular management area is: (i) Less than five percent of the total territory within the management area; or (ii) five percent or more of the total territory within the management area and all other initiating governments within the management area consent. A county meeting these conditions and choosing to opt out shall notify the department and the other initiating governments of that choice prior to commencement of plan adoption under the provisions of (a) of this subsection. A county choosing to opt out under the provisions of this section shall not be bound by obligations contained in the watershed plan adopted for that management area under this chapter. Even if a county chooses to opt out under the provisions of this section, the other counties within a management area may adopt a proposed watershed plan as provided in this chapter.

(3) The planning unit shall not add an element to its watershed plan that creates an obligation unless each of the governments to be obligated has at least one representative on the planning unit and the respective members appointed to represent those governments agree to adding the element that creates the obligation. A member's agreeing to add an element shall be evidenced by a recorded vote of all members of the planning unit in which the members record support for adding the element. If the watershed plan is approved under subsections (1) and (2) of this section and the plan creates obligations: (a) For agencies of state government, the agencies shall adopt by rule the obligations of both state and county governments and rules implementing the state obligations, or, with the consent of the planning unit, may adopt policies, procedures, or agreements related to the obligations or implementation of the obligations in addition to or in lieu of rules. The obligations on state agencies are binding upon adoption of the obligations, and the agencies shall take other actions to fulfill their obligations as soon as possible, and should annually review implementation needs with respect to budget and staffing; (b) for counties, the obligations are binding on the counties and the counties shall adopt any necessary implementing ordinances and take other actions to fulfill their obligations as soon as possible, and should annually review implementation needs with respect to budget and staffing; or (c) for an organization voluntarily accepting an obligation, the organization must adopt policies, procedures, agreements, rules, or ordinances to implement the plan, and should annually review implementation needs with respect to budget and staffing.

(4) After a plan is adopted in accordance with subsection (3) of this section, and if the department participated in the planning process, the plan shall be deemed to satisfy the watershed planning authority of the department with respect to the components included under the provisions of RCW 90.82.070 through 90.82.100 for the watershed or watersheds included in the plan. The department shall use the plan as the framework for making future water resource decisions for the planned watershed or watersheds. Additionally, the department shall rely upon the plan as a primary consideration in determining the public interest related to such decisions.

(5) Once a WRIA plan has been approved under subsection (2) of this section for a watershed, the department may

develop and adopt modifications to the plan or obligations imposed by the plan only through a form of negotiated rule making that uses the same processes that applied in that watershed for developing the plan.

(6) As used in this section, "obligation" means any action required as a result of this chapter that imposes upon a tribal government, county government, or state government, either: A fiscal impact; a redeployment of resources; or a change of existing policy. [2003 1st sp.s. c 4 § 5; 2001 c 237 § 4; 1998 c 247 § 9.]

Findings—2003 1st sp.s. c 4: See note following RCW 90.82.040.

Finding—Intent—Severability—Effective date—2001 c 237: See notes following RCW 90.82.040.

Intent—2001 c 237: See note following RCW 90.66.065.

Last Page of 2013 GMA and Related Laws Update

Department of Commerce
Innovation is in our nature.

The department is the state's lead agency charged with providing financial and technical resources to facilitate local governments to have adequate infrastructure to accommodate allocated growth and enable economic development and business opportunities, while maintaining the quality of life.

The department administers the state's Growth Management Act. Its role is to assist and enable local governments to design their own programs to fit local needs and opportunities, consistent with the Growth Management Act.

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Administrative Rules Guiding Implementation of the Growth Management Act

- Minimum Guidelines To Classify Agriculture, Forest And Mineral Resource Lands (WAC 365-190)
- Best Available Science (WAC 365-195)
- Procedural Criteria For Adopting Comprehensive Plans And Development Regulations (WAC 365-196)
- Project Consistency (WAC 365-197)

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February 19, 2010

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365-190 WAC: MINIMUM GUIDELINES TO CLASSIFY AGRICULTURE, FOREST, MINERAL LANDS AND CRITICAL AREAS.

365-190-010 Authority

This chapter is established pursuant to RCW 36.70A.050.

[Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-010, filed 3/15/91, effective 4/15/91.]

365-190-020 Purpose

(1) The intent of this chapter is to establish minimum guidelines to assist all counties and cities in classifying and designating agricultural lands, forest lands, mineral resource lands, and critical areas.

(2) Growth management, natural resource land conservation, and critical areas protection share problems related to governmental costs and efficiency. The unwise development of natural resource lands or areas susceptible to natural hazards may lead to inefficient use of limited public resources, jeopardize environmental resource functions and values, subject persons and property to unsafe conditions, and affect the perceived quality of life. It is more costly to remedy the loss of natural resource lands or critical areas than to conserve and protect them from loss or degradation. The inherent economic, ecological, social, and cultural values of natural resource lands and critical areas should be considered in the development of strategies designed to conserve and protect these lands.

(3) In recognition of these common concerns, classification and designation of natural resource lands and critical areas is intended to assure the long-term conservation of natural resource lands and the protection of critical areas, and to preclude land uses and developments which are incompatible with natural resource lands and critical areas. When classifying and designating natural resource lands and critical areas, counties and cities should integrate regulatory and nonregulatory approaches together in a comprehensive program that relates to existing local, state, and federal efforts. An integrated approach should also consider other applicable planning requirements, including the need to identify open space corridors in RCW 36.70A.160, and the need to include the best available science in policies and regulations protecting critical areas in RCW 36.70A.172.

(4) There are qualitative differences between and among critical areas. Not all areas and ecosystems are critical for the same reasons. Some are critical because of the hazard they present to public health and safety, some because of the values they represent to the public welfare. In some cases, the risk posed to the public by use or development of a critical area can be mitigated or reduced by engineering or design; in other cases that risk cannot be effectively reduced except by avoidance of the critical area. Classification and designation of critical areas is intended to lead counties and cities to recognize the differences among these areas, and to develop appropriate regulatory and nonregulatory actions in response.

(5) There are also qualitative differences between and among natural resource lands. The three types of natural resource lands (agricultural, forest, and mineral) vary widely in their use, location, and size. One type may overlap another type. For example, designated forest resource lands may also include designated mineral resource lands. Agricultural resource lands vary based on the types of crops produced, their location on the landscape, and their relationship to sustaining agricultural industries in an identified geographic area.

(6) Counties and cities required or opting to plan under the act should consider the definitions and guidelines in this chapter when preparing development regulations that preclude uses and development incompatible with natural resource lands and critical areas (see RCW 36.70A.060). Precluding incompatible uses and development does not mean a prohibition of all uses or development. Rather, it means governing changes in land uses, new activities, or development that could adversely affect natural resource lands or critical areas. For each type of natural resource land and critical area, counties and cities planning under the act should define classification schemes and prepare development regulations that govern changes in land uses and new activities by prohibiting clearly inappropriate actions and restricting, allowing, or conditioning other activities as appropriate.

(7) It is the intent of these guidelines that critical areas designations overlay other land uses including designated natural resource lands. For example, if both critical area and natural resource land use designations apply to a given parcel or a portion of a parcel, both or all designations must be made. Regarding natural resource lands, counties and cities should allow existing and ongoing resource management operations, that have long-term commercial significance, to continue. Counties and cities should encourage resource land managers to use the best management practices of their industry, especially where existing and ongoing resource management operations that have long-term commercial significance include designated critical areas. Future operations or expansion of existing operations should be done in consideration of protecting critical areas, and with special consideration for conservation or protection measures needed to preserve or enhance anadromous fisheries.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-190-020, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-020, filed 3/15/91, effective 4/15/91.]

365-190-030 Definitions.

(1) "**Agricultural land**" is land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production. These lands are referred to in this chapter as agricultural resource lands to distinguish between formally designated lands, and other lands used for agricultural purposes.

(2) "**City**" means any city or town, including a code city.

(3) "**Critical aquifer recharge areas**" are areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge.

(4) "**Critical areas**" include the following:

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable water, referred to in this chapter as critical aquifer recharge areas;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(5) "**Erosion hazard areas**" are those areas containing soils which, according to the United States Department of Agriculture Natural Resources Conservation Service Soil Survey Program, may experience significant erosion. Erosion hazard areas also include coastal erosion-prone areas and channel migration zones.

(6)(a) "**Fish and wildlife habitat conservation areas**" are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species.

(b) "**Habitats of local importance**" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities.

(7) "**Forest land**" is land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. These lands are referred to in this chapter as forest resource lands to distinguish between formally designated lands, and other lands used for forestry purposes.

(8) "**Frequently flooded areas**" are lands in the flood plain subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high ground water. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and areas where high ground water forms ponds on the ground surface.

(9) "**Geologically hazardous areas**" are areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting commercial, residential, or industrial development consistent with public health or safety concerns.

(10) "**Landslide hazard areas**" are areas at risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

(11) "**Long-term commercial significance**" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of land. Long-term commercial significance means the land is capable of producing the specified natural resources at commercially sustainable levels for at least the twenty-year planning period, if adequately conserved. Designated mineral resource lands of long-term commercial significance may have alternative post-mining land uses, as provided by the Surface Mining Reclamation Act, comprehensive plan and development regulations, or other laws.

(12) "**Mine hazard areas**" are those areas directly underlain by, adjacent to, or affected by mine workings such as adits, tunnels, drifts, or air shafts.

(13) "**Mineral resource lands**" means lands primarily devoted to the extraction of minerals or that have known or potential long-term commercial significance for the extraction of minerals.

(14) "**Minerals**" include gravel, sand, and valuable metallic substances.

(15) "**Natural resource lands**" means agricultural, forest and mineral resource lands which have long-term commercial significance.

(16) "**Public facilities**" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(17) "**Public services**" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(18) "**Seismic hazard areas**" are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, debris flows, lahars, or tsunamis.

(19) "**Species of local importance**" are those species that are of local concern due to their population status or their sensitivity to habitat alteration or that are game species.

(20) "**Urban growth**" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. Urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(21) "**Volcanic hazard areas**" shall include areas subject to pyroclastic flows, lava flows, and inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

(22) "**Wetland**" or "**wetlands**" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate conversion of wetlands, if permitted by the county or city.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-190-030, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-030, filed 3/15/91, effective 4/15/91.]

365-190-040 Process.

(1) The classification and designation of natural resource lands and critical areas is an important step among several in the overall growth management process. These steps, outlined in subsections (4) and (5) of this section comprise a vision of the future, and that vision gives direction to the steps in the form of specific goals and objectives. Under the act, the timing of the first steps coincided with development of the larger vision through the comprehensive planning process.

(2) The act required preliminary classifications and designations of natural resource lands and critical areas to be completed in 1991. Counties and cities planning under the act were to enact interim regulations to protect and conserve these natural resource lands and critical areas by September 1, 1991. By July 1, 1992, counties and cities not planning under the act were to bring their development regulations into conformance with their comprehensive plans. By July 1, 1993, counties and cities planning under the act were to adopt comprehensive plans, consistent with the goals of the act. Implementation of the comprehensive plans was to occur by the following year.

(3) Under RCW 36.70A.130, all counties and cities must review, and if needed, update their natural resource lands and critical areas designations. Counties and cities fully planning under the act must also review and, if needed, update their natural resource lands conservation provisions, comprehensive plans and development regulations. Legal challenges to some updates have led to clarifications of the ongoing review and update requirements in RCW 36.70A.130, and the process for implementing those requirements. The process description and recommendations in this section incorporate those clarifications and describe both the initial designation and conservation or protection of natural resource lands and critical areas, as well as subsequent local actions to amend those designations and provisions.

(4) Classification is the first step in implementing RCW 36.70A.170 and requires defining categories to which natural resource lands and critical areas will be assigned.

> (a) Counties and cities are encouraged to adopt classification schemes that are consistent with federal and state classification schemes and those of adjacent jurisdictions to ensure regional consistency. Specific classification schemes for natural resource lands and critical areas are described in WAC 365-190-050 through 365-190-130.

(b) State agency classification schemes are available for specific critical area types, including the wetlands rating systems for eastern and western Washington from the Washington state department of ecology, the priority habitats and species categories and recommendations from the Washington state department of fish and wildlife, and the high quality ecosystem and rare plant categories and listings from the department of natural resources, natural heritage program. The Washington state department of natural resources provides significant information on geologic hazards and aquatic resources that may be useful in classifying these critical areas. Not all areas classified by state agencies must be designated, but such areas may be likely candidates for designation.

(5) Designation is the second step in implementing RCW 36.70A.170.

(a) Pursuant to RCW 36.70A.170, natural resource lands and critical areas must be designated based on their defined classifications. For planning purposes, designation establishes:

(i) The classification scheme;

(ii) The distribution, location, and extent of the uses of land, where appropriate, for agriculture, forestry, and mineral extraction; and

(iii) The general distribution, location, and extent of critical areas.

(b) Inventories and maps should indicate designations of natural resource lands. In circumstances where critical areas cannot be readily identified, these areas should be designated by performance standards or definitions, so they can be specifically identified during the processing of a permit or development authorization.

(c) Designation means, at a minimum, formal adoption of a policy statement, and may include further legislative action. Designating inventoried lands for comprehensive planning and policy definition may be less precise than subsequent regulation of specific parcels for conservation and protection.

(d) Successful achievement of the natural resource industries goal set forth in RCW 36.70A.020 requires the conservation of land base sufficient in size and quality to maintain and enhance those industries, and the development and use of land use techniques that discourage uses incompatible to the management of designated lands.

(e) Mineral resource lands especially should be designated as close as possible to their likely end use areas, to avoid losing access to those valuable minerals by development, and to minimize the costs of production and transport. It is expected that mineral resource lands will be depleted of minerals over time, and that subsequent land uses may occur on these lands after mining is completed.

(6) Classifying, inventorying, and designating lands or areas does not imply a change in a landowner's right to use his or her land under current law. The law requires that natural resource land uses be protected from land uses on adjacent lands that would restrict resource production. Development regulations adopted to protect critical areas may limit some land development options. Land uses are regulated on a parcel basis and innovative land use management techniques should be applied when counties and cities adopt development regulations to conserve and protect designated natural resource lands and critical areas. The purpose of designating natural resource lands is to enable industries to maintain access to lands with long-term commercial significance for agricultural, forest, and mineral resource production. The purpose is not to confine all natural resource production activity only to designated lands nor to require designation as the basis for a permit to engage in natural resource production. The department provides technical assistance to counties and cities on a wide array of regulatory options and alternative land use management techniques.

(7) Overlapping designations. The designation process may result in critical area designations that overlay other critical area or natural resource land classifications. Overlapping designations should not necessarily be considered inconsistent. If two or more critical area designations apply to a given parcel, or portion of a given parcel, both or all designations apply.

(a) If a critical area designation overlies a natural resource land designation, both designations apply. For counties and cities required or opting to plan under the act, reconciling these multiple designations will be the subject of local development regulations adopted pursuant to RCW 36.70A.060.

(b) If two or more natural resource land designations apply, counties and cities must determine if these designations are incompatible. If they are incompatible, counties and cities should examine the criteria to determine which use has the greatest long-term commercial significance, and that resource use should be assigned to the lands being designated.

(8) Counties and cities must involve the public in classifying and designating natural resource lands and critical areas. The process should include:

(a) Public participation program:

(i) Public participation should include, at a minimum, representative participation from the following entities: Landowners; representatives of agriculture, forestry, mining, business, environmental, and community groups; tribal governments; representatives of adjacent counties and cities; and state agencies. The public participation program should include early and timely public notice of pending designations and regulations and should address proposed nonregulatory incentive programs.

(ii) Counties and cities are encouraged to consider a variety of opportunities to adequately communicate with the public. These methods of notification may include, but are not limited to, traditional forms of mailed notices, published announcements, electronic mail, and internet sites to distribute informational brochures, meeting times, project timelines, and design and map proposals to provide an opportunity for the public to participate.

(iii) The department provides technical assistance in preparing public participation programs.

(b) Adoption process. Statutory and local processes already in place governing land use decisions are the minimum processes required for designation and regulation pursuant to RCW 36.70A.060 and 36.70A.170. At a minimum the following steps should be included in the adoption process:

(i) Accept the requirements of chapter 36.70A RCW;

(ii) Consider minimum guidelines developed by the department under RCW 36.70A.050;

(iii) Consider other definitions used by state and federal regulatory agencies;

(iv) Consider definitions used by similarly situated counties and cities;

(v) Determine recommended definitions and check conformance with minimum definitions in chapter 36.70A RCW;

(vi) Adopt definitions, classifications, and standards;

(vii) Apply definitions by mapping designated natural resource lands; and

(viii) Establish procedures for amending natural resource lands and critical areas designations.

(c) Intergovernmental coordination.

(i) The act requires coordination among counties and cities to reconcile conflicts and strive for consistent definitions, standards, and designations within regions. The minimum coordination process may include one of two options:

(A) Notification option: Adjacent cities (or those with overlapping or adjacent planning areas); counties and the cities within them; and adjacent counties would provide each other and special purpose districts and special purpose districts within them notice of their intent to classify and designate natural resource lands and critical areas within their jurisdiction. Counties or cities receiving notice may provide comments and input to the notifying jurisdiction. The notifying jurisdiction specifies a comment period prior to adoption. Within forty-five days of the jurisdiction's date of adoption of classifications or designations, affected jurisdictions are supplied information on how to locate a copy of the proposal. The department may provide mediation services to counties and cities to help resolve disputed classifications or designations.

(B) Interlocal agreement option: Adjacent counties and cities; all the cities within a county; or several counties and the cities within them may choose to cooperatively classify and designate natural resource lands and critical areas within their jurisdictions. Counties and cities by interlocal agreement would identify the definitions, classification, designation, and process that will be used to classify and designate lands within their areas. State and federal agencies or tribes may participate in the interlocal agreement or be provided a method of commenting on designations and classifications prior to adoption by jurisdictions.

(ii) Counties or cities may begin with the notification option in (c)(i)(A) of this subsection and choose to change to the interlocal agreement method in (c)(i)(B) of this subsection prior to completion of the classification and designations within their jurisdictions. Approaches to intergovernmental coordination may vary between natural resource land and critical area designation. It is intended that state and federal agencies with land ownership or management responsibilities, special purpose districts, and Indian tribes with interests within the counties or cities adopting classification and designation be consulted and their input considered in the development and adoption of designations and classifications. The department may provide mediation services to help resolve disputes between counties and cities that are using either the notification or interlocal agreement method of coordinating between jurisdictions.

(d) Mapping natural resource lands. Mapping should be done to identify designated natural resource lands. For counties and cities fully planning under the act, natural resource lands designations must be incorporated into the comprehensive plan land use element and should be shown on the future land use map required under RCW 36.70A.070.

(9) Evaluation. When counties and cities adopt a comprehensive plan, the act requires them to evaluate their designations and development regulations to assure that they are consistent with and implement the comprehensive plan. When considering changes to the designations or development regulations, counties and cities should seek interjurisdictional coordination and must include public participation.

(10) Designation amendment process.

(a) Land use planning is a dynamic process. Designation procedures should provide a rational and predictable basis for accommodating change.

(b) Reviewing natural resource lands designation. In classifying and designating natural resource lands, counties must approach the effort as a county-wide or regional process. Counties and cities should not review natural resource lands designations solely on a parcel-by-parcel process. Designation amendments should be based on consistency with one or more of the following criteria:

(i) A change in circumstances pertaining to the comprehensive plan or public policy related to designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);

(ii) A change in circumstances to the subject property, which is beyond the control of the landowner and is related to designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);

(iii) An error in designation or failure to designate;

(iv) New information on natural resource land or critical area status related to the designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3); or

(v) A change in population growth rates, or consumption rates, especially of mineral resources.

(11) Use of innovative land use management techniques.

(a) Natural resource uses have preferred and primary status in designated natural resource lands. Counties and cities must determine if and to what extent other uses will be allowed. If other uses are allowed, counties and cities should consider using innovative land management techniques that minimize land use incompatibilities and most effectively maintain current and future natural resource lands.

(b) Techniques to conserve and protect agricultural, forest lands, and mineral resource lands include the purchase or transfer of development rights, fee simple purchase of the land, less than fee simple purchase, purchase with leaseback, buffering, land trades, conservation easements, current use assessments, innovative zoning, or other innovations which maintain current uses and assure the conservation of these natural resource lands.

(12) Development in and adjacent to agricultural, forest, and mineral resource lands shall assure the continued management of these lands for natural resource production. Uses that would convert natural resource lands to other uses or would interfere with the allowed natural resource uses must be prohibited except as authorized in accessory uses under RCW 36.70A.177 or other applicable statutes. Any uses adjacent to agricultural, forest, and mineral resource lands of long-term commercial significance must not interfere with their continued use for the production of agricultural, forest, or mineral products respectively. Counties and cities should consider the adoption of right-to-farm provisions, and may also adopt measures to conserve and enhance marine aquaculture. Covenants or easements recognizing that farming, forestry, and mining activities will occur should be imposed on new development in or adjacent to agricultural, forest, or mineral resource lands. Where buffering is used it should be on land within the adjacent development unless an alternative is mutually agreed on by adjacent landowners.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-190-040, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-040, filed 3/15/91, effective 4/15/91.]

365-190-050 Agricultural resource lands.

(1) In classifying and designating agricultural resource lands, counties must approach the effort as a county-wide or area-wide process. Counties and cities should not review resource lands designations solely on a parcel-by-parcel process. Counties and cities must have a program for the transfer or purchase of development rights prior to designating agricultural resource lands in urban growth areas. Cities are encouraged to coordinate their agricultural resource lands designations with their county and any adjacent jurisdictions.

(2) Once lands are designated, counties and cities planning under the act must adopt development regulations that assure the conservation of agricultural resource lands. Recommendations for those regulations are found in WAC 365-196-815.

(3) Lands should be considered for designation as agricultural resource lands based on three factors:

(a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should use the criteria contained in WAC 365-196-310.

(b) The land is used or capable of being used for agricultural production. This factor evaluates whether lands are well suited to agricultural use based primarily on their physical and geographic characteristics. Some agricultural operations are less dependent on soil quality than others, including some livestock production operations.

(i) Lands that are currently used for agricultural production and lands that are capable of such use must be evaluated for designation. The intent of a landowner to use land for agriculture or to cease such use is not the controlling factor in determining if land is used or capable of being used for agricultural production. Land enrolled in federal conservation reserve programs is recommended for designation based on previous agricultural use, management requirements, and potential for reuse as agricultural land.

(ii) In determining whether lands are used or capable of being used for agricultural production, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Natural Resources Conservation Service as defined in relevant Field Office Technical Guides. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys, and are based on the growing capacity, productivity and soil composition of the land.

(c) The land has long-term commercial significance for agriculture. In determining this factor, counties and cities should consider the following nonexclusive criteria, as applicable:

(i) The classification of prime and unique farmland soils as mapped by the Natural Resources Conservation Service;

(ii) The availability of public facilities, including roads used in transporting agricultural products;

(iii) Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW and whether the optional public benefit rating system is used locally, and whether there is the ability to purchase or transfer land development rights;

(iv) The availability of public services;

(v) Relationship or proximity to urban growth areas and to markets and suppliers;

(vi) Predominant parcel size;

(vii) Land use settlement patterns and their compatibility with agricultural practices;

(viii) Intensity of nearby land uses;

(ix) History of land development permits issued nearby; and

(x) Land values under alternative uses.

(4) When designating agricultural resource lands, counties and cities may consider food security issues, which may include providing local food supplies for food banks, schools and institutions, vocational training opportunities in agricultural operations, and preserving heritage or artisanal foods.

(5) When applying the criteria in subsection (3)(c) of this section, the process should result in designating at least the minimum amount of agricultural resource lands needed to maintain economic viability for the agricultural industry and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities. Economic viability in this context is that amount of designated agricultural resource land needed to maintain the economic viability of the agricultural sector in the county over the long term.

(6) Counties and cities may further classify additional agricultural lands of local importance. Classifying additional agricultural lands of local importance should include, in addition to general public involvement, consultation with the board of the local conservation district and the local committee of the farm service agency. It may also be useful to consult with any existing local organizations marketing or using local produce, including the boards of local farmers markets, school districts, other large institutions, such as hospitals, correctional facilities, or existing food cooperatives.

These additional lands may include designated critical areas, such as bogs used to grow cranberries or farmed wetlands. Where these lands are also designated critical areas, counties and cities planning under the act must weigh the compatibility of adjacent land uses and development with the continuing need to protect the functions and values of critical areas and ecosystems.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-190-050, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-050, filed 3/15/91, effective 4/15/91.]

365-190-060 Forest resource lands

(1) In classifying and designating forest resource lands, counties must approach the effort as a county-wide or regional process. Cities are encouraged to coordinate their forest resource lands designations with their county and any adjacent jurisdictions. Counties and cities should not review forest resource lands designations solely on a parcel-by-parcel basis.

(2) Lands should be designated as forest resource lands of long-term commercial significance based on three factors:

> (a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should use the criteria contained in WAC 365-196-310.
>
> (b) The land is used or capable of being used for forestry production. To evaluate this factor, counties and cities should determine whether lands are well suited for forestry use based primarily on their physical and geographic characteristics.
>
> Lands that are currently used for forestry production and lands that are capable of such use must be evaluated for designation. The landowner's intent to either use land for forestry or to cease such use is not the controlling factor in determining if land is used or capable of being used for forestry production.
>
> (c) The land has long-term commercial significance. When determining whether lands are used or capable of being used for forestry production, counties and cities should determine which land grade constitutes forest land of long-term commercial significance, based on local physical, biological, economic, and land use considerations. Counties and cities should use the private forest land grades of the department of revenue (WAC 458-40-530). This system incorporates consideration of growing capacity, productivity, and soil composition of the land. Forest land of long-term commercial significance will generally have a predominance of the higher private forest land grades. However, the presence of lower private forest land grades within the areas of predominantly higher grades need not preclude designation as forest land.

(3) Counties and cities may also consider secondary benefits from retaining commercial forestry operations. Benefits from retaining commercial forestry may include protecting air and water quality, maintaining adequate aquifer recharge areas, reducing forest fire risks, supporting tourism and access to recreational opportunities, providing carbon sequestration benefits, and improving wildlife habitat and connectivity for upland species. These are only potential secondary benefits from retaining commercial forestry operations, and should not be used alone as a basis for designating or dedesignating forest resource lands.

(4) Counties and cities must also consider the effects of proximity to population areas and the possibility of more intense uses of the land as indicated by the following criteria as applicable:

(a) The availability of public services and facilities conducive to the conversion of forest land;

(b) The proximity of forest land to urban and suburban areas and rural settlements: Forest lands of long-term commercial significance are located outside the urban and suburban areas and rural settlements;

(c) The size of the parcels: Forest lands consist of predominantly large parcels;

(d) The compatibility and intensity of adjacent and nearby land use and settlement patterns with forest lands of long-term commercial significance;

(e) Property tax classification: Property is assessed as open space or forest land pursuant to chapter 84.33 or 84.34 RCW;

(f) Local economic conditions which affect the ability to manage timberlands for long-term commercial production; and

(g) History of land development permits issued nearby.

(5) When applying the criteria in subsection (4) of this section, counties or cities should designate at least the minimum amount of forest resource lands needed to maintain economic viability for the forestry industry and to retain supporting forestry businesses, such as loggers, mills, forest product processors, equipment suppliers, and equipment maintenance and repair facilities. Economic viability in this context is that amount of designated forestry resource land needed to maintain economic viability of the forestry industry in the region over the long term.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-190-060, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-060, filed 3/15/91, effective 4/15/91.]

365-190-070 Mineral resource lands.

(1) In designating mineral resource lands, counties and cities must approach the effort as a county-wide or regional process, with the exception of owner-initiated requests for designation. Counties and cities should not review mineral resource lands designations solely on a parcel-by-parcel basis.

(2) Counties and cities must identify and classify mineral resource lands from which the extraction of minerals occurs or can be anticipated. Counties and cities may consider the need for a longer planning period specifically to address mineral resource lands, based on the need to assure availability of minerals for future uses, and to not inadvertently preclude access to available mineral resources due to incompatible development. Other proposed land uses within these areas may require special attention to ensure future supply of aggregate and mineral resource material, while maintaining a balance of land uses.

(3) Classification criteria.

(a) Counties and cities classify mineral resource lands based on geologic, environmental, and economic factors, existing land uses, and land ownership. It is expected that mineral resource lands will be depleted of minerals over time, and that subsequent land uses may occur on these lands after mining is completed. Counties and cities may approve and permit land uses on these mineral resource lands to occur after mining is completed.

(b) Counties and cities should classify lands with potential long-term commercial significance for extracting at least the following minerals: Sand, gravel, and valuable metallic substances. Other minerals may be classified as appropriate.

(c) When classifying these areas, counties and cities should use maps and information on location and extent of mineral deposits provided by the department of natural resources, the United States Geological Service and any relevant information provided by property owners. Counties and cities may also use all or part of a detailed minerals classification system developed by the department of natural resources.

(d) Classifying mineral resource lands should be based on the geology and the distance to market of potential mineral resource lands, including:

(i) Physical and topographic characteristics of the mineral resource site, including the depth and quantity of the resource and depth of the overburden;

(ii) Physical properties of the resource including quality and type;

(iii) Projected life of the resource;

(iv) Resource availability in the region; and

(v) Accessibility and proximity to the point of use or market.

(e) Other factors to consider when classifying potential mineral resource lands should include three aspects of mineral resource lands:

(i) The ability to access needed minerals may be lost if suitable mineral resource lands are not classified and designated; and

(ii) The effects of proximity to population areas and the possibility of more intense uses of the land in both the short and long-term, as indicated by the following:

(A) General land use patterns in the area;
(B) Availability of utilities, including water supply;
(C) Surrounding parcel sizes and surrounding uses;
(D) Availability of public roads and other public services; and
(E) Subdivision or zoning for urban or small lots.

(iii) Energy costs of transporting minerals.

(4) Designation of mineral resource lands.

(a) Counties and cities must designate known mineral deposits so that access to mineral resources of long-term commercial significance is not knowingly precluded. Priority land use for mineral extraction should be retained for all designated mineral resource lands.

(b) In designating mineral resource lands, counties and cities should determine if adequate mineral resources are available for projected needs from currently designated mineral resource lands.

(c) Counties and cities may consult with the department of transportation and the regional transportation planning organization to determine projected future mineral resource needs for large transportation projects planned in their area.

(d) In designating mineral resource lands, counties and cities must also consider that mining may be a temporary use at any given mine, depending on the amount of minerals available and the consumption rate, and that other land uses can occur on the mine site after mining is completed, subject to approval.

(e) Successful achievement of the natural resource industries goal set forth in RCW 36.70A.020 requires the conservation of a land base sufficient in size and quality to maintain and enhance those industries and the development and use of land use techniques that discourage uses incompatible with the management of designated lands.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-190-070, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-070, filed 3/15/91, effective 4/15/91.]

365-190-080 Critical areas.

(1) Counties and cities must protect critical areas. Counties and cities required or opting to plan under the act must consider the definitions and guidelines in this chapter when designating critical areas and when preparing development regulations that protect the function and values of critical areas. The department provides additional recommendations for adopting critical areas regulations in WAC 365-196-485.

(2) Counties and cities must include the best available science as described in chapter 365-195 WAC, when designating critical areas and when developing policies and regulations that protect critical areas. Counties and cities must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Counties and cities are encouraged to also protect both surface and ground water resources, because these waters often recharge wetlands, streams and lakes.

(3) Counties and cities are encouraged to develop a coordinated regional critical areas protection program that combines interjurisdictional cooperation, public education, incentives to promote voluntary protective measures, and regulatory standards that serve to protect these critical areas.

(4) Counties and cities should designate critical areas by using maps and performance standards.

> (a) Maps may benefit the public by increasing public awareness of critical areas and their locations. County and city staff may also benefit from maps which provide a useful tool for determining whether a particular land use permit application may affect a critical area. However, because maps may be too inexact for regulatory purposes, counties and cities should rely primarily on performance standards to protect critical areas. Counties and cities should apply performance standards to protect critical areas when a land use permit decision is made.
>
> (b) Counties and cities should clearly state that maps showing known critical areas are only for information or illustrative purposes.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-190-080, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-080, filed 3/15/91, effective 4/15/91.]

365-190-090 Wetlands.

(1) The wetlands of Washington state are fragile ecosystems that serve a number of important beneficial functions. Wetlands assist in reducing erosion, siltation, flooding, ground and surface water pollution, and provide wildlife, plant, and fisheries habitats. Wetlands destruction or impairment may result in increased public and private costs and property losses.

(2) In designating wetlands for regulatory purposes, counties and cities must use the definition of wetlands in RCW 36.70A.030. Counties and cities are requested and encouraged to make their actions consistent with the intent and goals of "protection of wetlands," Executive Orders 89-10 and 90-04 as they existed on September 1, 1990. Additionally, counties and cities should consider wetlands protection guidance provided by the department of ecology, including the management recommendations based on the best available science, mitigation guidance, and provisions addressing the option of using wetland mitigation banks.

(3) Wetlands rating systems. Wetland functions vary widely.

(a) When designating wetlands, counties and cities should use a rating system that evaluates the existing wetland functions and values to determine what functions must be protected.

(b) In developing wetlands rating systems, counties and cities should consider using the wetland rating system developed jointly by the department of ecology and the United States Army Corps of Engineers.

(c) If a county or city chooses to use an alternative rating system, it must include the best available science.

(d) A rating system should evaluate, at a minimum, the following factors:

(i) Wetlands functions and values;

(ii) Degree of sensitivity to disturbance;

(iii) Rarity;

(iv) The degree to which a wetland contributes to functions and values of a larger ecosystem. Rating systems should generally rate wetlands higher when they are well-connected to adjacent or nearby habitats, are part of an intact ecosystem or function in a network of critical areas; and

(v) The ability to replace the functions and values through compensatory mitigation.

(4) Counties and cities may use the National Wetlands Inventory and a landscape-scale watershed characterization as information sources for determining the approximate distribution and extent of wetlands. The National Wetlands Inventory is an inventory providing maps of wetland areas according to the definition of wetlands issued by the United States Department of Interior Fish and Wildlife Service. A landscape-scale watershed characterization may identify areas that are conducive to forming wetlands based on topography, soils and geology, and hydrology. Any potential locations of wetlands based on the National Wetlands Inventory or landscape-scale watershed characterization should be confirmed by field visits, either before or as part of permitting activities, and identified wetlands should have their boundaries delineated for regulation consistent with the wetlands definition in RCW 36.70A.030.

(5) Counties and cities must use the methodology for regulatory delineations in the adopted state manual identified in RCW 36.70A.175.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-190-090, filed 1/19/10, effective 2/19/10.]

365-190-100 Critical aquifer recharge areas.

(1) Potable water is an essential life sustaining element for people and many other species. Much of Washington's drinking water comes from ground water. Once ground water is contaminated it is difficult, costly, and sometimes impossible to clean up. Preventing contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people and ecosystems.

(2) The quality and quantity of ground water in an aquifer is inextricably linked to its recharge area. Where aquifers and their recharge areas have been studied, affected counties and cities should use this information as the basis for classifying and designating these areas. Where no specific studies have been done, counties and cities may use existing soil and surficial geologic information to determine where recharge areas exist. To determine the threat to ground water quality, existing land use activities and their potential to lead to contamination should be evaluated.

(3) Counties and cities must classify recharge areas for aquifers according to the aquifer vulnerability. Vulnerability is the combined effect of hydrogeological susceptibility to contamination and the contamination loading potential. High vulnerability is indicated by land uses that contribute directly or indirectly to contamination that may degrade ground water, and hydrogeologic conditions that facilitate degradation. Low vulnerability is indicated by land uses that do not contribute contaminants that will degrade ground water, and by hydrogeologic conditions that do not facilitate degradation. Hydrological conditions may include those induced by limited recharge of an aquifer. Reduced aquifer recharge from effective impervious surfaces may result in higher concentrations of contaminants than would otherwise occur.

(a) To characterize hydrogeologic susceptibility of the recharge area to contamination, counties and cities may consider the following physical characteristics:

(i) Depth to ground water;
(ii) Aquifer properties such as hydraulic conductivity, gradients, and size;
(iii) Soil (texture, permeability, and contaminant attenuation properties);
(iv) Characteristics of the vadose zone including permeability and attenuation properties; and
(v) Other relevant factors.

(b) The following may be considered to evaluate vulnerability based on the contaminant loading potential:
(i) General land use;
(ii) Waste disposal sites;
(iii) Agriculture activities;
(iv) Well logs and water quality test results;

(v) Proximity to marine shorelines; and

(vi) Other information about the potential for contamination.

(4) A classification strategy for aquifer recharge areas should be to maintain the quality, and if needed, the quantity of the ground water, with particular attention to recharge areas of high susceptibility.

(a) In recharge areas that are highly vulnerable, studies should be initiated to determine if ground water contamination has occurred. Classification of these areas should include consideration of the degree to which the aquifer is used as a potable water source, feasibility of protective measures to preclude further degradation, availability of treatment measures to maintain potability, and availability of alternative potable water sources.

(b) Examples of areas with a critical recharging effect on aquifers used for potable water may include:

(i) Recharge areas for sole source aquifers designated pursuant to the Federal Safe Drinking Water Act;

(ii) Areas established for special protection pursuant to a ground water management program, chapters 90.44, 90.48, and 90.54 RCW, and chapters 173-100 and 173-200 WAC;

(iii) Areas designated for wellhead protection pursuant to the Federal Safe Drinking Water Act;

(iv) Areas near marine waters where aquifers may be subject to saltwater intrusion; and

(v) Other areas meeting the definition of "areas with a critical recharging effect on aquifers used for potable water" in these guidelines.

(c) Some aquifers may also have critical recharging effects on streams, lakes, and wetlands that provide critical fish and wildlife habitat. Protecting adequate recharge of these aquifers may provide additional benefits in maintaining fish and wildlife habitat conservation areas.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-190-100, filed 1/19/10, effective 2/19/10.]

365-190-110 Frequently flooded areas.

Frequently flooded areas. Flood plains and other areas subject to flooding perform important hydrologic functions and may present a risk to persons and property.

(1) Classifications of frequently flooded areas should include, at a minimum, the 100-year flood plain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

(2) Counties and cities should consider the following when designating and classifying frequently flooded areas:

(a) Effects of flooding on human health and safety, and to public facilities and services;

(b) Available documentation including federal, state, and local laws, regulations, and programs, local studies and maps, and federal flood insurance programs, including the provisions for urban growth areas in RCW 36.70A.110;

(c) The future flow flood plain, defined as the channel of the stream and that portion of the adjoining flood plain that is necessary to contain and discharge the base flood flow at build out;

(d) The potential effects of tsunami, high tides with strong winds, sea level rise, and extreme weather events, including those potentially resulting from global climate change;

(e) Greater surface runoff caused by increasing impervious surfaces.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-190-110, filed 1/19/10, effective 2/19/10.]

365-190-120 Geologically hazardous areas.

(1) Geologically hazardous areas. Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard.

(2) Some geological hazards can be reduced or mitigated by engineering, design, or modified construction or mining practices so that risks to public health and safety are minimized. When technology cannot reduce risks to acceptable levels, building in geologically hazardous areas must be avoided. The distinction between avoidance and compensatory mitigation should be considered by counties and cities that do not currently classify geological hazards, as they develop their classification scheme.

(3) Areas that are susceptible to one or more of the following types of hazards shall be classified as a geologically hazardous area:

(a) Erosion hazard;

(b) Landslide hazard;

(c) Seismic hazard; or

(d) Areas subject to other geological events such as coal mine hazards and volcanic hazards including: Mass wasting, debris flows, rock falls, and differential settlement.

(4) Counties and cities should assess the risks and classify geologically hazardous areas as either:

(a) Known or suspected risk;

(b) No known risk; or

(c) Risk unknown - data are not available to determine the presence or absence of risk.

(5) Erosion hazard areas include areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils. Erosion hazard areas may also include coastal erosion areas: This information can be found in the Washington state coastal atlas available from the department of ecology. Counties and cities may consult with the United States Department of Agriculture Natural Resources Conservation Service for data to help identify erosion hazard areas.

(6) Landslide hazard areas include areas subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include any areas susceptible to landslide because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors, and include, at a minimum, the following:

(a) Areas of historic failures, such as:

(i) Those areas delineated by the United States Department of Agriculture Natural Resources Conservation Service as having a significant limitation for building site development;

(ii) Those coastal areas mapped as class u (unstable), uos (unstable old slides), and urs (unstable recent slides) in the department of ecology Washington coastal atlas; or

(iii) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geological Survey or Washington department of natural resources.

(b) Areas with all three of the following characteristics:

(i) Slopes steeper than fifteen percent;

(ii) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

(iii) Springs or ground water seepage.

(c) Areas that have shown movement during the holocene epoch (from ten thousand years ago to the present) or which are underlain or covered by mass wastage debris of this epoch;

(d) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

(e) Slopes having gradients steeper than eighty percent subject to rockfall during seismic shaking;

(f) Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action, including stream channel migration zones;

(g) Areas that show evidence of, or are at risk from snow avalanches;

(h) Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and

(i) Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of bedrock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief.

(7) Seismic hazard areas must include areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, surface faulting, or tsunamis. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow ground water table. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington, and ground settlement may occur with shaking. The strength of ground shaking is primarily affected by:

(a) The magnitude of an earthquake;
(b) The distance from the source of an earthquake;
(c) The type or thickness of geologic materials at the surface; and
(d) The type of subsurface geologic structure.

(8) Other geological hazard areas:

(a) Volcanic hazard areas must include areas subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

(b) Mine hazard areas are those areas underlain by, adjacent to, or affected by mine workings such as adits, gangways, tunnels, drifts, or air shafts. Factors which should be considered include: Proximity to development, depth from ground surface to the mine working, and geologic material.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-190-120, filed 1/19/10, effective 2/19/10.]

365-190-130 Fish and wildlife habitat conservation areas.

(1) "Fish and wildlife habitat conservation" means land management for maintaining populations of species in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term and isolated subpopulations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean not degrading or reducing populations or habitats so that they are no longer viable over the long term. Counties and cities should engage in cooperative planning and coordination to help assure long term population viability.

Fish and wildlife habitat conservation areas contribute to the state's biodiversity and occur on both publicly and privately owned lands. Designating these areas is an important part of land use planning for appropriate development densities, urban growth area boundaries, open space corridors, and incentive-based land conservation and stewardship programs.

(2) Fish and wildlife habitat conservation areas that must be considered for classification and designation include:

(a) Areas where endangered, threatened, and sensitive species have a primary association;

(b) Habitats and species of local importance, as determined locally;

(c) Commercial and recreational shellfish areas;

(d) Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;

(e) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;

(f) Waters of the state;

(g) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and

(h) State natural area preserves, natural resource conservation areas, and state wildlife areas.

(3) When classifying and designating these areas, counties and cities must include the best available science, as described in chapter 365-195 WAC.

(a) Counties and cities should consider the following:

(i) Creating a system of fish and wildlife habitat with connections between larger habitat blocks and open spaces, integrating with open space corridor planning where appropriate;

(ii) Level of human activity in such areas including presence of roads and level of recreation type (passive or active recreation may be appropriate for certain areas and habitats);

(iii) Protecting riparian ecosystems including salmonid habitat, which also includes marine nearshore areas;

(iv) Evaluating land uses surrounding ponds and fish and wildlife habitat conservation areas that may negatively impact these areas, or conversely, that may contribute positively to their function;

(v) Establishing buffer zones around these areas to separate incompatible uses from habitat areas;

(b) Counties and cities may also consider the following:

(i) Potential for restoring lost and impaired salmonid habitat;

(ii) Potential for designating areas important for local and ecoregional biodiversity; and

(iii) Establishing or enhancing nonregulatory approaches in addition to regulatory methods to protect fish and wildlife habitat conservation areas.

(4) Sources and methods.

(a) Endangered, threatened and sensitive species. Counties and cities should identify and classify seasonal ranges and habitat elements where federal and state listed endangered, threatened and sensitive species have a primary association and which, if altered, may reduce the likelihood that the species will persist over the long term. Counties and cities should consult current information on priority habitats and species identified by the Washington state department of fish and wildlife. Recovery plans and management recommendations for many of these species are available from the Unites States Fish and Wildlife Service, the National Marine Fisheries Service and the Washington state department of fish and wildlife. Additional information is also available from the Washington state department of natural resources, natural heritage program, and aquatic resources program.

(b) Habitats and species areas of local importance. Counties and cities should identify, classify and designate locally important habitats and species. Counties and cities should consult current information on priority habitats and species identified by the Washington state department of fish and wildlife. Priority habitat and species information includes endangered, threatened and sensitive species, but also includes candidate species and other vulnerable and unique species and habitats. While these priorities are those of the Washington state department of fish and wildlife, they should be considered by counties and cities as they include the best available science. The Washington state department of fish and wildlife can also provide assistance with identifying and mapping important habitat areas at various landscape scales. Similarly, the Washington state department of natural resources' natural heritage program can provide a list of high quality ecological communities and systems and rare plants.

(c) Shellfish areas. All public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas. Counties and cities should consider both commercial and recreational shellfish areas. Counties and cities should consider the Washington state department of health classification of commercial and recreational shellfish growing areas to determine the existing condition of these areas. Further consideration should be given to the vulnerability of these areas to contamination. Shellfish protection districts established pursuant to chapter 90.72 RCW shall be included in the classification of critical shellfish areas.

(d) Kelp and eelgrass beds; herring, smelt and other forage fish spawning areas. Counties and cities must classify kelp and eelgrass beds, identified by the Washington state department of natural resources and the department of ecology. Though not an inclusive inventory, locations of kelp and eelgrass beds are compiled in the Washington coastal atlas published by the department of ecology. Herring, smelt and other forage fish spawning times and locations are outlined in WAC 220-110-240 through 220-110-271.

(e) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farmponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority.

(f) Waters of the state.

(i) Waters of the state are defined in RCW 90.48.020 and include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and water courses in Washington. Stream types are classified in Title 222 WAC, the forest practices regulations. Counties and cities may use the classification system established in WAC 222-16-030 to classify waters of the state. Counties and cities using the water types defined in WAC 222-16-030 or 222-16-031 (interim) should not rely solely on Washington state department of natural resources maps of these stream types for purposes of regulating land uses or establishing stream buffers.

(ii) Counties and cities that use the stream typing system developed by the department of natural resources should develop a process to verify actual stream conditions, identify flow alterations, and locate fish passage barriers by conducting a field visit. Field verification of all intermittent or nonfish bearing streams should occur during the wet season months of October to March or as determined locally.

(iii) Counties and cities may consider the following factors when classifying waters of the state as fish and wildlife habitat conservation areas:

(A) Species present which are endangered, threatened or sensitive, and other species of concern;
(B) Species present which are sensitive to habitat manipulation (e.g., priority habitats and species program);
(C) Historic presence of species of local importance;
(D) Existing surrounding land uses that are incompatible with salmonid habitat;
(E) Presence and size of riparian ecosystems;
(F) Existing water rights; and
(G) The intermittent nature of some waters of the state.

(g) Lakes, ponds, streams, and rivers planted with game fish. This includes game fish planted in these water bodies under the auspices of a federal, state, local, or tribal program or which supports priority fish species as identified by the Washington state department of fish and wildlife.

(h) State natural area preserves, natural resource conservation areas, and state wildlife areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the department of natural resources. State wildlife areas are defined, established, and managed by the Washington state department of fish and wildlife, which provides information about state wildlife areas for each county.

(i) Salmonid habitat. Counties and cities should consider recommendations found in salmon recovery plans (see the governor's salmon recovery office). Counties and cities may use information prepared by the United States Department of the Interior Fish and Wildlife Service, National Marine Fisheries Service, the Washington state department of fish and wildlife, the state recreation and conservation office, and the Puget Sound partnership to designate, protect and restore salmonid habitat.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-190-130, filed 1/19/10, effective 2/19/10.]

365-195 WAC PART NINE
BEST AVAILABLE SCIENCE

365-195-900 Background and purpose.

(1) Counties and cities planning under RCW 36.70A.040 are subject to continuing review and evaluation of their comprehensive land use plan and development regulations. Every five years they must take action to review and revise their plans and regulations, if needed, to ensure they comply with the requirements of the Growth Management Act. RCW 36.70A.130.

(2) Counties and cities must include the "best available science" when developing policies and development regulations to protect the functions and values of critical areas and must give "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries. RCW 36.70A.172(1). The rules in WAC 365-195-900 through 365-195-925 are intended to assist counties and cities in identifying and including the best available science in newly adopted policies and regulations and in this periodic review and evaluation and in demonstrating they have met their statutory obligations under RCW 36.70A.172(1).

(3) The inclusion of the best available science in the development of critical areas policies and regulations is especially important to salmon recovery efforts, and to other decision-making affecting threatened or endangered species.

(4) These rules are adopted under the authority of RCW 36.70A.190 (4)(b) which requires the department of community, trade, and economic development (department) to adopt rules to assist counties and cities to comply with the goals and requirements of the Growth Management Act.

[Statutory Authority: RCW 36.70A.190 (4)(b). 01-08-056, § 365-195-900, filed 4/2/01, effective 5/3/01; 00-16-064, § 365-195-900, filed 7/27/00, effective 8/27/00.]

365-195-905 Criteria for determining which information is the "best available science."

(1) This section provides assessment criteria to assist counties and cities in determining whether information obtained during development of critical areas policies and regulations constitutes the "best available science."

(2) Counties and cities may use information that local, state or federal natural resource agencies have determined represents the best available science consistent with criteria set out in WAC 365-195-900 through 365-195-925. The department will make available a list of resources that state agencies have identified as meeting the criteria for best available science pursuant to this chapter. Such information should be reviewed for local applicability.

(3) The responsibility for including the best available science in the development and implementation of critical areas policies or regulations rests with the legislative authority of the county or city. However, when feasible, counties and cities should consult with a qualified scientific expert or team of qualified scientific experts to identify scientific information, determine the best available science, and assess its applicability to the relevant critical areas. The scientific expert or experts may rely on their professional judgment based on experience and training, but they should use the criteria set out in WAC 365-195-900 through 365-195-925 and any technical guidance provided by the department. Use of these criteria also should guide counties and cities that lack the assistance of a qualified expert or experts, but these criteria are not intended to be a substitute for an assessment and recommendation by a qualified scientific expert or team of experts.

(4) Whether a person is a qualified scientific expert with expertise appropriate to the relevant critical areas is determined by the person's professional credentials and/or certification, any advanced degrees earned in the pertinent scientific discipline from a recognized university, the number of years of experience in the pertinent scientific discipline, recognized leadership in the discipline of interest, formal training in the specific area of expertise, and field and/or laboratory experience with evidence of the ability to produce peer-reviewed publications or other professional literature. No one factor is determinative in deciding whether a person is a qualified scientific expert. Where pertinent scientific information implicates multiple scientific disciplines, counties and cities are encouraged to consult a team of qualified scientific experts representing the various disciplines to ensure the identification and inclusion of the best available science.

(5) Scientific information can be produced only through a valid scientific process. To ensure that the best available science is being included, a county or city should consider the following:

(a) **Characteristics of a valid scientific process.** In the context of critical areas protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government's regulatory decisions and in developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas. To determine whether information received during the public participation process is reliable scientific information, a county or city should determine whether the source of the information displays the characteristics of a valid scientific process. The characteristics generally to be expected in a valid scientific process are as follows:

1. **Peer review.** The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The criticism of the peer reviewers has been addressed by the proponents of the information. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed.

2. **Methods.** The methods that were used to obtain the information are clearly stated and able to be replicated. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to assure their reliability and validity.

3. **Logical conclusions and reasonable inferences.** The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained.

4. **Quantitative analysis.** The data have been analyzed using appropriate statistical or quantitative methods.

5. **Context.** The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.

6. **References.** The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information.

(b) **Common sources of scientific information.** Some sources of information routinely exhibit all or some of the characteristics listed in (a) of this subsection. Information derived from one of the following sources may be considered scientific information if the source possesses the characteristics in Table 1. A county or city may consider information to be scientifically valid if the source possesses the characteristics listed in (a) of this subsection. The information found in Table 1 provides a general indication of the characteristics of a valid scientific process typically associated with common sources of scientific information.

	CHARACTERISTICS					
Table 1 **SOURCES OF SCIENTIFIC INFORMATION**	Peer review	Methods	Logical conclusions & reasonable inferences	Quantitative analysis	Context	References
A. Research. Research data collected and analyzed as part of a controlled experiment (or other appropriate methodology) to test a specific hypothesis.	**X**	**X**	**X**	**X**	**X**	**X**
B. Monitoring. Monitoring data collected periodically over time to determine a resource trend or evaluate a management program.		**X**	**X**	**Y**	**X**	**X**
C. Inventory. Inventory data collected from an entire population or population segment (e.g., individuals in a		**X**	**X**	**Y**	**X**	**X**

	CHARACTERISTICS					
Table 1 **SOURCES OF SCIENTIFIC INFORMATION**	Peer review	Methods	Logical conclusions & reasonable inferences	Quantitative analysis	Context	References
plant or animal species) or an entire ecosystem or ecosystem segment (e.g., the species in a particular wetland).						
D. Survey. Survey data collected from a statistical sample from a population or ecosystem.		**X**	**X**	**Y**	**X**	**X**
E. Modeling. Mathematical or symbolic simulation or representation of a natural system. Models generally are used to understand and explain occurrences that cannot be directly observed.	**X**	**X**	**X**	**X**	**X**	**X**
F. Assessment. Inspection and evaluation of site-specific information by a qualified scientific expert. An assessment may or may not involve collection of new data.		**X**	**X**		**X**	**X**
G. Synthesis. A						

	CHARACTERISTICS					
Table 1 **SOURCES OF SCIENTIFIC INFORMATION**	Peer review	Methods	Logical conclusions & reasonable inferences	Quantitative analysis	Context	References
comprehensive review and explanation of pertinent literature and other relevant existing knowledge by a qualified scientific expert.	**X**	**X**	**X**		**X**	**X**
H. Expert Opinion. Statement of a qualified scientific expert based on his or her best professional judgment and experience in the pertinent scientific discipline. The opinion may or may not be based on site-specific information.			**X**		**X**	**X**

X = characteristic must be present for information derived to be considered scientifically valid and reliable
Y = presence of characteristic strengthens scientific validity and reliability of information derived, but is not essential to ensure scientific validity and reliability

(c) **Common sources of nonscientific information.** Many sources of information usually do not produce scientific information because they do not exhibit the necessary characteristics for scientific validity and reliability. Information from these sources may provide valuable information to supplement scientific information, but it is not an adequate substitute for scientific information. Nonscientific information should not be used as a substitute for valid and available scientific information. Common sources of nonscientific information include the following:

(i) Anecdotal information. One or more observations which are not part of an organized scientific effort (for example, "I saw a grizzly bear in that area while I was hiking").

(ii) Nonexpert opinion. Opinion of a person who is not a qualified scientific expert in a pertinent scientific discipline (for example, "I do not believe there are grizzly bears in that area").

(iii) Hearsay. Information repeated from communication with others (for example, "At a lecture last week, Dr. Smith said there were no grizzly bears in that area").

(6) Counties and cities are encouraged to monitor and evaluate their efforts in critical areas protection and incorporate new scientific information, as it becomes available.

[Statutory Authority: RCW 36.70A.190 (4)(b). 00-16-064, § 365-195-905, filed 7/27/00, effective 8/27/00.]

365-195-910 Criteria for obtaining the best available science.

(1) Consultation with state and federal natural resources agencies and tribes can provide a quick and cost-effective way to develop scientific information and recommendations. State natural resource agencies provide numerous guidance documents and model ordinances that incorporate the agencies' assessments of the best available science. The department can provide technical assistance in obtaining such information from state natural resources agencies, developing model GMA-compliant critical areas policies and development regulations, and related subjects. The department will make available to interested parties a current list of the best available science determined to be consistent with criteria set out in WAC 365-195-905 as identified by state or federal natural resource agencies for critical areas.

(2) A county or city may compile scientific information through its own efforts, with or without the assistance of qualified experts, and through state agency review and the Growth Management Act's required public participation process. The county or city should assess whether the scientific information it compiles constitutes the best available science applicable to the critical areas to be protected, using the criteria set out in WAC 365-195-900 through 365-195-925 and any technical guidance provided by the department. If not, the county or city should identify and assemble additional scientific information to ensure it has included the best available science.

[Statutory Authority: RCW 36.70A.190 (4)(b). 00-16-064, § 365-195-910, filed 7/27/00, effective 8/27/00.]

365-195-915 Criteria for including the best available science in developing policies and development regulations.

(1) To demonstrate that the best available science has been included in the development of critical areas policies and regulations, counties and cities should address each of the following on the record:

(a) The specific policies and development regulations adopted to protect the functions and values of the critical areas at issue.

(b) The relevant sources of best available scientific information included in the decision-making.

(c) Any nonscientific information -- including legal, social, cultural, economic, and political information -- used as a basis for critical area policies and regulations that depart from recommendations derived from the best available science. A county or city departing from science-based recommendations should:

(i) Identify the information in the record that supports its decision to depart from science-based recommendations;

(ii) Explain its rationale for departing from science-based recommendations; and

(iii) Identify potential risks to the functions and values of the critical area or areas at issue and any additional measures chosen to limit such risks. State Environmental Policy Act (SEPA) review often provides an opportunity to establish and publish the record of this assessment.

(2) Counties and cities should include the best available science in determining whether to grant applications for administrative variances and exemptions from generally applicable provisions in policies and development regulations adopted to protect the functions and values of critical areas. Counties and cities should adopt procedures and criteria to ensure that the best available science is included in every review of an application for an administrative variance or exemption.

[Statutory Authority: RCW 36.70A.190 (4)(b). 00-16-064, § 365-195-915, filed 7/27/00, effective 8/27/00.]

365-195-920 Criteria for addressing inadequate scientific information.

Where there is an absence of valid scientific information or incomplete scientific information relating to a county's or city's critical areas, leading to uncertainty about which development and land uses could lead to harm of critical areas or uncertainty about the risk to critical area function of permitting development, counties and cities should use the following approach:

(1) A "precautionary or a no risk approach," in which development and land use activities are strictly limited until the uncertainty is sufficiently resolved; and

(2) As an interim approach, an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and nonregulatory actions achieve their objectives. Management, policy, and regulatory actions are treated as experiments that are purposefully monitored and evaluated to determine whether they are effective and, if not, how they should be improved to increase their effectiveness. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. To effectively implement an adaptive management program, counties and cities should be willing to:

(a) Address funding for the research component of the adaptive management program;

(b) Change course based on the results and interpretation of new information that resolves uncertainties; and

(c) Commit to the appropriate time frame and scale necessary to reliably evaluate regulatory and nonregulatory actions affecting critical areas protection and anadromous fisheries.

[Statutory Authority: RCW 36.70A.190 (4)(b). 00-16-064, § 365-195-920, filed 7/27/00, effective 8/27/00.]

365-195-925 Criteria for demonstrating "special consideration" has been given to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

(1) RCW 36.70A.172(1) imposes two distinct but related requirements on counties and cities. Counties and cities must include the "best available science" when developing policies and development regulations to protect the functions and values of critical areas, and counties and cities must give "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Local governments should address both requirements in RCW 36.70A.172(1) when developing their records to support their critical areas policies and development regulations.

(2) To demonstrate compliance with RCW 36.70A.172(1), a county or city adopting policies and development regulations to protect critical areas should include in the record evidence that it has given "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries. The record should be developed using the criteria set out in WAC 365-195-900 through 365-195-925 to ensure that conservation or protection measures necessary to preserve or enhance anadromous fisheries are grounded in the best available science.

(3) Conservation or protection measures necessary to preserve or enhance anadromous fisheries include measures that protect habitat important for all life stages of anadromous fish, including, but not limited to, spawning and incubation, juvenile rearing and adult residence, juvenile migration downstream to the sea, and adult migration upstream to spawning areas. Special consideration should be given to habitat protection measures based on the best available science relevant to stream flows, water quality and temperature, spawning substrates, instream structural diversity, migratory access, estuary and nearshore marine habitat quality, and the maintenance of salmon prey species. Conservation or protection measures can include the adoption of interim actions and long-term strategies to protect and enhance fisheries resources.

[Statutory Authority: RCW 36.70A.190 (4)(b). 00-16-064, § 365-195-925, filed 7/27/00, effective 8/27/00.]

365-196 WAC PROCEDURAL CRITERIA FOR ADOPTING COMPREHENSIVE PLANS AND DEVELOPMENT REGULATIONS

PART I GENERAL CONSIDERATIONS

365-196-010 Background.

Through the Growth Management Act, the legislature provided a new framework for land use planning and the regulation of development in Washington state. The act was enacted in response to problems associated with uncoordinated and unplanned growth and a lack of common goals in the conservation and the wise use of our lands. The problems included increased traffic congestion, pollution, school overcrowding, urban sprawl, and the loss of rural lands.

(1) Major features of the act's framework include:

(a) A requirement that counties with specified populations and rates of growth and the cities within them adopt comprehensive plans and development regulations under the act. Other counties can choose to be covered by this requirement, thereby including the cities they contain.

(b) A set of common goals to guide the development of comprehensive plans and development regulations.

(c) The concept that the process should be a "bottom up" effort, involving early and continuous public participation, with the central locus of decision-making at the local level, bounded by the goals and requirements of the act.

(d) Requirements for the locally developed plans to be internally consistent, consistent with county-wide planning policies and multicounty planning policies, and consistent with the plans of other counties and cities where there are common borders or related regional issues.

(e) A requirement that development regulations adopted to implement the comprehensive plans be consistent with such plans.

(f) The principle that development and the providing of public facilities and services needed to support development should occur concurrently.

(g) A determination that planning and plan implementation actions should address difficult issues that have resisted resolution in the past, such as:

(i) The timely financing of needed infrastructure;

(ii) Providing adequate and affordable housing for all economic segments of the population;

(iii) Concentrating growth in urban areas, provided with adequate urban services;

(iv) The siting of essential public facilities;

(v) The designation and conservation of agricultural, forest, and mineral resource lands;

(vi) The designation and protection of environmentally critical areas.

(h) A determination that comprehensive planning can simultaneously address these multiple issues by focusing on the land development process as a common underlying factor.

(i) An intention that economic development be encouraged and fostered within the planning and regulatory scheme established for managing growth.

(j) A recognition that the act is a fundamental building block of regulatory reform. The state and local government have invested considerable resources in an act that should serve as the integrating framework for other land use related laws.

(k) A desire to recognize the importance of rural areas and provide for rural economic development.

(l) A requirement that counties and cities must periodically review and update their comprehensive plans and development regulations to ensure continued compliance with the goals and requirements of the act.

(2) **The pattern of development established in the act.** The act calls for a pattern of development that consists of different types of land uses existing on the landscape. These types generally include urban land, rural land, resource lands, and critical areas. Critical areas exist in rural, urban, and resource lands. Counties and cities must designate lands in these categories and develop policies governing development consistent with these designations. The act establishes criteria to guide the designation process and to guide the character of development in these lands.

(3) **How the act applies to existing developed areas.** The act is prospective in nature. It establishes a framework for how counties and cities plan for future growth. In many areas, the pattern called for in the act is a departure from the pattern that existed prior to the act. As a consequence, areas developed prior to the act may not clearly fit into the pattern of development established in the act. In rural areas, comprehensive plans developed under the act should find locally appropriate ways to recognize these areas without allowing these patterns to spread into new undeveloped areas. In urban areas, comprehensive plans should find locally appropriate ways to encourage redevelopment of these areas in a manner consistent with the pattern of development envisioned by the act.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-010, filed 1/19/10, effective 2/19/10.]

365-196-020 Purpose.

(1) Within the framework established by the act, counties and cities may accommodate a wide diversity of local visions. There is no exclusive method for accomplishing the requirements of the act.

(2) In light of the complexity and difficulty of the task, the legislature required the department to establish a technical assistance program. As part of that program, the department must adopt by rule procedural criteria to assist counties and cities in adopting comprehensive plans and development regulations that meet the goals and requirements of the act.

(3) Definitions and interpretations made in this chapter by the department, but not expressly set forth in the act, are identified as such. The department's purpose is to provide assistance in interpreting the act, not to add provisions and meanings beyond those intended by the legislature. For definitions of specific terms used in this chapter see WAC 365-196-210.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-020, filed 1/19/10, effective 2/19/10.]

365-196-030 Applicability.

(1) Where these guidelines apply.

(a) This chapter applies to all counties and cities that are required to plan or choose to plan under RCW 36.70A.040.

(b) WAC 365-196-830 addressing protection of critical areas applies to all counties and cities, including those that do not fully plan under RCW 36.70A.040.

(c) As of May 1, 2009, the following counties and cities within them are not required to fully plan under RCW 36.70A.040: Adams, Asotin, Cowlitz, Grays Harbor, Klickitat, Lincoln, Okanogan, Wahkiakum, Skamania, and Whitman.

(2) **Compliance with the procedural criteria is not a prerequisite for compliance with the act.** This chapter makes recommendations for meeting the requirements of the act, it does not set a minimum list of actions or criteria that a county or city must take. Counties and cities can achieve compliance with the goals and requirements of the act by adopting other approaches.

(3) **How the growth management hearings boards use these guidelines.** The growth management hearings boards must determine, in cases brought before them, whether comprehensive plans or development regulations are in compliance with the goals and requirements of the act. When doing so, boards must consider the procedural criteria contained in this chapter, but determination of compliance must be based on the act itself.

(4) **When a county or city should consider the procedural criteria.** Counties and cities should consider these procedural criteria when amending or updating their comprehensive plans, development regulations or county-wide planning policies. Since adoption of the act, counties and cities and others have adopted a variety of agreements and frameworks to collaboratively address issues of local concern and their responsibilities under the act. The procedural criteria do not trigger an independent obligation to revisit those agreements. Any local land use planning agreements should, where possible, be construed as consistent with these procedural criteria. Changes to these procedural criteria do not trigger an obligation to review and update local plans and regulations to be consistent with these criteria.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-030, filed 1/19/10, effective 2/19/10.]

365-196-040 Standard of review.

(1) Comprehensive plans and development regulations adopted under the act are presumed valid upon adoption. No state approval is required.

(2) An appeal of a local comprehensive plan or development regulation alleging a violation of the act must be filed with the appropriate growth management hearings board (the board). The board must find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of the act. To find an action clearly erroneous, the board must be left with a firm and definite conclusion that a mistake was made.

(3) Although a county or city does not have to prove compliance, if challenged, it must provide to the hearings board an index of "the record" - all material used in taking the action which is the subject of the challenge. See WAC 242-02-520. This record should include the documents containing the factual basis for determining that the challenged action complies with the act. This information may be contained in the comprehensive plan or development regulations, in the findings of the adopting ordinance or resolution, or in accompanying background documents, such as staff reports.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-040, filed 1/19/10, effective 2/19/10.]

365-196-050 Regional and local variations.

(1) Regional and local variations and the diversity that exist among different counties and cities should be reflected in the use and application of these procedural criteria.

(2) Recognition of variations and diversity is implicit in the act's framework, with an emphasis on a "bottom up" planning process and on public participation. Such recognition is also inherent in the listing of goals without assignment of priority. Accordingly, this chapter seeks to accommodate regional and local differences by focusing on an analytical process, instead of on specific outcomes.

(3) Local plans and development regulations are expected to vary in complexity and in level of detail depending on population size, growth rates, resources available for planning and scale of public facilities, and services provided.

(4) In general, smaller jurisdictions will not be expected to engage in extensive original research, but will be able to rely upon reasonable assumptions derived from available data of a statewide or regional nature or representative of jurisdictions of comparable size and growth rates.

(5) When commenting on plans and regulations proposed for adoption, state agencies, including the department, should be guided by a common sense appreciation of the size of the jurisdiction involved, the magnitude of the problems addressed, and the context of the submitted changes.

(6) The department has developed a variety of technical assistance materials for counties and cities that may be used to help guide local planning.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-050, filed 1/19/10, effective 2/19/10.]

365-196-060 Goals.

The act lists thirteen overall goals in RCW 36.70A.020, plus the shoreline goal added in RCW 36.70A.480(1). Counties and cities should design comprehensive plans and development regulations to meet these goals.

(1) This list of fourteen goals is not exclusive. Counties and cities may adopt additional goals. However, these additional goals must be supplementary. They may not conflict with the fourteen statutory goals.

(2) Balancing the goals in the act.

> (a) The act's goals are not listed in order of priority. The ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community. Differences in emphasis are expected from jurisdiction to jurisdiction. Although there may be an inherent tension between the act's goals, counties and cities must give some effect to all the goals. Counties and cities should consider developing a written record demonstrating that it considered the planning goals during the development of the comprehensive plan and development regulations.
>
> (b) When there is a conflict between the general planning goals and more specific requirements of the act, the specific requirements control.
>
> (c) In some cases, counties and cities may support activities outside their jurisdictional boundaries in order to meet goals of the act.
>
> (d) Development regulations must be consistent with the goals and requirements of the act and the comprehensive plan. In most cases, if a comprehensive plan meets the statutory goals, development regulations consistent with the comprehensive plan will meet the goals.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-060, filed 1/19/10, effective 2/19/10.]

PART TWO
DEFINITIONS

365-196-200 Statutory definitions.

The following definitions are contained in chapter 36.70A RCW and provided under this section for convenience. Most statutory definitions included in this section are located in RCW 36.70A.030. Other relevant statutory terms defined elsewhere in chapter 36.70A RCW are also included in this section.

(1) "**Adopt a comprehensive land use plan**" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "**Agricultural land**" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock and that has long-term commercial significance for agricultural production.

(3) "**City**" means any city or town, including a code city.

(4) "**Comprehensive land use plan**," "**comprehensive plan**," or "**plan**" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(5) "**Critical areas**" include the following areas and ecosystems:

(a) Wetlands;
(b) Areas with a critical recharging effect on aquifers used for potable water;
(c) Fish and wildlife habitat conservation areas;
(d) Frequently flooded areas; and
(e) Geologically hazardous areas.

(6) "**Department**" means the department of commerce.

(7) "**Development regulations**" or "**regulation**" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(8) "**Essential public facilities**" includes those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

(9) "**Forest land**" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 through 84.33.110, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered:

(a) The proximity of the land to urban, suburban, and rural settlements;

(b) Surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses;

(c) Long-term local economic conditions that affect the ability to manage for timber production; and

(d) The availability of public facilities and services conducive to conversion of forest land to other uses.

(10) "**Geologically hazardous areas**" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(11) "**Long-term commercial significance**" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

(12) "**Master planned resort**" means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.

(13) "**Minerals**" include gravel, sand, and valuable metallic substances.

(14) "**Public facilities**" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(15) "**Public services**" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(16) "**Rural character**" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

(17) "**Rural development**" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(18) "**Rural governmental services**" or "**rural services**" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

(19) "**Urban governmental services**" or "**urban services**" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

(20) "**Urban growth**" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.170 (1)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(21) "**Urban growth areas**" means those areas designated by a county pursuant to RCW 36.70A.110.

(22) "**Wetland**" or "**wetlands**" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

* RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-200, filed 1/19/10, effective 2/19/10.]

365-196-210 Definitions of terms as used in this chapter.

The following are definitions which are not defined in RCW 36.70A.030 but are defined here for purposes of the procedural criteria.

(1) "**Act**" means the Growth Management Act, as enacted in chapter 17, Laws of 1990 1st ex. sess., and chapter 32, Laws of 1991 sp. sess., state of Washington as amended. The act is codified primarily in chapter 36.70A RCW.

(2) "**Achieved density**" means the density at which new development occurred in the planning period preceding the analysis required in either RCW 36.70A.130(3) or 36.70A.215.

(3) "**Adequate public facilities**" means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums.

(4) "**Affordable housing**" means residential housing that is rented or owned by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household's monthly income.

(5) "**Allowed densities**" means the density, expressed in dwelling units per acre, allowed under a county's or city's development regulations when considering the combined effects of all applicable development regulations.

(6) "**Assumed densities**" means the density at which future development is expected to occur as specified in the land capacity analysis or the future land use element. Assumed densities are also referred to in RCW 36.70A.110 as densities sufficient to permit the urban growth that is projected to occur.

(7) "**Concurrency**" means that adequate public facilities are available when the impacts of development occur, or within a specified time thereafter. This definition includes the concept of "adequate public facilities" as defined above.

(8) "**Consistency**" means that no feature of a plan or regulation is incompatible with any other feature of a plan or regulation. Consistency is indicative of a capacity for orderly integration or operation with other elements in a system.

(9) "**Contiguous development**" means development of areas immediately adjacent to one another.

(10) "**Coordination**" means consultation and cooperation among jurisdictions.

(11) "**Cultural resources**" is a term used interchangeably with "lands, sites, and structures, which have historical or archaeological and traditional cultural significance."

(12) "**Demand management strategies**" or "transportation demand management strategies" means strategies designed to change travel behavior to make more efficient use of existing facilities to meet travel demand. Examples of demand management strategies can include strategies that:

(a) Shift demand outside of the peak travel time;
(b) Shift demand to other modes of transportation;
(c) Increase the average number of occupants per vehicle;
(d) Decrease the length of trips; and
(e) Avoid the need for vehicle trips.

(13) "**Domestic water system**" means any system providing a supply of potable water which is deemed adequate pursuant to RCW 19.27.097 for the intended use of a development.

(14) "**Family day-care provider**" is defined in RCW 43.215.010. It is a person who regularly provides child care and early learning services for not more than twelve children. Children include both the provider's children, close relatives and other children irrespective of whether the provider gets paid to care for them. They provide their services in the family living quarters of the day care provider's home.

(15) "**Financial commitment**" means that sources of public or private funds or combinations thereof have been identified which will be sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.

(16) "**Growth Management Act**" - see definition of "**act**."

(17) "**Historic preservation**" or "**preservation**" is defined in the National Historic Preservation Act of 1966, as identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities or any combination of the foregoing activities.

(18) "**Lands, sites, and structures, that have historical, archaeological, or traditional cultural significance**" are the tangible and material evidence of the human past, aged fifty years or older, and include archaeological sites, historic buildings and structures, districts, landscapes, and objects.

(19) "**Level of service**" means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need. Level of service standards are synonymous with locally established minimum standards.

(20) "**May**," as used in this chapter, indicates an option counties and cities can take at their discretion.

(21) "**Must**," as used in this chapter, indicates a requirement for compliance with the act. It has the same meaning within this chapter as "shall."

(22) "**New fully contained community**" is a development proposed for location outside of the existing designated urban growth areas which is characterized by urban densities, uses, and services, and meets the criteria of RCW 36.70A.350.

(23) "**Planning period**" means the twenty-year period following the adoption of a comprehensive plan or such longer period as may have been selected as the initial planning horizon.

(24) "**Public service obligations**" means obligations imposed by law on utilities to furnish facilities and supply service to all who may apply for and be reasonably entitled to service.

(25) "**Regional transportation plan**" means the transportation plan for the regionally designated transportation system which is produced by the regional transportation planning organization.

(26) "**Regional transportation planning organization (RTPO)**" means the voluntary organization conforming to RCW 47.80.020, consisting of counties and cities within a region containing one or more counties which have common transportation interests.

(27) "**Rural lands**" means all lands which are not within an urban growth area and are not designated as natural resource lands having long-term commercial significance for production of agricultural products, timber, or the extraction of minerals.

(28) "**Sanitary sewer systems**" means all facilities, including approved on-site disposal facilities, used in the collection, transmission, storage, treatment, or discharge of any waterborne waste, whether domestic in origin or a combination of domestic, commercial, or industrial waste. On-site disposal facilities are only considered sanitary sewer systems if they are designed to serve urban densities.

(29) "**Shall**," as used in this chapter, indicates a requirement for compliance with the act. It has the same meaning within this chapter as "must."

(30) "Should," as used in this chapter, indicates the advice of the department, but does not indicate a requirement for compliance with the act.

(31) "**Solid waste handling facility**" means any facility for the transfer or ultimate disposal of solid waste, including land fills and municipal incinerators.

(32) "**Sufficient land capacity for development**" means that the comprehensive plan and development regulations provide for the capacity necessary to accommodate all the growth in population and employment that is allocated to that jurisdiction through the process outlined in the county-wide planning policies.

(33) "**Transportation facilities**" includes capital facilities related to air, water, or land transportation.

(34) "**Transportation level of service standards**" means a measure which describes the operational condition of the travel stream and acceptable adequacy requirements. Such standards may be expressed in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety.

(35) "**Transportation system management**" means the use of low cost solutions to increase the performance of the transportation system. Transportation system management (TSM) strategies include but are not limited to signalization, channelization, ramp metering, incident response programs, and bus turn-outs.

(36) "**Utilities**" or "**public utilities**" means enterprises or facilities serving the public by means of an integrated system of collection, transmission, distribution, and processing facilities through more or less permanent physical connections between the plant of the serving entity and the premises of the customer. Included are systems for the delivery of natural gas, electricity, telecommunications services, and water, and for the disposal of sewage.

(37) "**Visioning**" means a process of citizen involvement to determine values and ideals for the future of a community and to transform those values and ideals into manageable and feasible community goals.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-210, filed 1/19/10, effective 2/19/10.]

PART THREE
URBAN GROWTH AREAS AND COUNTY-WIDE PLANNING POLICIES

365-196-300 Urban density.

(1) The role of urban areas in the act. The act requires counties and cities to direct new growth to urban areas to allow for more efficient and predictable provision of adequate public facilities, to promote an orderly transition of governance for urban areas, to reduce development pressure on rural and resource lands, and to encourage redevelopment of existing urban areas.

(2) How the urban density requirements in the act are interrelated. The act involves a consideration of density in three contexts:

(a) Allowed densities: The density, expressed in dwelling units per acre, allowed under a county's or city's development regulations when considering the combined effects of all applicable development regulations.

(b) Assumed densities: The density at which future development is expected to occur as specified in the land capacity analysis or the future land use element. Assumed densities are also referred to in RCW 36.70A.110 as densities sufficient to permit the urban growth that is projected to occur.

(c) Achieved density: The density at which new development occurred in the period preceding the analysis required in either RCW 36.70A.130(3) or 36.70A.215.

(3) Determining the appropriate range of urban densities. Within urban growth areas, counties and cities must permit urban densities and provide sufficient land capacity suitable for development. The requirements of RCW 36.70A.110 and 36.70A.115 apply to the densities assumed in the comprehensive plan and the densities allowed in the implementing development regulations.

(a) Comprehensive plans. Under RCW 36.70A.070(1) and in RCW 36.70A.110(2), the act requires that the land use element identify areas and assumed densities sufficient to accommodate the twenty-year population allocation. The land use element should clearly identify the densities, or range of densities, assumed for each land use designation as shown on the future land use map. When reviewing the urban growth area, the assumed densities in the land capacity analysis must be urban densities.

(b) Development regulations. Counties and cities must provide sufficient capacity of land suitable for development.

(i) Development regulations must allow development at the densities assumed in the comprehensive plan.

(ii) Counties and cities need not force redevelopment in urban areas not currently developed at urban densities, but the development regulations must allow, and should not discourage redevelopment at urban densities. If development patterns are not occurring at urban densities, counties and cities should review development regulations for potential barriers or disincentives to development at urban densities. Counties and cities should revise regulations to remove any identified barriers and disincentives to urban densities, and may include incentives.

(4) Factors to consider for establishing urban densities. The act does not establish a uniform standard for minimum urban density. Counties and cities may establish a specified minimum density in county-wide or multicounty planning policies. Counties and cities should consider the following factors when determining an appropriate range of urban densities:

(a) An urban density is a density for which cost-effective urban services can be provided. Higher densities generally lower the per capita cost to provide urban governmental services.

(b) Densities should be higher in areas with a high local transit level of service. Generally, a minimum of seven to eight dwelling units per acre is necessary to support local urban transit service. Higher densities are preferred around high capacity transit stations.

(c) The areas and densities within an urban growth area must be sufficient to accommodate the portion of the twenty-year population that is allocated to the urban area. Urban densities should allow accommodation of the population allocated within the area that can be provided with adequate public facilities during the planning period.

(d) Counties and cities should establish significantly higher densities within regional growth centers designated in RCW 47.80.030; in growth and transportation efficiency centers designated under RCW 70.94.528; and around high capacity transit stations in accordance with RCW 47.80.026. Cities may also designate new or existing downtown centers, neighborhood centers, or identified transit corridors as focus areas for infill and redevelopment at higher densities.

(e) Densities should allow counties and cities to accommodate new growth predominantly in existing urban areas and reduce reliance on either continued expansion of the urban growth area, or directing significant amounts of new growth to rural areas.

(f) The densities chosen should accommodate a variety of housing types and sizes to meet the needs of all economic segments of the community. The amount and type of housing accommodated at each density and in each land use designation should be consistent with the need for various housing types identified in the housing element of the comprehensive plan.

(g) Counties and cities may designate some urban areas at less than urban densities to protect a network of critical areas, to avoid further development in frequently flooded areas, or to prevent further development in geologically hazardous areas. Counties or cities should show that the critical areas are present in the area so designated and that area designated is limited to the area necessary to achieve these purposes.

(5) Addressing development patterns that occurred prior to the act.

(a) Prior to the passage of the act, many areas within the state developed at densities that are neither urban nor rural. Inside the urban growth area, local comprehensive plans should allow appropriate redevelopment of these areas. Newly developed areas inside the urban growth area should be developed at urban densities.

(b) Local capital facilities plans should include plans to provide existing urban areas with adequate public facilities during the planning period so that available infrastructure does not serve as a limiting factor to redevelopment at urban densities.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-300, filed 1/19/10, effective 2/19/10.]

365-196-305 County-wide planning policies.

(1) Purpose of county-wide planning policies. The act requires counties and cities to collaboratively develop county-wide planning policies to govern the development of comprehensive plans. The primary purpose of county-wide planning policies is to ensure consistency between the comprehensive plans of counties and cities sharing a common border or related regional issues. Another purpose of county-wide planning policies is to facilitate the transformation of local governance in the urban growth area, typically through annexation to or incorporation of a city, so that urban governmental services are primarily provided by cities and rural and regional services are provided by counties.

(2) Relationship to the act. County-wide planning policies must comply with the requirements of the act. County-wide planning policies may not compel counties and cities to take action that violates the act. County-wide planning policies may not permit actions that the act prohibits nor include exceptions to such prohibitions not contained in the act. If a county-wide planning policy can be implemented in a way that is consistent with the act, then it is consistent with the act, even if its subsequent implementation is found to be out of compliance. RCW 36.70A.210(4) requires state agencies to comply with county-wide planning policies.

(3) Relationship to comprehensive plans. The comprehensive plans of counties and cities must comply with both the county-wide planning policies and the act. Any requirements in a county-wide planning policy do not replace requirements in the act or any other state or federal law or regulation.

(4) Required policies. Consistent with RCW 36.70A.210(3) and 36.70A.215, county-wide planning policies must cover the following subjects:

(a) Policies to implement RCW 36.70A.110, including:

(i) Designation of urban growth areas;

(ii) Selection and allocation of population between cities and counties as part of the review of an urban growth area;

(iii) Procedures governing amendments to urban growth areas, including the review required by RCW 36.70A.130(3);

(iv) Consultation between cities and counties regarding urban growth areas; and

(v) If desired, policies governing the establishment of urban service boundaries or potential annexation areas.

(b) Promoting contiguous and orderly development and provision of urban services to such development;

(c) Siting public facilities of a county-wide or statewide nature, including transportation facilities of statewide significance;

(d) County-wide transportation facilities and strategies;

(e) The need for affordable housing such as housing for all economic segments of the population and parameters for its distribution;

(f) Joint city/county planning in urban growth areas;

(g) County-wide economic development and employment;

(h) An analysis of fiscal impact; and

(i) Where applicable, policies governing the buildable lands review and evaluation program.

(5) Recommended policies. County-wide planning policies should also include policies addressing the following:

(a) Procedures by which the county-wide planning policies will be reviewed and amended; and

(b) A process for resolving disputes regarding interpretation of county-wide planning policies or disputes regarding implementation of the county-wide planning policies.

(6) Framework for adoption of county-wide planning policies. Prior to adopting county-wide planning policies, counties and cities must develop a framework. This framework should be in written form and agreed to by the county and the cities within those counties. The framework may be in a memorandum of understanding, an intergovernmental agreement, or as a section of the county-wide planning policies. This framework must include the following provisions:

(a) Desired policies;

(b) Deadlines;

(c) Ratification of final agreements and demonstration; and

(d) Financing, if any, of all activities associated with developing and adopting the county-wide planning policies.

(7) Forum for ongoing coordination. Counties and cities should establish a method for ongoing coordination of issues associated with implementation of the county-wide planning policies, which should include both a forum for county and city elected officials and a forum for county and city staff responsible for implementation. These forums may also include special purpose districts, transit districts, port districts, federal agencies, state agencies, and tribes.

(8) Multicounty planning policies.

(a) Multicounty planning policies must be adopted by two or more counties, each with a population of four hundred fifty thousand or more, with contiguous urban areas. They may also be adopted by other counties by a process agreed to among the counties and cities within the affected counties.

(b) Multicounty planning policies are adopted by two or more counties and establish a common region-wide framework that ensures consistency among county and city comprehensive plans adopted pursuant to RCW 36.70A.070, and county-wide planning policies adopted pursuant to RCW 36.70A.210.

(c) Multicounty planning policies provide a framework for regional plans developed within a multicounty region, including regional transportation plans established under RCW 47.80.023, as well as plans of cities, counties, and others that have common borders or related regional issues as required under RCW 36.70A.100.

(d) Multicounty planning policies should address, at a minimum, the same topics identified for county-wide planning as identified in RCW 36.70A.210(3), except for those responsibilities assigned exclusively to counties. Other issues may also be addressed.

(e) Because of the regional nature of multicounty planning policies, counties or cities should use an existing regional agency with the same or similar geographic area, such as a regional transportation planning organization, pursuant to RCW 47.80.020, to develop, adopt, and administer multicounty planning policies.

(f) In order to provide an ongoing multicounty framework, a schedule for reviewing and revising the multicounty planning policies may be established. This schedule should relate to the review and revision deadlines for county and city comprehensive plans pursuant to RCW 36.70A.130.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-305, filed 1/19/10, effective 2/19/10.]

365-196-310 Urban growth areas.

(1) Requirements.

(a) Each county planning under the act must designate an urban growth area or areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Each county must designate an urban growth area in its comprehensive plan.

(b) Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city.

(c) An urban growth area may include territory that is located outside a city if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth.

(d) Based upon the growth management planning population projection selected by the county from within the range provided by the office of financial management, and based on a county-wide employment forecast developed by the county at its discretion, the urban growth areas shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period. Counties and cities may provide the office of financial management with information they deem relevant to prepare the population projections, and the office shall consider and comment on such information and review projections with cities and counties before they are adopted. Counties and cities may petition the office to revise projections they believe will not reflect actual population growth.

(e) The urban growth area may not exceed the areas necessary to accommodate the growth management planning projections, plus a reasonable land market supply factor, or market factor. In determining this market factor, counties and cities may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.

(f) Counties and cities should facilitate urban growth as follows:

> (i) Urban growth should be located first in areas already characterized by urban growth that have existing public facilities and service capacities adequate to serve urban development.
>
> (ii) Second, urban growth should be located in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.

(iii) Third, urban growth should be located in the remaining portions of the urban growth area.

(g) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development. Recommendations governing the extension of urban services into rural areas are found in WAC 365-196-425.

(h) Each county that designates urban growth areas must review, at least every ten years, its designated urban growth areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. This review should be conducted jointly with the affected cities. The purpose of the ten-year urban growth area review is to assess the capacity of the urban land to accommodate population growth projected for the succeeding twenty-year planning period. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(2) General procedure for designating urban growth areas.

(a) The designation process shall include consultation by the county with each city located within its boundaries. The adoption, review and amendment of the urban growth area should reflect a cooperative effort among jurisdictions to accomplish the requirements of the act on a regional basis, consistent with the county-wide planning policies and, where applicable, multicounty planning policies.

(b) Each city shall propose the location of an urban growth area.

(c) The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located.

(d) If an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated an urban growth area.

(e) As growth occurs, most lands within the urban growth area should ultimately be provided with urban governmental services by cities, either directly or by contract. Other service providers are appropriate within urban growth areas for regional or county-wide services, or for isolated unincorporated pockets characterized by urban growth. Counties and cities should provide for development phasing within each urban growth area to ensure the orderly sequencing of development and that services are provided as growth occurs.

(f) Counties and cities should develop and evaluate urban growth area proposals with the purpose of accommodating projected urban growth through infill and redevelopment within existing municipal boundaries or urban areas. In some cases, expansion will be the logical response to projected urban growth.

(g) Counties, cities, and other municipalities, where appropriate, should negotiate interlocal agreements to coordinate land use management with the provision of adequate public facilities to the urban growth area. Such agreements should facilitate urban growth in a manner consistent with the cities' comprehensive plans and development regulations, and should facilitate a general transformation of governance over time, through annexation or incorporation, and transfer of nonregional public services to cities as the urban area develops.

(3) Recommendations for meeting requirements.

(a) Selecting and allocating county-wide growth forecasts. This process should involve at least the following:

(i) The total county-wide population is the sum of the population allocated to each city; the population allocated to any portion of the urban growth area associated with cities; the population allocated to any portion of the urban growth area not associated with a city; and the population growth that is expected outside of the urban growth area.

(ii) RCW 43.62.035 directs the office of financial management to provide a reasonable range of high, medium and low twenty-year population forecasts for each county in the state, with the medium forecast being most likely. Counties and cities must plan for a total county-wide population that falls within the office of financial management range.

(iii) Consideration of other population forecast data, trends, and implications. In selecting population forecasts, counties and cities may consider the following:

(A) Population forecasts from outside agencies, such as regional or metropolitan planning agencies, and service providers.

(B) Historical growth trends and factors which would cause those trends to change in the future.

(C) General implications, including:

(I) Public facilities and service implications. Counties and cities should carefully consider how to finance the necessary facilities and should establish a phasing plan to ensure that development occurs at urban densities; occurs in a contiguous and orderly manner; and is linked with provision of adequate public facilities. These considerations are particularly important when considering forecasts closer to the high end of the range. Jurisdictions considering a population forecast closer to the low end of the range should closely monitor development and population growth trends to ensure actual growth does not begin to exceed the planned capacity.

(II) Overall land supplies. Counties and cities facing immediate physical or other land supply limitations may consider these limitations in selecting a forecast. Counties and cities that identify potential longer term land supply limitations should consider the extent to which current forecast options would require increased densities or slower growth in the future.

(III) Implications of short term updates. The act requires that twenty-year growth forecasts and designated urban growth areas be updated at a minimum every ten years. Counties and cities should consider the likely timing of future updates, and the opportunities this provides for adjustments.

(D) Counties and cities are not required to adopt forecasts for annual growth rates within the twenty-year period, but may choose to for planning purposes. If used, annual growth projections may assume a consistent rate throughout the planning period, or may assume faster or slower than average growth in certain periods, as long as they result in total growth consistent with the twenty-year forecasts selected.

(iv) Selection of a county-wide employment forecast. Counties, in consultation with cities, should adopt a twenty-year county-wide employment forecast to be allocated among urban growth areas, cities, and the rural area. The following should be considered in this process:

(A) The county-wide population forecast, and the resulting ratio of forecast jobs to persons. This ratio should be compared to past levels locally and other regions, and to desired policy objectives; and

(B) Economic trends and forecasts produced by outside agencies or private sources.

(v) Projections for commercial and industrial land needs. When establishing an urban growth area, counties should designate sufficient commercial and industrial land. Although no office of financial management forecasts are available for industrial or commercial land needs, counties and cities should use a county-wide employment forecast, available data on the current and projected local and regional economies, and local demand for services driven by population growth. Counties and cities should consider establishing a county-wide estimate of commercial and industrial land needs to ensure consistency of local plans.

Counties and cities should consider the need for industrial lands in the economic development element of their comprehensive plan. Counties and cities should avoid conversion of areas set aside for industrial uses to other incompatible uses, to ensure the availability of suitable sites for industrial development.

(vi) Selection of community growth goals with respect to population, commercial and industrial development and residential development.

(vii) Selection of the densities the community seeks to achieve in relation to its growth goals. Inside the urban growth areas densities must be urban. Outside the urban growth areas, densities must be rural.

(b) General considerations for determining the need for urban growth areas expansions to accommodate projected population and employment growth.

(i) Estimation of the number of new persons and jobs to be accommodated based on the difference between the twenty-year forecast and current population and employment.

(ii) Estimation of the capacity of current cities and urban growth areas to accommodate additional population and employment over the twenty-year planning period. This should be based on a land capacity analysis, which may include the following:

(A) Identification of the amount of developable residential, commercial and industrial land, based on inventories of currently undeveloped or partially developed urban lands.

(B) Identification of the appropriate amount of greenbelt and open space to be preserved or created in connection with the overall growth pattern and consistent with any adopted levels of service. See WAC 365-196-335 for additional information.

(C) Identification of the amount of developable urban land needed for the public facilities, public services, and utilities necessary to support the likely level of development. See WAC 365-196-320 for additional information.

(D) Based on allowed land use development densities and intensities, a projection of the additional urban population and employment growth that may occur on the available residential, commercial and industrial land base. The projection should consider the portion of population and employment growth which may occur through redevelopment of previously developed urban areas during the twenty-year planning period.

(E) The land capacity analysis must be based on the assumption that growth will occur at urban densities inside the urban growth area. In formulating land capacity analyses, counties and cities should consider data on past development, as well as factors which may cause trends to change in the future. For counties and cities subject to RCW 36.70A.215, information from associated buildable lands reports should be considered. If past development patterns have not resulted in urban densities, or have not resulted in a pattern of desired development, counties and cities should use assumptions aligned with desired future development patterns. Counties and cities should then implement strategies to better align future development patterns with those desired.

(F) The land capacity analysis may also include a reasonable land market supply factor, also referred to as the "market factor." The purpose of the market factor is to account for the estimated percentage of developable acres contained within an urban growth area that, due to fluctuating market forces, is likely to remain undeveloped over the course of the twenty-year planning period. The market factor recognizes that not all developable land will be put to its maximum use because of owner preference, cost, stability, quality, and location. If establishing a market factor, counties and cities should establish an explicit market factor for the purposes of establishing the amount of needed land capacity. Counties and cities may consider local circumstances in determining an appropriate market factor. Counties and cities may also use a number derived from general information if local study data is not available.

(iii) An estimation of the additional growth capacity of rural and other lands outside of existing urban growth areas compared with future growth forecasted, and current urban and rural capacities.

(iv) If future growth forecasts exceed current capacities, counties and cities should first consider the potential of increasing capacity of existing urban areas through allowances for higher densities, or for additional provisions to encourage redevelopment. If counties and cities find that increasing the capacity of existing urban areas is not feasible or appropriate based on the evidence they examine, counties and cities may consider expansion of the urban growth area to meet the future growth forecast.

(c) Determining the appropriate locations of new or expanded urban growth area boundaries. This process should consider the following:

(i) Selection of appropriate densities. For all jurisdictions planning under the act, the urban growth area should represent the physical area where that jurisdiction's urban development vision can be realized over the next twenty years. The urban growth area should be based on densities which accommodate urban growth, served by adequate public facilities, discourage sprawl, and promote goals of the act. RCW 36.70A.110 requires that densities specified for land inside the urban growth area must be urban densities. See WAC 365-196-300 for recommendations on determining appropriate urban densities.

(ii) The county should attempt to define urban growth areas to accommodate the growth plans of the cities. Urban growth areas should be defined so as to facilitate the transformation of services and governance during the planning period. However, physical location or existing patterns of service make some unincorporated areas which are characterized by urban growth inappropriate for inclusion in any city's potential growth area.

(iii) Identifying the location of any new lands added to the urban growth area. Lands should be included in the urban growth area in the following priority order:

(A) Existing incorporated areas;

(B) Land that is already characterized by urban growth and has adequate public facilities and services;

(C) Land already characterized by urban growth, but requiring additional public facilities and urban services; and

(D) Lands adjacent to the above, but not meeting those criteria.

(iv) Designating industrial lands. Counties and cities should consult with local economic development organizations when identifying industrial lands to identify sites that are particularly well suited for industry, considering factors such as:

(A) Rail access;

(B) Highway access;

(C) Large parcel size;

(D) Location along major electrical transmission lines;

(E) Location along pipelines;

(F) Location near or adjacent to ports and commercial navigation routes;

(G) Availability of needed infrastructure; or

(H) Absence of surrounding incompatible uses.

(v) Consideration of resource lands issues. Urban growth areas should not be expanded into designated agricultural, forest or resource lands unless no other option is available. Prior to expansion of the urban growth area, counties and cities must first review the natural resource lands designation and conclude the lands no longer meet the designation criteria for resource lands of long-term commercial significance. Designated agricultural or forest resource lands may not be located inside the urban growth area unless a city or county has enacted a program authorizing transfer or purchase of development rights.

(vi) Consideration of critical areas issues. Although critical areas exist within urban areas, counties and cities should avoid expanding the urban growth areas into areas with known critical areas extending over a large area. See RCW 36.70A.110(8) for legislative direction on expansion of urban growth areas into the one hundred year floodplain of river segments that are located west of the crest of the Cascade mountains and have a mean annual flow of one thousand or more cubic feet per second.

(vii) If there is physically no land available into which a city might expand, it may need to revise its proposed urban densities or population levels in order to accommodate growth on its existing land base.

(d) Evaluating the feasibility of the overall growth plan. Counties and cities should perform a check on the feasibility of the overall plan to accommodate growth. If, as a result of this evaluation, the urban growth area appears to have been drawn too small or too large, the proposal should be adjusted accordingly. Counties and cities should evaluate:

(i) The anticipated ability to finance the public facilities, public services, and open space needed in the urban growth area over the planning period. When conducting a review of the urban growth areas, counties and cities should develop an analysis of the fiscal impact of alternative land use patterns that accommodate the growth anticipated over the succeeding twenty-year period. This provides the public and decision makers with an estimate of the fiscal consequences of various development patterns. This analysis could be done in conjunction with the analysis required under the State Environmental Policy Act.

(ii) The effect that confining urban growth within the areas defined is likely to have on the price of property and the impact thereof on the ability of residents of all economic strata to obtain housing they can afford.

(iii) Whether the level of population and economic growth contemplated can be achieved within the capacity of available land and water resources and without environmental degradation.

(iv) The extent to which the comprehensive plan of the county and of adjacent counties and cities will influence the area needed.

(e) County actions in adopting urban growth areas.

(i) A change to the urban growth area is an amendment to the comprehensive plan and requires, at a minimum, an amendment to the land use element. Counties and cities should also review and update the transportation, capital facilities, utilities, and housing elements to maintain consistency and show how any new areas added to the urban growth area will be provided with adequate public facilities. A modification of any portion of the urban growth area affects the overall urban growth area size and has county-wide implications. Because of the significant amount of resources needed to conduct a review of the urban growth area, and because some policy objectives require time to achieve, frequent, piecemeal expansion of the urban growth area should be avoided. Site-specific proposals to expand the urban growth area should be deferred until the next comprehensive review of the urban growth area.

(ii) Counties and cities that are required to participate in the buildable lands program must first have adopted and implemented reasonable measures as required by RCW 36.70A.215 before considering expansion of an urban growth area.

(iii) Consistent with county-wide planning policies, counties and cities consulting on the designation of urban growth areas should consider the following implementation steps:

(A) Establishment of agreements regarding land use regulations and the provision of services in that portion of the urban growth area outside of an existing city into which it is eventually expected to expand.

(B) Negotiation of agreements for appropriate allocation of financial burdens resulting from the transition of land from county to city jurisdiction.

(C) Provision for an ongoing collaborative process to assist in implementing county-wide planning policies, resolving regional issues, and adjusting growth boundaries.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-310, filed 1/19/10, effective 2/19/10.]

365-196-315 Buildable lands review and evaluation.

(1) **Purpose**. The review and evaluation program required by RCW 36.70A.215 is referred to as the "buildable lands program." The buildable lands program is intended to determine if urban densities are being achieved within urban growth areas by comparing local planning goals and assumptions with actual development and determining if actual development is consistent with the comprehensive plan. It also determines if there is sufficient commercial, industrial and housing capacity within the adopted urban growth area to accommodate the county's twenty-year planning targets. If, through this evaluation, it is determined that there is an inconsistency between planned and built-out densities or there is insufficient development capacity, counties and cities must adopt and implement measures, other than expanding urban growth areas, that are reasonably likely to increase consistency. These measures are referred to as "reasonable measures." Products derived through the program should be used as a technical resource to local policy makers for subsequent comprehensive plan updates.

(2) Required jurisdictions.

(a) The following counties, and the cities located within those counties, must establish and maintain a buildable lands program as required by RCW 36.70A.215:

(i) Clark;
(ii) King;
(iii) Kitsap;
(iv) Pierce;
(v) Snohomish; and
(vi) Thurston.

(b) If another county or city establishes a program containing features of the buildable lands program, they are not obligated to meet the requirements of RCW 36.70A.215.

(3) County-wide planning policies.

(a) Buildable lands programs must be established in county-wide planning policies.

(b) The buildable lands program must contain policies that establish a framework for implementation and continued administration.

(c) The buildable lands program's framework for implementation and administration may be adopted administratively. The program's framework must contain policies or procedures to:

(i) Provide guidance for the collection and analysis of data;

(ii) Provide for the evaluation of the data every five years, commonly referred to as the buildable lands report;

(iii) Provide for the establishment of methods to resolve disputes among jurisdictions regarding inconsistencies in collection and analysis of data; and

(iv) Provide for the amendment of the county-wide policies and county and city comprehensive plans as needed to remedy inconsistencies identified through the evaluation required by this section, or to bring these policies and plans into compliance with the requirements of the act.

(d) The program's framework for implementation and administration should, in addition to the above, address the following:

(i) Establishment of the lead agency responsible for the overall coordination of the program;

(ii) Establishment of criteria and timelines for each county or city to:

(A) Make a determination as to consistency or inconsistency between what was envisioned in adopted county-wide planning policies, comprehensive plans and development regulations and actual development that has occurred;

(B) Adopt and implement reasonable measures, if necessary;

(C) Report on the monitoring of the effectiveness of reasonable measures that have been adopted and implemented. Such reporting could be included in the subsequent five-year buildable lands report;

(D) Transmit copies of any actions taken under (d)(ii)(A), (B) and (C) of this subsection to the department.

(iii) Providing opportunities for the public to review and comment on the following:

(A) Refinement of data collection and analysis methods for the review and evaluation elements of the program;

(B) Determinations as to consistency or inconsistency between what was envisioned in adopted county-wide planning policies, comprehensive plans and development regulations and actual development that has occurred; and

(C) Adoption of reasonable measures, and reports on the monitoring of their effectiveness.

(iv) Public involvement may be accommodated during review and evaluation of a county or city comprehensive plan in consideration of the buildable land report information. This would generally include public review and comment opportunities before the planning commission or legislative body during the normal local government planning process.

(4) Buildable lands program reporting.

(a) Every five years the buildable lands program must compile and publish an evaluation, known as the buildable lands report. The first report was due September 1, 2002, and subsequent reports every five years thereafter. Each buildable lands report must be submitted to the department upon publication.

(b) The buildable lands reports must compare growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred during the preceding five years. The results of this analysis are intended to aid counties and cities in reviewing and adjusting planning strategies.

(c) The publication, "Buildable Lands Program Guidelines," available from the department, may be used as a source for suggested approaches for meeting the requirements of the program.

(5) Criteria for determining consistency or inconsistency.

(a) The determination of consistency or inconsistency for each county or city maintaining a buildable lands program must be made under RCW 36.70A.215(3):

(i) Evaluation under RCW 36.70A.215 (3)(a) should determine whether the comprehensive plan and development regulations sufficiently accommodate the population projection established for the county and allocated within the county and between the county and its cities, consistent with the requirements in RCW 36.70A.110.

(ii) Evaluation under RCW 36.70A.215 (3)(b) should compare the achieved densities, type and density range for commercial, industrial and residential land uses with the assumed densities that were envisioned in the applicable county-wide planning policies, and the comprehensive plan.

(iii) Evaluation under RCW 36.70A.215 (3)(c) should determine, based on actual development densities determined in the evaluation under RCW 36.70A.215 (3)(b), the amount of land needed for commercial, industrial and residential uses for the remaining portion of the twenty-year planning period. This evaluation should consider the type and densities of each type of land use as envisioned in the county-wide planning policies, comprehensive plan.

(b) The evaluation used to determine whether there is a consistency or inconsistency should include any additional standards identified in the county-wide planning policies or in other policies that are specifically directed for use in the evaluation.

(6) Measures to address inconsistencies.

(a) The legislative bodies of counties and cities are responsible for the adoption of reasonable measures requiring legislative action to amend their individual comprehensive plans and development regulations. Counties, in consultation with cities, are responsible for amending the county-wide planning policies reasonably likely to increase consistency. Annual monitoring and reporting is the responsibility of the adopting jurisdiction, but may be carried out by either the adopting jurisdiction or other designated agency or person.

(b) If a county or city determines an inconsistency exists, the county or city should establish a timeline for adopting and implementing measures that are reasonably likely to increase consistency in the succeeding five years. The responsible county or city may utilize its annual review under RCW 36.70A.130 to make adjustments to its comprehensive plan and development regulations that are necessary to implement reasonable measures. Information regarding the adoption, implementation, and monitoring of reasonable measures should be made available to the public. Counties and cities may not rely on expansion of the urban growth area as a measure to address the inconsistency.

(i) Each county or city is responsible for implementing reasonable measures within its jurisdiction and must adopt measures that are designed to remedy the inconsistency within the remaining planning horizon of the adopted comprehensive plan;

(ii) Each county or city adopting reasonable measures is responsible for documenting its methodology and expectations for monitoring to provide a basis to evaluate whether the adopted measures have been effective in increasing consistency during the subsequent five-year period;

(iii) If the monitoring of reasonable measures fails to show increased consistency relative to adopted policies, plans and development regulations during the subsequent five-year period, the county or city should evaluate whether the measures in question should be revised, replaced, supplemented or rescinded;

(iv) If monitoring of reasonable measures demonstrates that such measures have remedied the inconsistency, the adopting county or city may discontinue monitoring;

(v) A copy of any action taken to adopt, amend, or rescind reasonable measures should be submitted to the department.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-315, filed 1/19/10, effective 2/19/10.]

365-196-320 Providing urban services.

(1) Urban governmental services.

(a) Urban services are defined by RCW 36.70A.030(18) as those public services and public facilities at an intensity historically and typically provided in cities. Urban services specifically include:

(i) Sanitary sewer systems;

(ii) Storm drainage systems;

(iii) Domestic water systems;

(iv) Street cleaning services;

(v) Fire and police protection services;

(vi) Public transit services; and

(vii) Other public utilities associated with urban areas and normally not associated with rural areas.

(b) RCW 36.70A.030 (12) and (13) define public facilities and public services, which in addition to those defined as urban services, also include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, parks and recreational facilities, and schools, public health and environmental protection, and other governmental services.

(c) Although some of these services may be provided in rural areas, urban areas are typically served by higher capacity systems capable of providing adequate services at urban densities. Storm and sanitary sewer systems are the only services that are generally exclusively for urban growth areas. Outside of urban growth areas storm and sanitary sewer systems are appropriate in limited circumstances when necessary to protect basic public health and safety and the environment, and when such services are financially supportable at rural densities and do not permit urban development.

(d) At a minimum, adequate public facilities in urban areas should include sanitary sewer systems, and public water service from a Group A public water system under chapter 70.119 or 70.119A RCW because these services are usually necessary to support urban densities. The services provided must be adequate to allow development at urban densities and serve development at densities consistent with the land use element.

(e) The obligation to provide urban areas with adequate public facilities is not limited to new urban areas. Counties and cities must include in their capital facilities element a plan to provide adequate public facilities to all urban areas, including those existing areas that are developed, but do not currently have a full range of urban governmental services or services necessary to support urban densities.

(f) The use of on-site sewer systems within urban growth areas may be appropriate in limited circumstances where there is no negative effect on basic public health, safety and the environment; and the use of on-site sewer systems does not preclude development at urban densities. Such circumstances may include:

> (i) Use of on-site sewer systems as a transitional strategy where there is a development phasing plan in place (see WAC 365-195-330); or
>
> (ii) To serve isolated pockets of urban land difficult to serve due to terrain, critical areas or where the benefit of providing an urban level of service is cost-prohibitive; or
>
> (iii) Where on-site systems are the best available technology for the circumstances and are designed to serve urban densities.

(2) Appropriate providers. RCW 36.70A.110(4) states that, in general, cities are the units of government most appropriate to provide urban governmental services. However, counties, special purpose districts and private providers also provide urban services, particularly services that are regional in nature. Counties and cities should plan for a transformation of governance as urban growth areas develop, whereby annexation or incorporation occurs, and nonregional urban services provided by counties are generally transferred to cities. See WAC 365-196-305.

(3) Coordination of planning in urban growth areas.

(a) The capital facilities element and transportation element of the county or city comprehensive plan must show how adequate public facilities will be provided and by whom. If the county or city with land use authority over an area is not the provider of urban services, a process for maintaining consistency between the land use element and plans for infrastructure provision should be developed consistent with the county-wide planning policies.

(b) If a city is the designated service provider outside of its municipal boundaries, the city capital facilities element must also show how urban services will be provided within their service area. This should include incorporated areas and any portion of the urban growth area that it is assigned as a service area or potential annexation area designated under RCW 36.70A.110(7). See WAC 365-196-415 for information on the capital facilities element.

(4) Level of financial certainty required when establishing urban growth areas.

(a) Any amendment to an urban growth area must be accompanied by an analysis of what capital facilities investments are necessary to ensure the provision of adequate public facilities.

(b) If new or upgraded facilities are necessary, counties and cities must amend the capital facilities and transportation elements to maintain consistency with the land use element.

(c) The amended capital facilities and transportation elements must identify those new or expanded facilities and services necessary to support development in new urban growth areas. The elements must also include cost estimates to determine the amount of funding necessary to construct needed facilities.

(d) The capital facilities and transportation elements should identify what combination of new or existing funding will be necessary to develop the needed facilities. Funding goals should be based on what can be raised by using existing resources. Use of state and federal grants should be realistic based on past trends unless the capital facilities element identifies new programs or an increased amount of available funding from state or federal sources.

(e) If funding available from existing sources is not sufficient, counties and cities should use development phasing strategies to prevent the irreversible commitment of land to urban development before adequate funding is available. Development phasing strategies are described in WAC 365-196-330. Counties and cities should then implement measures needed to close the funding gap.

(f) When considering potential changes to the urban growth area, counties should require that any proposal to expand the urban growth area must include necessary information to demonstrate an ability to provide adequate public facilities to any potential new portions of the urban growth area.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-320, filed 1/19/10, effective 2/19/10.]

365-196-325 Providing sufficient land capacity suitable for development.

(1) Requirements.

(a) RCW 36.70A.115 requires counties and cities to ensure that, taken collectively, comprehensive plans and development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, as adopted in the applicable county-wide planning policies and consistent with the twenty-year population forecast for the office of financial management. To demonstrate this requirement is met, counties and cities must conduct an evaluation of land capacity sufficiency that is commonly referred to as a "land capacity analysis."

(b) Counties and cities must, at minimum, complete a land capacity analysis that demonstrates sufficient land for development or redevelopment to meet their adopted growth allocation targets during the ten-year review of urban growth areas required by RCW 36.70A.130 (3)(a). See WAC 365-196-310 for guidance in estimating and providing sufficient land capacity.

(c) Counties and cities subject to RCW 36.70A.215 must determine land capacity sufficiency as part of the buildable lands reporting required at least every five years, and adopt and implement measures that are reasonably likely to increase the consistency between land capacity and growth allocations. See WAC 365-196-315 for guidance.

(d) Although it is not required, counties and cities may elect to conduct a land capacity analysis during the periodic review and update of comprehensive plans required under RCW 36.70A.130(1).

(e) A complete land capacity analysis is not required to be undertaken for every amendment to a comprehensive plan or development regulation outside of the act's required periodic reviews. However, when considering amendments to the comprehensive plan or development regulations which increase or decrease allowed densities, counties and cities should estimate the degree of increase or decrease in development capacity on lands subject to the amendments, and estimate if the capacity change may affect its ability to provide sufficient capacity of land suitable for development. If so, the county or city should complete a land capacity analysis.

(2) Recommendations for meeting requirement.

(a) Determining land capacity sufficiency. The land capacity analysis is a comparison between the collective effects of all development regulations operating on development and the assumed densities established in the land use element. In order to achieve sufficiency, the development regulations must allow at least the low end of the range of assumed densities established in the land use element. This assures a city or county can meet its obligation to accommodate the growth allocated through the county-wide population allocation process.

(b) Appropriate area for analysis. The focus of the analysis is on the county or city's ability to meet its obligation to accommodate the growth allocated through the county-wide population or employment allocation process. Providing sufficient land capacity for development does not require a county or city to achieve or evaluate sufficiency for every parcel of a future land use designation provided the area as a whole ensures sufficient land capacity for development.

(c) The land capacity analysis should evaluate what the development regulations allow, rather than what development has actually occurred. Many factors beyond the control of counties and cities will control the amount and pace of actual development, what density it is built at and what types and densities of development are financially viable for any set of economic conditions. Counties and cities need not ensure that particular types of development are financially feasible in the context of short term market conditions. Counties and cities should, however, consider available information on trends in local markets to inform its evaluation of sufficient land capacity for the twenty-year planning period.

(d) Development phasing. RCW 36.70A.115 does not create an obligation to ensure that all land in the urban growth area is available for development at the same time. When counties or cities establish mechanisms for development phasing, zoned densities in the short term may be established that are substantially lower than called for in the future land use designations. In these cases, a county or city ensures a sufficient land capacity suitable for development by implementing its development phasing policies to allow development to occur within the twenty-year planning period. Development phasing is described in greater detail in WAC 365-196-330.

(e) The department recommends the following means of implementing the requirements of RCW 36.70A.115.

(i) **Periodic evaluation.** Counties and cities ensure sufficient land capacity for development by comparing the achieved density of development that has been permitted in each zoning category to the assumed densities established in the land use element using existing permitting data. If existing permitting data shows that the densities approved are lower than assumed densities established in the land use element, counties and cities should review their development regulations to determine if regulatory barriers are preventing development at the densities as envisioned. This could occur as part of the seven-year review and update required in RCW 36.70A.130 (1)(a). It must occur at a minimum as part of the ten-year urban growth area review required in RCW 36.70A.130 (3)(a) and as part of the buildable lands review and evaluation program conducted under RCW 36.70A.215.

(ii) **Flexible development standards.** Counties and cities could ensure sufficient land capacity for development by establishing development regulations to allow development proposals that transfer development capacity from unbuildable portions of a development parcel to other portions of the development parcel so the underlying zoned density is still allowed. This may provide for flexibility in some dimensional standards provided development is consistent with state law and all impacts are mitigated.

(iii) **Evaluation of development capacity impacts of proposed development regulation amendments.** Counties and cities may also consider evaluation of whether proposed amendments to development regulations will have a significant impact on the ability of a county or city to provide sufficient capacity of land for development.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-325, filed 1/19/10, effective 2/19/10.]

365-196-330 Phasing development within the UGA.

(1) Purpose of development phasing. Development phasing is the sequencing of development subareas within a city or urban growth area over the course of the twenty-year planning period. Development phasing should be considered a way to achieve one or more of the following:

(a) Orderly development pursuant to RCW 36.70A.110(3), which states that urban growth should first be located in areas with existing urban development and existing service capacity; second in existing urban development areas where new services can be provided in conjunction with existing services; and third in the remainder of the urban growth area;

(b) Preventing the irreversible commitment of land to urban growth before the provision of adequate public facilities. Within the comprehensive plan, the capital facilities element, transportation element, and parks and recreation element each must contain a plan to provide urban areas with adequate public facilities. The comprehensive plan must identify those facilities needed to achieve and maintain adopted levels of service over the twenty-year planning period, but only requires a six-year financing plan. Development phasing is a tool to address those areas for which capital facility needs have been identified in the twenty-year plan, but financing has not yet been identified. Because no irreversible commitment of land has been made in the zoning ordinance, if provision of urban governmental services ultimately proves infeasible, the area can be removed from the urban growth area when reassessing the land use element if probable funding falls short;

(c) Preventing a pattern of sprawling low density development from occurring or vesting in these areas prior to the ability to support urban densities. Once this pattern has occurred, it is more difficult to serve with urban services and less likely to ultimately achieve urban densities;

(d) Serving as a means of developing more detailed intergovernmental agreements or other plans to facilitate the orderly transition of governance and public services.

(2) Recommended provisions for development phasing. Comprehensive plan and development regulation provisions for development phasing should include the following:

(a) Identification of the areas to be sequenced;

(b) The criteria required to develop these areas at the ultimate urban densities envisioned. Criteria may be based on adequacy of services, existing urban development, and provisions for transition of governance. Timelines may also be used for sequencing;

(c) The densities and uses allowed in identified areas that have not yet met the criteria. Densities and intensities more typical of rural development should be considered to avoid hindering future development at urban densities. Such requirements are not inconsistent with the obligation to permit urban densities if provisions are made for conversion to urban densities over the course of the twenty-year planning period. Regulations should ensure that interim uses do not preclude future development at urban densities; and

(d) The review process for transitioning to ultimate urban densities. This should involve changes to development regulations, and not require amendments to the comprehensive plan.

(3) Additional considerations.

(a) Comprehensive plans may include other tools selected to facilitate phasing.

(b) Counties and cities should coordinate the phasing of development within portions of urban growth areas assigned to cities, and throughout urban growth areas in which cities are located. Development phasing polices may be addressed in county-wide planning policies.

(c) Counties and cities must still provide sufficient capacity of land suitable for development as required in RCW 36.70A.115, but lands subject to sequencing requirements should be included in this capacity as long as phasing is implemented during the planning period.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-330, filed 1/19/10, effective 2/19/10.]

365-196-335 Identification of open space corridors.

(1) Requirements.

(a) Each county or city planning under the act must identify open space corridors within and between urban growth areas. They must include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030.

(b) The county or city may seek to acquire by purchase the fee simple or lesser interests in open space corridors using funds authorized by RCW 84.34.230 or other sources.

(2) Recommendations for meeting requirements.

(a) Counties and cities should consider identifying open space corridors when reviewing and updating urban growth areas, critical areas designations, and the land use element of comprehensive plans.

(b) Counties and cities should consider the various purposes and uses of identified corridors, and should state the preferred uses anticipated for each identified corridor, if known. In some cases, uses preferred for an identified corridor may preclude other incompatible uses.

(c) Counties and cities should consider how identified corridors exist in relationship to designated critical areas and natural resource lands, the extent and trends of public demands for recreational lands and access to public lands for recreation, and specific existing and planned recreational uses that may make use of identified corridors for specific uses, including nonmotorized transportation.

(d) When identifying open space corridors, counties and cities should plan an integrated system that uses identified corridors to link established large areas of parks and recreational lands, resource lands, greenbelts, streams, and wildlife corridors to help protect fish and wildlife habitat conservation areas.

(e) Counties and cities should also consider the potential to use vegetated green spaces as part of an integrated system to absorb and treat storm water.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-335, filed 1/19/10, effective 2/19/10.]

365-196-340 Identification of lands useful for public purposes.

(1) Requirements. Each county and city planning under the act must identify land useful for public purposes such as utility corridors, transportation corridors, landfills, sewage treatment facilities, storm water management facilities, recreation, schools, and other public uses. The county must work with the state and with the cities within the county's borders to identify areas of shared need for public facilities. The jurisdictions within the county must prepare a prioritized list of lands necessary for the identified public uses including an estimated date by which the acquisition will be needed. The respective capital acquisition budgets for each jurisdiction must reflect the jointly agreed upon priorities and time schedule. See WAC 365-196-405 (2)(g), Land use element.

(2) Recommendations for meeting requirements. Counties and cities should identify lands useful for public purposes when updating the urban growth area designations and the land use, utilities and transportation elements of comprehensive plans. The department recommends that the information derived in meeting this requirement be made generally available only to the extent necessary to meet the requirements of the public disclosure laws.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-340, filed 1/19/10, effective 2/19/10.]

365-196-345 New fully contained communities.

(1) Any county planning under the act may reserve a portion of its twenty-year population projection for new fully contained communities, located outside of the designated urban growth areas.

(2) Proposals to authorize fully contained communities must be processed according to the locally established policies implementing the criteria set forth in RCW 36.70A.350. Approval of a new fully contained community has the effect of amending the comprehensive plan, therefore it is a legislative action and should follow the procedures associated with comprehensive plan amendments.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-345, filed 1/19/10, effective 2/19/10.]

PART FOUR
FEATURES OF THE COMPREHENSIVE PLAN

365-196-400 Mandatory elements.

(1) Requirements.

(a) The comprehensive plan must include, at a minimum, a future land use map.

(b) The comprehensive plan must contain descriptive text covering objectives, principles, and standards used to develop the comprehensive plan.

(c) The comprehensive plan must be an internally consistent document and all elements shall be consistent with the future land use map.

(d) Each comprehensive plan must include each of the following:

(i) A land use element;

(ii) A housing element;

(iii) A capital facilities plan element;

(iv) A utilities element;

(v) A transportation element.

(e) Required elements enacted after January 1, 2002, must be included in each comprehensive plan that is updated under RCW 36.70A.130(1), but only if funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before the applicable review and update deadline in RCW 36.70A.130(4). The department will notify counties and cities when funds have been appropriated for this purpose. Elements enacted after January 1, 2002, include:

(i) An economic development element; and

(ii) A parks and recreation element.

(f) County comprehensive plans must also include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources.

(g) Additionally, each county and city comprehensive plan must contain:

(i) A process for identifying and siting essential public facilities.

(ii) The goals and policies of the shoreline master program adopted by the county or city, either directly in the comprehensive plan, or through incorporation by reference as described in WAC 173-26-191.

(2) Recommendations for overall design of the comprehensive plan.

(a) The planning horizon for the comprehensive plan must be at least the twenty-year period following the adoption of the comprehensive plan.

(b) The comprehensive plan should include or reference the statutory goals and requirements of the act as guiding the development of the comprehensive plan and should also identify any supplementary goals adopted in the comprehensive plan.

(c) Each county and city comprehensive plan should include, or reference, the county-wide planning policies, along with an explanation of how the county-wide planning policies have been integrated into the comprehensive plan.

(d) Each comprehensive plan must contain a future land use map showing the proposed physical distribution and location of the various land uses during the planning period. This map should provide a graphic display of how and where development is expected to occur.

(e) The comprehensive plan should include a vision for the community at the end of the twenty-year planning period and identify community values derived from the visioning and other citizen participation processes. Goals may be further defined with policies and objectives in each element of the comprehensive plan.

(f) Each county and city should include at the beginning of its comprehensive plan a section which summarizes, with graphics and a minimum amount of text, how the various pieces of the comprehensive plan fit together. A comprehensive plan may include overlay maps and other graphic displays depicting known critical areas, open space corridors, development patterns, phasing of development, neighborhoods or subarea definitions, and other plan features.

(g) Detailed recommendations for preparing each element of the comprehensive plan are provided in WAC 365-196-405 through 365-196-485.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-400, filed 1/19/10, effective 2/19/10.]

365-196-405 Land use element.

(1) Requirements. The land use element must contain the following features:

(a) Designation of the proposed general distribution and general location and extent of the uses of land, where appropriate, for agricultural, timber, and mineral production, for housing, commerce, industry, recreation, open spaces, public utilities, public facilities, general aviation airports, military bases, rural uses, and other land uses.

(b) Population densities, building intensities, and estimates of future population growth.

(c) Provisions for protection of the quality and quantity of ground water used for public water supplies.

(d) Wherever possible, consideration of urban planning approaches to promote physical activity.

(e) Where applicable, a review of drainage, flooding, and storm water runoff in the area covered by the plan and nearby jurisdictions, and guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) Recommendations for meeting requirements. The land use assumptions in the land use element form the basis for all growth-related planning functions in the comprehensive plan, including transportation, housing, capital facilities, and, for counties, the rural element. Preparing the land use element is an iterative process. Linking all plan elements to the land use assumptions in the land use element helps meet the act's requirement for internal consistency. The following steps are recommended in preparing the land use element:

(a) Counties and cities should integrate relevant county-wide planning policies and, where applicable, multicounty planning policies, into the local planning process, and ensure local goals and policies are consistent.

(b) Counties and cities should identify the existing general distribution and location of various land uses, the approximate acreage, and general range of density or intensity of existing uses.

(c) Counties and cities should conduct an inventory of vacant, partially used and underutilized land to determine the extent to which existing buildings and housing, together with vacant, partially used and underutilized land, can support anticipated growth over the planning period. Growth anticipated through redevelopment of developed lands should also be considered. This information should be provided through a land capacity analysis as part of a county-wide process described in WAC 365-196-305 and 365-196-310 or, as applicable, WAC 365-196-315.

(d) Counties and cities should identify special characteristics and uses of the land which may influence land use or regulation. These may include:

(i) The location of agriculture, forest and mineral resource lands of long-term commercial significance.

(ii) The general location of any known critical areas that limit suitability of land for development.

(iii) Influences or threats to the quality and quantity of ground water used for public water supplies. These may be identified from information sources such as the following:

(A) Designated critical aquifer recharge areas that identify areas where potentially hazardous material use should be limited, or for direction on where managing development practices that influence the aquifer would be important;

(B) Watershed plans approved under chapter 90.82 RCW; ground water management plans approved under RCW 90.44.400; coordinated water system plans adopted under chapter 70.116 RCW; and watershed plans adopted under chapter 90.54 RCW as outlined in RCW 90.03.386.

(C) Instream flow rules prepared by the department of ecology and limitations and recommendations therein that may inform land use decisions.

(iv) Areas adjacent to general aviation airports where incompatible uses should be discouraged, as required by RCW 36.70A.510 and 36.70.547, with guidance in WAC 365-196-455.

(v) Areas adjacent to military bases where incompatible uses should be discouraged, as required by RCW 36.70A.530 with guidance in WAC 365-196-475.

(vi) Existing or potential open space corridors within and between urban growth areas as required by RCW 36.70A.160 for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Counties and cities may consult WAC 365-196-335 for additional information.

(vii) Where applicable, sites that are particularly well suited for industry. Counties and cities should consult WAC 365-196-310 (3)(c)(iv) for information on industrial land uses. For counties, the process described in WAC 365-196-465 and 365-196-470 may be relevant for industrial areas outside of an urban growth area.

(viii) Other features that may be relevant to this information gathering process may include view corridors, brownfield sites, national scenic areas, historic districts, or other opportunity sites, or other special characteristics which may be useful to inform future land use decisions.

(e) Counties and cities must review drainage, flooding, and storm water runoff in the area or nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound. Water quality information may be integrated from the following sources:

(i) Planning and regulatory requirements of municipal storm water general permits issued by the department of ecology that apply to the county or city.

(ii) Local waters listed under Washington state's water quality assessment and any water quality concerns associated with those waters.

(iii) Interjurisdictional plans, such as total maximum daily loads.

(f) Counties and cities must obtain twenty-year population allocations for their planning area as part of a county-wide process described in WAC 365-196-305(4) and 365-196-310. Using information from the housing needs analysis, identify the amount of land suitable for development at a variety of densities consistent with the number and type of residential units likely to be needed over the planning period. At a minimum, cities must plan for the population allocated to them, but may plan for additional population within incorporated areas.

(g) Counties and cities should estimate the level of commercial space, and industrial land needed using information from the economic development element, if available, or from other relevant economic development plans.

(h) Counties and cities should identify the general location and estimated quantity of land needed for public purposes such as utility corridors, landfills or solid waste transfer stations, sewage treatment facilities, storm water management facilities, recreation, schools, and other public uses. Counties and cities should consider corridors needed for transportation including automobile, rail, and trail use in and between planning areas, consistent with the transportation element and coordinate with adjacent jurisdictions for connectivity.

(i) Counties and cities should select land use designations and implement zoning. Select appropriate commercial, industrial, and residential densities and their distribution based on the total analysis of land features, population to be supported, implementation of regional planning strategies, and needed capital facilities.

(i) It is strongly recommended that a table be included showing the acreage in each land use designation, the acreage in each implementing zone, the approximate densities that are assumed, and how this meets the twenty-year population projection.

(ii) Counties and cities should prepare a future land use map including land use designations, municipal and urban growth area boundaries, and any other relevant features consistent with other elements of the comprehensive plan.

(j) Wherever possible, counties and cities should consider urban planning approaches that promote physical activity. Urban planning approaches that promote physical activity may include:

(i) Higher intensity residential or mixed-use land use designations to support walkable and diverse urban, town and neighborhood centers.

(ii) Transit-oriented districts around public transportation transfer facilities, rail stations, or higher intensity development along a corridor served by high quality transit service.

(iii) Policies for siting or colocating public facilities such as schools, parks, libraries, community centers and athletic centers to place them within walking or cycling distance of their users.

(iv) Policies supporting linear parks and shared-use paths, interconnected street networks or other urban forms supporting bicycle and pedestrian transportation.

(v) Policies supporting multimodal approaches to concurrency consistent with other elements of the plan.

(vi) Traditional or main street commercial corridors with street front buildings and limited parking and driveway interruption.

(vii) Opportunities for promoting physical activity through these and other policies should be sought in existing as well as newly developing areas. Regulatory or policy barriers to promoting physical activity for new or existing development should also be removed or lessened where feasible.

(k) Counties and cities may prepare an implementation strategy describing the steps needed to accomplish the vision and the densities and distributions identified in the land use element. Where greater intensity of development is proposed, the strategy may include a design scheme to encourage new development that is compatible with existing or desired community character.

(l) Counties and cities may prepare a schedule for the phasing of the planned development contemplated consistent with the availability of capital facilities as provided in the capital facilities element. WAC 365-196-330 provides additional information regarding development phasing.

(m) Counties and cities should reassess the land use element in light of:

(i) The projected capacity for financing the needed capital facilities over the planning period; and

(ii) An assessment of whether the planned densities and distribution of growth can be achieved within the capacity of available land and water resources and without environmental degradation.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-405, filed 1/19/10, effective 2/19/10.]

365-196-410Housing element.

(1) Requirements. Counties and cities must develop a housing element ensuring vitality and character of established residential neighborhoods. The housing element must contain at least the following features:

(a) An inventory and analysis of existing and projected housing needs.

(b) A statement of the goals, policies, and objectives for the preservation, improvement, and development of housing, including single-family residences.

(c) Identification of sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, group homes and foster care facilities.

(d) Adequate provisions for existing and projected housing needs of all economic segments of the community.

(2) Recommendations for meeting requirements. The housing element shows how a county or city will accommodate anticipated growth, provide a variety of housing types at a variety of densities, provide opportunities for affordable housing for all economic segments of the community, and ensure the vitality of established residential neighborhoods. The following components should appear in the housing element:

(a) Housing goals and policies.

(i) The goals and policies serve as a guide to the creation and adoption of development regulations and may also guide the exercise of discretion in the permitting process.

(ii) The housing goals and policies of counties and cities should be consistent with county-wide planning policies and, where applicable, multicounty planning policies.

(iii) Housing goals and policies should address at least the following:

(A) Affordable housing;

(B) Preservation of neighborhood character; and

(C) Provision of a variety of housing types along with a variety of densities.

(iv) Housing goals and policies should be written to allow the evaluation of progress toward achieving the housing element's goals and policies.

(b) Housing inventory.

(i) The purpose of the required inventory is to gauge the availability of existing housing for all economic segments of the community.

(ii) The inventory should identify the amount of various types of housing that exist in a community. The act does not require that a housing inventory be in a specific form. Counties and cities should consider WAC 365-196-050 (3) and (4) when determining how to meet the housing inventory requirement and may rely on existing data.

(iii) The housing inventory may show the affordability of different types of housing. It may provide data about the median sales prices of homes and average rental prices.

(iv) The housing inventory may include information about other types of housing available within the jurisdiction such as:

(A) The number of beds available in group homes, nursing homes and/or assisted living facilities;

(B) The number of dwelling units available specifically for senior citizens;

(C) The number of government-assisted housing units for lower-income households.

(c) Housing needs analysis.

(i) The purpose of the needs analysis is to estimate the type and densities of future housing needed to serve all economic segments of the community. The housing needs analysis should compare the number of housing units identified in the housing inventory to the projected growth or other locally identified housing needs.

(ii) The definition of housing needs should be addressed in a regional context and may use existing data.

(iii) The analysis should be based on the most recent twenty-year population allocation.

(iv) The analysis should analyze consistency with county-wide planning policies, and where applicable, multicounty planning policies, related to housing for all economic segments of the population.

(d) Housing targets or capacity.

(i) The housing needs analysis should identify the number and types of new housing units needed to serve the projected growth and the income ranges within it. This should be used to designate sufficient land capacity suitable for development in the land use element.

(ii) Counties and cities may also use other considerations to identify housing needs, which may include:

(A) Workforce housing which is often defined as housing affordable to households earning between eighty to one hundred twenty percent of the median household income.

(B) Jobs-to-housing balance, which is the number of jobs in a city or county relative to the number of housing units.

(C) Reasonable measures to address inconsistencies found in buildable lands reports prepared under RCW 36.70A.215.

(D) Housing needed to address an observed pattern of a larger quantity of second homes in destination communities.

(iii) The targets established in the housing element will serve as benchmarks to evaluate progress and guide decisions regarding development regulations.

(e) Affordable housing. RCW 36.70A.070 requires counties and cities, in their housing element, to make adequate provisions for existing and projected needs for all economic segments of the community.

(i) Determining what housing units are affordable.

(A) In the case of dwelling units for sale, affordable housing has mortgages, amortization, taxes, insurance and condominium or association fees, if any, that consume no more than thirty percent of the owner's gross annual household income.

(B) In the case of dwelling units for rent, affordable housing has rent and utility costs, as defined by the county or city, that cost no more than thirty percent of the tenant's gross annual household income.

(C) Income ranges used when considering affordability. When planning for affordable housing, counties or cities should use income ranges consistent with the applicable county-wide or multicounty planning policies. If no such terms exist, counties or cities should consider using the United States Department of Housing and Urban Development (HUD) definitions found in 24 C.F.R. 91.5, which are used to draft consolidated planning documents required by HUD. The following definitions are from 24 C.F.R. 91.5:

(I) Median income refers to median household income.

(II) Extremely low-income refers to a household whose income is at or below thirty percent of the median income, adjusted for household size, for the county where the housing unit is located.

(III) Low-income refers to a household whose income is between thirty percent and fifty percent of the median income, adjusted for household size, for the county where the housing unit is located.

(IV) Moderate-income refers to a household whose income is between fifty percent and eighty percent of the median income where the housing unit is located.

(V) Middle-income refers to a household whose income is between eighty percent and ninety-five percent of the median income for the area where the housing unit is located.

(ii) Affordable housing requires planning from a regional perspective. County-wide planning policies must address affordable housing and its distribution among counties and cities. A county's or city's obligation to plan for affordable housing within a regional context is determined by the applicable county-wide planning policies. Counties and cities should review county-wide affordable housing policies when developing the housing element to maintain consistency.

(iii) Counties and cities should consider the ability of the market to address housing needs for all economic segments of the population. Counties and cities may help to address affordable housing by identifying and removing any regulatory barriers limiting the availability of affordable housing.

(iv) Counties and cities may help to address affordable housing needs by increasing development capacity. In such an event, a county or city affordable housing section should:

(A) Identify certain land use designations within a geographic area where increased residential development may help achieve affordable housing policies and targets;

(B) As needed, identify policies and subsequent development regulations that may increase residential development capacity;

(C) Determine the number of additional housing units these policies and development regulations may generate; and

(D) Establish a target that represents the minimum amount of affordable housing units that it seeks to generate.

(f) Implementation plan.

(i) The housing element should identify strategies designed to help meet the needs identified for all economic segments of the population within the planning area. It should include, but not be limited to, the following:

(A) Consideration of the range of housing choices to be encouraged including, but not limited to, multifamily housing, mixed uses, manufactured houses, accessory dwelling units, and detached houses;

(B) Consideration of various lot sizes and densities, and of clustering and other design configurations;

(C) Identification of a sufficient amount of appropriately zoned land to accommodate the identified housing needs over the planning period; and

(D) Evaluation of the capacity of local public and private entities and the availability of financing to produce housing to meet the identified need.

(ii) The housing element should also address how the county or city will provide for group homes, foster care facilities, and facilities for other populations with special needs. The housing element should provide for an equitable distribution of these facilities among neighborhoods within the county or city

(iii) The housing element should identify strategies designed to ensure the vitality and character of existing neighborhoods. It should show how growth and change will preserve or improve existing residential qualities. The housing element may not focus on one requirement (e.g., preserving existing housing) to the exclusion of the other requirements (e.g., affordable housing) in RCW 36.70A.070(2). It should explain how various needs are reconciled.

(iv) The housing element should include provisions to monitor the performance of its housing strategy. A monitoring program may include the following:

(A) The collection and analysis of information about the housing market;
(B) Data about the supply of developable residential building lots at various land-use densities and the supply of rental and for-sale housing at various price levels;
(C) A comparison of actual housing development to the targets, policies and goals contained in the housing element;
(D) Identification of thresholds at which steps should be taken to adjust and revise goals and policies; and
(E) A description of the types of adjustments and revisions that the county or city may consider.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-410, filed 1/19/10, effective 2/19/10.]

365-196-415 Capital facilities element.

(1) Requirements. The capital facilities element of a comprehensive plan must contain at least the following features:

(a) An inventory of existing capital facilities owned by public entities, also referred to as "public facilities," showing the locations and capacities of the capital facilities;

(b) A forecast of the future needs for such capital facilities based on the land use element;

(c) The proposed locations and capacities of expanded or new capital facilities;

(d) At least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and

(e) A requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(2) Recommendations for meeting requirements.

(a) Inventory of existing facilities.

(i) Counties and cities should create an inventory of existing capital facilities showing locations and capacities, including the extent to which existing facilities have capacity available for future growth.

(ii) Capital facilities involved should include, at a minimum, water systems, sanitary sewer systems, storm water facilities, reclaimed water facilities, schools, parks and recreational facilities, police and fire protection facilities.

(iii) Capital facilities that are needed to support other comprehensive plan elements, such as transportation, the parks and recreation or the utilities elements, may be addressed in the capital facility element or in the specific element.

(iv) Counties and cities should periodically review and update the inventory. At a minimum this review must occur as part of the seven-year periodic update required by RCW 36.70A.130(1). Counties and cities may also maintain this inventory annually in response to changes in the annual capital budget.

(b) Forecast of future needs.

(i) Counties and cities should forecast needs for capital facilities during the planning period, based on the levels of service or planning assumptions selected and consistent with the growth, densities and distribution of growth anticipated in the land use element. The forecast should include reasonable assumptions about the effect of any identified system management or demand management approaches to preserve capacity or avoid the need for new facilities.

(ii) The capital facilities element should identify all capital facilities that are planned to be provided within the planning period, including general location and capacity.

(A) Counties and cities should identify those improvements that are necessary to address existing deficiencies or to preserve the ability to maintain existing capacity.

(B) Counties and cities should identify those improvements that are necessary for development.

(C) Counties and cities may identify any other improvements desired to raise levels of services above locally adopted minimum standards, to enhance the quality of life in the community or meet other community needs not related to growth such as administrative offices, courts or jail facilities. Counties and cities are not required to set level of service standards for facilities that are not necessary for development. Because these facilities are not necessary for development, the failure to fund these facilities as planned would not require a reassessment of the land use element if funding falls short as required by RCW 36.70A.070 (3)(e).

(c) Financing plan.

(i) The capital facilities element should include creation of at least a six-year capital facilities plan for financing capital facilities needed within that time frame. Counties and cities should forecast projected funding capacities based on revenues available under existing laws and ordinances, followed by the identification of sources of public or private funds for which there is reasonable assurance of availability. Where the services and capital facilities are provided by other entities, these other providers should provide financial information as well. If the funding strategy relies on new or previously untapped sources of revenue, the capital facilities element should include an estimate of new funding that will be supplied. Adoption of the development regulations or other actions to secure these funding sources should be included in the implementation strategy.

(ii) The six-year plan should be updated at least biennially so financial planning remains sufficiently ahead of the present for concurrency to be evaluated. Such an update of the capital facilities element may be integrated with the county's or city's annual budget process for capital facilities.

(d) Reassessment.

(i) Counties and cities must reassess the land use element and other elements of the comprehensive plan if the probable funding falls short of meeting the need for facilities that are determined by a county or city to be necessary for development. Counties and cities should identify a mechanism to periodically evaluate the adequacy of public facilities based on adopted levels of service or other objective standards. The evaluation should determine if a combination of existing and funded facilities are adequate to maintain or exceed adopted level of service standards.

(ii) This evaluation must occur, at a minimum, as part of the periodic review and update required in RCW 36.70A.130(1), during the review of urban growth areas required by RCW 36.70A.130(3) and as major changes are made to the capital facilities element.

(iii) If public facilities are inadequate, local governments must address this inadequacy. If the reassessment identifies a lack of adequate public facilities, counties and cities may use a variety of strategies including, but not limited to, the following:

(A) Reducing demand through demand management strategies;

(B) Reducing levels of service standards;

(C) Increasing revenue;

(D) Reducing the cost of the needed facilities;

(E) Reallocating or redirecting planned population and employment growth within the jurisdiction or among jurisdictions within the urban growth area to make better use of existing facilities;

(F) Phasing growth or adopting other measures to adjust the timing of development, if public facilities or services are lacking in the short term for a portion of the planning period;

(G) Revising county-wide population forecasts within the allowable range, or revising the county-wide employment forecast.

(3) Relationship between the capital facilities element and the land use element.

(a) Providing adequate public facilities is a component of the affirmative duty created by the act for counties and cities to accommodate the growth that is selected and allocated, to provide sufficient capacity of land suitable for development, and to permit urban densities.

(b) The needs for capital facilities should be dictated by the land use element. The future land use map designates sufficient land use densities and intensities to accommodate the population and employment that is selected and allocated. The land uses and assumed densities identified in the land use element determine the location and timing of the need for new or expanded facilities.

(c) A capital facilities element includes the new and expanded facilities necessary for growth over the twenty-year life of the comprehensive plan. Facilities needed for new growth, combined with needs for maintenance and rehabilitation of the existing systems and the need to address existing deficiencies constitutes the capital facilities demand.

(4) Relationship to plans of other service providers or plans adopted by reference. A county or city should not meet their responsibility to prepare a capital facilities element by relying only on assurances of availability from other service providers. When system plans or master plans from other service providers are adopted by reference, counties and cities should do the following:

(a) Summarize this information within the capital facilities element;

(b) Synthesize the information from the various providers to show that the actions, taken together, provide adequate public facilities; and

(c) Conclude that the capital facilities element shows how the area will be provided with adequate public facilities.

(5) Relationship between growth and provision of adequate public facilities.

(a) Counties and cities should identify in the capital facility element which types of facilities it considers to be necessary for development.

> (i) Counties and cities should identify facilities as necessary for development if the need for new facilities is reasonably related to the impacts of development.
>
> (ii) Capital facilities must be identified as necessary for development if a county or city imposes an impact fee as a funding strategy for those facilities.

(iii) In urban areas, all facilities necessary to achieve urban densities must be identified as necessary for development.

(b) For those capital facilities deemed necessary for development, adequate public facilities may be maintained as follows:

(i) Transportation facilities are the only facilities required to have a concurrency mechanism, although a local government may adopt a concurrency mechanism for other facilities that are deemed necessary for development. See WAC 365-196-840.

(ii) Counties and cities should determine which capital facilities will be required as a condition of project approval, but not subject to concurrency. These may include, for example: Capital facilities required to ensure adequate water availability, capital facilities necessary to handle wastewater, and capital facilities necessary to manage storm water.

(iii) For capital facilities that are necessary for development, but not identified in subsection (2)(b)(ii)(A) or (B) of this section, counties and cities should set a minimum level of service standard, or provide some other objective basis for assessing the need for new facilities or capacity. This standard must be indicated as the baseline standard, below which the jurisdiction will not allow service to fall. Policies must require periodic analysis to determine if the adopted level of service is being met consistent with this section.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-415, filed 1/19/10, effective 2/19/10.]

365-196-420 Utilities element.

(1) Requirements. The utilities element shall contain at least the following features: The general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(2) Recommendations for meeting requirements. Counties and cities should consider the following:

(a) The general location and capacity of existing and proposed utility facilities should be integrated with the land use element. Proposed utilities are those awaiting approval when the comprehensive plan is adopted.

(b) In consultation with serving utilities, counties and cities should prepare an analysis of the capacity needs for various utilities over the planning period, to serve the growth anticipated at the locations and densities proposed within the jurisdiction's planning area. The capacity needs analysis should include consideration of comprehensive utility plans, least-cost plans, load forecasts, and other planning efforts.

(c) The utility element should identify the general location of utility lines and facilities required to furnish anticipated capacity needs for the planning period. This should be developed in consultation with serving utilities as a part of the process of identifying lands useful for public purposes.

(d) Counties and cities should evaluate whether any utilities should be identified and classified as essential public facilities, subject in cases of siting difficulty to the separate siting process established under the comprehensive plan for such facilities.

(e) Counties and cities should evaluate whether any utility facilities within their planning area are subject to county-wide planning policies for siting public facilities of a county-wide or statewide nature.

(f) Counties and cities should include local criteria for siting utilities over the planning period, including:

> (i) Consideration of whether a siting proposal is consistent with the locations and densities for growth as designated in the land use element.
>
> (ii) Consideration of any public service obligations of the utility involved.
>
> (iii) Evaluation of whether the siting decision will adversely affect the ability of the utility to provide service throughout its service area.
>
> (iv) Balancing of local design considerations against articulated needs for system-wide uniformity.

(g) Counties and cities should adopt policies that call for:

(i) Joint use of transportation rights of way and utility corridors, where possible.

(ii) Timely and effective notification of interested utilities about road construction, and of maintenance and upgrades of existing roads to facilitate coordination of public and private utility trenching activities.

(iii) Consideration of utility permit applications simultaneously with the project permit application for the project proposal requesting service and, when possible, approval of utility permits when the project permit application for the project to be served is approved.

(iv) Cooperation and collaboration between the county or city and the utility provider to develop vegetation management policies and plans for utility corridors.

(A) Coordination and cooperation between the county or city and the utility provider to educate the public on avoiding preventable utility conflicts through choosing proper vegetation (i.e., "Right Tree, Right Place").

(B) Coordination and cooperation between the county or city and the utility provider to reduce potential critical areas conflicts through the consideration of alternate utility routes, expedited vegetation management permitting, coordinated vegetation management activities, and/or long-term vegetation management plans.

(h) Adjacent counties and cities should coordinate to ensure the consistency of each jurisdiction's utilities element and regional utility plan, and to develop a coordinated process for siting regional utility facilities in a timely manner.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-420, filed 1/19/10, effective 2/19/10.]

365-196-425 Rural element.

Counties must include a rural element in their comprehensive plan. This element shall include lands that are not designated for urban growth, agriculture, forest, or mineral resources. The rural element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of rural densities.

(1) Developing a written record. When developing the rural element, a county may consider local circumstances in establishing patterns of rural densities and uses, but must develop a written record explaining how the rural element harmonizes the planning goals in the act and meets the requirements of the act. This record should document local circumstances the county considered and the historic patterns of development in the rural areas.

(2) Establishing a definition of rural character.

(a) The rural element shall include measures that apply to rural development and protect rural character. Counties must define rural character to guide the development of the rural element and the implementing development regulations.

(b) The act identifies rural character as patterns of land use and development that:

(i) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(ii) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(iii) Provide visual landscapes that are traditionally found in rural areas and communities;

(iv) Are compatible with the use of land by wildlife and for fish and wildlife habitat;

(v) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(vi) Generally do not require the extension of urban governmental services; and

(vii) Are consistent with protection of natural surface water flows and ground water and surface water recharge and discharge areas.

(c) Counties should adopt a locally appropriate definition of rural character. Rural areas are diverse in visual character and in density, across the state and across a particular county. Rural development may consist of a variety of densities and uses. It may, for example, include clustered residential development at levels consistent with the preservation of rural character. Counties should define rural development both in terms of its visual character and in terms of the density and intensity of uses. Defining rural development in this way allows the county to use its definition of rural development both in its future land use designations and in its development regulations governing rural development.

(3) Rural densities.

(a) The rural element should provide for a variety of densities that are consistent with the pattern of development established in its definition of rural character. The rural comprehensive plan designations should be shown on the future land use map. Rural densities are a range of densities that:

(i) Are compatible with the primary use of land for natural resource production;

(ii) Do not make intensive use of the land;

(iii) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(iv) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(v) Provide visual landscapes that are traditionally found in rural areas and communities;

(vi) Are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(vii) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(viii) Generally do not require the extension of urban governmental services;

(ix) Are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas; and

(x) Do not create urban densities in rural areas or abrogate the county's responsibility to encourage new development in urban areas.

(b) Counties should perform a periodic analysis of development occurring in rural areas, to determine if patterns of rural development are protecting rural character and encouraging development in urban areas. This analysis should occur at least every ten years, along with the ten-year urban growth area review required in RCW 36.70A.130 (3)(a). The analysis may include the following:

(i) Patterns of development occurring in rural areas.

(ii) The percentage of new growth occurring in rural versus urban areas.

(iii) Patterns of rural comprehensive plan or zoning amendments.

(iv) Numbers of permits issued in rural areas.

(v) Numbers of new approved wells and septic systems.

(vi) Growth in traffic levels on rural roads.

(vii) Growth in public facilities and public services costs in rural areas.

(viii) Changes in rural land values and rural employment.

(ix) Potential build-out at the allowed rural densities.

(x) The degree to which the growth that is occurring in the rural areas is consistent with patterns of rural land use and development established in the rural element.

(4) Rural governmental services.

(a) Rural governmental services are those public facilities and services historically and typically delivered at intensities usually found in rural areas, and may include the following:

(i) Domestic water system;
(ii) Fire and police protection;
(iii) Transportation and public transportation; and
(iv) Public utilities, such as electrical, telecommunications and natural gas lines.

(b) Rural services do not include storm or sanitary sewers. Urban governmental services that pass through rural areas when connecting urban areas do not constitute an extension of urban services into a rural area provided those public services are not provided in the rural area. Sanitary sewer service may be provided only if it:

(i) Is necessary to protect basic public health and safety and the environment;
(ii) Is financially supportable at rural densities; and

(iii) Does not permit urban development.

(c) When establishing levels of service in the capital facilities and transportation element, each county should establish rural levels of service, for those rural services that are necessary for development, to determine if it is providing adequate public facilities. Counties are not required to use a single level of service for the entire rural area and may establish varying levels of service for public services in different rural areas. Where private purveyors or other public entities provide rural services, counties should coordinate with them to establish and document appropriate levels of service.

(d) Rural areas typically rely on natural systems to adequately manage storm water and typically rely on on-site sewage systems to treat wastewater. Development in rural areas also typically relies on individual wells, exempt wells or small water systems for water. Counties should ensure the densities it establishes in rural areas do not overwhelm the ability of natural systems to provide these services without compromising either public health or the vitality of the surrounding ecosystem.

(e) Rural road systems are not typically designed to handle large traffic volumes. Local conditions may influence varying levels of service for rural road system, and level of service standards for rural arterials should be set accordingly. Generally, level of service standards should reflect the expectation that high levels of local traffic and the associated road improvements are not usually associated with rural areas.

(f) Levels of public services decrease, and corresponding costs increase when demand is spread over a large area. This is especially true for public safety services and both school and public transportation services. Counties should provide clear expectations to the public about the availability of rural public services. Counties should ensure the densities it establishes in rural areas do not overwhelm the capacity of rural public services.

(5) Innovative zoning techniques.

(a) Innovative zoning techniques allow greater flexibility in rural development regulations to create forms of development that are more consistent with rural character than forms of development generated by conventional large-lot zoning. Innovative zoning techniques may allow forms of rural development that:

(i) Result in rural development that is more visually compatible with the surrounding rural areas;

(ii) Maximize the availability of rural land for either resource use or wildlife habitat;

(iii) Increase the operational compatibility of the rural development with use of the land for resource production;

(iv) Decrease the impact of the rural development on the surrounding ecosystem;

(v) Does not allow urban growth; and

(vi) Does not require the extension of urban governmental services.

(b) Rural clusters. One common form of innovative zoning technique is the rural cluster. A rural cluster can create smaller individual lots than would normally be allowed in exchange for open space that preserves a significant portion of the original parcel.

(i) When calculating the density of development for zoning purposes, counties should calculate density based on the number of dwelling units over the entire development parcel, rather than the size of the individual lots created.

(ii) The open space portion of the original parcel should be held by an easement for open space or resource use. This should be held in perpetuity, without an expiration date.

(iii) If a county allows bonus densities in a rural cluster, the resulting density after applying the bonus must be a rural density.

(iv) Rural clusters may not create a pattern of development that relies on or requires urban governmental services. Counties should establish a limit on the size of the residential cluster so that a cluster does not constitute urban growth in a rural area. A very large project may create multiple smaller clusters that are separated from each other and use a different access point to avoid creating a pattern of development that would constitute urban growth.

(v) Development regulations governing rural clusters should include design criteria that preserve rural visual character.

(6) Limited areas of more intense rural development. The act allows counties to plan for isolated pockets of more intense development in the rural area. These are referred to in the act as limited areas of more intense rural development or LAMIRDs.

(a) LAMIRDs serve the following purposes:

(i) To recognize existing areas of more intense rural development and to minimize and contain these areas to prevent low density sprawl;

(ii) To allow for small-scale commercial uses that rely on a rural location;

(iii) To allow for small-scale economic development and employment consistent with rural character; and

(iv) To allow for redevelopment of existing industrial areas within rural areas.

(b) An existing area or existing use is one that was in existence on the date the county became subject to all of the provisions of the act:

(i) For a county initially required to fully plan under the act, on July 1, 1990.

(ii) For a county that chooses to fully plan under the act, on the date the county adopted the resolution under RCW 36.70A.040(2).

(iii) For a county that becomes subject to all of the requirements of the act under RCW 36.70A.040(5), on the date the office of financial management certifies the county's population.

(c) Counties may allow for more intensive uses in a LAMIRD than would otherwise be allowed in rural areas and may allow public facilities and services that are appropriate and necessary to serve LAMIRDs subject to the following requirements:

(i) Type 1 LAMIRDs - Isolated areas of existing more intense development. Within these areas, rural development consists of infill, development, or redevelopment of existing areas. These areas may include a variety of uses including commercial, industrial, residential, or mixed-use areas. These may be also characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) Development or redevelopment in LAMIRDS may be both allowed and encouraged provided it is consistent with the character of the existing LAMIRD in terms of building size, scale, use, and intensity. Counties may allow new uses of property within a LAMIRD, including development of vacant land.

(B) When establishing a Type I LAMIRD, counties must establish a logical outer boundary. The purpose of the logical outer boundary is to minimize and contain the areas of more intensive rural development to the existing areas. Uses, densities or intensities not normally allowed in a rural area may be allowed inside the logical outer boundary consistent with the existing character of the LAMIRD. Appropriate and necessary levels of public facilities and services not otherwise provided in rural areas may be provided inside the logical outer boundary.

(C) The logical outer boundary must be delineated primarily by the built environment as it existed on the date the county became subject to the planning requirements of the act.

(I) Some vacant land may be included within the logical outer boundary provided it is limited and does not create a significant amount of new development within the LAMIRD.

(II) Construction that defines the built environment may include above or below ground improvements. The built environment does not include patterns of vesting or preexisting zoning, nor does it include roads, clearing, grading, or the inclusion within a sewer or water service area if no physical improvements are in place. Although vested lots and structures built after the county became subject to the act's requirements should not be considered when identifying the built environment, they may be included within the logical outer boundary as infill.

(III) The logical outer boundary is not required to strictly follow parcel boundaries. If a large parcel contains an existing structure, a county may include part of the parcel in the LAMIRD boundary without including the entire parcel, to avoid a significant increase in the amount of development allowed within the LAMIRD.

(D) The fundamental purpose of the logical outer boundary is to minimize and contain the LAMIRD. Counties should favor the configuration that best minimizes and contains the LAMIRD to the area of existing development as of the date the county became subject to the planning requirements of the act. When evaluating alternative configurations of the logical outer boundary, counties should determine how much new growth will occur at build out and determine if this level of new growth is consistent with rural character and can be accommodated with the appropriate level of public facilities and public services. Counties should use the following criteria to evaluate various configurations when establishing the logical outer boundary:

(I) The need to preserve the character of existing natural neighborhoods and communities;

(II) Physical boundaries such as bodies of water, streets and highways, and land forms and contours;

(III) The prevention of abnormally irregular boundaries; and

(IV) The ability to provide public facilities and public services in a manner that does not permit low-density sprawl.

(E) Once a logical outer boundary has been adopted, counties may consider changes to the boundary in subsequent amendments. When doing so, the county must use the same criteria used when originally designating the boundary. Counties should avoid adding new undeveloped parcels as infill, especially if doing so would add to the capacity of the LAMIRD.

(ii) Type 2 LAMIRDs - Small-scale recreational uses. Counties may allow small-scale tourist or recreational uses in rural areas. Small-scale recreational or tourist uses rely on a rural location and setting and need not be principally designed to serve the existing and projected rural population.

(A) Counties may allow small-scale tourist or recreational uses through redevelopment of an existing site, intensification of an existing site, or new development on a previously undeveloped site, but not new residential development. Counties may allow public services and facilities that are limited to those necessary to serve the recreation or tourist uses and that do not permit low-density sprawl. Small-scale recreational or tourist uses may be added as accessory uses for resource-based industry. For accessory uses on agricultural lands of long-term commercial significance, see WAC 365-196-815.

(B) Counties are not required to designate Type 2 LAMIRDs on the future land use map and may allow them as a conditional use. If using a conditional use process, counties should include in their development regulations conditions that address all the statutory criteria for the location of a Type 2 LAMIRD. Conditions must assure that Type 2 LAMIRDs:

(I) Are isolated, both from urban areas and from each other. Conditions should include spacing criteria to avoid creating a pattern of strip development;

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Rely on a rural location or a natural setting;

(V) Do not include new residential development;

(VI) Do not require services and facilities beyond what is available in the rural area; and

(VII) Are operationally compatible with surrounding resource-based industries.

(iii) Type 3 LAMIRDs - Small-scale businesses and cottage industries. Counties may allow isolated small-scale businesses and cottage industries that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents, through the intensification of development on existing lots or on undeveloped sites.

(A) Counties may allow the expansion of small-scale businesses in rural areas as long as those small-scale businesses are consistent with the rural character of the area as defined by the county in the rural element. Counties may also allow new small-scale businesses to use a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area. Any public services and public facilities provided to the cottage industry or small-scale business must be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl.

(B) Counties are not required to designate Type 3 LAMIRDs on the future land use map and may allow them as a conditional use. If using a conditional use process, counties should include in their development regulations conditions that address all the statutory criteria for the location of a Type 3 LAMIRD. Conditions must assure that Type 3 LAMIRDs:

(I) Are isolated, both from urban areas and from each other. Conditions should include spacing criteria to avoid creating a pattern of strip development;

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Do not include new residential development;

(V) Do not require public services and facilities beyond what is available in the rural area; and

(VI) Are operationally compatible with surrounding resource-based industries.

(d) Major industrial developments and master planned resorts governed by other requirements. Counties may not use the provisions of RCW 36.70A.070 (5)(d)(iii) to permit a major industrial development or a master planned resort. These types of development must comply with the requirements of RCW 36.70A.360 through 36.70A.368. For more information about major industrial developments, see WAC 365-196-465. For more information about master planned resorts, see WAC 365-196-460.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-425, filed 1/19/10, effective 2/19/10.]

365-196-430 Transportation element.

(1) Requirements. Each comprehensive plan shall include a transportation element that implements, and is consistent with, the land use element. The transportation element shall contain at least the following subelements:

(a) Land use assumptions used in estimating travel;

(b) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(c) Facilities and services needs, including:

(i) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airports facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the county's or city's jurisdictional boundaries;

(ii) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(iii) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's ten-year investment program. The concurrency requirements of RCW 36.70A.070 (6)(b) do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in RCW 36.70A.070 (6)(b);

(iv) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(v) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(vi) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(d) Finance, including:

(i) An analysis of funding capability to judge needs against probable funding resources;

(ii) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the ten-year improvement program developed by the department of transportation as required by RCW 47.05.030;

(iii) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(e) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(f) Demand-management strategies;

(g) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles;

(h) The transportation element, and the six-year plan required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and the ten-year plan required by RCW 47.05.030 for the state, must be consistent.

(2) Recommendations for meeting element requirements.

(a) Consistency with the land use element, regional and state planning.

(i) RCW 36.70A.070(6) requires that the transportation element implement and be consistent with the land use element. Counties and cities should use consistent land use assumptions, population forecasts, and planning periods for both elements.

(ii) Counties and cities should refer to the statewide multimodal transportation plan produced by the department of transportation under chapter 47.06 RCW to ensure consistency between the transportation element and the statewide multimodal transportation plan. Local transportation elements should also reference applicable department of transportation corridor planning studies, including scenic byway corridor management plans.

(iii) Counties and cities should refer to the regional transportation plan developed by their regional transportation planning organization under chapter 47.80 RCW to ensure the transportation element reflects regional guidelines and principles; is consistent with the regional transportation plan; and is consistent with adopted regional growth and transportation strategies. Considering consistency during the development and review of the transportation element will facilitate the certification of transportation elements by the regional transportation planning organization as required by RCW 47.80.023(3).

(iv) Counties and cities should develop their transportation elements using the framework established in county-wide planning policies, and where applicable, multicounty planning policies. Using this framework ensures their transportation elements are coordinated and consistent with the comprehensive plans of other counties and cities sharing common borders or related regional issues as required by RCW 36.70A.100 and 36.70A.210.

(v) Counties and cities should refer to the six-year transit plans developed by municipalities or regional transit authorities pursuant to RCW 35.58.2795 to ensure their transportation element is consistent with transit development plans as required by RCW 36.70A.070 (6)(c).

(vi) Land use elements and transportation elements may incorporate commute trip reduction plans to ensure consistency between the commute trip reduction plans and the comprehensive plan as required by RCW 70.94.527(5). Counties and cities may also include transportation demand management programs for growth and transportation efficiency centers designated in accordance with RCW 70.94.528.

(b) The transportation element should contain goals and policies to guide the development and implementation of the transportation element. The goals and policies should be consistent with statewide and regional goals and policies. Goals and policies should address the following:

(i) Roadways and roadway design that provides safe access and travel for all users, including motorists, transit vehicles and riders, bicyclists, and pedestrians;

(ii) Public transportation, including public transit and passenger rail, intermodal transfers, and multimodal access;

(iii) Bicycle and pedestrian travel;

(iv) Transportation demand management, including education, encouragement and law enforcement strategies;

(v) Freight mobility including port facilities, truck, air, rail, and water-based freight;

(vi) Transportation finance including strategies for addressing impacts of development through concurrency, impact fees, and other mitigation; and

(vii) Policies to preserve the functionality of state highways within the local jurisdiction such as policies to provide an adequate local network of streets, paths, and transit service so that local short-range trips do not require single-occupant vehicle travel on the state highway system; and policies to mitigate traffic and storm water impacts on state-owned transportation facilities as development occurs.

(c) Inventory and analysis of transportation facilities. RCW 36.70A.070 (6)(a)(iii)(A) requires an inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities. The inventory defines existing capital facilities and travel levels as a basis for future planning. The inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries. Counties and cities should identify transportation facilities which are owned or operated by others. For those facilities operated by others, counties and cities should refer to the responsible agencies for information concerning current and projected plans for transportation facilities and services. Counties, cities, and agencies responsible for transportation facilities and services should cooperate in identifying and resolving land use and transportation compatibility issues.

(i) Air transportation facilities.

(A) Where applicable, counties and cities should describe the location of facilities and services provided by any general aviation airport within or adjacent to the county or city, and should reference any relevant airport planning documents including airport master plans, airport layout plans or technical assistance materials made available by the Washington state department of transportation, aviation division.

(B) Counties and cities should identify supporting transportation infrastructure such as roads, rail, and routes for freight, employee, and passenger access, and assess the impact to the local transportation system.

(C) Counties and cities should assess the compatibility of land uses adjacent to the airport and discourage the siting of incompatible uses in the land use element as directed by RCW 36.70A.510 and WAC 365-196-455.

(ii) Water transportation facilities.

(A) Where applicable, counties and cities should describe or map any ferry facilities and services, including ownership, and should reference any relevant ferry planning documents. The inventory should identify if a ferry route is subject to concurrency under RCW 36.70A.070 (6)(b). A ferry route is subject to concurrency if it serves counties consisting of islands whose only connection to the mainland are state highways or ferry routes.

(B) Counties and cities should identify supporting infrastructure such as parking and transfer facilities, bicycle, pedestrian, and vehicle access to ferry terminals and assess the impact on the local transportation system.

(C) Where applicable, counties and cities should describe marine and inland waterways, and related port facilities and services. Counties and cities should identify supporting transportation infrastructure, and assess the impact to the local transportation system.

(iii) Ground transportation facilities and services.

(A) Roadways. Counties and cities must include a map of roadways owned or operated by city, county, and state governments.

(I) Counties and cities may describe the general travel market (i.e., commuter, tourist, farm to market, etc.) served by the transportation network. The inventory may include information such as: Traffic volumes, truck volumes and classification, functional classification, strategic freight corridor designation, preferred freight routes, scenic and recreational highway designation, and ownership.

(II) For state highways, counties and cities should coordinate with the regional office of the Washington state department of transportation to identify designated high occupancy vehicle or high occupancy toll lanes, access classification, roadside classification, functional classification, and whether the highway is a state-designated highway of statewide significance, or state scenic and recreational highway designated under chapter 47.39 RCW. These designations may impact future development along state highway corridors. If these classifications impact future land use, this information should be included in the comprehensive plan along with reference to any relevant corridor planning documents.

(B) Public transportation and rail facilities and services.

(I) RCW 36.70A.070 (6)(a)(iii)(A) requires an inventory of transit alignments. Where applicable, counties and cities must inventory existing public transportation facilities and services. This section should reference transit development plans that provide local services. The inventory should contain a description of regional and intercity rail, and local, regional, and intercity bus service, paratransit, or other services. Counties and cities should include a map of local transit routes. The inventory should also identify locations of passenger rail stations and major public transit transfer stations for appropriate land use.

(II) Where applicable, such as where a major freight transfer facility is located, counties and cities should include a map of existing freight rail lines, and reference any relevant planning documents. Counties and cities should assess the adequacy of supporting transportation infrastructure such as roads, rail, and navigational routes for freight, employee, and passenger access, and the impact on the local transportation system.

(d) If the planning area is within a National Ambient Air Quality Standards nonattainment area, compliance with the Clean Air Act Amendments of l990 is required. Where applicable, the transportation element should include: A map of the area designated as the nonattainment area for ozone, carbon monoxide, and particulate matter (PM10 and PM2.5); a discussion of the severity of the violation(s) contributed by transportation-related sources; and a description of measures that will be implemented consistent with the state implementation plan for air quality. Counties and cities should refer to chapter 173-420 WAC, and to local air quality agencies and metropolitan planning organizations for assistance.

(e) Level of service standards. Level of service standards serve to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between city, county and state transportation investment programs.

(i) RCW 36.70A.070 (6)(a)(iii)(B) requires the transportation element to include level of service standards for all locally owned arterials. Counties and cities may adopt level of service standards for other locally owned roads or travel modes at their discretion.

(ii) RCW 36.70A.070 (6)(a)(iii)(C) requires level of service standards for highways, as reflected in chapters 47.06 and 47.80 RCW, to gauge the performance of the transportation system. The department of transportation, in consultation with counties and cities, establishes level of service standards for state highways and ferry routes of statewide significance. Counties and cities should refer to the state highway and ferry plans developed in accordance with chapter 47.06 RCW for the adopted level of service standards.

(iii) Regional transportation planning organizations and the department of transportation jointly develop level of service standards for all other state highways and ferry routes. Counties and cities should refer to the regional transportation plans developed in accordance with chapter 47.80 RCW for the adopted level of service standards.

(iv) RCW 36.70A.070 (6)(a)(iii)(B) requires the transportation element to include level of service standards for all transit routes. To identify level of service standards for public transit services, counties and cities should include the established level of service or performance standards from the transit provider and should reference any relevant planning documents.

(v) Adopted level of service standards should reflect access, mobility, mode-split, or capacity goals for the transportation facility depending upon the surrounding development density and community goals, and should be developed in consultation with transit agencies serving the planning area.

(vi) The measurement methodology and standards should vary based on the urban or rural character of the surrounding area. The county or city should also balance the desired community character, funding capacity, and traveler expectations when selecting level of service methodologies and standards. A county or city may select different ways to measure travel performance depending on how a county or city balances these factors and the characteristics of travel in their community. For example, counties and cities may measure performance at different times of day, week, or month (peak versus off-peak, weekday versus weekend, summer versus winter). Counties and cities may also measure performance at different geographic scales (intersections, road or route segments, travel corridors, or travel zones), or in terms of the supply of multimodal capacity available in a corridor.

(vii) In urban areas RCW 36.70A.108 encourages the use of methodologies analyzing the transportation system from a comprehensive, multimodal perspective. Multimodal levels of service methodologies and standards should consider the needs of travelers using the four major travel modes (motor vehicle, public transportation, bicycle, and pedestrian), their impacts on each other as they share the street, and their mode specific requirements for street design and operation. For example, bicycle and pedestrian level of service standards should emphasize the availability of facilities and safety levels for users.

(f) Travel forecasts. RCW 36.70A.070 (6)(a)(iii)(E) requires forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth. Counties and cities must include at least a ten-year travel forecast in the transportation element. The forecast time period and underlying assumptions must be consistent with the land use element. Counties and cities may forecast travel for the twenty-year planning period. Counties and cities may include bicycle, pedestrian, and/or planned transit service in a multimodal forecast. Travel forecasts should be based on adopted regional growth strategies, the regional transportation plan, and comprehensive plans within the region to ensure consistency.

(g) Identify transportation system needs.

(i) RCW 36.70A.070 (6)(a)(iii)(D) requires that the transportation element include specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below established level of service standards.

(ii) System needs are those improvements needed to meet and maintain adopted levels of service over at least the required ten-year forecasting period. If counties and cities use a twenty-year forecasting period, they should also identify needs for the entire twenty-year period.

(iii) RCW 47.80.030(3) requires identified needs on regional facilities or services to be consistent with the regional transportation plan and the adopted regional growth and transportation strategies. RCW 36.70A.070 (6)(a)(iii)(F) requires identified needs on state-owned transportation facilities to be consistent with the statewide multimodal transportation plan.

(iv) Counties and cities should cooperate with public transit providers to analyze projected transit services and needs based on projected land use assumptions, and consistent with regional land use and transportation planning. Coordination may also include identification of mixed use centers, and consider opportunities for intermodal integration and appropriate multimodal access, particularly bicycle and pedestrian access.

(v) Counties and cities must include state transportation investments identified in the statewide multimodal transportation plan required under chapter 47.06 RCW and funded in the Washington state department of transportation's ten-year improvement program. Identified needs must be consistent with regional transportation improvements identified in regional transportation plans required under chapter 47.80 RCW. The transportation element should also include plans for new or expanded public transit and be coordinated with local transit providers.

(vi) The identified transportation system needs may include: Considerations for repair, replacement, enhancement, or expansion of vehicular, transit, bicycle, and pedestrian facilities; enhanced or expanded transit services; system management; or demand management approaches.

(vii) Transportation system needs may include transportation system management measures increasing the motor vehicle capacity of the existing street and road system. They may include, but are not limited to signal timing, traffic channelization, intersection reconfiguration, exclusive turn lanes or turn prohibitions, bus turn-out bays, grade separations, removal of on-street parking or improving street network connectivity.

(viii) When identifying system needs, counties and cities may identify a timeline for improvements. Identification of a timeline provides clarity as to when and where specific transportation investments are planned and provides the opportunity to coordinate and cooperate in transportation planning and permitting decisions.

(ix) Counties and cities should consider how the improvements relate to adjacent counties or cities.

(h) Local impacts to state transportation facilities. RCW 36.70A.070 (6)(a)(ii) requires counties and cities to estimate traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the Washington state department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities. Traffic impacts should include the number of motor vehicle, and, as information becomes available, bicycle, public transit, and pedestrian trips estimated to use the state highway and ferry systems throughout the planning period.

(i) Transportation demand management.

(i) RCW 36.70A.070 (6)(a)(vi) requires that the transportation element include transportation demand management strategies. These strategies are designed to encourage the use of alternatives to single occupancy travel and to reduce congestion, especially during peak times.

(ii) Where applicable, counties and cities may include the goals and relevant strategies of employer-based commute trip reduction programs developed under RCW 70.94.521 through 70.94.555. All other counties and cities should consider strategies which may include, but are not limited to ridesharing, vanpooling, promotion of bicycling, walking and use of public transportation, transportation-efficient parking and land use policies, and high occupancy vehicle subsidy programs.

(j) Pedestrian and bicycle component. RCW 36.70A.070 (6)(a)(vii) requires the transportation element to include a pedestrian and bicycle component that includes collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(i) Collaborative efforts may include referencing local, regional, and state pedestrian and bicycle planning documents, if any. Designated shared use paths, which are part of bicycle and pedestrian networks, should be consistent with those in the parks, recreation and open space element.

(ii) To identify and designate planned improvements for bicycle facilities and corridors, the pedestrian and bicycle component should include a map of bicycle facilities, such as bicycle lanes, shared use paths, paved road shoulders. This map should identify state and local designated bicycle routes, and describe how the facilities link to those in adjacent jurisdictions.

(iii) To identify and designate planned improvements for pedestrian facilities and corridors, the pedestrian and bicycle component should include a map of pedestrian facilities such as sidewalks, pedestrian connectors, and other designated facilities, especially in areas of high pedestrian use such as designated centers, major transit routes, and route plans designated by school districts under WAC 392-151-025.

(iv) The pedestrian and bicycle component should plan a network that connects residential and employment areas with community and regional destinations, schools, and public transportation services.

(v) The pedestrian and bicycle component should also review existing pedestrian and bicycle collision data to plan pedestrian facilities that improve pedestrian and bicycle safety.

(k) Multiyear financing plan.

(i) RCW 36.70A.070 (6)(a)(iii)(B) requires that the transportation element include a multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which develop a financing plan that addresses all identified transportation facilities and strategies throughout the twenty-year planning period. The identified needs shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should reflect regional improvements identified in regional transportation plans required under chapter 47.80 RCW and be coordinated with the ten-year investment program developed by the Washington state department of transportation as required by RCW 47.05.030;

(ii) The horizon year for the multiyear plan should be the same as the time period for the travel forecast and identified needs. The financing plan should include cost estimates for new and enhanced locally owned roadway facilities including new or enhanced bicycle and pedestrian facilities to estimate the cost of future facilities and the ability of the local government to fund the improvements.

(iii) Sources of proposed funding may include:

(A) Federal or state funding.

(B) Local funding from taxes, bonds, or other sources.

(C) Developer contributions, which may include:

(I) Impact or mitigation fees assessed according to chapter 82.02 RCW, or the Local Transportation Act (chapter 39.92 RCW).

(II) Contributions or improvements required under SEPA (RCW 43.21C.060).

(III) Concurrency requirements implemented according to RCW 36.70A.070 (6)(b).

(D) Transportation benefit districts established under RCW 35.21.225 and chapter 36.73 RCW.

(iv) RCW 36.70A.070 (6)(a)(iv)(A) requires an analysis of funding capability to judge needs against probable funding resources. When considering the cost of new facilities, counties and cities should consider the cost of maintaining facilities in addition to the cost of their initial construction. Counties and cities should forecast projected funding capacities based on revenues that are reasonably expected to be available, under existing laws and ordinances, to carry out the plan. If the funding strategy relies on new or previously untapped sources of revenue, the financing plan should include a realistic estimate of new funding that will be supplied.

(l) Reassessment if probable funding falls short.

(i) RCW 36.70A.070 (6)(a)(iv)(C) requires reassessment if probable funding falls short of meeting identified needs. Counties and cities must discuss how additional funding will be raised or how land use assumptions will be reassessed to ensure that level of service standards will be met.

(ii) This review must take place, at a minimum, as part of the seven-year periodic review and update required in RCW 36.70A.130(1), during the review of urban growth areas required by RCW 36.70A.130(3) and as major changes are made to the transportation element.

(iii) If probable funding falls short of meeting identified needs, counties and cities have several choices. For example, they may choose to:

(A) Seek additional sources of funding for identified transportation improvements;

(B) Adjust level of service standards to reduce the number and cost of needed facilities;

(C) Revisit identified needs and use of transportation system management or transportation demand management strategies to reduce the need for new facilities; or

(D) Revise the land use element to shift future travel to areas with adequate capacity, to lower average trip length or to avoid the need for new facilities in undeveloped areas;

(E) If needed, adjustments should be made throughout the comprehensive plan to maintain consistency.

(m) Implementation measures. Counties and cities may include an implementation section that broadly defines regulatory and nonregulatory actions and programs designed to proactively implement the transportation element. Implementation measures may include:

(i) Public works guidelines to reflect multimodal transportation standards for pedestrians, bicycles and transit; or adoption of Washington state department of transportation standards or the American Association of State Highway and Transportation Officials standards for bicycle and pedestrian facilities;

(ii) Transportation concurrency ordinances affecting development review;

(iii) Parking standards, especially in urban centers, to reduce vehicle parking requirements and include bicycle parking;

(iv) Commute trip reduction ordinances and transportation demand management programs;

(v) Access management ordinances;

(vi) Nonmotorized transportation funding programs;

(vii) Maintenance procedures and pavement management systems to include bicycle, pedestrians and transit considerations;

(viii) Subdivision standards to reflect multimodal goals; and

(ix) Transit compatibility policies and rules to guide development review procedures to incorporate review of bicycle, pedestrian and transit access to sites.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-430, filed 1/19/10, effective 2/19/10.]

365-196-435 Economic development element.

(1) Requirements.

(a) The economic development element should establish local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. An economic development element should include:

(i) A summary of the local economy such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate;

(ii) A summary of the strengths and weaknesses of the local economy defined as the commercial and industrial sectors and supporting factors such as land use, transportation, utilities, education, workforce, housing, and natural/cultural resources; and

(iii) An identification of policies, programs, and projects to foster economic growth and development and to address future needs. Identification of these policies, programs, and projects should include a summary of each.

(b) A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(c) The requirement to include an economic development element is null and void until sufficient funds to cover applicable local governments costs are appropriated and distributed at least two years before the due date for the periodic review and update required in RCW 36.70A.130(1).

(2) Recommendations for meeting the requirements. Counties and cities should consider using existing economic development plans developed at the county and regional level and may adopt them by reference as a means of including an economic development element within their comprehensive plan. Counties and cities should consider developing partnerships with organizations within the community and with state and federal agencies and the private sector. Because labor markets typically encompass at least one county and may encompass a multicounty region, counties and cities should coordinate economic development activities on a regional basis. The department recommends counties and cities consider the following in preparing an economic development element:

(a) A summary of the local economy.

(i) Economic development begins with information gathering. The purpose of information gathering is to provide a summary of the local economy. Much of this information is available from regional, state or federal agencies.

(ii) Counties and cities should use population information consistent with the information used in the land use element and the housing element.

(iii) Counties and cities are not required to generate original data, but can rely on available data from the agencies who report the information. Employment, payroll, and other economic information is available from state and federal agencies, such as the Washington state department of employment security, the Bureau of Labor Statistics and the Census Bureau. Some of this information may not be available at the city level, but may be available only at the county-wide level. Government agencies that report this data may be prohibited from releasing certain data to avoid disclosing proprietary information. Local governments should also consult with their associate development organization, economic development council and economic development districts. Counties and cities may also use data such as permit volume, local inventories of available land and other data generated from their activities that is useful for economic development planning.

(b) Summary of strengths and weaknesses of the local economy.

(i) Counties and cities should consult with their associated development organization, economic development council and/or economic development district to help with identifying appropriate commercial and industrial sectors.

(ii) Shift-share analysis is one method of identifying strengths and weaknesses of the local economy. This method identifies industrial sectors that have a relatively greater proportion of the local area's employment than exists in the national economy. It is one method of identifying sectors with a local competitive advantage. This is a method that can be employed using readily available existing data.

(iii) Identification of industry clusters is another method of identifying strengths and weaknesses of the local economy. State and local economic development organizations, including some associated development organizations and the department, have identified a number of industry clusters in the state. An industry cluster is a group of related firms that provide interdependent specialized goods or services. The presence of existing suppliers of specialized services and a specialized work force makes attracting additional economic activity in the cluster easier.

(iv) Identifying strong industry sectors or clusters can help determine strengths and weaknesses, help a city or county develop a realistic profile of land and infrastructure needs, and identify ways to focus economic development activities. It does not confer preferred status on any particular firm or industry. Counties and cities should still treat all individuals and firms as equal under the law.

(v) Counties and cities may also refer to information and public input collected during public participation to identify strengths and weaknesses based on community perception of their community. Counties and cities may conduct a separate visioning exercise to help identify strengths and weaknesses.

(vi) Counties and cities may employ asset mapping, which builds from the information gathered. Asset mapping is similar to traditional strengths, weaknesses, opportunities, and threats (SWOT) analysis with several significant distinctions. Under the SWOT analysis, strength and opportunity factors may not be linked together.

(c) Identification of policies, programs, and projects to foster economic growth and development and to address future needs.

(i) After identifying strengths and weaknesses, the economic development element may identify policies, programs and projects that foster economic growth and development and address future needs. The programs and policies should be targeted at addressing weaknesses or capitalizing on strengths identified in the community.

(ii) Counties and cities should consider using specific, quantified, and time-framed performance targets that provide a measurement of the success of an economic development element and serve as a reference point in the economic development process.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-435, filed 1/19/10, effective 2/19/10.]

365-196-440 Parks and recreation element.

(1) Requirements.

(a) The park and recreation element of the comprehensive plan must contain at least the following features:

(i) Consistency with the capital facilities element as it relates to park and recreation facilities;

(ii) Estimates of park and recreation demand for at least a ten-year period;

(iii) An evaluation of facilities and service needs; and

(iv) An evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(b) The requirement to include a parks and recreation element is null and void until sufficient funds to cover applicable local governments costs are appropriated and distributed at least two years before the due date for the periodic review and update required in RCW 36.70A.130(1).

(2) Recommendations for meeting requirements.

(a) Consistency and integration with other plan elements. Counties and cities should pay particular attention to consistency with the land use element, approaches to protecting critical areas and conserving natural resource lands, and identification of open space corridors and lands useful for public purposes. Planning policies and implementing regulations in each of these elements should complement each other to achieve adopted community goals.

(b) Visioning process. Counties and cities should start with a visioning process. This process should engage the public in the process of identifying needs, evaluating their satisfaction with existing recreational opportunities, and developing goals to guide the development of the parks and recreation element.

(c) Establishing level of service standards.

(i) The visioning process should be used when establishing levels of service for the parks and recreation element. Select levels of service or planning assumptions that reflect local priorities.

(ii) Methods used to establish levels of service should reflect community goals, and may be adapted from approaches recommended by the Washington state recreation and conservation office or the National Recreation and Parks Association; facilities and services. Level of service standards should reflect local priorities.

(iii) Level of service standards should focus on those aspects that relate most directly to factors influenced by growth and development, to allow for counties and cities to more clearly identify the impact on the demand for park facilities resulting from new development.

(d) Evaluation of facilities and service needs.

(i) Counties and cities should ensure consistency with the land use element when identifying existing and future public facilities and services.

(ii) Counties and cities should prepare an inventory of all existing park, recreation and open space lands, and related services. The inventory should describe the location, size and type of each facility or service, its current condition and capacity, and its intended service area. It should include a description of the park and recreation facilities and services of other private and public entities, including state park and recreation services.

(iii) Counties and cities should estimate demand for parks, open space and recreational services. Estimates must be for at least a planning period of ten years, and jurisdictions should consider a planning period that matches that used for other comprehensive plan elements (e.g., twenty years). In preparing estimates, factors that should be considered include, but are not limited to:

(A) Population forecasts and other demographic projections;

(B) Levels of service selected for each type of facility or service to be provided;

(C) User information and participation rates from current facilities and programs;

(D) Surveys or other means of assessing community priorities for park and recreational services;

(E) National and local trends in recreational demands and services;

(F) Facilities and services provided by other private or public entities; and

(G) Review of statewide recreation plans, assessments and recreation trends made available through the department, the Washington state department of fish and wildlife, the Washington state department of natural resources, the recreation and conservation office, and the state parks and recreation commission.

(e) The parks and recreation element should identify future facilities and services needed to meet the estimated demand for parks, open space and recreational programs, consistent with levels of service or planning assumptions and the projections for distribution of growth in the land use element. Consistency with the capital facilities and land use elements should be ensured when identifying existing and future public facilities and services to meet the estimated demand. The parks and recreation element should provide for an integrated parks, recreation and open space system. The system should consist of a complementary set of parks and open spaces that, considered together, meet the needs of a full range of community interests.

(f) Opportunities for intergovernmental coordination.

(i) When preparing the parks and recreation element, counties and cities should review other local, statewide, and regional recreation and land use plans to identify any future facilities that may help in meeting the future demand for parks and recreation facilities.

(ii) Counties and cities should evaluate opportunities for intergovernmental or public/private partnership approaches to meeting regional demand for park and recreation services including, but not limited to:

(A) Joint facility use agreements or contracts;

(B) Interlocal agreements for land acquisition or facility construction to serve region-wide needs;

(C) Contracts with private service providers;

(D) Formation of a single, large regional service provider such as a park and recreation district (chapter 36.69 RCW), park and recreation service area (RCW 36.68.400 through 36.68.620), or metropolitan park district (chapter 35.61 RCW); and

(E) Partnerships with nearby state parks and recreation facilities and services.

(g) Strategies for achieving adopted goals.

(i) Counties and cities should prepare strategies for achieving the adopted goals, policies and objectives, and for meeting the future facilities and service needs. Strategies may include:

(A) Developing needed facilities and programs;

(B) Coordinating intergovernmental efforts to provide needed facilities and programs; or

(C) Adopting development regulations that require provision of needed facilities as a condition of development.

(ii) When creating plans for new park facilities, counties and cities should develop site selection criteria to enable strategic prioritization of acquisition and development opportunities.

(iii) Strategies for financing must be consistent with the financing plan in the capital facilities element. If a local government intends to adopt impact fees as a strategy, it must identify those facilities as necessary for development and should identify them in:

(A) The parks and recreation element;

(B) A separate parks plan; or

(C) In the capital facilities element.

(iv) Counties and cities should evaluate if the identified strategies are sufficient to meet the adopted levels of service. If not, counties and cities should use the priorities set in the visioning process to realign the level of service standards with available resources.

(v) A county or city should also develop protocols to monitor and evaluate the parks and recreation element. These protocols should be consistent with the policies adopted in the capital facilities element regarding reassessment. See WAC 365-196-415. The protocol should include plans to monitor the community's changing recreation needs, evaluate progress toward implementation, and adapt to new information, such as changes to plans of other public or private park and recreation service providers.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-440, filed 1/19/10, effective 2/19/10.]

365-196-445 Optional elements.

(1) A comprehensive plan may include additional elements, items, or studies dealing with other subjects relating to the physical development within its jurisdiction, including, but not limited to:

(a) Conservation;

(b) Solar energy.

(2) A comprehensive plan may include, where appropriate, subarea plans. Subarea plans must be consistent with the comprehensive plan.

(3) The department recommends that counties and cities give strong consideration to including elements on the following within comprehensive plans:

(a) Environmental protection (including critical areas);

(b) Natural resource lands (where applicable);

(c) Design;

(d) Historic preservation;

(e) Natural hazard reduction.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-445, filed 1/19/10, effective 2/19/10.]

365-196-450 Historic preservation.

(1) RCW 36.70A.020(13) calls on counties and cities to identify and encourage the preservation of lands, sites, and structures that have historical or archaeological significance, herein referred to as "cultural resources." Although the act does not require a separate historic preservation element, counties and cities must be guided by the historic preservation goal in their comprehensive plan.

(2) Recommendations for meeting requirements. Cities and counties should address historic preservation in coordination with their other associated obligations.

(a) Identifying cultural resources.

(i) Counties and cities may use existing programs to identify cultural resources. Counties and cities may consult with the department of archaeology and historic preservation for information and technical assistance regarding identification and protection of cultural resources.

(ii) Examples of existing programs that identify cultural resources include:

(A) The National Register of Historic Places;

(B) The Washington Heritage Register;

(C) Properties that are identified by the department of archaeology and historic preservation (DAHP) to be eligible for listing in either one of these registers; and

(D) Properties which are listed in a local register of historic places.

(iii) Counties and cities should also identify areas designated as traditional cultural properties. A "traditional cultural property" is a property which has traditional cultural significance. It is associated with the cultural practices or beliefs of a living community that are rooted in that community's history, and are important in maintaining the continuing cultural identity of the community. Because the location of these sites is uncertain and not on a public register, counties and cities should cooperate with the cultural resource officers of any potentially affected tribal governments to establish a protocol to identify cultural resources and procedures to protect any cultural resources that are identified or discovered during development activity. Counties and cities may establish a cultural resource data-sharing agreement with the department of archaeology and historic preservation to help identify sites with potential cultural historic or archaeological significance.

(iv) Counties and cities may, through existing data, attempt to identify sites with a high likelihood of containing cultural resources. If cultural resources are discovered during construction, irreversible damage to the resource may occur and significant and costly project delays are likely to occur. Establishing an early identification process can reduce the likelihood of these problems.

(b) Encouraging preservation of cultural resources.

(i) Counties and cities should include a process for encouraging the preservation of cultural resources. Counties and cities should start with an identification of existing state and federal requirements that encourage the preservation of cultural resources. These requirements include:

(A) Executive Order 05-05;

(B) Archaeological sites and resources (chapter 27.53 RCW);

(C) Archaeological excavation and removal permit (chapter 25-48 WAC);

(D) Indian graves and records (chapter 27.44 RCW);

(E) Human remains legislation (HB 2624);

(F) Abandoned and historic cemeteries and historic graves (chapter 68.60 RCW);

(G) Surcharge for preservation of historical documents (RCW 36.22.170);

(H) Shoreline Management Act (RCW 90.58.100);

(I) SEPA procedures (WAC 197-11-960).

(ii) Other potential strategies. Counties and cities should then assess if any additional steps are needed to implement the goals and policies established in the comprehensive plan regarding preservation of cultural resources. If a city or county determines any additional steps are needed, the following are other measures that are a means of encouraging the preservation of cultural resources:

(A) Establish a local preservation program and a historic preservation commission through adoption of a local preservation ordinance. The department of archaeology and historic preservation provides guidance on using the National Certified Local Government program as a local program.

(B) Establish zoning, financial, and procedural incentives for cultural and historic resource protection.

(C) Authorize a special valuation for historic properties tax incentive program.

(D) Establish incentives such as preservation covenants/easements and/or current use/open space taxation programs.

(E) Establish design guidelines, and authorize historic overlay/historic district zoning.

(F) Adopt the historic building code.

(G) Establish a program for transfer of development rights to encourage historic preservation.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-450, filed 1/19/10, effective 2/19/10.]

365-196-455 Land use compatibility adjacent to general aviation airports.

(1) Requirements:

(a) Counties and cities in which there is located a general aviation airport operated for the benefit of the general public must, through their comprehensive plans and development regulations, discourage the siting of incompatible uses adjacent to such an airport.

(b) Comprehensive plans or development regulations that affect lands adjacent to a general aviation airport may only be adopted or amended after formal consultation with the following: Airport owners and managers, private airport operators, general aviation pilots, ports, and the aviation division of the Washington state department of transportation.

(c) All proposed and adopted plans and regulations must be filed with the aviation division of the Washington state department of transportation within a reasonable time after release for public consideration and comment, but at least sixty days before adoption. See WAC 365-196-630 regarding notice to state agencies.

(d) General aviation airports are essential public facilities. Counties and cities must also ensure that proposed changes to comprehensive plans and development regulations are consistent with policies governing siting essential public facilities adopted under RCW 36.70A.200. See WAC 365-196-550 regarding essential public facilities.

(2) Recommendations for requirements:

(a) Counties and cities should invite formal consultation for any proposed change to the comprehensive plan or development regulations that may affect airport operations. This should include: Any comprehensive plan or development regulation proposal that may affect land uses within the airport traffic pattern and approach in ways that may be incompatible with airport operations; and any proposal that may create an airspace hazard or obstruction.

(b) Counties and cities should coordinate closely with the aviation division of the Washington state department of transportation, and consider technical assistance materials, including airport master plans, airport layout plans, and other resources made available by the aviation division. Counties and cities are encouraged to contact the aviation division of the Washington state department of transportation early in the process of drafting development regulations and comprehensive plan policies that implement RCW 36.70.547.

(c) Counties and cities may, in coordination with the airport owner, conduct an evaluation of compatible and incompatible land uses adjacent to the airport. In most instances an evaluation would include a radius of at least one mile around the airport and the approach. This evaluation and related planning processes may address the following:

(i) Incompatibly issues of residential encroachment;

(ii) High intensity uses such as K-12 schools, hospitals and major sporting events;

(iii) Airspace and height hazard obstructions;

(iv) Noise and safety issues; and

(v) Other issues unique to each airport, such as topography and geographic features.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-455, filed 1/19/10, effective 2/19/10.]

365-196-460 Master planned resorts.

(1) The act allows for master planned resorts to provide counties with a means of capitalizing on areas of significant natural amenities to provide sustainable economic development for its rural areas. The requirements allow for master planned resorts without degrading the rural character of the county or imposing a public service burden on the county.

(2) A master planned resort is a self-contained, fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities, consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities. Residential uses are permitted only if they are integrated into and support the on-site recreational nature of the resort.

(3) Master planned resorts may include public facilities and services beyond those normally provided in rural areas. However, those provided on-site must be limited to those that meet the needs of the master planned resort. Services may be developed on-site or may be provided by other service providers, including special purpose districts or municipalities. All costs associated with service extensions and capacity increases directly attributable to the master planned resort must be borne by the resort, rather than the county. A master planned resort may enter into development agreements with service providers to share facilities, provided the services serve either an existing urban growth area or the master planned resort. Such agreements may not allow or facilitate extension of urban services outside of the urban growth area or the master planned resort. When approving the master planned resort, the county must conclude that on-site and off-site infrastructure and service impacts are fully considered and mitigated.

(4) A county must include policies in its rural element to guide the development of master planned resorts before it can approve a master planned resort. These policies must preclude new urban or suburban land uses in the vicinity of the master planned resort unless those uses are otherwise within a designated urban growth area.

(5) When approving a master planned resort, a county must conclude, supported by the record before it, that the master planned resort is consistent with the development regulations protecting critical areas.

(6) If the area designated as a master planned resort includes resource lands of long-term commercial significance, a county must conclude, supported by the record before it, that the land is better suited, and has more long-term importance for the master planned resort than for the commercial harvesting of timber, minerals, or agricultural production. Because this conclusion effects a dedesignation of resource lands, it must be based on the criteria and the process contained in chapter 365-190 WAC. Even if lands are dedesignated, the master planned resort may not operationally interfere with the continued use of any adjacent resource lands of long-term commercial significance for natural resource production.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-460, filed 1/19/10, effective 2/19/10.]

365-196-465 Major industrial developments.

(1) General authority for major industrial developments. A county required or choosing to plan under the act may establish, in consultation with cities under the county-wide planning policies outlined in RCW 36.70A.210, a process for reviewing and approving proposals to authorize siting of specific major industrial developments outside urban growth areas.

(2)(a) "Major industrial development" means a master planned location for specific manufacturing, industrial, or commercial businesses that:

(i) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; or

(ii) Is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent.

(b) The major industrial development shall not be for the purpose of retail commercial development or multitenant office parks.

(3) Establishment of a review process required. Before reviewing an application for a major industrial development, counties, in consultation with cities, must establish a process for reviewing and approving applications.

(4) Criteria for approving a major industrial development. A major industrial development may be approved outside an urban growth area if criteria including, but not limited to the following, are met:

(a) New infrastructure is provided for and/or applicable impact fees are paid;

(b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the major industrial development and adjacent nonurban areas;

(d) Environmental protection including air and water quality has been addressed and provided for;

(e) Development regulations are established to ensure that urban growth will not occur in adjacent nonurban areas;

(f) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands;

(g) The major industrial development plan is consistent with the county's development regulations for critical areas;

(h) An inventory of developable land has been conducted and the county has determined and entered findings that land suitable to site the major industrial development is unavailable within the urban growth area. Priority shall be given to applications for sites that are adjacent to or in close proximity to the urban growth area.

(5) Amendment to the comprehensive plan.

(a) Final approval of an application for a major industrial development is an amendment to the comprehensive plan adopted pursuant to RCW 36.70A.070, designating the major industrial development site on the land use map as an urban growth area. The major industrial development is considered urban growth. Urban services may be provided at any scale and intensity. Major industrial developments are not required to be consistent with rural character or limited to the scale and intensity of an existing rural location.

(b) An application for a major industrial development may be considered at any time and is an exception to the general rule that amendments should be considered no more frequently than once per year.

(6) Public participation.

(a) Counties should address public participation procedures for major industrial developments when establishing the process for approval of major industrial developments. Counties should use existing public participation procedures for amending the comprehensive plan and amending the urban growth area as a starting point and modify these procedures, if necessary, to address considerations and requirements particular to major industrial developments.

(b) The public participation process should identify how a project proposal meets the statutory criteria for siting a major industrial development. However, the act does not require these proposals to undergo a greater degree of public participation than any other action.

(7) RCW 36.70A.070 (5)(e) does not prohibit the location of a major industrial development within or adjacent to an existing limited area of more intense rural development (LAMIRD) provided it is approved consistent with RCW 36.70A.365.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-465, filed 1/19/10, effective 2/19/10.]

365-196-470 Industrial land banks.

(1) In addition to the major industrial development allowed under RCW 36.70A.365, a county planning under RCW 36.70A.040 that meets the criteria in subsection (2) of this section may establish a process for designating an industrial land bank consisting of no more than two master planned locations for major industrial activity outside urban growth areas.

(a) "Industrial land bank" means up to two master planned locations, each consisting of a parcel or parcels of contiguous land, sufficiently large so as not to be readily available within the urban growth area of a city, or otherwise meeting the criteria contained in RCW 36.70A.367 (4)(a), suitable for manufacturing, industrial, or commercial businesses and designated by the county through the comprehensive planning process specifically for major industrial use.

(b) The process of designating industrial land banks must occur in consultation with cities consistent with the county-wide planning policies and, where applicable multicounty planning policies.

(c) A master planned location for major industrial developments may be approved through a two-step process: Designation of an industrial land bank area in the comprehensive plan; and subsequent approval of specific major industrial developments through a local master plan process described under subsection (3)(f) of this section.

(2) Counties eligible to create an industrial land bank. Only counties that meet one of the following criteria may designate an industrial land bank:

(a) Has a population greater than two hundred fifty thousand and is part of a metropolitan area that includes a city in another state with a population greater than two hundred fifty thousand;

(b) Has a population greater than one hundred forty thousand and is adjacent to another country;

(c) Has a population greater than forty thousand but less than seventy-five thousand and has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent and is:

(i) Bordered by the Pacific Ocean;
(ii) Located in the Interstate 5 or Interstate 90 corridor; or

(iii) Bordered by Hood Canal.

(d) Is east of the Cascade divide; and
(i) Borders another state to the south; or

(ii) Is located wholly south of Interstate 90 and borders the Columbia River to the east;

(e) Has an average population density of less than one hundred persons per square mile as determined by the office of financial management, and is bordered by the Pacific Ocean and by Hood Canal; or

(f) Meets all of the following criteria:

(i) Has a population greater than forty thousand but fewer than eighty thousand;

(ii) Has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent; and

(iii) Is located in the Interstate 5 or Interstate 90 corridor.

(g) A county's authority to create an industrial land bank expires on the due date for the next periodic update found in RCW 36.70A.130(4) occurring prior to December 31, 2014. Once a land bank area has been identified in the county's comprehensive plan, the authority of the county to process a master plan or site projects within an approved master plan does not expire.

(3) How to create an industrial land bank.

(a) Creation of an industrial land bank requires an amendment to a county's comprehensive plan and the adoption of development regulations.

(b) The comprehensive plan amendment that designates an industrial land bank must be accompanied by or contain an analysis that:

(i) Identifies locations suited to major industrial development due to proximity to transportation or resource assets. This should be based on an inventory of developable land as provided in RCW 36.70A.365. See WAC 365-196-465 for recommendations on major industrial developments.

(ii) Identifies the maximum size of the industrial land bank area and any limitations on major industrial developments based on local limiting factors, but does not need to specify a particular parcel or parcels of property or identify any specific use or user except as limited by this section.

(iii) Gives priority to locations that are adjacent to, or in close proximity to, an urban growth area. This should include an analysis of the availability of alternative sites within urban growth areas and the long-term annexation feasibility of sites outside of urban growth areas.

(c) The environmental review for amendment of the comprehensive plan should be at the programmatic level.

(d) A comprehensive plan amendment creating an industrial land bank may be considered at any time and is an exception to the requirement in RCW 36.70A.130(1) that the comprehensive plan may be amended no more often than once per year.

(e) Once the industrial land bank is created through the comprehensive plan amendment, approval of a specific major industrial development within the industrial land bank area requires no further amendment of the comprehensive plan.

(f) Development regulations. A county must also adopt development regulations for review and approval of specific major industrial developments through a master plan process. The development regulations governing the master plan process shall ensure, at a minimum, that:

(i) Urban growth will not occur in adjacent nonurban areas;

(ii) Development is consistent with the county's development regulations adopted for protection of critical areas;

(iii) Required infrastructure is identified and provided concurrent with development. Such infrastructure, however, may be phased in with development;

(iv) Transit-oriented site planning and demand management programs are specifically addressed as part of the master plan approval;

(v) Provision is made for addressing environmental protection, including air and water quality, as part of the master plan approval;

(vi) The master plan approval includes a requirement that interlocal agreements between the county and service providers, including cities and special purpose districts providing facilities or services to the approved master plan, be in place at the time of master plan approval;

(vii) A major industrial development is used primarily by industrial and manufacturing businesses, and that the gross floor area of all commercial and service buildings or facilities locating within the major industrial development do not exceed ten percent of the total gross floor area of buildings or facilities in the development. The intent of this provision for commercial or service use is to meet the needs of employees, clients, customers, vendors, and others having business at the industrial site, to attract and retain a quality workforce, and to further other public objectives, such as trip reduction. These uses may not be promoted to attract additional clientele from the surrounding area. Commercial and service businesses must be established concurrently with or subsequent to the industrial or manufacturing businesses;

(viii) New infrastructure is provided for and/or applicable impact fees are paid to assure that adequate facilities are provided concurrently with the development. Infrastructure may be achieved in phases as development proceeds;

(ix) Buffers are provided between the major industrial development and adjacent rural areas;

(x) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands; and

(xi) An open record public hearing is held before either the planning commission or hearing examiner with notice published at least thirty days before the hearing date and mailed to all property owners within one mile of the site.

(g) Required procedures. In addition to other procedural requirements that may apply, a county seeking to designate an industrial land bank under this section must:

(i) Provide county-wide notice, in conformance with RCW 36.70A.035, of the intent to designate an industrial land bank. Notice must be published in a newspaper or newspapers of general circulation reasonably likely to reach subscribers in all geographic areas of the county. Notice must be provided not less than thirty days prior to commencement of consideration by the county legislative body; and

(ii) Make a written determination of the criteria and rationale used by the legislative body as the basis for siting an industrial land bank under this chapter.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-470, filed 1/19/10, effective 2/19/10.]

365-196-475 Land use compatibility with military installations.

(1) Military installations are of particular importance to the economic health of the state of Washington. It is a priority of the state to protect the land surrounding military installations from incompatible development.

(2) A comprehensive plan, amendment to a comprehensive plan, a development regulation, or amendment to a development regulation, should not allow development in the vicinity of a military installation that is incompatible with the installation's ability to carry out its mission requirements. A county or city may find that an existing comprehensive plan or development regulations are compatible with the installation's ability to carry out its mission requirements.

(3) As part of the requirements of RCW 36.70A.070(1), each county or city planning under the act that has a federal military installation, other than a reserve center, that employs one hundred or more personnel and is operated by the United States Department of Defense within or adjacent to its border, must notify the commander of the military installation of the county's or city's intent to amend its comprehensive plan or development regulations to address lands adjacent to the military installation to ensure those lands are protected from incompatible development.

(4) The notice must request from the commander of the military installation a written recommendation and supporting facts relating to the use of land being considered in the adoption of a comprehensive plan or an amendment to a plan. The notice must provide sixty days for a response from the commander. If the commander does not submit a response to such request within sixty days, the county or city may presume that implementation of the proposed plan or amendment will not have any adverse effect on the operation of the military installation.

(5) When a county or city intends to amend its development regulations to be consistent with the comprehensive plan elements addressed in subsection (4) of this section, notice shall be provided to the commander of the military installation consistent with subsection (3) of this section. The notice shall request from the commander of the military installation a written recommendation and supporting facts relating to the use of land being considered in the amendment to the development regulations. The notice shall provide sixty days for a response from the commander to the requesting government. If the commander does not submit a response to such request within sixty days, the local government may presume that implementation of the proposed development regulation or amendment will not have any adverse effect on the operation of the installation.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-475, filed 1/19/10, effective 2/19/10.]

365-196-480 Natural resource lands.

(1) Requirements.

(a) In the initial period following adoption of the act, and prior to the development of comprehensive plans, counties and cities planning under the act were required to designate natural resource lands of long-term commercial significance and adopt development regulations to assure their conservation. Natural resource lands include agricultural, forest, and mineral resource lands. The previous designations and development regulations shall be reviewed in connection with the comprehensive plan adoption process and, where necessary, altered to ensure consistency.

(b) Counties and cities planning under the act must review their natural resource lands designations, comprehensive plans, policies, and development regulations as part of the required periodic update under RCW 36.70A.130(1) and 36.70A.131.

(c) Counties and cities not planning under RCW 36.70A.040 must review their natural resource lands designations, and if necessary revise those designations as part of the required periodic update under RCW 36.70A.130(1) and 36.70A.131.

(d) Forest land and agricultural land located within urban growth areas shall not be designated as forest resource land or agricultural resource land unless the county or city has enacted a program authorizing transfer or purchase of development rights.

(e) Mineral lands may be designated as mineral resource lands within urban growth areas. There may be subsequent reuse of mineral resource lands when the minerals have been mined out. In cases where designated mineral resource lands are likely to be mined out and closed to further mining within the planning period, the surface mine reclamation plan and permit from the department of natural resources division of geology should be reviewed to ensure it is consistent with the adopted comprehensive land use plan.

(f) In adopting development regulations to conserve natural resource lands, counties and cities shall address the need to buffer land uses adjacent to the natural resource lands. Where buffering is used it should be on land within the adjacent development unless an alternative is mutually agreed on by adjacent landowners.

(2) Recommendations for meeting requirements.

(a) In the initial period following adoption of the act, much of the analysis which was the basis for the comprehensive plan came later than the initial identification and regulation of natural resource lands. In all cases, counties and cities must address inconsistencies between plan policies, development regulations and previously adopted natural resource land provisions.

(b) The department issued guidelines for the classification and designation of natural resource lands which are contained in chapter 365-190 WAC. In general, natural resource lands should be located beyond the boundaries of urban growth areas; and urban growth areas should avoid including designated natural resource lands. In most cases, the designated purposes of natural resource lands are incompatible with urban densities. For inclusion in the urban growth area, counties and cities must first review the natural resource lands designation and conclude the lands no longer meet the designation criteria for resource lands of long-term commercial significance.

(c) As noted in subsection (1)(f) of this section, mineral resource lands are a possible exception to the requirement that natural resource lands be designated outside the urban growth area. This guidance is based on the significant cost savings from using minerals close to their source, and the potential for reusing the mined out lands for other purposes after mining is complete. Counties and cities should consider the potential loss of access to mineral resource lands if they are not designated and conserved, and should also consider the consumptive use of mineral resources when designating specific mineral resource lands.

(d) Counties and cities may also consider retaining local agricultural lands in or near urban growth areas as part of a local strategy promoting food security, agricultural education, or in support of local food banks, schools, or other large institutions.

(e) The review of existing designations should be done on an area-wide basis, and in most cases, be limited to the question of consistency with the comprehensive plan, rather than revisiting the entire prior designation and regulation process. However, to the extent that new information is available or errors have been discovered, the review process should take this information into account. Review for consistency in this context should include whether the planned use of lands adjacent to agricultural, forest, or mineral resource lands will interfere with the continued use, in an accustomed manner and in accordance with the best management practices, of the designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(f) Development regulations must assure that the planned use of lands adjacent to natural resource lands will not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands. Guidance on development regulations ensuring the conservation of designated resource lands is found in WAC 365-196-815.

(g) Counties and cities are encouraged to use a coordinated program that includes nonregulatory programs and incentives to supplement development regulations to conserve natural resource lands. Guidance for addressing the designation of natural resource lands is located under WAC 365-190-040 through 365-190-070.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-480, filed 1/19/10, effective 2/19/10.]

365-196-485 Critical areas.

(1) Relationship to the comprehensive plan.

(a) The act requires that the planning goals in RCW 36.70A.020 guide the development and adoption of comprehensive plans and development regulations. These goals include retaining open space; enhancing recreation opportunities; conserving fish and wildlife habitat; protecting the environment and enhancing the state's high quality of life, including air and water quality, and the availability of water.

(b) Jurisdictions are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas.

(c) Counties and cities are required to identify open space corridors within and between urban growth areas for multiple purposes, including those areas needed as critical habitat by wildlife.

(d) RCW 36.70A.070(1) requires counties and cities to provide for protection of the quality and quantity of ground water used for public water supplies in the land use element. Where applicable, the land use element must review drainage, flooding, and storm water runoff in the area and in nearby jurisdictions, and provide guidance to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(e) Because the critical areas regulations must be consistent with the comprehensive plan, each comprehensive plan should set forth the underlying policies for the jurisdiction's critical areas program.

(f) In pursuing the environmental protection and open space goals of the act, such policies should identify nonregulatory measures for protecting critical areas as well as regulatory approaches. Nonregulatory measures include but are not limited to: Incentives, public education, and public recognition, and could include innovative programs such as the purchase or transfer of development rights. When such policies are incorporated into the plan (either in a separate element or as a part of the land use element), the consistency of the regulations can be readily assessed.

(2) Requirements. Prior to the original development of comprehensive plans under the act, counties and cities were required to designate critical areas and adopt development regulations protecting them. Any previous designations and regulations must be reviewed in the comprehensive plan process to ensure consistency between previous designations and the comprehensive plan. Critical areas include the following areas and ecosystems:

(a) Wetlands;

(b) Areas of critical recharging effect on aquifers used for potable water;
(c) Fish and wildlife habitat conservation areas;
(d) Frequently flooded areas; and
(e) Geologically hazardous areas.

(3) Recommendations for meeting requirements.

(a) In the initial period following adoption of the act, much of the analysis which was the basis for the comprehensive plan came later than the initial identification and regulation of critical areas. Upon the adoption of the initial comprehensive plans, such designations and regulations were to be reviewed and, where necessary, altered to achieve consistency with the comprehensive plan. Subsequently, jurisdictions updating local critical areas ordinances are required to include the best available science.

(b) The department has issued guidelines for the classification and designation of critical areas which are contained in chapter 365-190 WAC.

(c) Critical areas should be designated and protected wherever the applicable environmental conditions exist, whether within or outside of urban growth areas. Critical areas may overlap each other, and requirements to protect critical areas apply in addition to the requirements of the underlying zoning.

(d) The review of existing designations during the comprehensive plan adoption process should, in most cases, be limited to the question of consistency with the comprehensive plan, rather than a revisiting of the entire prior designation and regulation process. However, counties and cities must address the requirements to include the best available science in developing policies and development regulations to protect the functions and values of critical areas, and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. To the extent that new information is available or errors have been discovered, the review process should take this information into account.

(e) The department recommends that planning jurisdictions identify the policies by which decisions are made on when and how regulations will be used and when and how other means will be employed (purchases, development rights, etc.). See WAC 365-196-855.

(4) Avoiding impacts through appropriate land use designations.

(a) Many existing data sources can identify, in advance of the development review process, the likely presence of critical areas. When developing and reviewing the comprehensive plan and future land use designations, counties and cities should use available information to avoid directing new growth to areas with a high probability of conflicts between new development and protecting critical areas. Identifying areas with a high probability of critical areas conflicts can help identify lands that are likely to be unsuitable for development and help a county or city better provide sufficient capacity of land that is suitable for development as required by RCW 36.70A.115. Impacts to these areas could be minimized through measures such as green infrastructure planning, open space acquisition, open space zoning, and the purchase or transfer of development rights.

(b) When considering expanding the urban growth area, counties and cities should avoid including lands that contain large amounts of mapped critical areas. Counties and cities should not designate new urban areas within the one hundred year flood plain unless no other alternatives exist, and if included, impacts on the flood plain must be mitigated, including the provisions in RCW 36.70A.110(8).

(c) If critical areas are included in urban growth areas, they still must be designated and protected. See WAC 365-196-310.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-485, filed 1/19/10, effective 2/19/10.]

PART FIVE
CONSISTENCY AND COORDINATION

365-196-500 Internal consistency.

(1) Comprehensive plans must be internally consistent. This requirement means that differing parts of the comprehensive plan must fit together so that no one feature precludes the achievement of any other.

(2) Use of compatible assumptions. A county or city must use compatible assumptions in different aspects of the plan.

(a) A county or city should use common numeric assumptions to the fullest extent possible, particularly in the long-term growth assumptions used in developing the land use, capital facilities and other elements of the comprehensive plan.

(b) If a county or city relies on forecasts, inventories, or functional plans developed by other entities, these plans might have been developed using different time horizons or different boundaries. If these differences create inconsistent assumptions, a county or city should include an analysis in its comprehensive plan of the differences and reconcile them to create a plan that uses compatible assumptions.

(3) The development regulations must be internally consistent and be consistent with and implement the comprehensive plan.

(4) Consistency review. Each comprehensive plan should provide mechanisms for ongoing review of its implementation and adjustment of its terms whenever internal conflicts become apparent. At a minimum, any amendment to the comprehensive plan or development regulations must be reviewed for consistency. The review and update processes required in RCW 36.70A.130 (1) and (3) should include a review of the comprehensive plan and development regulations for consistency.

(5) See WAC 365-196-800 for more information on the relationship between development regulations and the comprehensive plan. See WAC 356-196-305 for more information on the relationship between county-wide planning policies and the comprehensive plan. See WAC 365-196-315 (5)(a) for information on consistencies between assumptions and observed development for cities or counties subject to monitoring requirements in RCW 36.70A.215.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-500, filed 1/19/10, effective 2/19/10.]

365-196-510 Interjurisdictional consistency.

(1) Each county or city comprehensive plan must be coordinated with, and consistent with, the comprehensive plans of other counties and cities that share common borders or related regional issues with that county or city. Determining consistency in this interjurisdictional context is complicated by the differences in timing of comprehensive plan adoption and subsequent amendments.

(2) Initially, interjurisdictional consistency should be met by the adoption of comprehensive plans, and subsequent amendments, which are consistent with and carry out the relevant county-wide planning policies and, where applicable, the relevant multicounty planning policies. Adopted county-wide planning policies are designed to ensure that county and city comprehensive plans are consistent. More detailed recommendations about county-wide planning policies are contained in WAC 365-196-305.

(3) To better ensure consistency of comprehensive plans, counties and cities should consider using similar policies and assumptions that apply to common areas or issues.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-510, filed 1/19/10, effective 2/19/10.]

365-196-520 Coordination with other county and city comprehensive plans.

(1) Each county and city planning under the act should circulate its proposed comprehensive plan to other counties and cities with which it shares a common border or has related regional issues. The proposed comprehensive plan should be accompanied by the relevant environmental documents.

(2) Reviewing counties and cities are presumed to have concurred with the provisions of the comprehensive plan, unless within a reasonable period of time, they provide written comment identifying comprehensive plan features that will preclude or interfere with the achievement of their own comprehensive plans.

(3) All counties and cities should attempt to resolve conflicts over interjurisdictional consistency through consultation and negotiation. Additional guidance for interjurisdictional consistency is located in WAC 365-196-510.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-520, filed 1/19/10, effective 2/19/10.]

365-196-530 State agency compliance.

(1) RCW 36.70A.103 requires that state agencies comply with the local comprehensive plans and development regulations, and subsequent amendments, adopted pursuant to the act. An exception to this requirement exists for the state's authority to site and operate a special commitment center and a secure community transition facility to house persons conditionally released to a less restrictive alternative on McNeil Island under RCW 36.70A.200.

(2) The department construes RCW 36.70A.103 to require each state agency to meet local siting and building requirements when it occupies the position of an applicant proposing development, except where specific legislation explicitly dictates otherwise. This means that development of state facilities is subject to local approval procedures and substantive provisions, including zoning, density, setbacks, bulk and height restrictions.

(3) Under RCW 36.70A.210(4), state agencies must follow adopted county-wide planning policies. Consistent with other statutory mandates, state programs should be administered in a manner which does not interfere with implementation of the county framework for interjurisdictional consistency, or the exercise by any local government of its responsibilities and authorities under the act.

(4) Overall, the broad sweep of policy contained in the act implies a requirement that all programs at the state level accommodate the outcomes of the growth management process wherever possible. The exercise of statutory powers, whether in permit functions, grant funding, property acquisition or otherwise, routinely involves such agencies in discretionary decision making. The discretion they exercise should take into account legislatively mandated local growth management programs. State agencies that approve plans of special purpose districts that are required to be consistent with local comprehensive plans should provide guidance or technical assistance to those entities to explain the need to coordinate their planning with the local government comprehensive plans within which they provide service.

(5) After local adoption of comprehensive plans and development regulations under the act, state agencies should review their existing programs in light of the local plans and regulations. Within relevant legal constraints, this review should lead to redirecting the state's actions in the interests of consistency with the growth management effort.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-530, filed 1/19/10, effective 2/19/10.]

365-196-540 Compliance by regional agencies and special purpose districts.

(1) Regional agencies and special purpose districts possess statutorily defined powers which include:

(a) Planning;
(b) Development;
(c) Regulatory;
(d) Facility management; and
(e) Taxing functions.

(2) Such entities include:

(a) Regional air pollution control authorities;
(b) Metropolitan municipal corporations;
(c) Fire protection districts;
(d) Port districts;
(e) Public utility districts;
(f) School districts;
(g) Sewer districts;
(h) Water districts;
(i) Irrigation districts;
(j) Flood control districts;
(k) Diking and drainage districts; and
(l) Park and recreation districts.

(3) Except as otherwise provided by the legislature, the act requires that regional agencies and special purpose districts comply with the comprehensive plans and development regulations adopted under the act. WAC 365-196-745 lists statutes that provide direction to maintain consistency between special district plans and comprehensive plans.

(4) The plans of regional agencies and special purpose districts should be developed using local comprehensive plans as a basis for determining future development patterns. Regional agencies and special purpose districts should consult the land use, housing, and other relevant elements of the plans for information on future growth and development patterns, and should contact the local governments to ensure that special purpose districts can provide adequate public facilities to the area over the twenty-year life of the plan.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-540, filed 1/19/10, effective 2/19/10.]

365-196-550 Essential public facilities.

(1) Determining what facilities are essential public facilities.

(a) The term "essential public facilities" refers to public facilities that are typically difficult to site. Consistent with county-wide planning policies, counties and cities should create their own lists of "essential public facilities," to include at a minimum those set forth in RCW 36.70A.200.

(b) For the purposes of identifying facilities subject to the "essential public facilities" siting process, it is not necessary that the facilities be publicly owned.

(c) Essential public facilities include both new and existing facilities. It may include the expansion of existing essential public facilities or support activities and facilities necessary for an essential public facility.

(d) The following facilities and types of facilities are identified in RCW 36.70A.200 as essential public facilities:

(i) Airports;

(ii) State education facilities;

(iii) State or regional transportation facilities;

(iv) Transportation facilities of statewide significance as defined in RCW 47.06.140. These include:

(A) The interstate highway system;
(B) Interregional state principal arterials including ferry connections that serve statewide travel;
(C) Intercity passenger rail services;
(D) Intercity high-speed ground transportation;
(E) Major passenger intermodal terminals excluding all airport facilities and services;
(F) The freight railroad system;
(G) The Columbia/Snake navigable river system;
(H) Marine port facilities and services that are related solely to marine activities affecting international and interstate trade;
(I) High capacity transportation systems.

(v) State and local correctional facilities;

(vi) Solid waste handling facilities;

(vii) In-patient facilities, including substance abuse facilities;

(viii) Mental health facilities;

(ix) Group homes;

(x) Secure community transition facilities;

(xi) Any facility on the state ten-year capital plan maintained by the office of financial management.

(e) Essential public facility criteria apply to the facilities and not the operator. Cities and counties may not require applicants who operate essential public facilities to use an essential public facility siting process for projects that would otherwise be allowed by the development regulations. Applicants who operate essential public facilities may not use an essential public facility siting process to obtain approval for projects that are not essential public facilities.

(f) Regardless of whether it is a new, existing or an expansion or modification of an existing public facility, the major component in the identification of an essential public facility is whether it provides or is necessary to provide a public service and whether it is difficult to site.

(2) Criteria to determine if the facility is difficult to site. Any one or more of the following conditions is sufficient to make a facility difficult to site.

(a) The public facility needs a specific type of site of such as size, location, available public services, which there are few choices.

(b) The public facility needs to be located near another public facility or is an expansion of an essential public facility at an existing location.

(c) The public facility has, or is generally perceived by the public to have, significant adverse impacts that make it difficult to site.

(d) Use of the normal development review process would effectively preclude the siting of an essential public facility.

(e) Development regulations require the proposed facility to use an essential public facility siting process.

(3) Preclusion of essential public facilities.

(a) Cities and counties may not use their comprehensive plan or development regulations to preclude the siting of essential public facilities. Comprehensive plan provisions or development regulations preclude the siting of an essential public facility if their combined effects would make the siting of an essential public facility impossible or impracticable.

(i) Siting of an essential public facility is "impracticable" if it is incapable of being performed or accomplished by the means employed or at command.

(ii) Impracticability may also include restrictive zoning; comprehensive plan policies directing opposition to a regional decision; or the imposition of unreasonable conditions or requirements.

(iii) Limitations on essential public facilities such as capacity limits; internal staffing requirements; resident eligibility restrictions; internal security plan requirements; and provisions to demonstrate need may be considered preclusive in some circumstances.

(b) A local jurisdiction may not include criteria in its land use approval process which would allow the essential public facility to be denied, but may impose reasonable permitting requirements and require mitigation of the essential public facility's adverse effects.

(c) An essential public facility is not precluded simply because the comprehensive plan provisions would be too costly or time consuming to comply with.

(d) If the essential public facility and its location have been evaluated through a state or regional siting process, the county or city may not require the facility to go through the local siting process.

(e) Essential public facilities that are sited through a regional or state agency are distinct from those that are "sited by" a city or county or a private organization or individual. When a city or county is siting its own essential public facility, public or private, it is free to establish a nonpreclusive siting process with reasonable criteria.

(4) Comprehensive plan.

(a) Requirements:

(i) Each comprehensive plan shall include a process for identifying and siting essential public facilities. This process must be consistent with and implement applicable county-wide planning policies.

(ii) No local comprehensive plan may preclude the siting of essential public facilities.

(b) Recommendations for meeting requirements:

(i) Identification of essential public facilities. When identifying essential public facilities, counties and cities should take a broad view of what constitutes a public facility, involving the full range of services to the public provided by the government, substantially funded by the government, contracted for by the government, or provided by private entities subject to public service obligations.

(ii) Agreements among jurisdictions should be sought to mitigate any disproportionate financial burden which may fall on the county or city which becomes the site of a facility of a statewide, regional, or county-wide nature.

(iii) Where essential public facilities may be provided by special districts, the plans under which those districts operate must be consistent with the comprehensive plan of the city or county. Counties and cities should adopt provisions for consultation to ensure that such districts exercise their powers in a way that does not conflict with the relevant comprehensive plan.

(c) The siting process should take into consideration the need for county-wide, regional, or statewide uniformity in connection with the kind of facility under review.

(5) Development regulations governing essential public facilities.

(a) Development regulations governing the siting of essential public facilities must be consistent with and implement the process set forth in the comprehensive plan.

(b) Except where county-wide planning policies have otherwise dictated siting choices, provision should be made for the possibility of siting each of the listed essential public facilities somewhere within each county's or city's planning area.

(c) Counties and cities should consider the criteria established in their comprehensive plan, in consultation with this section to determine if a project is an essential public facility. Counties and cities may also adopt criteria for identifying an essential public facility.

(d) If an essential public facility does not present siting difficulties and can be permitted through the normal development review process, project review should be through the normal development review process otherwise applicable to facilities of its type.

(e) If an essential public facility presents siting difficulties, the application should be reviewed using the essential public facility siting process.

(6) The essential public facility siting process.

(a) The siting process may not be used to deny the approval of the essential public facility. The purpose of the essential public facility siting process is to allow a county or city to impose reasonable conditions on an essential public facility necessary to mitigate the impacts of the project while ensuring that its development regulations do not preclude the siting of an essential public facility.

(b) The review process for siting essential public facilities should include a requirement for notice and an opportunity to comment to other interested counties and cities and the public.

(c) The permit process may include reasonable requirements such as a conditional use permit, but the process used must ensure a decision on the essential public facility is completed without unreasonable delay.

(d) The essential public facility siting process should identify what conditions are necessary to mitigate the impacts associated with the essential public facility. The combination of any existing development regulations and any new conditions may not render impossible or impracticable, the siting, development or operation of the essential public facility.

(e) Counties and cities should consider the extent to which design conditions can be used to make a facility compatible with its surroundings. Counties and cities may also consider provisions for amenities or incentives for neighborhoods in which facilities are sited. Any conditions imposed must be necessary to mitigate an identified impact of the essential public facility.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-550, filed 1/19/10, effective 2/19/10.]

365-196-560 Special siting statutes.

(1) Comprehensive plans and development regulations adopted under the act should accommodate situations where the state has explicitly preempted all local land use regulations, as for example, in the siting of major energy facilities under RCW 80.50.110.

(2) Where special statutes relate specifically to the setting aside of designated areas for particular purposes and under particular management programs, local land use regulations adopted under the act should be consistent with those purposes and programs. Examples in this category are the statutes relating to:

(a) Natural resource conservation areas;

(b) Natural area preserves;

(c) Seashore conservation area;

(d) Scenic rivers.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-560, filed 1/19/10, effective 2/19/10.]

365-196-570 Secure community transition facilities.

Requirements.

(1) Secure community transition facilities are essential public facilities.

(2) Counties and cities must either establish an essential public facility siting process, or amend their existing process to allow for the siting of secure community transition facilities, or be subject to preemption by the Washington state department of social and health services consistent with RCW 71.09.342.

(3) A failure to act before the September 1, 2002, deadline does not constitute noncompliance for the purposes of grants and loans, and does not subject a county or city to a failure to act challenge to a growth management hearings board.

(4) If a county or city does not adopt an essential public facility siting process or does not amend its existing process to allow for the siting of a secure community transition facility, then the Washington state department of social and health services may preempt local development regulations as necessary to site and operate a secure community transition facility under RCW 71.09.285 through 71.09.342. If the Washington state department of social and health services preempts local development regulations, the county or city may still participate in the siting process as provided in RCW 71.09.342.

(5) A local secure community transition facility siting process established by a city or county must be consistent with, and no more restrictive than, the siting process established in RCW 71.09.285 through 71.09.342. The Washington state department of social and health services has final authority to determine if a locally adopted siting process allows for the siting of secure community transition facilities in compliance with RCW 71.09.285.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-570, filed 1/19/10, effective 2/19/10.]

PART SIX
REVIEWING, AMENDING, AND UPDATING COMPREHENSIVE PLANS AND DEVELOPMENT REGULATIONS

365-196-600 Public participation.

(1) Requirements.

(a) Each county and city planning under the act must establish procedures for early and continuous public participation in the development and amendment of comprehensive plans and development regulations. The procedures are not required to be reestablished for each set of amendments.

(b) The procedures must provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.

(c) Errors in exact compliance with the established procedures do not render the comprehensive plan or development regulations invalid if the spirit of the procedures is observed.

(2) Record of process.

(a) Whenever a provision of the comprehensive plan or development regulation is based on factual data, a clear reference to its source should be made part of the adoption record.

(b) The record should show how the public participation requirement was met.

(c) All public hearings should be recorded.

(3) Recommendations for meeting public participation requirements. These recommendations are a list of suggestions for meeting the public participation requirement.

(a) Designing the public participation program.

> (i) Implementation of the act requires a series of interrelated steps, including: Development of the initial comprehensive plan, evaluating amendments as part of the docket cycle, conducting the seven-year periodic update and reviewing the urban growth boundaries, amending development regulations, and conducting subarea planning. Each of these has different levels of significance and different procedural requirements.

(ii) Counties and cities are not required to establish individual public participation programs for each individual amendment. Counties and cities may wish to consider establishing a public program for annual amendments, and establishing separate or updated programs for major periodic updates. When developing a public participation plan for a project not covered by the existing public participation plan, a county or city should develop a public participation plan tailored to the type of action under consideration. This public participation plan should be focused on the type of public involvement appropriate for that type of action.

(iii) The public participation plan should identify which procedural requirements apply for the type of action under consideration and how the county or city intends to meet those requirements.

(iv) To avoid duplication of effort, counties and cities should integrate public involvement required by the State Environmental Policy Act, chapter 43.21C RCW, and rules adopted thereunder, into the overall public participation plan.

(v) Where a proposed amendment involves shorelines of the state, a county or city should integrate the public participation requirements of the Shoreline Management Act, chapter 90.58 RCW, into its public participation plan, as appropriate.

(vi) Once established, the public participation plan must be broadly disseminated.

(b) Visioning. When developing a new comprehensive plan or a significant update to an existing comprehensive plan, counties and cities should consider using a visioning process. The public should be involved, because the purpose of a visioning process is to gain public input on the desired features of the community. The comprehensive plan can then be designed to achieve these features.

(c) Planning commission. The public participation program should clearly describe the role of the planning commission, ensuring consistency with requirements of chapter 36.70, 35.63, or 35A.63 RCW.

(4) Each county or city should try to involve a broad cross-section of the community, so groups not previously involved in planning become involved.

(5) Counties and cities should take a broad view of public participation. The act contains no requirements or qualifications that an individual must meet in order to participate in the public process. If an individual or organization chooses to participate, it is an interested party for purposes of public participation.

(6) Providing adequate notice.

(a) Counties and cities are encouraged to consider a variety of opportunities to adequately communicate with the public. These methods of notification may include, but are not limited to, traditional forms of mailed notices, published announcements, electronic mail, and internet web sites to distribute informational brochures, meeting times, project timelines, and design and map proposals to provide an opportunity for the public to participate.

(b) Counties and cities must provide effective notice. In order to be effective, notice must be designed to accomplish the following:

(i) Notice must be timely, reasonably available and reasonably likely to reach interested persons. Notice of all events where public input is sought should be broadly disseminated at least one week in advance of any public hearing. Newspaper or on-line articles do not substitute for the requirement that jurisdictions publish the action taken. When appropriate, notices should announce the availability of relevant draft documents and how they may be obtained.

(ii) Broad dissemination means that a county or city has made the documents widely available and provided information on how to access the available documents and how to provide comments. Examples of methods of broad dissemination may include:

(A) Posting electronic copies of draft documents on the county and city official web site;

(B) Providing copies to local libraries;

(C) Providing copies as appropriate to other affected counties and cities, state and federal agencies;

(D) Providing notice to local newspapers; and

(E) Maintaining a list of individuals who have expressed an interest and providing them with notice when new materials are available.

(iii) Certain proposals may also require particularized notice to specific individuals if required by statute or adopted local policy.

(iv) The public notice must clearly specify the nature of the proposal under consideration and how the public may participate. Whenever public input is sought on proposals and alternatives, the relevant drafts should be available. The county or city must make available copies of the proposal that will be available prior to the public hearing so participants can comment appropriately. The notice should specify the range of alternatives considered or scope of alternatives available for public comment in accordance with RCW 36.70A.035 (2)(b)(i) and (ii).

(7) Receiving public comment.

(a) Public meetings on draft comprehensive plans. Once a comprehensive plan amendment or other proposal is completed in draft form, or as parts of it are drafted, the county or city may consider holding a series of public meetings or workshops at various locations throughout the jurisdiction to obtain public comments and suggestions.

(b) Public hearings. When the final draft of the comprehensive plan is completed, at least one public hearing should be held prior to the presentation of the final draft to the county or city legislative authority adopting it.

(c) Written comment. At each stage of the process when public input is sought, opportunity should be provided to make written comment.

(d) Attendance for all meetings and hearings to which the public is invited should be free and open. At hearings all persons desiring to speak should be allowed to do so. A county or city may establish a reasonable time limitation on spoken presentations during meetings or public hearings, particularly if written comments are allowed.

(8) Continuous public involvement.

(a) Consideration of and response to public comments. All public comments should be reviewed. Adequate time should be provided between the public hearing and the date of adoption for all or any part of the comprehensive plan to evaluate and respond to public comments. The county or city should provide a written summary of all public comments with a specific response and explanation for any subsequent action taken based on the public comments. This written summary should be included in the record of adoption for the plan.

(b) Ending the opportunity for comment prior to deliberation. After the end of public comment, the local government legislative body may hold additional meetings to deliberate on the information obtained in the public hearing.

(c) Additional meetings may be necessary if the public hearings provided the county or city with new evidence or information they wish to consider. If during deliberation, the county or city legislative body identifies new information for consideration after the record of adoption has been closed, then it must provide further opportunity for public comment so this information can be included in the record.

(9) Considering changes to an amendment after the opportunity for public review has closed.

(a) If the county or city legislative body considers a change to an amendment, and the opportunity for public review and comment has already closed, then the county or city must provide an opportunity for the public to review and comment on the proposed change before the legislative body takes action.

(b) The county or city may limit the opportunity for public comment to only the proposed change to the amendment.

(c) Although counties and cities are required to provide an opportunity for public comment, alternatives to a scheduled public hearing may suffice. Adequate notice must be provided indicating how the public may obtain information and offer comments.

(d) A county or city is not required to provide an additional opportunity for public comment under (a) of this subsection if one of the following exceptions applies (see RCW 36.70A.035 (2)(a)):

> (i) An environmental impact statement has been prepared under chapter 43.21C RCW, and the proposal falls within the range of alternatives considered in the environmental impact statement;
>
> (ii) The proposed change is within the range of alternatives available for public comment. When initiating the public participation process, a county or city should consider defining the range of alternatives under consideration;
>
> (iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;
>
> (iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or
>
> (v) The proposed change is to an ordinance or resolution enacting a moratorium or interim control adopted in compliance with RCW 36.70A.390.

(e) If a county or city adopts an amendment without providing an additional opportunity for public comment as described under (a) of this subsection, the findings of the adopted ordinance or resolution should identify which exception under RCW 36.70A.035 (2)(b) applies.

(10) Any amendment to the comprehensive plan or development regulation must follow the applicable procedural requirements and the county or city public participation plan. A county or city should not enter into an agreement that is a de facto amendment to the comprehensive plan accomplished without complying with the statutory public participation requirements. Examples of a de facto amendment include agreements that:

(a) Obligate the county or city, or authorizes another party, to act in a manner that is inconsistent with the comprehensive plan;

(b) Authorize an action the comprehensive plan prohibits; or

(c) Obligate the county or city to adopt a subsequent amendment to the comprehensive plan.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-600, filed 1/19/10, effective 2/19/10.]

365-196-610 Periodic review and update of comprehensive plans and development regulations.

(1) Requirements.

(a) Counties and cities must periodically take legislative action to review and, if necessary, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of the act. This review and revision, required under RCW 36.70A.130(1), is referred to in this section as the periodic update.

(b) Deadlines for periodic update. Comprehensive plans and development regulations are subject to periodic update every seven years on a schedule established in RCW 36.70A.130(4).

(i) Deadlines for completion of periodic review are as follows:

Table WAC 365-196-610.1

Update must be complete by December 1 of:	Affected counties and the cities within:
2011/2018	Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, Whatcom
2012/2019	Cowlitz, Island, Lewis, Mason, San Juan, Skagit, Skamania
2013/2020	Benton, Chelan, Douglas, Grant, Kittitas, Spokane, Yakima
2014/2021	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Orielle, Stevens, Wahkiakum, Walla Walla, Whitman

(ii) Certain counties and cities may take up to an additional three years to complete the update.

(A) The eligibility of a county for the three-year extension does not affect the eligibility of the cities within the county.

(B) A county is eligible if it has a population of less than fifty thousand and a growth rate of less than seventeen percent.

(C) A city is eligible if it has a population of less than five thousand, and either a growth rate of less than seventeen percent or a total population growth of less than one hundred persons.

(D) Growth rates are measured using the ten-year period preceding the due date listed in RCW 36.70A.130(4).

(E) If a city or county qualifies for the extension on the statutory due date, they remain eligible for the entire three-year extension period, even if they no longer meet the criteria due to population growth.

(c) Taking legislative action.

(i) The periodic update must be accomplished through legislative action. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing including, at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore.

(ii) Legislative action includes two components. It includes a review of the comprehensive plan and development regulations and it includes the adoption of any amendments necessary to bring the comprehensive plan and development regulations into compliance with the requirements of the act.

(d) What must be reviewed.

(i) Counties and cities that plan under RCW 36.70A.040 must review and, if needed, revise their comprehensive plans and development regulations for compliance with the act. This includes the critical areas ordinance.

(ii) Counties and cities that do not plan under RCW 36.70A.040 must review and, if needed, revise their resource lands designations and their development regulations designating and protecting critical areas.

(e) The required scope of review. The purpose of the review is to determine if revisions are needed to bring the comprehensive plan and development regulation into compliance with the requirements of the act. The update process provides the method for bringing plans into compliance with the requirements of the act that have been added or changed since the last update and for responding to changes in land use and in population growth. This review is necessary so that comprehensive plans are not allowed to fall out of compliance with the act over time through inaction. This review must include at least the following:

(i) Consideration of the critical areas ordinance;

(ii) Analysis of the population allocated to a city or county from the most recent ten-year urban growth area review;

(iii) Review of mineral resource lands designations and mineral resource lands development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060; and

(iv) Changes to the act or other applicable laws since the last review that have not been addressed in the comprehensive plan and development regulations.

(2) Recommendations for meeting requirements.

(a) Public participation program.

(i) Counties and cities should establish a public participation program that includes a schedule for the periodic update and identifies when legislative action on the review and update component are proposed to occur. The public participation program should also inform the public of when to comment on proposed changes to the comprehensive plan and clearly identify the scope of the review. Notice of the update process should be broadly disseminated as required by RCW 36.70A.035.

(ii) Counties and cities may adjust the public participation program to best meet the intent of the requirement. RCW 36.70A.140 notes that errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed. For example, if an established public participation program included one public hearing on all actions having to do with the seven-year update process, the public participation program could be adjusted later to provide additional public hearings to accommodate strong public interest.

(b) Review of relevant statutes and local information and analysis of whether there is a need for revisions.

(i) Amendments to the act. Counties and cities should first review amendments to the act that have occurred since the initial adoption or previous periodic update, and determine if local amendments are needed to maintain compliance with the act. The department will maintain a comprehensive list of legislative amendments and a checklist to assist counties and cities with this review.

(ii) Review and analysis of relevant plans, regulations and information. Although existing comprehensive plans and development regulations are considered compliant, counties and cities should consider reviewing development and other activities that have occurred since adoption to determine if the comprehensive plans and development regulations remain consistent with, and implement, the act. This should include at least the following:

(A) Analysis of the population allocated to a city or county during the most recent ten-year urban growth area review;

(B) Consideration of critical areas and resource lands ordinances;

(C) Review of mineral resource lands designations and development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060;

(D) Capital facilities plans. Changes in anticipated circumstances and needs should be addressed by updating the ten-year transportation plan and six-year capital facilities elements. This includes a reassessment of the land use element if funding falls short;

(E) Land use element;

(F) Changes to comprehensive plans and development regulations in adjacent jurisdictions, special purpose districts, or state plans that create an inconsistency with the county or city's comprehensive plan or development regulations;

(G) Basic assumptions underlying key calculations and conclusions in the existing comprehensive plan. If recent data demonstrates that key existing assumptions are no longer appropriate for the remainder of the twenty-year plan, counties and cities should consider updating them as part of the seven-year periodic update, or the ten-year urban growth area update (see WAC 365-196-310). Counties and cities required to establish a review and evaluation program under RCW 36.70A.215, should use that information in this review (see WAC 365-196-315); and

(H) Inventories. Counties and cities should review required inventories and to determine if new data or analysis is needed. Table 2 contains summary of the inventories required in the act.

Table WAC 365-196-610.2

Requirement	RCW Location		WAC Location	
Housing Inventory	36.70A.070(2)		365-196-430	
Inventory and analyze existing and projected housing needs, identifying the number of housing units necessary to manage project growth.				
Capital Facilities	36.70A.070(3)		365-196-445	
Inventory existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities, and forecast future needs and proposed locations and capacities of expanded or new facilities.				
Transportation	36.70A.070(6)		365-196-455	
An inventory of air, water and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels and a basis for future planning. This inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries.				

(c) Take legislative action.

(i) Any legislative action that completes a portion of the review and update process, either in whole or in part, must state in its findings that it is part of the update process.

(ii) Any public hearings on legislative actions that are, either in whole or in part, legislative actions completing the update must state in the notice of hearing that the actions considered are part of the update process.

(iii) At the end of the review and update process, counties and cities should take legislative action declaring the update process complete, either as a separate legislative action, or as a part of the final legislative action that occurs as part of the update process. This action should reference all prior legislative actions occurring as part of the update process.

(d) Submit notice of completion to the department. When adopted, counties and cities should transmit the notice of adoption to the department, consistent with RCW 36.70A.106. RCW 36.70A.130 requires compliance with the review and update requirement as a condition of eligibility for state grant and loan programs. The department tracks compliance with this requirement for agencies managing these grant and loan programs. Providing notice of completion to the department will help maintain access to these grant and loan programs.

(3) Relationship to other review and amendment requirements in the act.

(a) Relationship to the comprehensive plan amendment process. Cities and counties may amend the comprehensive plan no more often than once per year, as required in RCW 36.70A.130(2), and referred to as the docket. If a city or county conducts a comprehensive plan docket cycle in the year in which the review of the comprehensive plan is completed, it must be combined with the seven-year periodic review process. Cities and counties may not conduct the seven-year periodic review and a docket of amendments as separate processes in the same year.

(b) Relationship to the ten-year urban growth area (UGA) review.

> (i) At least every ten years, cities and counties must review the areas and densities contained in the urban growth area and, if necessary, revise their comprehensive plan to accommodate the growth projected to occur in the county for the succeeding twenty-year period, as required in RCW 36.70A.130(3). This is referred to in this section as the ten-year urban growth area review.
>
> (ii) The ten-year urban growth area review and the seven-year periodic update may be combined or may occur separately. The seven-year periodic update requires an assessment of the most recent twenty-year population forecast by the office of financial management, but does not require that land use plans or urban growth areas be updated to accommodate existing or future growth forecasts, which must be undertaken as part of the ten-year UGA review. Counties and cities may consider the most recent forecast from the office of financial management, and the adequacy of existing land supplies to meet their existing growth forecast allocations, in determining when to initiate the ten-year urban growth area review.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-610, filed 1/19/10, effective 2/19/10.]

365-196-620 Integration of State Environmental Policy Act process with creation and adoption of comprehensive plans and development regulations.

(1) Adoption of comprehensive plans and development regulations are "actions" as defined under State Environmental Policy Act (SEPA). Counties and cities must comply with SEPA when adopting new or amended comprehensive plans and development regulations.

(2) Integration of SEPA review with other analysis required by the act.

(a) The SEPA process is supplementary to other governmental decision-making processes, including the processes involved in creating and adopting comprehensive plans and development regulations under the act. The thoughtful integration of SEPA compliance with the overall effort to implement the act will provide understanding and insight of significant value to the choices growth management requires.

(b) SEPA analysis and documentation can serve, in significant part, to fulfill the need to compile a record showing the considerations which went into the plan and why one alternative was chosen over another.

(c) When conducting a SEPA analysis, counties and cities should coordinate the development and evaluation of SEPA alternatives with other evaluations required by the act such as:

(i) Evaluation of fiscal impact required by RCW 36.70A.210;

(ii) Review of drainage, flooding and storm water runoff required by RCW 36.70A.070;

(iii) The forecast of future capital facilities needs required by RCW 36.70A.070(3); and

(iv) The traffic forecast, identification of system needs and analysis of funding capability required in RCW 36.70A.070 (6)(a)(iii)(D), (E) and (F).

(d) Coordination should assure that these evaluations occur against a uniform set of alternatives and provide a complete picture of both the environmental and financial impacts of various alternatives.

(3) Phased environmental review.

(a) The growth management process is designed to proceed in phases, moving, by and large, from general policy-making to more specific implementation measures. Phased review available under SEPA can be integrated with the growth management process through a strategy that identifies the points in that process where the requirements of the two statutes are connected and seeks to accomplish the requirements of both at those points.

(b) In an integrated approach major emphasis should be placed on the quality of SEPA analysis at the front end of the growth management process - the local legislative phases of plan adoption and regulation adoption. The objective should be to create nonproject impact statements, and progressively more narrowly focused supplementary documents, that are sufficiently informative. These impact statements should reduce the need for extensive and time consuming analysis during subsequent environmental analysis at the individual project stage.

(c) The SEPA rules authorize joint documents that incorporate requirements of the act and SEPA (WAC 197-11-210 through 197-11-235). In general, using joint documents can provide time and cost savings related to review and adoption of comprehensive plan amendments.

(d) When evaluating comprehensive plan amendments, these amendments should generally be considered together as one action under SEPA so that the cumulative effect of various proposals can be evaluated together, consistent with RCW 36.70A.130 (2)(b).

(e) In conducting SEPA review and making a threshold determination, the county or city should review existing environmental documents. These documents may already address some or all of the potential adverse environmental impacts posed by the items on the docket. As an example, if an environmental impact statement (EIS) was done on the comprehensive plan, the county or city may only need to update or supplement the information in this existing EIS. The county or city may be able to accomplish this by incorporating a document by reference, adopting a document, or preparing a supplemental EIS or an addendum, as authorized by the SEPA rules (chapter 197-11 WAC).

(f) When creating SEPA documents, counties and cities should consider identifying and incorporating previous environmental analysis statements prepared by other lead agencies in connection with other related plans or projects.

(g) When conducting the SEPA analysis of a comprehensive plan amendment, counties and cities should analyze the impacts of fundamental land use planning choices. Because these choices cannot be revisited during project review, the impacts of these decisions must be evaluated when adopting comprehensive plan amendments. This analysis can serve as the foundation for project review. RCW 36.70B.030 identifies the following as fundamental land use planning choices:

(i) The types of land use;

(ii) The level of development, such as units per acre or other measures of density;

(iii) Infrastructure, including public facilities and services needed to serve the development; and

(iv) The characteristics of the development, such as development standards.

(h) SEPA compliance for development regulations should concentrate on the difference among alternative means of successfully implementing the goals and policies of the comprehensive plan. This approach can serve the goal that project applications be processed in a timely manner, while not compromising SEPA's basic aim of ensuring consideration of environmental impacts in advance of development.

(4) Interjurisdictional impacts. It is recognized that the growth of each county and city will have ripple effects which will reach across jurisdictional boundaries. Each county or city planning under the act should analyze what effects are likely to occur from the anticipated development. This analysis should be made as a part of the process of complying with SEPA in connection with comprehensive plan adoption. Affected jurisdictions should be given an opportunity to comment on this analysis.

(5) Other guidance found in SEPA rules. The SEPA rules (WAC 197-11-230) contain other guidance for preparing and issuing SEPA documents related to comprehensive plan amendments.

(6) Planned actions. One of the opportunities presented by the application of the act, SEPA, and the Regulatory Reform Act of 1995 (chapter 36.70B RCW and WAC 365-197-030) is the creation of a "planned action." A planned action is a nonproject action whose impacts are analyzed in an EIS associated with a comprehensive plan or subarea plan. The impacts and necessary mitigation are identified in a planned action ordinance. Development projects which are consistent with a planned action ordinance may not require additional environmental review. Planned actions are also addressed in WAC 197-11-168 and 197-11-172.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-620, filed 1/19/10, effective 2/19/10.]

365-196-630 Submitting notice of intent to adopt to the state.

(1) State notification and comment.

(a) The act requires each county or city proposing adoption of an original comprehensive plan or development regulation, or amendment, under the act, must notify the department of its intent at least sixty days prior to final adoption. Counties and cities may request expedited review for changes to the development regulations pursuant to RCW 36.70A.106 (3)(b).

(b) State agencies, including the department, may provide comments on comprehensive plans, development regulations, and related amendments during the public review process.

(2) Notice to the department must include:

(a) A cover letter or cover page that includes an explanation of the proposed amendment, notification that the submittal is intended to begin the sixty-day review process, the planned date of adoption, and the sender's contact information; and

(b) A copy of the proposed amendment language. The drafted amendment text should be in a complete form, and it should clearly identify how the existing language will be modified. An example of acceptable form includes struck through and underlined text that indicates proposed deleted text and new text, respectively.

(c) If the proposed amendment changes during the legislative process, counties and cities may submit supplemental materials to the department without initiating a new sixty-day notice period. Counties and cities must identify any materials submitted to the department if they are supplemental to an earlier proposed amendment under a sixty-day review.

(3) The department prefers that notices be submitted electronically. Expedited review requests should be submitted by e-mail as outlined in subsection (6) of this section. Counties and cities may contact the department by telephone at 360-725-3000 or by e-mail at reviewteam@commerce.wa.gov to obtain electronic contact information and procedures for electronic submittals.

Copies submitted by U.S. mail should be sent to:

Department of Commerce,
Growth Management Services
Attn: Review Team
P.O. Box 42525
Olympia, WA 98504-2525

(4) Submitting adopted amendments.

(a) Each county or city planning under the act must transmit to the department, within ten days after adoption, one complete and accurate copy of its adopted comprehensive plan or development regulation, or adopted amendment to a comprehensive plan or development regulation. Additional copies should be sent to those state agencies that provided comment on the proposed amendment.

(b) The submittal must include a copy of the final signed and dated ordinance or resolution identifying the legislative action.

(c) Submittal of adopted amendments should follow the method outlined for submission of the sixty-day notice for review.

(5) The sixty-day period for determining when a comprehensive plan, development regulation, or amendment can be adopted begins as follows:

(a) When the notice is automatically date-stamped upon receipt by e-mail attachment if the submittal is transmitted electronically; or

(b) When the material is stamped upon the date of receipt at the department's planning unit reception desk during regular business hours if the submittal is transmitted by U.S. mail.

(6) Expedited review.

(a) Counties and cities may request expedited review when they are providing to the department notice of intent to adopt development regulations under RCW 36.70A.106 (3)(b).

(b) Expedited review is intended for amendments to development regulations for which, without expedited review, the sixty-day state agency review process would needlessly delay the jurisdictions adoption schedule.

(c) Counties and cities may not request expedited review of comprehensive plan amendments.

(d) Certain types of development regulations are very likely to require review by state agencies, and are therefore generally not appropriate for expedited review. Proposed changes to critical areas ordinances, concurrency ordinances, or ordinances regulating essential public facilities are examples of development regulation amendments that should not be submitted for expedited review.

(e) Department responsibilities:

(i) Requests should be forwarded to other state agencies within two working days of receipt of request for expedited review.

(ii) State agencies have ten working days to determine if the proposal is of interest and requires more time for review.

(iii) If the department is notified by any state agency within ten working days that it has an interest in more time for review, the department will not grant expedited review until all agencies have had an opportunity to comment.

(iv) If after ten working days, a state agency does not respond to the department, then the department may grant the request for expedited review.

(v) The department may determine that it has an interest in a proposal that requires more time for review, and it may deny a request for expedited review on that basis.

(vi) The estimated time frame for processing an expedited review request is fourteen days, to coincide with the State Environmental Policy Act comment period.

(vii) The expedited review request must include the information required to determine if an item is of state interest, similar to the methods outlined for submission of amendments for sixty-day review.

(f) State agency responsibilities:

(i) If a state agency intends to comment, the agency must respond to requests for expedited review within ten working days.

(ii) State agencies should determine how to coordinate an agency response internally to maintain proper notification and information management between its headquarters office and regional offices. The department will work with state agencies if it can be of assistance in this process.

(iii) If a state agency has an interest in a proposed amendment for expedited review, and it has requested the department not grant expedited review, the state agency requesting denial of the expedited review should contact and provide comment directly to the requesting jurisdiction within the sixty-day period specified in RCW 36.70A.106. The state agency should notify the department when it has completed review and provided comments.

(g) County and city responsibilities:

(i) Requests for expedited review should be the exception and not the rule. Expedited review is designed for use with development regulations amendments that are unlikely to require state agency comment.

(ii) Expedited review should not be used as a substitute for timely notification. Counties and cities should plan for the full sixty-day review period when practicable.

(iii) Counties and cities must request expedited review on a case-by-case basis.

(iv) Requests should be in the form of an electronic submittal, following the department's requirements for e-mail submittal for sixty-day review in subsection (3) of this section.

(v) The request must be accompanied with enough information, as defined by the department, in consultation with other state agencies and counties and cities, to determine whether it is of state interest.

(vi) Expedited review should not be requested if the normal sixty-day period will not delay adoption.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-630, filed 1/19/10, effective 2/19/10.]

365-196-640Comprehensive plan amendment procedures.

(1) Each county or city should provide for an ongoing process to ensure:

(a) The comprehensive plan is internally consistent and consistent with the comprehensive plans of adjacent counties and cities. See WAC 365-196-500 and 365-196-510; and

(b) The development regulations are consistent with and implement the comprehensive plan.

(2) Counties and cities should establish procedures governing the amendment of the comprehensive plan. The location of these procedures may be either in the comprehensive plan, or clearly referenced in the plan.

(3) Amendments.

(a) All proposed amendments to the comprehensive plan must be considered by the governing body concurrently and may not be considered more frequently than once every year, so that the cumulative effect of various proposals can be ascertained. If a county or city's final legislative action is taken in a subsequent calendar year, it may still be considered part of the prior year's docket so long as the consideration of the amendments occurred within the prior year's comprehensive plan amendment process.

(b) Amendments may be considered more often under the following circumstances:

(i) The initial adoption of a subarea plan that does not modify the comprehensive plan policies and designations applicable to the subarea;

(ii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;

(iii) The amendment of the capital facilities element of a comprehensive plan that is part of the adoption or amendment of a county or city budget;

(iv) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW 43.21C.031(2), provided that amendments are considered in agreement with the public participation program established by the county or city under RCW 36.70A.140, and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment;

(v) To resolve an appeal of the comprehensive plan filed with the growth management hearings board; or

(vi) In the case of an emergency.

(4) Emergency amendments. Public notice and an opportunity for public comment must precede the adoption of emergency amendments to the comprehensive plan. Provisions in RCW 36.70A.390 apply only to moratoria or interim development regulations. They do not apply to comprehensive plans amendments. If a comprehensive plan amendment is necessary, counties and cities should adopt a moratoria or interim zoning control. The county or city should then consider the comprehensive plan amendment concurrently with the consideration of permanent amendments and only after public notice and an opportunity for public comment.

(5) Evaluating cumulative effects. RCW 36.70A.130 (2)(b) requires that all proposed amendments in any year be considered concurrently so the cumulative effect of the proposals can be ascertained. The amendment process should include an analysis of all proposed amendments evaluating their cumulative effect. This analysis should be prepared in conjunction with analyses required to comply with the State Environmental Policy Act under chapter 43.21C RCW.

(6) Docketing of proposed amendments.

(a) RCW 36.70A.470(2) requires that comprehensive plan amendment procedures allow interested persons, including applicants, citizens, hearing examiners, and staff of other agencies, to suggest amendments of comprehensive plans or development regulations. This process should include a means of docketing deficiencies in the comprehensive plan that arise during local project review. These suggestions must be docketed and considered at least annually.

(b) A consideration of proposed amendments does not require a full analysis of every proposal within twelve months if resources are unavailable.

(c) As part of this process, counties and cities should specify what information must be submitted and the submittal deadlines so that proposals can be evaluated concurrently.

(d) Once a proposed amendment is received, the county or city may determine if a proposal should receive further consideration as part of the comprehensive plan amendment process.

(e) Some types of proposed amendments require a significant investment of time and expense on the part of both applicants and the county or city. A county or city may specify in its policies certain types of amendments that will not be carried forward into the amendment process on an annual basis. This provides potential applicants with advance notice of whether a proposed amendment will be carried forward and can help applicants avoid the expense of preparing an application.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-640, filed 1/19/10, effective 2/19/10.]

365-196-650 Implementation strategy.

Each county or city planning under the act should develop a strategy for implementing its comprehensive plan. The strategy should describe the regulatory and nonregulatory measures (including actions for acquiring and spending money) to be used to implement the comprehensive plan. The strategy should identify each of the development regulations needed.

(1) Selection. In determining the specific regulations to be adopted, counties and cities may select from a wide variety of types of controls. The strategy should include consideration of:

(a) The choice of substantive requirements, such as the delineation of use zones; general development limitations concerning lot size, setbacks, bulk, height, density; provisions for environmental protection; urban design guidelines and design review criteria; specific requirements for affordable housing, landscaping, parking; levels of service, concurrency regulations and other measures relating to public facilities.

(b) The means of applying the substantive requirements, such as methods of prior approval through permits, licenses, franchises, or contracts.

(c) The processes to be used in applying the substantive requirements, such as permit application procedures, hearing procedures, approval deadlines, and appeals.

(d) The methods of enforcement, such as inspections, reporting requirements, bonds, permit revocation, civil penalties, and abatement.

(2) Identification. The strategy should include a list of all regulations identified as development regulations for implementing the comprehensive plan. Some of these regulations may already be in existence and consistent with the plan. Others may be in existence, but require amendment. Others will need to be written.

(3) Adoption schedule. The strategy should include a schedule for the adoption or amendment of the development regulations identified. Individual regulations or amendments may be adopted at different times. However, all of the regulations identified should be adopted by the applicable final deadline for adoption of development regulations.

(4) The implementation strategy for each jurisdiction should be in writing and available to the public. A copy should be provided to the department. Completion of adoption of all regulations identified in the strategy will be construed by the department as completion of the task of adopting development regulations for the purposes of deadlines under the statute.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-650, filed 1/19/10, effective 2/19/10.]

365-196-660 Supplementing, amending, and monitoring.

(1) New development regulations may be adopted as the need for supplementing the initial implementation strategy becomes apparent.

(2) Counties and cities should institute an annual review of growth management implementation on a systematic basis. To aid in this process, counties and cities planning under the act should consider establishing a growth management monitoring program designed to measure and evaluate the progress being made toward accomplishing the act's goals and the provisions of the comprehensive plan.

(a) This process should also include a review of comprehensive plan or regulatory deficiencies encountered during project review.

(b) This process should be integrated with provisions for continuous public involvement. See WAC 365-196-600.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-660, filed 1/19/10, effective 2/19/10.]

PART SEVEN
RELATIONSHIP OF GROWTH MANAGEMENT PLANNING TO OTHER LAWS

365-196-700 Background.

(1) For counties and cities subject to its terms, the act mandates the development of comprehensive plans and development regulations that meet statutory goals and requirements. These comprehensive plans and development regulations will take their place among existing laws relating to resource management, environmental protection, regulation of land use, utilities and public facilities. Many of these existing laws were neither repealed nor amended by the act.

(2) The circumstances outlined in subsection (1) of this section place responsibility both on local growth management planners and on administrators of preexisting programs to work toward producing a single harmonious body of law.

(3) The need to consider and recognize other laws should profoundly influence, limit, and shape planning and decision making under the act. At the same time, in recognition of the broad and fundamental changes intended by creation of the growth management scheme, prior programs should be interpreted and directed, to the maximum extent possible, in a manner consistent with the products of the comprehensive growth management system, as described in WAC 365-196-305, 365-196-500, and 365-196-510.

(4) The far-reaching nature of the act and the wide variety of possible outcomes under its authority dictate that identification of all the points of contact between its products and other laws will have to be elaborated over time. The entire process of determining how the act fits into the overall legal framework will, of necessity, be an incremental one.

(5) A conscious effort to address the requirements of other existing law is an essential step in adopting and amending local plans and regulations. This need poses an unprecedented challenge to all governmental entities - municipalities, counties, regional authorities, special purpose districts and state agencies - to communicate and collaborate. The act is a mandate to government at all levels to engage in coordinated planning and cooperative implementation.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-700, filed 1/19/10, effective 2/19/10.]

365-196-705 Basic assumptions.

(1) Where the legislature has spoken expressly on the relationship of the act to other statutory provisions, the explicit legislative directions shall be carried out. Examples of such express provisions are set forth in WAC 365-196-745.

(2) Absent a clear statement of legislative intent or judicial interpretation to the contrary, it should be presumed that neither the act nor other statutes are intended to be preemptive. Rather they should be read together and, wherever possible, construed as mutually consistent. However, the legislature has identified the act as a fundamental building block of regulatory reform, and it should serve as the integrating framework for all other local land-use regulations.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-705, filed 1/19/10, effective 2/19/10.]

365-196-710 Identification of other laws.

(1) In developing and amending comprehensive plans and implementing regulations, counties and cities planning under the act should identify other statutes and legal authorities affecting subjects addressed in their comprehensive plans and development regulations.

(2) To aid in this identification, state agencies, regional authorities, special districts and utilities should implement programs to inform counties and cities of programs and provisions within their jurisdiction or expertise that are relevant to growth management planning actions.

(3) Agencies that review and comment on draft comprehensive plans, or on related State Environmental Policy Act documents, should take advantage of these opportunities to advise planning jurisdictions of preexisting programs and related legal authorities.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-710, filed 1/19/10, effective 2/19/10.]

365-196-715 Integrating external considerations.

(1) County and city planners should take advantage of data and analyses prepared by other governmental agencies and use it to shape the form and content of comprehensive plans and development regulations under the act where relevant.

(2) Other governmental agencies should also use the data and analyses prepared by counties and cities in the formation of their comprehensive plans, especially when making assumptions about future land use patterns in areas covered by a local comprehensive plan.

(3) Governmental entities with expertise in subjects affecting or affected by the act and private companies that provide public services should, as practicable, offer technical assistance to counties and cities planning under the act.

(4) When drafting or amending comprehensive plans and development regulations, counties and cities should identify other related laws, evaluate any potential areas of conflict and make efforts to avoid such conflicts. Where the text of outside sources can appropriately serve local needs, consideration should be given to adoption of that text in local comprehensive plans or development regulations.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-715, filed 1/19/10, effective 2/19/10.]

365-196-720 Sources of law.

(1) In seeking to identify other relevant legal authorities, planners should refer to sources at all levels of government, including federal and state constitutions, federal and state statutes, federal and state administrative regulations, and judicial interpretations thereof.

(2) The sources of law set forth in WAC 365-196-725 through 365-196-745 are intended to assist planners by highlighting various kinds of external legal provisions that should be considered during the planning process. Some of the sources of law overlap in WAC 365-196-725 through 365-196-745. The listing is not exhaustive. It is intended to supplement, not substitute for, the informational efforts of state agencies, regional authorities, special districts and utilities.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-720, filed 1/19/10, effective 2/19/10.]

365-196-725 Constitutional provisions.

(1) Comprehensive plans and development regulations adopted under the act are subject to the supremacy principle of Article VI, United States Constitution and of Article XI, Section 11, Washington state Constitution.

(2) Counties and cities planning under the act are required to use a process established by the state attorney general to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights. As set forth in RCW 36.70A.370, the state attorney general has developed a publication entitled "Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property," which is updated frequently to maintain consistency with changes in case law. Counties and cities should contact the department or state attorney general for the latest edition of this advisory memorandum.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-725, filed 1/19/10, effective 2/19/10.]

365-196-730 Federal authorities.

(1) Counties and cities drafting or amending comprehensive plans and development regulations under the act should consider the effects of federal authority over land or resource use within the planning area, including:

(a) Treaties with Native Americans;
(b) Jurisdiction on land owned or held in trust by the federal government;
(c) Federal statutes or regulations imposing national standards;
(d) Federal permit programs and plans;
(e) Metropolitan planning organizations, which are also designated as regional transportation planning organizations established in chapter 47.80 RCW; and
(f) The Central Puget Sound economic development district.

(2) Examples of such federal standards, permit programs and plans are:

(a) National ambient air quality standards, adopted under the Federal Clean Air Act;

(b) Drinking water standards, adopted under the Federal Safe Drinking Water Act;

(c) Effluent limitations, adopted under the Federal Clean Water Act;

(d) Dredge and fill permits issued by the Army Corps of Engineers under the Federal Clean Water Act;

(e) Licenses for hydroelectric projects issued by the Federal Energy Regulatory Commission;

(f) Plans created under the Pacific Northwest Electric Power Planning and Conservation Act;

(g) Recovery plans and the prohibition on taking listed species under the Endangered Species Act;

(h) State and local consolidated plans required by the Department of Housing and Urban Development under the Code of Federal Regulations (24 C.F.R. 91 and 24 C.F.R. 570);

(i) Historic preservation requirements and standards of the National Historic Preservation Act;

(j) Regulatory requirements of section 4(f) of the Department of Transportation Act; and

(k) Plans adopted by metropolitan planning organizations to meet federal transportation planning responsibilities established by the U.S. Federal Highway Administration (FHWA) and the U.S. Federal Transit Administration (FTA).

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-730, filed 1/19/10, effective 2/19/10.]

365-196-735 State and regional authorities.

(1) When developing and amending comprehensive plans and development regulations under the act, counties and cities should consider existing state and regional regulatory and planning provisions affecting land use, resource management, environmental protection, utilities, or public facilities including:

(a) State statutes and regulations imposing statewide standards;

(b) Programs involving state-issued permits or certifications;

(c) State statutes and regulations regarding rates, services, facilities and practices of utilities, and tariffs of utilities in effect pursuant to such statutes and regulations;

(d) State and regional plans;

(e) Regulations and permits issued by regional entities;

(f) Locally developed plans subject to review or approval by state or regional entities.

(2) Examples of statutes and regulations imposing statewide standards are:

(a) Water quality standards and sediment standards, adopted by the department of ecology under the state Water Pollution Control Act;

(b) Drinking water standards adopted by the department of health pursuant to the Federal Safe Drinking Water Act;

(c) Minimum functional standards for solid waste handling, adopted by the department of ecology under the state Solid Waste Management Act;

(d) Minimum cleanup standards under the Model Toxics Control Act adopted by the department of ecology;

(e) Statutory requirements under the Shoreline Management Act and implementing guidelines and regulations adopted by the department of ecology;

(f) Standards for forest practices, adopted by the forest practices board under the state Forest Practices Act;

(g) Minimum requirements for flood plain management, adopted by the department of ecology under the Flood Plain Management Act;

(h) Minimum performance standards for construction pursuant to the state or International Building Code;

(i) Safety codes, such as the electrical construction code, adopted by the department of labor and industries;

(j) Archaeological investigation and reporting standards adopted by the department of archaeology and historic preservation under the Archaeological Sites and Resources Act and the Indian Graves and Records Act;

(k) Statutory requirements and procedures under the Planning Enabling Act.

(3) Examples of programs involving state issued permits or certifications are:

(a) Permits relating to forest practices, issued by the department of natural resources;

(b) Permits relating to surface mining reclamation, issued by the department of natural resources;

(c) National pollutant discharge elimination permits and waste discharge permits, issued by the department of ecology;

(d) Water rights permits, issued by department of ecology under state surface and ground water codes;

(e) Hydraulic project approvals, issued by departments of fisheries and wildlife under the state fisheries code;

(f) Water quality certifications, issued by the department of ecology;

(g) Operating permits for public water supply systems, issued by the state health department;

(h) Site certifications developed by the energy facility site evaluation council;

(i) Permits relating to the generation, transportation, storage or disposal of dangerous wastes, issued by the department of ecology;

(j) Permits for disturbing or impacting archaeological sites and for the discovery of human remains, issued by the department of archaeology and historic preservation.

(4) Examples of state and regional plans are:

(a) State implementation plan for ambient air quality standards under the Federal Clean Air Act;

(b) Statewide multimodal transportation plan and the Washington transportation plan adopted under chapter 47.01 RCW;

(c) Instream resource protection regulations for water resource inventory areas adopted under the Water Resources Act of 1971;

(d) Ground water management area programs, adopted pursuant to the ground water code;

(e) Plan or action agendas adopted by the Puget Sound partnership;

(f) State outdoor recreation and open space plan;

(g) State trails plan;

(h) Regional transportation planning organization plans and plans that meet the requirements for multicounty planning policies under RCW 36.70A.210(7).

(5) Examples of regulations and permits issued by regional entities are:

(a) Solid waste disposal facility permits issued by health departments under the Solid Waste Management Act;

(b) Regulations adopted by regional air pollution control authorities;

(c) Operating permits for air contaminant sources issued by regional air pollution control authorities.

(6) Examples of locally developed plans subject to review or approval by state or regional agencies are:

(a) Shoreline master programs, approved by the department of ecology;

(b) The consistency requirement for lands adjacent to shorelines of the state set forth in RCW 90.58.340;

(c) Coordinated water system plans for critical water supply service areas, approved by the department of health;

(d) Plans for individual public water systems, approved by the department of health;

(e) Comprehensive sewage drainage basin plans, approved by the department of ecology;

(f) Local moderate risk waste plans, approved by the department of ecology;

(g) Integrated resource plans required to be filed with the utilities and transportation commission in accordance with WAC 480-100-238;

(h) Reclaimed water plans, approved by the department of ecology and/or department of health.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-735, filed 1/19/10, effective 2/19/10.]

365-196-740 Regional perspective.

Some of the authorities in WAC 365-196-730 and 365-196-735 require planning for particular purposes for areas related by physical features, such as watersheds, rather than by political boundaries. Moreover, the environmental and ecological systems addressed in resource management, service by utilities, fish and wildlife management and pollution control are generally not circumscribed by county and city lines. Planning entities should attempt to identify these geographic areas which require a regional planning approach and, if needed, work toward creating collaborative processes involving all agencies with jurisdiction in the relevant geographical area. This approach should assist in achieving interjurisdictional consistency, consistency with the county-wide planning policies and, where applicable, multicounty planning policies. See WAC 365-196-305 regarding county-wide planning policies.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-740, filed 1/19/10, effective 2/19/10.]

365-196-745 Explicit statutory directions.

(1) The legislature expressly amended numerous statutes outside of chapter 36.70A RCW that relate to the act. These amendments define the relationship of such existing statutes to comprehensive plans and development regulations under the act. Examples include:

(a) RCW 19.27.097 (state building code - evidence of adequate supply of potable water);

(b) RCW 35.13.005 (annexation of unincorporated areas - prohibited beyond urban growth areas);

(c) RCW 35.58.2795 (municipal corporations - six-year transit plan consistent with comprehensive plans);

(d) RCW 35.77.010 (city streets - six-year comprehensive street program consistent with comprehensive plans);

(e) RCW 35A.14.005 (annexation by code cities - prohibited beyond urban growth areas);

(f) RCW 36.81.121 (county roads - six-year comprehensive road program consistent with act comprehensive plans);

(g) RCW 36.94.040 (sewerage, water, drainage systems - incorporation of relevant comprehensive plan provisions into sewer or water general plan);

(h) RCW 43.20.260 (water system plans consistent with comprehensive plans and development regulations);

(i) RCW 43.21C.240 (project review under the act);

(j) RCW 57.16.010 (water districts - district comprehensive water plan consistent with urban growth area restrictions);

(k) RCW 58.17.060 (short plats - written findings about appropriate provisions for infrastructure);

(l) RCW 58.17.110 (subdivisions - written findings about appropriate provisions for infrastructure);

(m) RCW 59.18.440 (land development - authority of entities planning under the act to require relocation assistance);

(n) RCW 70.118B.040(3) (requirements for large on-site sewage systems to be consistent with the requirements of any comprehensive plans or development regulations adopted under the act);

(o) RCW 86.12.200 (comprehensive flood control management plans - may be incorporated into comprehensive plans under the act); and

(p) RCW 90.46.120 (use of water from wastewater treatment facility - consideration in regional water supply plan or potable water supply service planning).

(2) As enacted, the act included the creation of a new chapter (chapter 47.80 RCW) authorizing and assigning duties to regional transportation planning organizations. These organizations were expressly given responsibilities for ensuring the consistency of transportation planning throughout a region containing multiple local governmental jurisdictions.

(3) As enacted, the act included the addition of new sections (RCW 82.02.050 through 82.02.090) concerning impact fees on development in counties or cities that plan under the act. These sections explicitly authorize and condition the use of such fees as part of the financing of public facility system improvements needed to serve new development.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-745, filed 1/19/10, effective 2/19/10.]

PART EIGHT
DEVELOPMENT REGULATIONS

365-196-800 Relationship between development regulations and comprehensive plans.

(1) Development regulations under the act are specific controls placed on development or land use activities by a county or city. Development regulations must be consistent with and implement comprehensive plans adopted pursuant to the act.

"Implement" in this context has a more affirmative meaning than merely "consistent." See WAC 365-196-210. "Implement" connotes not only a lack of conflict but also a sufficient scope to fully carry out the goals, policies, standards and directions contained in the comprehensive plan.

(2) When a county first becomes subject to the full planning requirements of RCW 36.70A.040, it must adopt development regulations designating interim urban growth areas as outlined under RCW 36.70A.110(5). The legislature specifically provided that the designation of interim urban growth areas shall be in the form of development regulations. Such interim designations shall generally precede the adoption of comprehensive plans.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-800, filed 1/19/10, effective 2/19/10.]

365-196-805 Timing of initial adoption.

(1) Except for interim regulations, required development regulations must be enacted either by the deadline for adoption of the comprehensive plan or within six months thereafter, if an extension is obtained. The possibility of a time gap between the adoption of a comprehensive plan and the adoption of development regulations pertains to the time frame after the initial adoption of the comprehensive plan. Subsequent amendments to the plan should not face any delay before being implemented by regulations. After adoption of the initial plan and development regulations, such regulations should at all times be consistent with the comprehensive plan. Whenever amendments to comprehensive plans are adopted, consistent implementing regulations or amendments to existing regulations should be enacted and put into effect concurrently. See WAC 365-196-660.

(2) To obtain an extension of the deadline for the initial adoption of development regulations, a county or city must notify the department of its need by letter prior to the initial deadline. Six-month extensions will be obtained whenever such letters are timely received, but no extensions will result from requests received after the initial deadline.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-805, filed 1/19/10, effective 2/19/10.]

365-196-810 Review for consistency when adopting development regulations.

(1) When adopting any development regulation intended to carry out a comprehensive plan, the proposing county or city should review its terms to ensure it is consistent with and implements the comprehensive plan and make a finding in the adopting ordinance to that effect.

(2) If a county or city develops an implementation strategy, it should ensure the strategies are consistent with the comprehensive plans of adjacent counties or cities. See WAC 365-196-650 for implementation strategy recommendations.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-810, filed 1/19/10, effective 2/19/10.]

365-196-815 Conservation of natural resource lands.

(1) Requirements.

(a) Counties and cities planning under RCW 36.70A.040 must adopt development regulations that assure the conservation of designated agricultural, forest, and mineral lands of long-term commercial significance. If counties and cities designate agricultural or forest resource lands within any urban growth area, they must also establish a program for the purchase or transfer of development rights.

(b) "Conservation" means measures designed to assure that the natural resource lands will remain available to be used for commercial production of the natural resources designated. Counties and cities should address two components to conservation:

> (i) Development regulations must prevent conversion to a use that removes land from resource production. Development regulations must not allow a primary use of agricultural resource lands that would convert those lands to nonresource purposes. Accessory uses may be allowed, consistent with subsection (3)(b) of this section.
>
> (ii) Development regulations must assure that the use of lands adjacent to designated natural resource lands does not interfere with the continued use, in the accustomed manner and in accordance with the best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(c) Classification, designation and designation amendment. The department adopted minimum guidelines in chapter 365-190 WAC, detailing the process involved in establishing a natural resource lands conservation program. Included are criteria to be considered before any designation change should be approved.

(d) Prior uses. Regulations for the conservation of natural resource lands may not prohibit uses legally existing on any parcel prior to their adoption.

(e) Plats and permits. Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet, of designated natural resource lands contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration.

(2) Relationship to other programs. In designing development regulations and nonregulatory programs to conserve designated natural resource lands, counties and cities should endeavor to make development regulations and programs fit together with regional, state and federal resource management programs applicable to the same lands. Comprehensive plans and policies may in some respects be adequately implemented by adopting the provisions of such other programs as part of the local regulations.

(3) Innovative zoning techniques.

(a) When adopting development regulations to assure the conservation of agricultural lands, counties should consider use of innovative zoning techniques. These techniques should be designed to conserve agricultural lands and encourage the agricultural economy. Any nonagricultural uses allowed should be limited to lands with poor soils or lands otherwise not suitable for agricultural purposes.

(b) Examples of innovative zoning techniques include:

(i) Agricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land and may allow accessory uses, including nonagricultural accessory uses and activities, that support, promote, or sustain agricultural operations and production, as provided in this subsection;

(ii) Cluster zoning, which allows new development on one portion of the land, leaving the remainder in agricultural or open space uses;

(iii) Large lot zoning, which establishes as a minimum lot size the amount of land necessary to achieve a successful farming practice;

(iv) Quarter/quarter zoning, which permits one residential dwelling on a one-acre minimum lot for each one-sixteenth of a section of land;

(v) Sliding scale zoning, which allows the number of lots for single-family residential purposes, with a minimum lot size of one acre, to increase inversely as the size of the total acreage increases; and

(vi) The transfer or purchase of development rights from agricultural lands, which can be used through cooperative agreements with cities, or counties with nonmunicipal urban growth areas, as receiving areas for the use of these development rights.

(c) Accessory uses on agricultural lands of long-term commercial significance:

(i) Counties may allow certain accessory uses on agricultural lands of long-term commercial significance. Accessory uses can promote the continued use of agricultural lands by allowing accessory uses that add value to agricultural products. Accessory uses can also promote the continued use of agricultural lands by allowing farming operations to generate supplemental income through unrelated uses, provided they are compatible with the continued use of agricultural land of resource production;

(ii) Development regulations must require accessory uses to be located, designed, and operated so as to not interfere with, and to support the continuation of, the overall agricultural use of the property and neighboring properties, and must comply with the requirements of the act;

(iii) Accessory uses may include:

(A) Agricultural accessory uses and activities, including but not limited to the storage, distribution, and marketing of regional agricultural products from one or more producers, agriculturally related experiences, or the production, marketing, and distribution of value-added agricultural products, including support services that facilitate these activities; and

(B) Nonagricultural accessory uses and activities as long as they are consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site. Nonagricultural accessory uses and activities, including new buildings, parking, or supportive uses, shall not be located outside the general area already developed for buildings and residential uses and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses; and

(C) Counties and cities have the authority to limit or exclude accessory uses otherwise authorized in this subsection in areas designated as agricultural lands of long-term commercial significance.

(iv) Any innovative zoning techniques must not limit agricultural production on designated agricultural resource lands.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-815, filed 1/19/10, effective 2/19/10.]

365-196-820 Subdivisions.

(1) Regulations for subdivision approvals and dedications, must require that the county or city make written findings that "appropriate provisions" have been made for the public health, safety, and general welfare, including open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and all other relevant factors, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school; and that the public use and interest will be served by the platting of such subdivision and dedication.

(2) Regulations for short plat and short subdivision approvals may require written findings for "appropriate provisions" that are different requirements than those governing the approval of preliminary and final plats of subdivisions. However, counties and cities must include in their short plat regulations and procedures provisions for considering sidewalks and other planning features that assure safe walking conditions for students who walk to and from school.

(3) Regulations for subdivision approvals may require that the county or city make additional findings related to the public health, safety and general welfare to the specific listing above, such as protection of critical areas, conservation of natural resource lands, and affordable housing for all economic segments of the population.

(4) In drafting development regulations, "appropriate provisions" should be defined in a manner consistent with the requirements of other applicable laws and with any level of service standards or planning objectives established by the city or county for the facilities involved. The definition of "appropriate provisions" could also cover the timing within which the facilities involved should be available for use, requiring, for example, that such timing be consistent with the definition of "concurrency" in this chapter. See WAC 365-196-210.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-820, filed 1/19/10, effective 2/19/10.]

365-196-825 Potable water.

(1) Each applicant for a building permit of a building needing potable water shall provide evidence of an adequate water supply for the intended use of the building. Local regulations should be designed to produce enough data to make such a determination, addressing both water quality and water quantity issues. RCW 19.27.097 provides that such evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply.

(2) Counties and cities should give consideration to guidelines promulgated by the departments of ecology and health on what constitutes an adequate water supply. In addition, Attorney General's Opinion, AGO 1992 No. 17, should be consulted for assistance in determining what substantive standards should be applied.

(3) If the department of ecology has adopted rules on this subject, or any part of it, local regulations should be consistent with those rules. Such rules may include instream flow rules, which may limit the availability of additional ground or surface water within a specific geographic area.

(4) Counties and cities may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-825, filed 1/19/10, effective 2/19/10.]

365-196-830 Protection of critical areas.

(1) The act requires the designation of critical areas and the adoption of regulations for the protection of such areas by all counties and cities, including those that do not plan under RCW 36.70A.040. The department has adopted minimum guidelines in chapter 365-190 WAC detailing the process involved in establishing a program to protect critical areas.

(2) Critical areas that must be protected include the following areas and ecosystems:

(a) Wetlands;

(b) Areas of critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(3) "Protection" in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety.

(4) Although counties and cities may protect critical areas in different ways or may allow some localized impacts to critical areas, or even the potential loss of some critical areas, development regulations must preserve the existing functions and values of critical areas. If development regulations allow harm to critical areas, they must require compensatory mitigation of the harm. Development regulations may not allow a net loss of the functions and values of the ecosystem that includes the impacted or lost critical areas.

(5) Counties and cities must include the best available science in developing policies and development regulations to protect functions and values of critical areas. See chapter 365-195 WAC.

(6) Functions and values must be evaluated at a scale appropriate to the function being evaluated. Functions are the conditions and processes that support the ecosystem. Conditions and processes operate on varying geographic scales ranging from site-specific to watershed and even regional scales. Some critical areas, such as wetlands and fish and wildlife habitat conservation areas, may constitute ecosystems or parts of ecosystems that transcend the boundaries of individual parcels and jurisdictions, so that protection of their function, and values should be considered on a larger scale.

(7) Protecting some critical areas may require using both regulatory and nonregulatory measures. When impacts to critical areas are from development beyond jurisdictional control, counties and cities are encouraged to use regional approaches to protect functions and values. It is especially important to use a regional approach when giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Conservation and protection measures may address land uses on any lands within a jurisdiction, and not only lands with designated critical areas.

(8) Local government may develop and implement alternative means of protecting critical areas from some activities using best management practices or a combination of regulatory and nonregulatory programs. When developing alternative means of protection, counties and cities must assure no net loss of functions and values and must include the best available science.

(9) In designing development regulations and nonregulatory programs to protect designated critical areas, counties and cities should endeavor to make such regulations and programs fit together with regional, state and federal programs directed to the same environmental, health, safety and welfare ends. Local plans and policies may in some respects be adequately implemented by adopting the provisions of such other programs as part of the local regulations.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-830, filed 1/19/10, effective 2/19/10.]

365-196-835 Relocation assistance for low-income tenants.

(1) Any county or city required to plan under the act is authorized to require, after reasonable notice to the public and a public hearing, property owners to provide their portion of reasonable relocation assistance to low-income tenants displaced by certain changes to residential property. The changes include demolition, substantial rehabilitation (whether due to code enforcement or any other reason), change of use and removal of use restrictions in an assisted-housing development.

(2) As used in this section, "assisted housing development" means a multifamily rental housing development that either receives government assistance and is defined as federally assisted housing in RCW 59.28.020, or that receives other federal, state, or local government assistance and is subject to use restrictions.

(3) The regulations implementing the relocation assistance program shall be governed by the provisions of RCW 59.18.440.

(4) "Low-income tenants" means tenants whose combined total income per dwelling unit is at or below fifty percent of the median income, adjusted for family size, in the county where the tenants reside.

(5) For purposes of determining eligibility, the department must annually inform counties and cities of the appropriate dollar limits to use for median income, adjusted for family size, in different areas within the state. In deciding on these limits, the department will refer to the county-by-county family income figures published annually by the federal department of Housing and Urban Development. As soon as the federal figures become available each year, the department will review them and advise counties and cities promptly of the appropriate dollar limits and their effective dates.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-835, filed 1/19/10, effective 2/19/10.]

365-196-840 Concurrency.

(1) **Purpose**.

(a) The purpose of concurrency is to assure that those public facilities and services necessary to support development are adequate to serve that development at the time it is available for occupancy and use, without decreasing service levels below locally established minimum standards.

(b) Concurrency describes the situation in which adequate facilities are available when the impacts of development occur, or within a specified time thereafter. Concurrency ensures consistency in land use approval and the development of adequate public facilities as plans are implemented, and it prevents development that is inconsistent with the public facilities necessary to support the development.

(c) With respect to facilities other than transportation facilities counties and cities may fashion their own regulatory responses and are not limited to imposing moratoria on development during periods when concurrency is not maintained.

(2) Determining the public facilities subject to concurrency. Concurrency is required for locally owned transportation facilities and for transportation facilities of statewide significance that serve counties consisting of islands whose only connection to the mainland are state highways or ferry routes. Counties and cities may adopt a concurrency mechanism for other facilities that are deemed necessary for development. See WAC 365-196-415(5).

(3) Establishing an appropriate level of service.

(a) The concept of concurrency is based on the maintenance of specified levels of service with respect to each of the public facilities to which concurrency applies. For all such facilities, counties and cities should designate appropriate levels of service.

(b) Level of service is typically set in the capital facilities element or the transportation element of the comprehensive plan. The level of service is used as a basis for developing the transportation and capital facilities plans.

(c) Counties and cities should set level of service to reflect realistic expectations consistent with the achievement of growth aims. Setting levels of service too high could, under some regulatory strategies, result in no growth. As a deliberate policy, this would be contrary to the act.

(d) Counties and cities should coordinate with and reach agreements with other affected purveyors or service providers when establishing level of service standards for facilities or services provided by others.

(e) The level of service standards adopted by the county or city should vary based on the urban or rural character of the surrounding area and should be consistent with the land use plan and policies. The county or city should also balance the desired community character, funding capacity, and traveler expectations when adopting levels of service for transportation facilities. For example a plan that calls for a safe pedestrian environment that promotes walking or one that promotes development of a bike system so that biking trips can be substituted for auto trips may suggest using a level of service that includes measures of the pedestrian environment.

(f) For transportation facilities, level of service standards for locally owned arterials and transit routes should be regionally coordinated. In some cases, this may mean less emphasis on peak-hour automobile capacity, for example, and more emphasis on other transportation priorities. Levels of service for highways of statewide significance are set by the Washington state department of transportation. For other state highways, levels of service are set in the regional transportation plan developed under RCW 47.80.030. Local levels of service for state highways should conform to the state and regionally adopted standards found in the statewide multimodal transportation plan and regional transportation plans. Other transportation facilities, however, may reflect local priorities.

(4) Measurement methodologies.

(a) Depending on how a county or city balances these factors and the characteristics of travel in their community, a county or city may select different ways to measure travel performance. For example, counties and cities may measure performance at different times of day, week, or month (peak versus off-peak, weekday versus weekend, summer versus winter). A city or county may choose to focus on the total multimodal supply of infrastructure available for use during a peak or off-peak period. Counties and cities may also measure performance at different geographic scales (intersections, road or route segments, travel corridors, or travel zones or measure multimodal mobility within a district).

(b) In urban areas, the department recommends counties and cities adopt methodologies that analyze the transportation system from a comprehensive, multimodal perspective, as authorized by RCW 36.70A.108. Multimodal level of service methodologies and standards should consider the needs of travelers using the four major modes of travel (auto, public transportation, bicycle, and pedestrian), their impacts on each other as they share the street or intersection, and their mode specific requirements for street and intersection design and operation.

(c) Although level of service standards and measurement methodologies are interrelated, changes in methodology, even if they have an incidental effect on the resulting level of service for a particular facility, are not necessarily a change in the level of service standard.

(5) Concurrency regulations.

(a) Each planning jurisdiction should produce a regulation or series of regulations which govern the operation of that jurisdiction's concurrency management system. This regulatory scheme will set forth the procedures and processes to be used to determine whether relevant public facilities have adequate capacity to accommodate a proposed development. In addition, the scheme should identify the responses to be taken when it is determined that capacity is not adequate to accommodate a proposal. Relevant public facilities for these purposes are those to which concurrency applies under the comprehensive plan. Adequate capacity refers to the maintenance of concurrency.

(b) Compliance with applicable environmental requirements, such as ambient air quality standards or water quality standards, should have been built into the determination of the facility capacities needed to accommodate anticipated growth.

(c) The variations possible in designing a concurrency management system are many. However, such a system could include the following features:

(i) Capacity monitoring - a process for collecting and maintaining real world data on use for comparison with evolving public facility capacities in order to show at any moment how much of the capacity of public facilities is being used;

(ii) Capacity allocation procedures - a process for determining whether proposed new development can be accommodated within the existing or programmed capacity of public facilities. This can include preassigning amounts of capacity to specific zones, corridors or areas on the basis of planned growth. For any individual development this may involve:

(A) A determination of anticipated total capacity at the time the impacts of development occur.

(B) Calculation of how much of the total capacity will be used by existing developments and other planned developments at the time the impacts of development occur. If a local government does not require a concurrency certification or exempts small projects from the normal concurrency process, it should still calculate the capacity used and subtract that from the capacity available.

(C) Calculation of the amount of capacity available for the proposed development.

(D) Calculation of the impact on capacity of the proposed development, minus the effects of any mitigation provided by the applicant. (Standardized smaller developments can be analyzed based on predetermined capacity impact values.)

(E) Comparison of available capacity with project impact. For any project that places demands on public facilities, cities and counties must determine if levels of service will fall below locally established minimum standards.

(iii) Provisions for reserving capacity - a process of prioritizing the allocation of capacity to proposed developments. This process might include one of the following alternatives:

(A) Setting aside a block or blocks of available or anticipated capacity for specified types of development fulfilling an identified public interest;

(B) Adopting a first-come, first-served system of allocation, dedicating capacity to applications in the order received; or

(C) Adopting a preference system giving certain categories or specified types of development preference over others in the allocation of available capacity.

(6) Regulatory response to the absence of concurrency. The comprehensive plan should provide a strategy for responding when approval of any particular development would cause levels of service for concurrency to fall below the locally adopted standards. To the extent that any jurisdiction uses denial of development as its regulatory response to the absence of concurrency, consideration should be given to defining this as an emergency for the purposes of the ability to amend or revise the comprehensive plan.

(a) In the case of transportation, an ordinance must prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan unless improvements or strategies to accommodate the impacts of development are made concurrent with the development.

(i) These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies.

(ii) "Concurrent with development" means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

(b) If the proposed development is consistent with the land use element, relevant levels of service should be reevaluated.

(c) Other responses could include:

(i) Development of a system of deferrals, approving proposed developments in advance but deferring authority to construct until adequate public facilities become available at the location in question. Such a system should conform to and help to implement the growth phasing schedule contemplated in the land use and capital facilities elements of the plan.

(ii) Conditional approval through which the developer agrees to mitigate the impacts.

(iii) Denial of the development, subject to resubmission when adequate public facilities are made available.

(iv) Redesign of the project or implementation of demand management strategies to reduce trip generation to a level that is within the available capacity of the system.

(v) Transportation system management measures to increase the capacity of the transportation system.

(7) Form, timing and duration of concurrency approvals. The system should include provisions for how to show that a project has met the concurrency requirement, whether as part of another approval document (e.g., permit, platting decisions, planned unit development) or as a separate certificate of concurrency, possibly a transferable document. This choice, of necessity, involves determining when in the approval process the concurrency issue is evaluated and decided. Approvals, however made, should specify the length of time that a concurrency determination will remain effective, including requirements for development progress necessary to maintain approval.

(8) Provisions for interjurisdictional coordination - SEPA consistency. Counties and cities should consider integrating SEPA compliance on the project-specific level with the case-by-case process for concurrency management.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-840, filed 1/19/10, effective 2/19/10.]

365-196-845 Local project review and development agreements.

(1) The local Project Review Act (chapter 36.70B RCW) requires counties and cities planning under the act to adopt procedures for fair and timely review of project permits under RCW 36.70B.020(4), such as building permits, subdivisions, binding site plans, planned unit developments, conditional uses, and other permits or other land use actions. The project permitting procedures ensure that when counties and cities implement goal 7 of the act, under RCW 36.70A.020(7), applications for both state and local government permits should be processed in a timely and fair manner.

(2) Consolidated permit review process.

(a) Counties and cities must adopt a permit review process that provides for consolidated review of all permits necessary for a proposed project action. The permit review process must provide for the following:

(i) A consolidated project coordinator for a consolidated project permit application;

(ii) A consolidated determination of completeness;

(iii) A consolidated notice of application;

(iv) A consolidated set of hearings; and

(v) A consolidated notice of final decision that includes all project permits being reviewed through the consolidated permit review process.

(b) Counties and cities administer many different types of permits, which can generally be grouped into categories. The following are examples of project permit categories:

(i) Permits that do not require environmental review or public notice, and may be administratively approved;

(ii) Permits that require environmental review, but do not require a public hearing; and

(iii) Permits that require environmental review and/or a public hearing, and may provide for a closed record appeal.

(c) Local project review procedures should address, at a minimum, the following for each category of permit:

(i) What is required for a complete application;

(ii) How the county or city will provide notice of application;

(iii) Who makes the final decision;

(iv) How long local project review is likely to take;

(v) What fees and charges will apply, and when an applicant must pay fees and charges;

(vi) How to appeal the decision;

(vii) Whether a preapplication conference is required;

(viii) A determination of consistency; and

(ix) Requirements for provision of notice of decision.

(d) A project permit applicant may apply for individual permits separately.

(3) Project permits that may be excluded from consolidated permit review procedures. A local government may, by ordinance or resolution, exclude some permit types from these procedures. Excluded permit types may include:

(a) Actions relating to the use of public areas or facilities such as landmark designations or street vacations;

(b) Actions categorically exempt from environmental review, or for which environmental review has already been completed such as lot line or boundary adjustments, and building and other construction permits, or similar administrative approvals; or

(c) Other project permits that the local government has determined present special circumstances.

(4) RCW 36.70A.470 prohibits using project review conducted under chapter 36.70B RCW from being used as a comprehensive planning process. Except when considering an application for a major industrial development under RCW 36.70A.365, counties and cities may not consolidate project permit review with review of proposals, to amend the comprehensive plan, even if the comprehensive plan amendment is site-specific. Counties and cities may not combine a project permit application with an area-wide rezone or a text amendment to the development regulations, even if proposed along with a project permit application.

(5) Consolidated project coordinator.

(a) Counties and cities should appoint a single project coordinator for each consolidated project permit application.

(b) Counties and cities should require the applicant for a project permit to designate a single person or entity to receive determinations and notices about a project permit application as authorized by RCW 36.70A.100.

(6) Determination of complete application.

(a) A project permit application is complete for the purposes of this section when it meets the county's or city's procedural submission requirements and is sufficient for continued processing, even if additional information is required, or the project is subsequently modified.

(b) The development regulations must specify, for each type of permit application, what information a permit application must contain to be considered complete. This may vary based on the type of permit.

(c) For more complex projects, counties and cities are encouraged to use preapplication meetings to clarify the project action and local government permitting requirements and review procedures. Counties and cities may require a preapplication conference.

(d) Within twenty-eight days of receiving a project permit application, counties and cities must provide to the applicant a written determination of completeness or request for more information stating either:

(i) The application is complete; or

(ii) The application is incomplete and what is necessary to make the application complete.

(e) A determination of completeness or request for more information is required within fourteen days of the applicant providing additional requested information.

(f) The application is deemed complete if the county and city does not provide the applicant with a determination of completeness or request for more information within the twenty-eight days of receiving the application.

(g) The determination of completeness may include a preliminary determination of consistency and a preliminary determination of development regulations that will be used for project mitigation.

(h) Counties and cities may require project applicants to provide additional information or studies, either at the time of the notice of completeness or if the county or city requires new information during the course of continued review, at the request of reviewing agencies, or if the proposed action substantially changes.

(7) Identification of permits from other agencies. To the extent known, the county or city must identify other agencies of local, state, or federal governments that may have jurisdiction over some aspect of the application. However, the applicant is solely responsible for knowing of, and obtaining any permits necessary for, a project action.

(8) Notice of project permit application. Notice of a project permit application must be provided to the public and the departments and agencies with jurisdiction over the project permit application. It may be combined with the notice of complete application.

(a) What the notice of application must include:

(i) The date of application, the date of the notice of completion, and the date of the notice of application;

(ii) A description of the proposed project action and a list of the project permits included in the application and a list of any required studies;

(iii) The identification of other permits not included in the application that the proposed project may require, to the extent known by the county or city;

(iv) The identification of existing environmental documents that evaluate the proposed project;

(v) The location where the application and any studies can be reviewed;

(vi) A preliminary determination, if one has been made at the time of notice, of which development regulations will be used for project mitigation and of project consistency as provided in RCW 36.70B.040 and chapter 365-197 WAC;

(vii) Any other information determined appropriate by the local government;

(viii) A statement of the public comment period. The statement must explain the following:

(A) How to comment on the application;

(B) How to receive notice of and participate in any hearings on the application;

(C) How to obtain a copy of the decision once made; and

(D) Any rights to appeal the decision.

(ix) If the project requires a hearing or hearings, and they have been scheduled by the date of notice of application, the notice must specify the date, time, place, and type of any hearings required for the project.

(b) When the notice of application must be provided. Notice of application must be provided within fourteen days of determining an application is complete. If the project permit requires an open record predecision hearing, the county or city must provide the notice of application at least fifteen days before the open record hearing.

(c) How to provide notice of application. A county or city may provide notice in different ways for different types of project permits depending on the size and scope of the project and the types of permit approval included in the project permit. Project review procedures should specify as minimum requirements, how to provide notice for each type of permit. Cities and counties may use a variety of methods for providing notice. However, if the local government does not specify how it will provide public notice, it shall use the methods specified in RCW 36.70B.110 (4)(a) and (b). Examples of reasonable methods of providing notice are:

(i) Posting the property for site-specific proposals;

(ii) Publishing notice in written media such as in the newspaper of general circulation in the general area where the proposal is located, in appropriate regional or neighborhood newspapers, trade journals, agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; or in a local land use newsletter published by the local government;

(iii) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(iv) Notifying the news media;

(v) Mailing to neighboring property owners; or

(vi) Providing notice by posting the application and other documentation using electronic media such as an e-mail and a web site.

(9) The application comment period. The comment period must be at least fourteen days and no more than thirty days from the date of notice of application. A county or city may accept public comments any time before the record closes for an open record predecision hearing. If no open record predecision hearing is provided, a county or city may accept public comments any time before the decision on the project permit.

(10) Project review timelines. Counties and cities must establish and implement a permit process time frame for review of each type of project permit application, and for consolidated permit applications, and must provide timely and predictable procedures for review. The time periods for county or city review of each type of complete application should not exceed one hundred twenty days unless written findings specify the additional time needed for processing. Project permit review time periods established elsewhere, such as in RCW 58.17.140 should be followed for those actions. Counties and cities are encouraged to consider expedited review for project permit applications for projects that are consistent with adopted development regulations and within the capacity of system wide infrastructure improvements.

(11) Hearings. Where multiple permits are required for a single project, counties and cities must allow for consolidated permit review as provided in RCW 36.70B.120(1). Counties and cities must determine which project permits require hearings. If hearings are required for certain permit categories, the review process must provide for no more than one consolidated open record hearing and one closed record appeal. An open record appeal hearing is only allowed for permits in which no open record hearing is provided prior to the decision. Counties and cities may combine an open record hearing on one or more permits with an open record appeal hearing on other permits. Hearings may be combined with hearings required for state, federal or other permits hearings provided that the hearing is held within the geographic boundary of the local government and the state or federal agency is not expressly prohibited by statute from doing so.

(12) Project permit decisions. A county or city may provide for the same or a different decision maker, hearing body or officer for different categories of project permits. The consolidated permit review process must specify which decision maker must make the decision or recommendation, conduct any required hearings or decide an appeal to ensure that consolidated permit review occurs as provided in this section.

(13) Notice of decision.

(a) The notice of decision must include the following:

(i) A statement of any SEPA threshold determination;

(ii) An explanation of how to file an administrative appeal (if provided) of the decision; and

(iii) A statement that the affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

(b) Notice of decision should also include:

(i) Any findings on which the final decision was based;

(ii) Any conditions of permit approval conditions or required mitigation; and

(iii) The permit expiration date, where applicable.

(c) Notice of decision may be in the form of a copy of the report or decision on the project permit application, provided it meets the minimum requirements for a notice of decision.

(d) How to provide notice of decision. A local government may provide notice in different ways for different types of project permits depending on the size and scope of the project and the types of permit approval included in the project permit. Project review procedures should specify as minimum requirements, how to provide notice for each type of permit. Examples of reasonable methods of providing notice of decision are:

(i) Posting the property for site-specific proposals;

(ii) Publishing notice in written media such as in the newspaper of general circulation in the general area where the proposal is located, in appropriate regional or neighborhood newspapers, trade journals, agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; or in a local land use newsletter published by the county or city;

(iii) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(iv) Notifying the news media;

(v) Mailing to neighboring property owners; or

(vi) Providing notice and posting the application and other documentation using electronic media such as e-mail and a web site.

(e) Cities and counties must provide a notice of decision to the following:

(i) The project applicant;

(ii) Any person who requested notice of decision;

(iii) Any person who submitted substantive comments on the application; and

(iv) The county assessor's office of the county or counties in which the property is situated.

(14) Appeals. A county or city is not required to provide for administrative appeals for project permit decisions. However, where appeals are provided, procedures should allow for no more than one consolidated open record hearing, if not already held, and one closed-record appeal. Provisions should ensure that appeals are to be filed within fourteen days after the notice of final decision and may be extended to twenty-one days to allow for appeals filed under chapter 43.21C RCW.

(15) Monitoring permit decisions. Each county and city shall adopt procedures to monitor and enforce permit decisions and conditions such as periodic review of permit provisions, inspections, and bonding provisions.

(16) Code interpretation. Project permitting procedures must include adopted procedures for administrative interpretation of development regulations. For example, procedures should specify who provides an interpretation related to a specific project, and where a record of such code interpretations are kept so that subsequent interpretations are consistent. Code interpretation procedures help ensure a consistent and predictable interpretation of development regulations.

(17) Development agreements. Counties and cities are authorized by RCW 36.70B.170(1) to enter into voluntary contractual agreements to govern the development of land and the issuance of project permits. These are referred to as development agreements.

(a) Purpose. The purpose of development agreements is to allow a county or city and a property owner/developer to enter into an agreement regarding the applicable regulations, standards, and mitigation that apply to a specific development project after the development agreement is executed.

> (i) If the development regulations allow some discretion in how those regulations apply or what mitigation is necessary, the development agreement specifies how the county or city will use that discretion. Development agreements allow counties and cities to combine an agreement on the exercise of its police power with the exercise of its power to enter contracts.
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> (ii) Development agreements must be consistent with applicable development regulations adopted by a county or city. Development agreements do not provide means of waiving or amending development regulations that would otherwise apply to a project.

(iii) Counties and cities may not use development agreements to impose impact fees, inspection fees, or dedications, or require any other financial contribution or mitigation measures except as otherwise expressly authorized, and consistent with the applicable development regulations.

(b) Parties to the development agreement. The development agreement must include as a party to the agreement, the person who owns or controls the land subject to the agreement. Development agreements may also include others, including other agencies with permitting authority or service providers. Cities and counties may enter into development agreements outside of their boundaries if the agreement is part of a proposed annexation or service agreement.

(c) Content of a development agreement. The development agreement must set forth the development standards and other provisions that apply to, govern, and vest the development, use, and mitigation of the development of the real property for the duration of the agreement. These may include, but are not limited to:

(i) Project elements such as permitted uses, residential densities, and intensity of commercial or industrial land uses and building sizes;

(ii) The amount and payment of fees imposed or agreed to in accordance with any applicable laws or rules in effect at the time, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

(iii) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

(iv) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

(v) Affordable housing;

(vi) Parks and open space preservation;

(vii) Phasing;

(viii) Review procedures and standards of implementing decisions;

(ix) A build-out or vesting period for applicable standards; and

(x) Any other appropriate development requirement or procedure.

(d) The effect of development agreements. Development agreements may exercise a county's or city's authority to issue permits or its contracting authority. Once executed, development agreements are binding between the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area covering the property covered by the development agreement. The agreement grants vesting rights to the proposed development consistent with the development regulations in existence at the time of execution of the agreement. A permit approval issued by the county or city after the execution of the development agreement must be consistent with the development agreement. A development agreement may obligate a party to fund or provide services, infrastructure or other facilities. A development agreement may not obligate a county or city to adopt subsequent amendments to the comprehensive plan, development regulations or otherwise delegate legislative powers. Any such amendments must still be adopted by the legislative body following all applicable procedural requirements.

(e) A development agreement must reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

(f) Procedures.

(i) These procedural requirements are in addition to and supplemental to the procedural requirements necessary for any actions, such as rezones, street vacations or annexations, called for in a development agreement. Development agreements may not be used to bypass any procedural requirements that would otherwise apply. Counties and cities may combine hearings, analyses, or reports provided the process meets all applicable procedural requirements;

(ii) Only the county or city legislative authority may approve a development agreement;

(iii) A county or city must hold a public hearing prior to executing a development agreement. The public hearing may be conducted by the county or city legislative body, planning commission or hearing examiner, or other body designated by the legislative body to conduct the public hearing; and

(iv) A development agreement must be recorded in the county where the property is located.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-845, filed 1/19/10, effective 2/19/10.]

365-196-850 Impact fees.

(1) Counties and cities planning under the act are authorized to impose impact fees on development activities as part of public facilities financing. However, the financing for system improvements to serve new development must provide a balance between impact fees and other sources of public funds and cannot rely solely on impact fees.

(2) The decision to use impact fees should be specifically implemented through development regulations. The regulations should call for a specific finding on all three of the following limitations whenever an impact fee is imposed. The impact fees:

(a) Must only be imposed for system improvements that are reasonably related to the new development. "System improvements" (in contrast to "project improvements") are public facilities included in the capital facilities plan that are designed to provide service to service areas within the community at large;

(b) Must not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and

(c) Must be used for system improvements that will reasonably benefit the new development.

(3) Impact fees may be collected and spent only for the following capital facilities owned or operated by government entities:

(a) Public streets and roads;

(b) Publicly owned parks;

(c) Open space and recreation facilities;

(d) School facilities; and

(e) Fire protection facilities in jurisdictions that are not part of a fire district.

(4) Capital facilities for which impact fees will be imposed must have been addressed in a capital facilities plan element which identifies:

(a) Deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated within a reasonable period of time;

(b) Additional demands placed on existing public facilities by new development; and

(c) Additional public facility improvements required to serve new development.

(5) The local ordinance by which impact fees are imposed must conform to the provisions of RCW 82.02.060. The department recommends that jurisdictions include the authorized exemption for low-income housing.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-850, filed 1/19/10, effective 2/19/10.]

365-196-855 Protection of private property.

In the drafting of development regulations, counties and cities must use the attorney general's process of evaluation issued pursuant to RCW 36.70A.370, to assure that governmental actions do not result in an unconstitutional taking of private property. Procedures for avoiding takings, such as variances or exemptions, should be built into the overall regulatory process.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-855, filed 1/19/10, effective 2/19/10.]

365-196-860 Treatment of residential structures occupied by persons with handicaps.

(1) Counties and cities planning under the act may not enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals.

(2) The term "handicap" is defined by the federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3602). It pertains to a person who:

(a) Has a physical or mental impairment that substantially limits one or more of their major life activities;

(b) Has a record of having such impairment; or

(c) Is regarded as having such impairment.

It does not include current, illegal use of or addiction to a controlled substance (as defined in 21 U.S.C. Sec. 802).

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-860, filed 1/19/10, effective 2/19/10.]

365-196-865 Family day-care providers.

(1) Counties and cities may not prohibit the use of a residential dwelling as a family day-care provider's home facility that is located in an area zoned for residential or commercial land uses. However, counties and cities may regulate such use as a conditional use. Counties and cities may prohibit such use if it would create an incompatible use adjacent to resource lands of long-term commercial significance. Counties and cities may prohibit such use in the primary crash zone of an airport or aviation facility.

(2) See WAC 365-196-210 for the definition of "family day-care providers" used in this section.

(3) A county or city may require the family day-care provider to comply with building and land use regulations. They can require the provider to be certified by the department of early learning and to comply with the sign code; as well as any building, fire, safety, health code, and business licensing requirements. They can also limit the hours of operation to keep the day-care from disrupting other neighborhood uses, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

(4) The county or city might also require the family day-care provider to show that they notified adjoining property owners of their intent to locate and maintain a family day-care near them.

(5) If disputes arise between neighbors and the family day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute. A forum, in this case, refers to a meeting of the affected parties to discuss and resolve the dispute.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-865, filed 1/19/10, effective 2/19/10.]

365-197 WAC PROJECT CONSISTENCY

365-197-010 Purpose of a project consistency rule.

The Local Project Review Act (chapter 36.70B RCW) authorizes the department of community, trade, and economic development to develop and adopt by rule criteria to assist local governments planning under RCW 36.70A.040 to analyze the consistency of project actions. These criteria are to be jointly developed with the department of ecology (RCW 36.70B.040(5)).

A basic principle of the Growth Management Act (GMA) and the Local Project Review Act is that land use decisions made in adopting a comprehensive plan and development regulations under chapter 36.70A RCW should not be revisited during project review. When review of a project indicates that it is consistent with earlier land use decisions, that project should not be reevaluated or scrutinized with respect to whether those decisions were appropriate. Given the number of jurisdictions and agencies in the state, it is essential to establish a uniform framework for jurisdictions planning under the GMA to consider the consistency of a proposed project with the applicable development regulations or, in the absence of applicable regulations, the adopted comprehensive plan.

Consistency should be considered in the project review process by analyzing four factors found in applicable regulations or plans. The four factors are:

(1) The type of land use allowed;

(2) The level of development allowed, such as dwelling units per acre or other measures of intensity;

(3) Infrastructure, such as the adequacy of public facilities and services to serve the proposed project; and

(4) The characteristics of the proposed development, such as assessment for compliance with specific development regulations or standards.

This uniform approach is based upon existing project review practices and should not place a "new" burden on applicants or local government. The intent is that consistency analysis be largely a matter of code checking for most projects, which are simple or routine. More complex projects may require more analysis of these factors, including any required studies. During project review, a question may be raised about whether a project is consistent with applicable regulations or plans after some initial analysis. A project's consistency with applicable development regulations may not initially be clear due to the complexity of the project or the regulations. For example, provision for infrastructure. In these cases, the criteria in the rule are intended to provide guidance to local government, applicants, and reviewers in conducting a consistency analysis. The criteria are not intended for every aspect of the project, only for those aspects where there are still questions of consistency after the initial review.

This rule is advisory in nature. As provided by RCW 36.70B.040, local governments may develop and apply their own procedures for determining project consistency.

[Statutory Authority: RCW 36.70B.040. 01-13-039, § 365-197-010, filed 6/13/01, effective 7/14/01.]

365-197-020 Definitions.

(1) "**GMA**" means the Growth Management Act, chapter 36.70A RCW and those statutes codified in other chapters of the Revised Code of Washington that were enacted or amended as part of chapter 17, Laws of 1990 1st ex. sess. and chapter 32, Laws of 1991 sp. sess.

(2) "**GMA county/city**" means a county or city that is planning under RCW 36.70A.040.

(3) "S**EPA**" means the State Environmental Policy Act of 1971, chapter 43.21C RCW, and the SEPA rules, chapter 197-11 WAC, as enacted or later amended.

[Statutory Authority: RCW 36.70B.040. 01-13-039, § 365-197-020, filed 6/13/01, effective 7/14/01.]

365-197-030 Integrated project review — GMA project consistency analysis and environmental review under SEPA.

The GMA is a fundamental building block of regulatory reform. The GMA should serve as an integrating framework for other land use-related laws. (ESHB 1724, Section 1.)

Integration of permit review and environmental review is intended to eliminate duplication in processes and requirements. The legislature recognized that consistency analysis and determinations of whether environmental impacts have been adequately addressed involve many of the same studies and analyses. SEPA substantive authority should not be used to condition or deny a permit for those impacts adequately addressed by the applicable development regulations.

The primary role of environmental review under SEPA at the project level is to focus on those environmental impacts that have not been addressed by a GMA county's/city's development regulations and/or comprehensive plan adopted under chapter 36.70A RCW, or other local, state, and federal laws and regulations. SEPA substantive authority should only be used when the impacts cannot be adequately addressed by existing laws. As consistency analysis involves the application of development regulations and/or the comprehensive plan to a specific project, it will also help answer the question of whether a project's environmental impacts have been adequately addressed by the regulations and/or plan policies.

During project review, a GMA county/city may determine that some or all of the environmental impacts of the project have been addressed by its development regulations, comprehensive plan, or other applicable local, state, or federal laws or rules (RCW 43.21C.240 and WAC 197-11-158). The GMA county/city may make this determination during the course of environmental review and preparation of a threshold determination (including initial consistency review), if the impacts have been adequately addressed in the applicable regulations, plan policies, or other laws. "Adequately addressed" is defined as having identified the impacts and avoided, otherwise mitigated, or designated as acceptable the impacts associated with certain levels of service, land use designations, development standards, or other land use planning decisions required or allowed under the GMA. Once a determination has been made that an impact has been adequately addressed, the jurisdiction may not require additional mitigation for that impact under its SEPA substantive authority.

Thus, through the project review process:

> (1) If the applicable regulations require studies that adequately analyze all of the project's specific probable adverse environmental impacts, additional studies under SEPA will not be necessary on those impacts;
>
> (2) If the applicable regulations require measures that adequately address such environmental impacts, additional measures would likewise not be required under SEPA; and

(3) If the applicable regulations do not adequately analyze or address a proposal's specific probable adverse environmental impacts, SEPA provides the authority and procedures for additional review. (Note to RCW 43.21C.240.)

[Statutory Authority: RCW 36.70B.040. 01-13-039, § 365-197-030, filed 6/13/01, effective 7/14/01.]

365-197-040 Definition and review of project consistency.

(1) "Project consistency" refers to whether a project is consistent with adopted and applicable development regulations, or in their absence, comprehensive plans adopted under chapter 36.70A RCW.

(2) Project review for consistency is not subject to the provisions of this chapter for regulations or plans that:

(a) Do not exist or have not been adopted under chapter 36.70A RCW; or

(b) Do not apply to the particular project (e.g., no need to review compliance with flood plain ordinances if the site is not in a flood plain).

(3) The adopted and applicable development regulations/plans that apply to a project fall into four basic categories, which are defined in different levels of detail by GMA counties/cities:

(a) Type of land use;

(b) Level of development (dwelling units per acre or other measures of density);

(c) Infrastructure to support the proposed project (public facilities and services); and

(d) The other characteristics of the development (how the project is sited or otherwise built and operated from a growth management/land use and environmental perspective).

(4) Reviewing consistency in these four categories will be largely a code-checking exercise for relatively simple or routine projects in GMA counties/cities with specific development regulations, while more complex projects or projects that affect critical areas may require more analysis.

[Statutory Authority: RCW 36.70B.040. 01-13-039, § 365-197-040, filed 6/13/01, effective 7/14/01.]

365-197-050 Criteria to analyze consistency of project actions.

(1) In considering the four basic categories of project consistency, it may not be clear on initial review whether a project is consistent with a particular applicable development regulation, or in its absence, the comprehensive plan. The following criteria, in the form of questions, are intended to assist cities/counties, applicants, and reviewers in analyzing for consistency.

(a) Type of land use: Is the project's proposed land use within the range of allowable uses identified for this site in the comprehensive plan/development regulation? This would include uses that may be allowed under certain circumstances if they satisfy approval criteria, for example, planned unit developments, conditional uses, or special uses.

(b) Level of development: Is the project's proposed land use within the range of densities, including dwelling units per acre or other measures of intensity, as defined in the comprehensive plan/development regulations? Other measures of intensity may include, but are not limited to, such measures as square footage of nonresidential development, number of employees, or floor area ratio.

(c) Infrastructure: Are the system-wide public facilities and services necessary to serve the development available? To make this decision, the local jurisdiction should ask:

(i) Is the system-wide infrastructure sufficient to serve the development? (If yes, no need to ask the next question.)

(ii) Have any system improvements needed for the proposed development and site:

(A) Been identified as necessary to support development in the comprehensive plan; and

(B) Had provision for funding in the comprehensive plan (e.g., capital facilities plan, utilities element, transportation improvement plan)? Alternatively, can the applicant demonstrate capacity, e.g., through a certificate of concurrency process? (If yes, no need to ask the next question.)

(iii) Will the proposed project use more capacity than the usage or assumptions on which the capital facilities plan, utilities element, or transportation improvement plan were based, or will the project cause current service levels to fall below level of service standards identified in the comprehensive plan? (If yes, does the applicant want to pay for the improvements or allow the GMA county/city to docket the issue for future plan amendment?)

(d) Characteristics of development: Does the proposed project:

(i) Meet or fall within the range of numerical standards that apply? (Examples of numerical standards may include, but are not limited to, number of dwelling units per acre, floor area ratio, building setbacks, building height, lot size, lot coverage, minimum width and depth for new lots, parking requirements, and density/intensity bonuses or incentives. In applying some of these standards, some overlap may occur with the analysis for level of development, i.e., units per acre and floor area ratio.)

(ii) Promote or not substantially conflict with narrative standards that apply? (Examples of narrative standards include performance standards, engineering or design criteria, methods for determining compliance such as monitoring or contingency plans, and mandatory policies or criteria.) Analysis of consistency with narrative standards may be contingent upon preparation, completion, and approval of required studies, plans, determinations, or monitoring (e.g., delineation of critical areas, mitigation plans, etc.).

(e) For purposes of this section, "system-wide" infrastructure means those public services or facilities that may be needed to serve a geographic area greater than the specific site on which the project is located. For example, sewer systems, water systems, or transportation systems that serve a geographic area beyond the project site. Public services or facilities that are not system-wide and may be needed on or near a proposed project (such as drainage facilities, utility connections or transportation improvements to primarily serve the project) should be addressed through analysis of the characteristics of development.

(2) Analysis of project consistency should take into consideration regulatory standards and policies that provide a method to reconcile a project's proposed type of development, level of development, infrastructure needs, or characteristics of development with development regulation and/or comprehensive plan requirements. Such provisions include, but are not limited to, variance and conditional use procedures, innovative land use techniques, developer funding for infrastructure construction or improvements, and project-specific mitigation measures.

(3) If the information needed to analyze project consistency does not exist in the applicable development regulations or comprehensive plan, the county or city should determine whether a deficiency exists pursuant to WAC 365-197-060.

[Statutory Authority: RCW 36.70B.040. 01-13-039, § 365-197-050, filed 6/13/01, effective 7/14/01.]

365-197-060 Definition of plan "deficiency" identified in project review and how such deficiencies should be docketed.

(1) Project review may continue under SEPA and other applicable laws, if, during project review, a GMA county/city identifies a deficiency in the applicable development regulations or the policies in the comprehensive plan. The identified deficiency shall be docketed for possible future development regulation or plan amendments. The applicant may proceed as provided in subsection (4)(c) of this section. The project review process shall not be used as a comprehensive planning process. Docketed deficiencies shall be considered through the normal amendment process for comprehensive plans or development regulations.

(2) "Deficiency" in a development regulation or comprehensive plan refers to the absence of required or potentially desirable1 contents of a comprehensive plan or development regulation. It does not refer to whether a development regulation adequately addresses a project's probable specific adverse environmental impacts, which the permitting agency could mitigate in the normal project review process. Some project-specific impacts could be identified that the agency will need to or prefer to address at the project level rather than in the comprehensive plan or development regulations.

For purposes of docketing, use of the term "deficiency" shall not mean that a comprehensive plan or development regulation adopted by a county or city under chapter 36.70A RCW is invalid or out of compliance with chapter 36.70A RCW. Docketing is intended to allow and encourage GMA counties/cities to improve their plans and regulations as a result of experience in reviewing projects, but without stopping review of the project that may have disclosed the "deficiency."

(3) A project should not be found to be inconsistent with applicable regulations or the plan if the inconsistency is the result of a deficiency of one of the four criteria for project consistency. The deficiency should be docketed for possible future regulation or plan amendments, and the project proponent can proceed with either of the options provided in subsection (4) of this section.

(4) If all of the information to analyze consistency does not exist in the regulations or plan, the absent policy or regulatory information should be docketed for possible future regulation or plan amendments. At this point the applicant may:

(a) Await docketing and decision on the proposed amendment to address the deficiency before proceeding with the project review process; or

(b) Proceed with the project review process under SEPA and other applicable laws.

[Statutory Authority: RCW 36.70B.040. 01-13-039, § 365-197-060, filed 6/13/01, effective 7/14/01.]

365-197-070 Appeals of consistency.

(1) When and how appeals of consistency may fit into a GMA county's/city's appeal process depends upon the individual jurisdiction's project review and appeals process. Nothing in this section requires documentation or dictates a GMA county's/city's procedures for considering consistency.

(2) Fundamental land use planning decisions made in comprehensive plans and development regulations should not be revisited at the project level. During project review, the local government or any subsequent reviewing body shall not reexamine alternatives to or hear appeals on the planning decisions specified in subsection (3)(a) through (c) of this section, except for issues of code interpretation. The planning decisions in subsection (3)(a) through (c) of this section are a subset of the four basic categories of criteria for analyzing project consistency under WAC 365-197-050 (1)(a) through (d). The planning decisions in subsection (3)(a) through (c) of this section are identified in RCW 36.70B.030(2) as decisions that are determinative and cannot be reexamined at the project level if they have been addressed in the development regulations and/or comprehensive plan. As project review includes environmental review, the local government or subsequent reviewing body shall not reexamine or hear appeals on how the environmental impacts of those planning decisions in subsection (3)(a) through (c) of this section were addressed under chapter 43.21C RCW. However, if environmental information is required to analyze project consistency under subsection (3)(a) through (c) of this section and that information is not available, the decision may still be challenged under SEPA.

(3) During project review, a GMA county/city or any subsequent reviewing body shall determine whether the items listed in (a) through (c) of this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations, the adopted comprehensive plan under chapter 36.70A RCW. At a minimum, such applicable regulations or plans shall be determinative of the:

(a) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;

(b) Density of residential development in urban growth areas, including densities that may be allowed under certain circumstances, such as planned unit developments and density bonuses;

(c) Availability and adequacy of public facilities:

(i) That are needed to serve the proposed development;

(ii) That are identified in the comprehensive plan; and

(iii) For which the plan or development regulations identify the probable sources of funding, as required by chapter 36.70A RCW.

(4) Upon a determination of consistency of the project with the planning decisions in subsection (3)(a) through (c) of this section, no further analysis of the project with respect to those items will be required. However, because the planning decisions in subsection (3)(a) through (c) of this section do not include all of the project review criteria in WAC 365-197-050 (1)(a) through (d), further analysis may be required to apply the remaining criteria listed in WAC 365-197-050 (1)(a) through (d) that are not addressed in the planning decisions in subsection (3)(a) through (c) of this section. For example, analysis of residential densities outside the urban growth area or the character of development may still need to be addressed.

(5) For purposes of this section, "code interpretation" includes the correct application of the applicable regulations or plan to the project. As part of its project review process, each GMA county/city must adopt procedures for obtaining a code interpretation pursuant to RCW 36.70B.030(3) and 36.70B.110(11). A GMA county/city may provide a formal or informal process for code interpretation. The GMA county or city or subsequent reviewing body may consider comments on the application of regulations or the plan to the project without requiring a formal code interpretation.

(6) As provided above, agencies should not be revisiting fundamental land use planning decisions made in comprehensive plans and development regulations at the project level. However, nothing is this chapter limits the authority of a permitting agency to approve, condition, or deny a project as provided in its development regulations adopted under chapter 36.70A RCW and in its SEPA substantive policies adopted under RCW 43.21C.060. An agency may still use its authority under adopted development regulations or SEPA substantive policies to condition a project. For example, an agency may condition a project to reduce neighborhood traffic or traffic impacts, which could have the effect of reducing the level of development otherwise permitted by zoning ordinance.

[Statutory Authority: RCW 36.70B.040. 01-13-039, § 365-197-070, filed 6/13/01, effective 7/14/01.]

365-197-080 An agency may deny a project based upon consistency analysis.

(1) An agency has the authority to deny a project if it:

(a) Is inconsistent and does not comply with the applicable development regulations, or in their absence, the adopted comprehensive plan;

(b) Will result in significant adverse environmental impacts which cannot be mitigated per RCW 43.21C.060 and WAC 197-11-660; or

(c) Does not comply with other local, state, or federal law and rules, and the local jurisdiction has the authority to deny based upon these other laws and rules.

(2) This rule is not intended to modify any criteria developed by a GMA county/city for denying a project.

[Statutory Authority: RCW 36.70B.040. 01-13-039, § 365-197-080, filed 6/13/01, effective 7/14/01.]