

Title 332 WAC

NATURAL RESOURCES, BOARD AND DEPARTMENT OF

Chapters

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- 332-40-030 Integration of SEPA procedures with other department operations. [Order 259, § 332-40-030, filed 6/10/76; Order 257, § 332-40-030, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-035 Statute of limitations. [Order 259, § 332-40-035, filed 6/10/76; Order 257, § 332-40-035, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-037 SEPA public information center. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-037, filed 4/11/78; Order 259, § 332-40-037, filed 6/10/76; Order 257, § 332-40-037, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-040 Definitions. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-040, filed 4/11/78; Order 259, § 332-40-040, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. Later promulgation, see WAC 332-41-040.
- 332-40-045 Responsible official. [Order 259, § 332-40-045, filed 6/10/76; Order 257, § 332-40-045, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-050 Use of the environmental checklist form. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-050, filed 4/11/78; Order 259, § 332-40-050, filed 6/10/76; Order 257, § 332-40-050, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-055 Timing of the EIS process. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-055, filed 4/11/78; Order 259, § 332-40-055, filed 6/10/76; Order 257, § 332-40-055, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. Later promulgation, see WAC 332-41-055.
- 332-40-060 Scope of a proposal and its impacts for the purposes of lead agency determination, threshold determination, and EIS preparation. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-060, filed 4/11/78; Order 259, § 332-40-060, filed 6/10/76; Order 257, § 332-40-060, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-100 Summary of information which may be required of a private applicant. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-100, filed 4/11/78; Order 259, § 332-40-100, filed 6/10/76; Order 257, § 332-40-100, filed 5/21/76.] Repealed by 84-18-

DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

Chapter 332-40

GUIDELINES INTERPRETING AND IMPLEMENTING THE STATE ENVIRONMENTAL POLICY ACT

- 332-40-010 Authority. [Order 259, § 332-40-010, filed 6/10/76; Order 257, § 332-40-010, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. Later promulgation, see WAC 332-41-010.
- 332-40-020 Purpose. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-020, filed 4/11/78; Order 259, § 332-40-020, filed 6/10/76; Order 257, § 332-40-020, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. Later promulgation, see WAC 332-41-030.
- 332-40-025 Scope and coverage of this chapter. [Order 259, § 332-40-025, filed 6/10/76; Order 257, § 332-40-025, filed 5/21/76.] Repealed by 84-18-052 (Order

- 052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-160 No presumption of significance for nonexempt actions. [Order 259, § 332-40-160, filed 6/10/76; Order 257, § 332-40-160, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-170 Categorical exemptions. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-170, filed 4/11/78; Order 259, § 332-40-170, filed 6/10/76; Order 257, § 332-40-170, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-175 Exemptions and nonexemptions applicable to specific state agencies. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-175, filed 4/11/78; Order 268, § 332-40-175, filed 7/21/76; Order 259, § 332-40-175, filed 6/10/76; Order 257, § 332-40-175, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-177 Environmentally sensitive areas. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-177, filed 4/11/78; Order 259, § 332-40-177, filed 6/10/76; Order 257, § 332-40-177, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-180 Exemption for emergency actions. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-180, filed 4/11/78; Order 259, § 332-40-180, filed 6/10/76; Order 257, § 332-40-180, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-190 Use and effect of categorical exemptions. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-190, filed 4/11/78; Order 259, § 332-40-190, filed 6/10/76; Order 257, § 332-40-190, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-200 Lead agency—Responsibilities. [Order 259, § 332-40-200, filed 6/10/76; Order 257, § 332-40-200, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-203 Determination of lead agency—Procedures. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-203, filed 4/11/78; Order 259, § 332-40-203, filed 6/10/76; Order 257, § 332-40-203, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-205 Lead agency designation—Department proposals. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-205, filed 4/11/78; Order 259, § 332-40-205, filed 6/10/76; Order 257, § 332-40-205, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-210 Lead agency designation—Proposals involving both private and public construction activity. [Order 259, § 332-40-210, filed 6/10/76; Order 257, § 332-40-210, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-215 Lead agency designation—Private projects for which the department is the only agency with jurisdiction. [Order 259, § 332-40-215, filed 6/10/76; Order 257, § 332-40-215, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-220 Lead agency designation—Private projects requiring licenses from more than one agency, when one of the agencies is a county/city. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-220, filed 4/11/78; Order 259, § 332-40-220, filed 6/10/76; Order 257, § 332-40-220, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-225 Lead agency designation—Private projects requiring licenses from more than one state agency. [Order 259, § 332-40-225, filed 6/10/76; Order 257, § 332-40-225, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-230 Lead agency designation—Specific proposals. [Order 259, § 332-40-230, filed 6/10/76; Order 257, § 332-40-230, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-240 Agreements as to lead agency status. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-240, filed 4/11/78; Order 259, § 332-40-240, filed 6/10/76; Order 257, § 332-40-240, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-245 Agreements between agencies as to division of lead agency duties. [Order 259, § 332-40-245, filed 6/10/76; Order 257, § 332-40-245, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-260 Dispute as to lead agency determination—Resolution by CEP. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-260, filed 4/11/78; Order 259, § 332-40-260, filed 6/10/76; Order 257, § 332-40-260, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-300 Threshold determination requirement. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-300, filed 4/11/78; Order 259, § 332-40-300, filed 6/10/76; Order 257, § 332-40-300, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-305 Designation of responsible official. [Order 259, § 332-40-305, filed 6/10/76; Order 257, § 332-40-305, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-310 Threshold determination procedures—Environmental checklist. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-310, filed 4/11/78; Order 259, § 332-40-310, filed 6/10/76; Order 257, § 332-40-310, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-315 Actions requiring a threshold determination. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-315, filed 4/11/78; Order 259, § 332-40-315, filed 6/10/76; Order 257, § 332-40-315, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW

- and RCW 43.30.150. Later promulgation, see WAC 332-41-310.
- 332-40-320 Threshold determination procedures—Initial review of environmental checklist. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-320, filed 4/11/78; Order 259, § 332-40-320, filed 6/10/76; Order 257, § 332-40-320, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-330 Threshold determination procedures—Information in addition to checklist. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-330, filed 4/11/78; Order 259, § 332-40-330, filed 6/10/76; Order 257, § 332-40-330, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-340 Threshold determination procedures—Negative declarations. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-340, filed 4/11/78; Order 259, § 332-40-340, filed 6/10/76; Order 257, § 332-40-340, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-345 Assumption of lead agency status by the department when it is an agency with jurisdiction over a proposal—Prerequisites, effect and form of notice. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-345, filed 4/11/78; Order 259, § 332-40-345, filed 6/10/76; Order 257, § 332-40-345, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-350 Affirmative threshold determination. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-350, filed 4/11/78; Order 259, § 332-40-350, filed 6/10/76; Order 257, § 332-40-350, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-355 Form of declaration of significance/nonsignificance. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-355, filed 4/11/78; Order 259, § 332-40-355, filed 6/10/76; Order 257, § 332-40-355, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-360 Threshold determination criteria—Application of environmental checklist. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-360, filed 4/11/78; Order 259, § 332-40-360, filed 6/10/76; Order 257, § 332-40-360, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-365 Environmental checklist. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-365, filed 4/11/78; Order 259, § 332-40-365, filed 6/10/76; Order 257, § 332-40-365, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-370 Withdrawal of affirmative threshold determination. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-370, filed 4/11/78; Order 259, § 332-40-370, filed 6/10/76; Order 257, § 332-40-370, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-375 Withdrawal of negative threshold determination. [Order 259, § 332-40-375, filed 6/10/76; Order 257, § 332-40-375, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-400 Duty to begin preparation of a draft EIS. [Order 259, § 332-40-400, filed 6/10/76; Order 257, § 332-40-400, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-405 Purpose and function of a draft EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-405, filed 4/11/78; Order 259, § 332-40-405, filed 6/10/76; Order 257, § 332-40-405, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-410 Predraft consultation procedures. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-410, filed 4/11/78; Order 259, § 332-40-410, filed 6/10/76; Order 257, § 332-40-410, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-420 Preparation of EIS by persons outside the department. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-420, filed 4/11/78; Order 259, § 332-40-420, filed 6/10/76; Order 257, § 332-40-420, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. Later promulgation, see WAC 332-41-420.
- 332-40-425 Organization and style of a draft EIS. [Order 259, § 332-40-425, filed 6/10/76; Order 257, § 332-40-425, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-440 Contents of a draft EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-440, filed 4/11/78; Order 259, § 332-40-440, filed 6/10/76; Order 257, § 332-40-440, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-442 Special considerations regarding contents of an EIS on a nonproject action. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-442, filed 4/11/78; Order 259, § 332-40-442, filed 6/10/76; Order 257, § 332-40-442, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-444 List of elements of the environment. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-444, filed 4/11/78; Order 259, § 332-40-444, filed 6/10/76; Order 257, § 332-40-444, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-446 Draft EIS—Optional additional elements—Limitation. [Order 259, § 332-40-446, filed 6/10/76; Order 257, § 332-40-446, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-450 Public awareness of availability of draft EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-450, filed 4/11/78; Order 259, § 332-40-450, filed 6/10/76; Order 257, § 332-40-450, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed

- 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-455 Circulation of the draft EIS—Review period. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-455, filed 4/11/78.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-460 Specific agencies to which draft EIS shall be sent. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-460, filed 4/11/78; Order 259, § 332-40-460, filed 6/10/76; Order 257, § 332-40-460, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-465 Agencies possessing environmental expertise. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-465, filed 4/11/78; Order 259, § 332-40-465, filed 6/10/76; Order 257, § 332-40-465, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-470 Cost to the public for reproduction of environmental documents. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-470, filed 4/11/78; Order 259, § 332-40-470, filed 6/10/76; Order 257, § 332-40-470, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-480 Public hearing on a proposal—When required. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-480, filed 4/11/78; Order 259, § 332-40-480, filed 6/10/76; Order 257, § 332-40-480, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-485 Notice of public hearing on environmental impact of the proposal. [Order 259, § 332-40-485, filed 6/10/76; Order 257, § 332-40-485, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-490 Public hearing on the proposal—Use of environmental documents. [Order 259, § 332-40-490, filed 6/10/76; Order 257, § 332-40-490, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-495 Preparation of amended or new draft EIS. [Order 259, § 332-40-495, filed 6/10/76; Order 257, § 332-40-495, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-500 Department responsibilities when consulted as an agency with jurisdiction. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-500, filed 4/11/78; Order 259, § 332-40-500, filed 6/10/76; Order 257, § 332-40-500, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-520 Department responsibilities when consulted as an agency with environmental expertise. [Order 259, § 332-40-520, filed 6/10/76; Order 257, § 332-40-520, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-530 Responsibilities of the department—When predraft consultation has occurred. [Order 259, § 332-40-530, filed 6/10/76; Order 257, § 332-40-530, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-535 Cost of performance of consulted agency responsibilities. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-535, filed 4/11/78; Order 259, § 332-40-535, filed 6/10/76; Order 257, § 332-40-535, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-540 Limitations on responses to consultation. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-540, filed 4/11/78; Order 259, § 332-40-540, filed 6/10/76; Order 257, § 332-40-540, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-545 Effect of no written comment. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-545, filed 4/11/78; Order 259, § 332-40-545, filed 6/10/76; Order 257, § 332-40-545, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-570 Preparation of the final EIS—Contents—When no critical comments received on the draft EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-570, filed 4/11/78; Order 259, § 332-40-570, filed 6/10/76; Order 257, § 332-40-570, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-580 Preparation of the final EIS—Contents—When critical comments received on the draft EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-580, filed 4/11/78; Order 259, § 332-40-580, filed 6/10/76; Order 257, § 332-40-580, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-600 Circulation of the final EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-600, filed 4/11/78; Order 259, § 332-40-600, filed 6/10/76; Order 257, § 332-40-600, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-650 Effect of an adequate final EIS prepared pursuant to NEPA. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-650, filed 4/11/78; Order 259, § 332-40-650, filed 6/10/76; Order 257, § 332-40-650, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-652 Supplementation by the department of an inadequate final NEPA EIS. [Order 259, § 332-40-652, filed 6/10/76; Order 257, § 332-40-652, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-660 Use of previously prepared EIS for a different proposed action. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-660, filed 4/11/78; Order 259, § 332-40-660, filed 6/10/76; Order 257, § 332-40-660, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-690 Use of another lead agency's EIS by the department for the same proposal. [Statutory Authority: RCW

- 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-690, filed 4/11/78; Order 259, § 332-40-690, filed 6/10/76; Order 257, § 332-40-690, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-695 Draft and final supplements to a revised EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-695, filed 4/11/78; Order 259, § 332-40-695, filed 6/10/76; Order 257, § 332-40-695, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-700 EIS combined with existing planning and review processes. [Order 259, § 332-40-700, filed 6/10/76; Order 257, § 332-40-700, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-710 No action for seven days after publication of the final EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-710, filed 4/11/78.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-800 Amendments to this chapter. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-800, filed 4/11/78; Order 259, § 332-40-800, filed 6/10/76; Order 257, § 332-40-800, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-830 SEPA public information center. [Order 259, § 332-40-830, filed 6/10/76; Order 257, § 332-40-830, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-835 Regional SEPA public information centers. [Order 259, § 332-40-835, filed 6/10/76; Order 257, § 332-40-835, filed 5/21/76.] Repealed by 78-05-015 (Order 292), filed 4/11/78. Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810.
- 332-40-840 Application of agency guidelines to ongoing actions. [Order 259, § 332-40-840, filed 6/10/76; Order 257, § 332-40-840, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
- 332-40-910 Severability. [Order 259, § 332-40-910, filed 6/10/76; Order 257, § 332-40-910, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.
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Chapter 332-08 WAC PRACTICE AND PROCEDURE

WAC

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332-08-570 Petitions for rule making, amendment, or repeal—
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WAC 332-08-010 Appearance and practice before agency--Who may appear. No person may appear in a representative capacity before the department of natural resources or its designated hearing officer other than the following:

(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington.

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law.

(3) A bona fide officer, partner, or full-time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association, partnership, or corporation.

[Regulation .08.010, filed 2/7/61.]

WAC 332-08-020 Appearance and practice before agency--Appearance in certain proceedings may be limited to attorneys. In all hearings involving the taking of testimony and the formulation of a record subject to review by the courts, where the department of natural resources or its designated hearing officer determines that representative activity in such hearing requires a high degree of legal training, experience, and skill, the department of natural resources or its designated hearing officer may limit those who may appear in a representative capacity to attorneys at law.

[Regulation .08.020, filed 2/7/61.]

WAC 332-08-040 Appearance and practice before agency--Standards of ethical conduct. All persons appearing in proceedings before the department of natural resources in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any such person does not conform to such standards, the department of natural resources may decline to permit such person to appear in a representative capacity in any proceeding before the department.

[Regulation .08.040, filed 2/7/61.]

WAC 332-08-050 Appearance and practice before agency--Appearance by former employee of department or former member of the attorney general's staff. No former employee of the department of natural resources or member of the attorney general's staff may at any time after severing his employment with the department or the attorney general appear, except with the written permission of the department, in a representative capacity on behalf of other parties in a formal proceeding wherein he previously took an active part as a representative of the department.

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[Regulation 08.050, filed 2/7/61.]

WAC 332-08-060 Appearance and practice before agency--Former employee as expert witness. No former employee of the department of natural resources shall at any time after severing his employment with the department appear, except with the written permission of the department, as an expert witness on behalf of other parties in a formal proceeding wherein he previously took an active part in the investigation as a representative of the department.

[Regulation .08.060, filed 2/7/61.]

WAC 332-08-070 Computation of time. In computing any period of time prescribed or allowed by the department of natural resources rules, by order of the department or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

[Regulation .08.070, filed 2/7/61.]

WAC 332-08-080 Notice and opportunity for hearing in contested cases. In any contested case, all parties shall be served with a notice at least ten days before the date set for the hearing. The notice shall state the time, place, and issues involved, as required by RCW 34.04.090(1).

[Regulation .08.080, filed 2/7/61.]

WAC 332-08-090 Service of process--By whom served. The department of natural resources shall cause to be served all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it.

[Regulation .08.090, filed 2/7/61.]

WAC 332-08-100 Service of process--Upon whom served. All papers served by either the department of natural resources or any party shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact.

[Regulation .08.100, filed 2/7/61.]

WAC 332-08-110 Service of process--Service upon parties. The final order, and any other paper required to be served by the agency upon a party, shall be served upon such party or upon the agent designated by him or

by law to receive service of such papers, and a copy shall be furnished to counsel of record.

[Regulation .08.110, filed 2/7/61.]

WAC 332-08-120 Service of process--Method of service. Service of papers shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail, or by telegraph.

[Regulation .08.120, filed 2/7/61.]

WAC 332-08-130 Service of process--When service complete. Service upon parties shall be regarded as complete: By mail, upon deposit in the United States mail properly stamped and addressed; by telegraph, when deposited with a telegraph company properly addressed and with charges prepaid.

[Regulation .08.130, filed 2/7/61.]

WAC 332-08-140 Service of process--Filing with agency. Papers required to be filed with the department of natural resources shall be deemed filed upon actual receipt by the department accompanied by proof of service upon parties required to be served.

[Regulation .08.140, filed 2/7/61.]

WAC 332-08-150 Subpoenas where provided by law--Form. Every subpoena shall be issued in the name of the department of natural resources and shall set forth the title of the proceeding, if any, and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents or things under his control at a specified time and place.

[Regulation .08.150, filed 2/7/61.]

WAC 332-08-160 Subpoenas where provided by law--Issuance to parties. Upon application of counsel for any party to a contested case, there shall be issued to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding. The department of natural resources may issue subpoenas to parties not so represented upon request or upon a showing of general relevance and reasonable scope of the testimony or evidence sought. No subpoena shall be issued except where authorized by statute.

[Regulation .08.160, filed 2/7/61.]

WAC 332-08-170 Subpoenas where provided by law--Service. Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand the fees for one day's attendance and the mileage allowed by law.

[Regulation .08.170, filed 2/7/61.]

WAC 332-08-180 Subpoenas where provided by law--Fees. Witnesses summoned before the department of natural resources shall be paid by the party at whose instance they appear the same fees and mileage that are

paid to witnesses in the superior courts of the state of Washington.

[Regulation .08.180, filed 2/7/61.]

WAC 332-08-190 Subpoenas where provided by law--Proof of service. The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit, or acknowledgment of service with the department of natural resources or the officer before whom the witness is required to testify or produce evidence. If service is made by a person other than an officer of the department, and such service has not been acknowledged by the witness, such person shall make an affidavit of service. Failure to make proof of service does not affect the validity of the service.

[Regulation .08.190, filed 2/7/61.]

WAC 332-08-200 Subpoenas where provided by law--Quashing. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance, by the person to whom the subpoena is directed (and upon notice to the party to whom the subpoena was issued) the department of natural resources or its authorized members or officer may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion just and reasonable conditions.

[Regulation .08.200, filed 2/7/61.]

WAC 332-08-210 Subpoenas where provided by law--Enforcement. Upon application and for good cause shown, the department of natural resources will seek judicial enforcement of subpoenas issued to parties and which have not been quashed.

[Regulation .08.210, filed 2/7/61.]

WAC 332-08-220 Subpoenas where provided by law--Geographical scope. Such attendance of witnesses and such production of evidence may be required from any place in the state of Washington, at any designated place of hearing.

[Regulation .08.220, filed 2/7/61.]

WAC 332-08-230 Depositions and interrogatories in contested cases--Right to take. Except as may be otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the proceeding, except that leave must be obtained if notice of the taking is served by a proponent within ten days after service of original process. The attendance of witnesses may be compelled by the use of a subpoena. Depositions shall be taken only in accordance with this rule and the rule on subpoenas.

[Regulation .08.230, filed 2/7/61.]

WAC 332-08-240 Depositions and interrogatories in contested cases--Scope. Unless otherwise ordered, the deponent may be examined regarding any matter not

privileged, which is relevant to the subject matter involved in the proceeding.

[Regulation .08.240, filed 2/7/61.]

WAC 332-08-250 Depositions and interrogatories in contested cases--Officer before whom taken. Within the United States or within a territory or insular possession subject to the dominion of the United States depositions shall be taken before an officer authorized to administer oaths by the laws of the state of Washington or of the place where the examination is held; within a foreign country, depositions shall be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or a person designated by the department of natural resources or agreed upon by the parties by stipulation in writing filed with the department. Except by stipulation, no deposition shall be taken before a person who is a party or the privy of a party, or a privy of any counsel of a party, or who is financially interested in the proceeding.

[Regulation .08.250, filed 2/7/61.]

WAC 332-08-260 Depositions and interrogatories in contested cases--Authorization. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than three days in writing to the department of natural resources and all parties. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of a party upon whom the notice is served, the hearing officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

[Regulation .08.260, filed 2/7/61.]

WAC 332-08-270 Depositions and interrogatories in contested cases--Protection of parties and deponents. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the department of natural resources or its designated hearing officer may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel or that after being sealed, the deposition shall be opened only by order of the department, or that business secrets or secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file

specified documents or information enclosed in sealed envelopes to be opened as directed by the department; or the department may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the department or its designated hearing officer may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

[Regulation .08.270, filed 2/7/61.]

WAC 332-08-280 Depositions and interrogatories in contested cases--Oral examination and cross-examination. Examination and cross-examination shall proceed as at an oral hearing. In lieu of participating in the oral examination, any party served with notice of taking a deposition may transmit written cross interrogatories to the officer who, without first disclosing them to any person, and after the direct testimony is complete, shall propound them seriatim to the deponent and record or cause the answers to be recorded verbatim.

[Regulation .08.280, filed 2/7/61.]

WAC 332-08-290 Depositions and interrogatories in contested cases--Recordation. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally or by someone acting under his direction and in his presence, record the testimony by typewriter directly or by transcription from stenographic notes, wire or record recorders, which record shall separately and consecutively number each interrogatory. Objections to the notice, qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of the officer, or of any party, shall be noted by the officer upon the deposition. All objections by any party not so made are waived.

[Regulation .08.290, filed 2/7/61.]

WAC 332-08-300 Depositions and interrogatories in contested cases--Signing attestation and return. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found

or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress the department of natural resources holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of proceeding and marked "Deposition of (here insert name of witness)" and shall promptly send it by registered or certified mail to the department or its designated hearing officer, for filing. The party taking the deposition shall give prompt notice of its filing to all other parties. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

[Regulation .08.300, filed 2/7/61.]

WAC 332-08-310 Depositions and interrogatories in contested cases—Use and effect. Subject to rulings by the hearing officer upon objections a deposition taken and filed as provided in this rule will not become a part of the record in the proceeding until received in evidence by the hearing officer upon his own motion or the motion of any party. Except by agreement of the parties or ruling of the hearing officer, a deposition will be received only in its entirety. A party does not make a party, or the privy of a party, or any hostile witness his witness by taking his deposition. Any party may rebut any relevant evidence contained in a deposition whether introduced by him or any other party.

[Regulation .08.310, filed 2/7/61.]

WAC 332-08-320 Depositions and interrogatories in contested cases—Fees of officers and deponents. Deponents whose depositions are taken and the officers taking the same shall be entitled to the same fees as are paid for like services in the superior courts of the state of Washington, which fees shall be paid by the party at whose instance the depositions are taken.

[Regulation .08.320, filed 2/7/61.]

WAC 332-08-330 Depositions upon interrogatories—Submission of interrogatories. Where the deposition is taken upon written interrogatories, the party offering the testimony shall separately and consecutively number each interrogatory and file and serve them with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom they are to be taken. Within 10 days thereafter a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within five days thereafter, the latter may serve redirect interrogatories upon the party who served cross-interrogatories.

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[Regulation .08.330, filed 2/7/61.]

WAC 332-08-340 Depositions upon interrogatories—Interrogation. Where the interrogatories are forwarded to an officer authorized to administer oaths as provided in WAC 332-08-250 the officer taking the same after duly swearing the deponent, shall read to him seriatim, one interrogatory at a time and cause the same and the answer thereto to be recorded before the succeeding interrogatory is asked. No one except the deponent, the officer and the court reporter or stenographer recording and transcribing it shall be present during the interrogation.

[Regulation .08.340, filed 2/7/61.]

WAC 332-08-350 Depositions upon interrogatories—Attestation and return. The officer before whom interrogatories are verified or answered shall (1) certify under his official signature and seal that the deponent was duly sworn by him, that the interrogatories and answers are a true record of the deponent's testimony, that no one except deponent, the officer and the stenographer were present during the taking, and that neither he nor the stenographer, to his knowledge, is a party, privy to a party, or interested in the event of the proceedings, and (2) promptly send by registered or certified mail the original copy of the deposition and exhibits with his attestation to the department, or its designated hearing officer, one copy to the counsel who submitted the interrogatories and another copy to the deponent.

[Regulation .08.350, filed 2/7/61.]

WAC 332-08-360 Depositions upon interrogatories—Provisions of deposition rule. In all other respects, depositions upon interrogatories shall be governed by the previous deposition rule.

[Regulation .08.360, filed 2/7/61.]

WAC 332-08-370 Official notice—Matters of law. The department of natural resources or its hearing officer, upon request made before or during a hearing, will officially notice:

(1) **Federal law.** The Constitution; congressional acts, resolutions, records, journals and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders and notices published in the Federal Register;

(2) **State law.** The Constitution of the state of Washington, acts of the legislature, resolutions, records, journals and committee reports; decisions and administrative agencies of the state of Washington, executive orders and proclamations by the governor; and all rules, orders and notices filed with the code reviser.

(3) **Governmental organization.** Organization, territorial limitations, officers, departments, and general administration of the government of the state of Washington, the United States, the several states and foreign nations;

(4) **Agency organization.** The department of natural resources' organization, administration, officers, personnel, official publications, and practitioners before its bar.

[Title 332 WAC—p 9]

[Regulation .08.370, filed 2/7/61.]

WAC 332-08-380 Official notice--Material facts.

In the absence of controverting evidence, the department of natural resources and its hearing officers, upon request made before or during a hearing, may officially notice:

(1) **Agency proceedings.** The pendency of, the issues and position of the parties therein, and the disposition of any proceeding then pending before or theretofore concluded by the department;

(2) **Business customs.** General customs and practices followed in the transaction of business;

(3) **Notorious facts.** Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute, or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency;

(4) **Technical knowledge.** Matters within the technical knowledge of the department as a body of experts, within the scope or pertaining to the subject matter of its statutory duties, responsibilities or jurisdiction;

(5) **Request or suggestion.** Any party may request, or the hearing officer or the department may suggest, that official notice be taken of a material fact, which shall be clearly and precisely stated, orally on the record, at any prehearing conference or oral hearing or argument, or may make such request or suggestion by written notice, any pleading, motion, memorandum, or brief served upon all parties, at any time prior to a final decision;

(6) **Statement.** Where an initial or final decision of the department rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision. In determining whether to take official notice of material facts, the hearing officer of the department may consult any source of pertinent information, whether or not furnished as it may be, by any party and whether or not admissible under the rules of evidence;

(7) **Controversion.** Any party may controvert a request or a suggestion that official notice of a material fact be taken at the time the same is made if it be made orally, or by a pleading, reply or brief in response to the pleading or brief or notice in which the same is made or suggested. If any decision is stated to rest in whole or in part upon official notice of a material fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by appropriate exceptions if such notice be taken in an initial or intermediate decision or by a petition for reconsideration if notice of such fact be taken in a final report. Such controversion shall concisely and clearly set forth the sources, authority and other data relied upon to show the existence or nonexistence of the material fact assumed or denied in the decision;

(8) **Evaluation of evidence.** Nothing herein shall be construed to preclude the department or its authorized

agents from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

[Regulation .08.380, filed 2/7/61.]

WAC 332-08-390 Presumptions. Upon proof of the predicate facts specified in the following six subdivisions hereof without substantial dispute and by direct, clear, and convincing evidence, the department of natural resources, with or without prior request or notice, may make the following presumptions, where consistent with all surrounding facts and circumstances:

(1) **Continuity.** That a fact of a continuous nature, proved to exist at a particular time, continues to exist as of the date of the presumption, if the fact is one which usually exists for at least that period of time;

(2) **Identity.** That persons and objects of the same name and description are identical;

(3) **Delivery.** Except in a proceeding where the liability of the carrier for nondelivery is involved, that mail matter, communications, express or freight, properly addressed, marked, billed and delivered respectively to the post office, telegraph, cable or radio company, or authorized common carrier of property with all postage, tolls and charges properly prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business;

(4) **Ordinary course.** That a fact exists or does not exist, upon proof of the existence or nonexistence of another fact which in the ordinary and usual course of affairs, usually and regularly coexists with the fact presumed;

(5) **Acceptance of benefit.** That a person for whom an act is done or to whom a transfer is made has, does or will accept same where it is clearly in his own self-interest so to do;

(6) **Interference with remedy.** That evidence, with respect to a material fact which in bad faith is destroyed, eloiigned, suppressed or withheld by a party in control thereof, would if produced, corroborate the evidence of the adversary party with respect to such fact.

[Regulation 08.390, filed 2/7/61.]

WAC 332-08-400 Stipulations and admissions of record. The existence or nonexistence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party, provided:

(1) **Upon whom binding.** Such a stipulation or admission is binding upon the parties by whom it is made, their privies and upon all other parties to the proceeding who do not expressly and unequivocally deny the existence or nonexistence of the material fact so admitted or stipulated, upon the making thereof, if made on the record at a prehearing conference, oral hearing, oral argument or by a writing filed and served upon all parties within five days after a copy of such stipulation or admission has been served upon them;

(2) **Withdrawal.** Any party bound by a stipulation or admission of record at any time prior to final decision may be permitted to withdraw the same in whole or in part by showing to the satisfaction of the hearing officer or the department of natural resources that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding.

[Regulation .08.400, filed 2/7/61.]

WAC 332-08-410 Form and content of decisions in contested cases. Every decision and order, whether proposed, initial, or final shall:

(1) Be correctly captioned as to name of agency and name of proceeding;

(2) Designate all parties and counsel to the proceeding;

(3) Include a concise statement of the nature and background of the proceeding;

(4) Be accompanied by appropriate numbered findings of fact and conclusions of law;

(5) Whenever practical, the conclusions of law shall include the reason or reasons for the particular order or remedy afforded;

(6) Wherever practical, the conclusions and/or order shall be referenced to specific provisions of the law and/or regulations appropriate thereto, together with reasons and precedents relied upon to support the same.

[Regulation .08.410, filed 2/7/61.]

WAC 332-08-420 Definition of issues before hearing. In all proceedings the issues to be adjudicated shall be made initially as precise as possible, in order that hearing officers may proceed promptly to conduct the hearings on relevant and material matter only.

[Regulation .08.420, filed 2/7/61.]

WAC 332-08-430 Prehearing conference rule. In any proceeding the department of natural resources or its designated hearing officer upon its or his own motion, or upon the motion of one of the parties or their qualified representatives, may in its or his discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider

(1) The simplification of the issues;

(2) The necessity of amendments to the pleadings;

(3) The possibility of obtaining stipulations, admissions of facts and of documents;

(4) The limitation of the number of expert witnesses;

(5) Such other matters as may aid in the disposition of the proceeding.

[Regulation .08.430, filed 2/7/61.]

WAC 332-08-440 Prehearing conference rule—Record of. The department of natural resources or its designated hearing officer shall make an order or statement which recites the action taken at the conference,

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the amendments allowed to the pleadings and the agreements made by the parties or their qualified representatives as to any of the matters considered, including the settlement or simplification of issues, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order or statement shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

[Regulation .08.440, filed 2/7/61.]

WAC 332-08-450 Submission of documentary evidence in advance. Where practicable the department of natural resources or its designated hearing officer may require:

(1) That all documentary evidence which is to be offered during the taking of evidence be submitted to the hearing examiner and to the other parties to the proceeding sufficiently in advance of such taking of evidence to permit study and preparation of cross-examination and rebuttal evidence;

(2) That documentary evidence not submitted in advance, as may be required by section (1), be not received in evidence in the absence of a clear showing that the offering party had good cause for his failure to produce the evidence sooner;

(3) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required, be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

[Regulation .08.450, filed 2/7/61.]

WAC 332-08-460 Excerpts from documentary evidence. When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the hearing examiner and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding.

[Regulation .08.460, filed 2/7/61.]

WAC 332-08-470 Expert or opinion testimony and testimony based on economic and statistical data—Number and qualifications of witnesses. The hearing examiner or other appropriate officer in all classes of cases where practicable shall make an effort to have the interested parties agree upon the witness or witnesses who are to give expert or opinion testimony, either by selecting one or more to speak for all parties or by limiting the number for each party; and, if the interested parties cannot agree, shall require them to submit to him and to the other parties written statements containing the names, addresses and qualifications of their respective opinion or expert witnesses, by a date determined by him

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and fixed sufficiently in advance of the hearing to permit the other interested parties to investigate such qualifications.

[Regulation .08.470, filed 2/7/61.]

WAC 332-08-480 Expert or opinion testimony and testimony based on economic and statistical data—Written sworn statements. The hearing examiner or other appropriate officer, in all classes of cases in which it is practicable and permissible, shall require, and when not so permissible, shall make every effort to bring about by voluntary submission, that all direct opinion or expert testimony and all direct testimony based on economic or statistical data be reduced to written sworn statements, and, together with the exhibits upon which based, be submitted to him and to the other parties to the proceeding by a date determined by the hearing officer and fixed a reasonable time in advance of the hearing; and that such sworn statements be acceptable as evidence upon formal offer at the hearing, subject to objection on any ground except that such sworn statements shall not be subject to challenge because the testimony is not presented orally. Witnesses making such statements shall not be subject to cross-examination unless a request is made sufficiently in advance of the hearing to insure the presence of the witnesses.

[Regulation .08.480, filed 2/7/61.]

WAC 332-08-490 Expert or opinion testimony and testimony based on economic and statistical data—Supporting data. That the hearing examiner or other appropriate officer, in his discretion but consistent with the rights of the parties, cause the parties to make available for inspection in advance of the hearing, and for purposes of cross-examination at the hearing, the data underlying statements and exhibits submitted in accordance with WAC 332-08-480, but, wherever practicable that he restrict to a minimum the placing of such data in the record.

[Regulation .08.490, filed 2/7/61.]

WAC 332-08-500 Expert or opinion testimony and testimony based on economic and statistical data—Effect of noncompliance with WAC 332-08-470 or 332-08-480. Whenever the manner of introduction of opinion or expert testimony or testimony based on economic or statistical data is governed by requirements fixed under the provisions of WAC 332-08-470 or 332-08-480, such testimony not submitted in accordance with the relevant requirements shall not be received in evidence in the absence of a clear showing that the offering party had good cause for his failure to conform to such requirements.

[Regulation .08.500, filed 2/7/61.]

WAC 332-08-510 Continuances. Any party who desires a continuance shall, immediately upon receipt of notice of a hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the

department of natural resources or its designated hearing officer of said desire, stating in detail the reasons why such continuance is necessary. The department or its designated hearing officer, in passing upon a request for continuance, shall consider whether such request was promptly and timely made. For good cause shown, the department or its designated hearing officer may grant such a continuance and may at any time order a continuance upon its or his own motion. During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the examiner or other officer conducting the hearing may in his discretion continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Such oral notice shall constitute final notice of such continued hearing.

[Regulation .08.510, filed 2/7/61.]

WAC 332-08-520 Rules of evidence—Admissibility criteria. Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the officer conducting the hearing, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the officer conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings, in matters not involving trial by jury, in the superior court of the state of Washington.

[Regulation .08.520, filed 2/7/61.]

WAC 332-08-530 Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The officer conducting the hearing may, in his discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered.

[Regulation 08.530, filed 2/7/61.]

WAC 332-08-540 Petitions for rule making, amendment, or repeal—Who may petition. Any interested person may petition the department of natural resources requesting the promulgation, amendment, or repeal of any rule.

[Regulation .08.540, filed 2/7/61.]

WAC 332-08-550 Petitions for rule making, amendment, or repeal—Requisites. Where the petition requests the promulgation of a rule, the requested or proposed rule must be set out in full. The petition must also include all the reasons for the requested rule together with briefs of any applicable law. Where the petition requests the amendment or repeal of a rule presently in effect, the rule or portion of the rule in question must be set out as well as a suggested amended

form, if any. The petition must include all reasons for the requested amendment or repeal of the rule.

[Regulation .08.550, filed 2/7/61.]

WAC 332-08-560 Petitions for rule making, amendment, or repeal--Agency must consider. All petitions shall be considered by the department of natural resources and it may, in its discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal, or modification of any rule.

[Regulation .08.560, filed 2/7/61.]

WAC 332-08-570 Petitions for rule making, amendment, or repeal--Notice of disposition. The department of natural resources shall notify the petitioning party within a reasonable time for the disposition, if any, of the petition.

[Regulation .08.570, filed 2/7/61.]

WAC 332-08-580 Declaratory rulings. As prescribed by RCW 34.04.080, any interested person may petition the department of natural resources for a declaratory ruling. The department shall consider the petition and within a reasonable time it shall:

- (1) Issue a nonbinding declaratory ruling; or
- (2) Notify the person that no declaratory ruling is to be issued; or
- (3) Set a reasonable time and place for hearing argument upon the matter, and give reasonable notification to the person of the time and place for such hearing and of the issues involved.

If a hearing as provided in subsection (3) is conducted, the department shall within a reasonable time:

- (1) Issue a binding declaratory rule; or
- (2) Issue a nonbinding declaratory ruling; or
- (3) Notify the person that no declaratory ruling is to be issued.

[Regulation .08.580, filed 2/7/61.]

WAC 332-08-590 Forms. (1) Any interested person petitioning the department of natural resources for a declaratory ruling pursuant to RCW 34.04.080, shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the board of natural resources, (commissioner of public lands, supervisor, as the case may be), department of natural resources, state of Washington." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory ruling." Opposite the foregoing caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions

before the superior courts of this state. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

The original and five legible copies shall be filed with the agency. Petitions shall be on white paper, 8 1/2" x 11" in size.

(2) Any interested person petitioning the department of natural resources requesting the promulgation, amendment or repeal of any rules shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the board of natural resources, department of natural resources, state of Washington." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for (state whether promulgation, amendment or repeal) of rule (or rules)." Opposite the foregoing caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for amendment, the new matter shall be underscored and the matter proposed to be deleted shall appear in double parentheses. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by agency rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

Petitions shall be dated and signed by the person or entity named in the first paragraph or by his attorney. The original and five legible copies of the petition shall be filed with the agency. Petitions shall be on white paper 8 1/2" x 11" in size.

[Regulation 08.590, filed 2/7/61.]

Chapter 332-10 WAC

PUBLIC RECORDS--DEPARTMENT OF NATURAL RESOURCES AND BOARD OF NATURAL RESOURCES

WAC	
332-10-010	Purpose of rules.
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332-10-180	Application fee.
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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-10-150	Promulgation. [Statutory Authority: RCW 79.01.088. 80-17-021 (Order 349, Resolution No. 310), § 332-10-150, filed 11/13/80.] Repealed by 83-24-055 (Order 406), filed 12/6/83. Statutory Authority: RCW 79.01.088 and 79.01.720.
332-10-160	Definition. [Statutory Authority: RCW 79.01.088. 80-17-021 (Order 349, Resolution No. 310), § 332-10-160, filed 11/13/80.] Repealed by 83-24-055 (Order 406), filed 12/6/83. Statutory Authority: RCW 79.01.088 and 79.01.720.

WAC 332-10-010 Purpose of rules. The purpose of this chapter shall be to insure compliance by the department of natural resources and the board of natural resources with the provisions of chapter 42.17 RCW, Disclosure—Campaign finances—Lobbying—Records, and in particular with RCW 42.17.250 through 42.17.340 of that act dealing with public records.

[Order 262, § 332-10-010, filed 6/16/76.]

WAC 332-10-020 Definition. The following definitions shall apply in this chapter:

(1) "Public record" includes any writing containing information relating to the conduct of governmental or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics not otherwise confidential by law.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

(3) "Board" means the board of natural resources, a policy setting board whose five members serve in an officio capacity.

(4) "Department" means the department of natural resources which is:

(a) A regulatory agency with regard to forestry, outdoor burning and geology activities on state and privately owned land,

(b) A land management agency for state owned and administered land,

(c) A service and information repository agency regarding surveys and maps of the state, farm forestry advice and general geology information.

(5) "Commissioner" means the commissioner of public lands who is an elected official and serves as the administrator of the department. The commissioner, in accordance with the RCW, has delegated to the supervisor of the department the direct supervision of the department activities.

[Order 262, § 332-10-020, filed 6/16/76.]

WAC 332-10-030 Description of central and field organization of department of natural resources. (1) The department is a regulatory and land management agency. The administrative office of the department and its staff are located in the Public Lands Building, Olympia, Washington 98504. Field offices of the department are located at:

<u>Area Office</u>	<u>Address</u>
Olympic	Rt. 1, Box 1375, Forks, WA 98331
Northwest	Rt. 4, Box 17, Sedro Woolley, WA 98284
South Puget Sound	28329 SE 448th St., Enumclaw, WA 98022
Central	P.O. Box 1004, Chehalis, WA 98532
Southwest	Box 798, Castle Rock, WA 98611
Southeast	Rt. 3, Box 1, Ellensburg, WA 98926
Northeast	Box 190, Colville, WA 99114

(2) Map.

[Order 262, § 332-10-030, filed 6/16/76.]

WAC 332-10-035 Description of organization of board of natural resources. The board is primarily a policy setting board consisting of five members. The members are: The governor, the superintendent of public instruction, the commissioner of public lands, the dean of the college of forest resources University of Washington, and the director of the institute of agricultural sciences for the Washington State University. The board selects its own chairman and vice-chairman among its members. In the absence of the chairman and vice-chairman at a meeting of the board, the members select a chairman pro tem. The commissioner of public lands is the secretary of the board. The board meets on every second Tuesday of every month at the capitol in Olympia, Washington. However, the board may hold special meetings when called by the chairman or the majority of the board membership upon written notice to all members of the board. No action may be taken by the board except by the agreement of at least three members. The board maintains its principal office at the Public Lands Building, Olympia, Washington, 98504.

[Order 262, § 332-10-035, filed 6/16/76.]

WAC 332-10-040 Operations and procedures of the department of natural resources. (1) The legal authority for the department's activities is provided by:

(a) The State Enabling Act, Section Nos. 10 through 19;

(b) The state Constitution, Article Nos. III, XV, XVI, XVII and Amendment No. 15;

(c) The RCW, Title Nos. 43, 46, 58, 70, 76, 78, 79 and 84;

(d) The WAC chapter [title] No. 332.

(2) The board of natural resources at monthly meetings:

(a) Establishes broad policy for the department;

(b) Approves lease and sale proposals submitted by department regarding state owned grant and forest board lands;

(c) Reviews the department's administration of the Surface Mine Reclamation Act.

(3) In accordance with legal authority, board policy and direction from the commissioner, the supervisor of the department provides direct supervision over the department's activities. Such supervision is applied directly and through deputies:

(a) At the central office staff level through 10 divisions, each responsible for a specific staff specialty;

(b) At the field level through seven area managers, each responsible for managing the department's governmental and proprietary functions within their specific area working through district managers and local managers.

(4) Policy and procedure is developed and discussed at all levels of supervision with recommendations passed through the seven area managers and 10 division supervisors to the department supervisor for decision.

(5) Inquiry for general information regarding department activities may be directed by the public to the central headquarters or any area office.

(6) Applications for regulatory permits and licenses issued by the department may be directed as follows:

(a) To the central headquarters in Olympia for conventional seismic exploration permit, oil and gas drilling permits, geothermal permit, log brand registration, log patrol license;

(b) To the area office (which manages the area where the permit and license will be used) for surface mining permit, forest practices permit, permit for special recreational activity on state land, right to enter state land, easement on state land, state land lease or purchase application, road use permit, woodcutting permit, burning permit, operating permit (logging), all other permits, licenses, or sales.

(7) Permits, licenses, lease or sale documents are issued or denied by the department based on facts and/or judgment of the department of natural resources officer involving part or all of the following:

(a) Inspection of the site,

(b) Compliance with RCW and WAC,

(c) Receipt of compliance or performance bond,

(d) Receipt of fee, rent or purchase payment (if any),

(e) Completion of appraisal packet,

(f) Board of natural resources approval (when required),

(g) Environmental impact statement (if required).

[Order 262, § 332-10-040, filed 6/16/76.]

WAC 332-10-045 Operations and procedures of board of natural resources. The board of natural resources together with an administrator and a supervisor composes the department of natural resources. The board performs all duties relating to appraisal, appeal,

approval and hearing functions of the department. The board establishes policies to insure that the acquisition, management and disposition of all lands and resources within the department's jurisdiction are based on sound principles designed to achieve the maximum effective development and use of such lands and resources. The board constitutes the board of appraisers and the commission on harbor lines. The board fixes the value of public lands and gives authority to the commissioner to inspect, appraise and offer for sale state lands. The board will hold public hearings on the withdrawal of any state trust lands for recreational purposes and determines the market value of trust lands used for state park purposes. The board administers the Surface Mine Reclamation Act (RCW 78.44.040) by utilizing the services of the department. The board adopts and enforces such rules and regulations as may be deemed necessary and proper for carrying out the powers, duties and functions imposed upon it by law.

[Order 262, § 332-10-045, filed 6/16/76.]

WAC 332-10-050 Public records available. All public records of the department and the board, as defined in WAC 332-120-020, are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.17.310, WAC 332-120-100 and other laws.

[Order 262, § 332-10-050, filed 6/16/76.]

WAC 332-10-060 Public records officer for the department of natural resources. The public records officer for the department is designated as the office manager located in the department's administrative office. In addition, the operations forester, located in each of the area offices is designated as a records officer. The public records officer shall be in charge of the department's public records and shall be responsible for the following: The implementation of the department's rules and regulations regarding release of public records, coordinating the staff of the department in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of chapter 42.17 RCW.

[Order 262, § 332-10-060, filed 6/16/76.]

WAC 332-10-065 Public records officer for the board of natural resources. The public records officer for the board is designated as the secretary of the commissioner.

[Order 262, § 332-10-065, filed 6/16/76.]

WAC 332-10-070 Office hours. Public records shall be available for inspection and copying during the customary office hours of the department. For the purpose of this chapter, the customary office hours shall be from 8:00 a.m. until noon and from 1:00 p.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. Such inspection and copying may be postponed if, in the department's opinion, it would interfere with duties related to an emergency at an area office or the fire control division in central headquarters.

[Order 262, § 332-10-070, filed 6/16/76.]

WAC 332-10-080 Requests for public records. In accordance with requirements of chapter 1, Laws of 1973, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied, or copies of such records may be obtained by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the department and the board which shall be available at its central and area offices. The form shall be presented to the public records officer, or a designated substitute, if the public records officer is not available, at the central and area offices of the department during customary office hours. The request shall include the following information:

(a) The name and address of the person requesting the record and the organization they represent;

(b) The time of day and calendar date on which the request was made;

(c) A description of the material requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.

(3) The department will also honor requests received by mail for identifiable public records unless exempted.

[Order 262, § 332-10-080, filed 6/16/76.]

WAC 332-10-090 Copying. No fee shall be charged for the inspection of public records. For printed, typed and written material of a maximum size of 8 1/2" by 14", the department shall charge a reasonable fee determined from time to time by the department for providing copies of public records and for use of the department's copy equipment, payable at the time copies are furnished. This charge is the amount necessary to reimburse the department for its actual costs incident to such copying. Copies of maps, photos, reports and other nonstandard items shall be furnished at the regular price established by the department. When other special copy work of nonstandard items is requested, the fee charged will reflect the total cost including the time of department personnel.

[Order 262, § 332-10-090, filed 6/16/76.]

WAC 332-10-100 Exemptions. (1) The department and the board reserve the right to determine that a public record requested in accordance with the procedures outlined in WAC 332-120-180 is exempt under the provisions of section 31, chapter 1, Laws of 1973. Exemptions shall include, but are not limited to:

(a) *Lists of individuals.* The lists will include the names and/or addresses of individuals. A request for this inspection requested for commercial purposes shall not be made available unless the department or board is specifically authorized or directed by law to do so;

(b) *Personnel files.* The contents of these files include data of a personal nature regarding each individual employee such as: Personal references, performance evaluations, promotional evaluations, salary, payroll withholding, disciplinary and warning letters, employment applications, civil service promotional grades;

(c) *Civil service examination data.* These records contain questions used in civil service examinations (written, oral and performance);

(d) *Law enforcement files.* These files contain investigation reports, witness statements, permit or license violations and other data related to enforcement of state law, trespass on state land, theft and vandalism of state property and collection of bills. This information shall remain confidential until court action is completed or the case is formally closed by the department;

(e) *Income reports or credit reports on applicants applying for proprietary interests.* These reports contain confidential data from an individual company which frequently contains income data regarding the entire company operation;

(f) *Material obtained by the state with copyright or contract condition prohibiting further distribution by the department.*

(g) *State land inspection reports and appraisal data.* This data constitutes an appraisal of the value of state land and the products therefrom which we use to determine minimum bid level for purchase or rent. This data shall remain confidential until after the sale or lease is consummated, but in no event shall disclosure be denied for more than three years after the appraisal;

(h) *Oil and gas exploration reports, drilling logs and core samples.* These files contain confidential information from an individual company regarding an expensive exploration operation. Disclosure would provide an unfair advantage to competitors;

(i) *Confidential surveys.* This information constitutes confidential production data gathered from individuals and companies for statistical purposes to prepare reports reflecting trends and general production statistics. All data except the final report shall remain confidential;

(j) *Data processing discs and tapes.* Contains stored data on magnetic discs and tapes, a large part of which includes confidential data. Since the confidential data cannot be deleted, the discs and tapes shall be exempt from review and copying. Printout reports may be available for review and copying;

(k) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(l) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action;

(m) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(2) In addition, pursuant to section 26, chapter 1, Laws of 1973, the department reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.

(3) All public records otherwise exempt by law shall be considered exempt under the provision of these rules.

(4) All denials of requests for public records will be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

(5) The department recognizes that the preservation of personal rights is of paramount importance. Accordingly, the department policy shall be to conduct the disclosure of public records in such a manner to preserve the personal privacy of all department personnel. The policy shall extend to companies and individuals from outside the department whose records come into possession of the department.

The exemptions of this section shall be inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption shall be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

Inspection or copying of any specific records, exempt under the provisions of this section, may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records, is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

[Order 262, § 332-10-100, filed 6/16/76.]

WAC 332-10-105 Statement of reason for denial of request for records. When the department or board refuses, in whole or part, inspections of any public record, it shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

[Order 262, § 332-10-105, filed 6/16/76.]

WAC 332-10-110 Reviews of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public

records officer or other staff member denying the request shall refer it to the supervisor of the department. The supervisor or his designee shall immediately consider the matter and either affirm or reverse such denial. The request shall be returned with a final decision, within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the department has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

[Order 262, § 332-10-110, filed 6/16/76.]

WAC 332-10-120 Protection of public records. In order to adequately protect the public records in the custody of the department and the board, the following guidelines shall be adhered to by any person inspecting such public records:

(1) No public records shall be removed from the department's premises.

(2) Inspection of any public record shall be conducted in the presence of a designated department employee.

(3) No public records may be marked or defaced in any manner during inspection.

(4) Public records which are maintained in a file or jacket, or chronological order, may not be dismantled except for purposes of copying and then only by a designated employee of the department.

(5) Access to file cabinets, shelves, vaults, etc., is restricted to department personnel or board members.

[Order 262, § 332-10-120, filed 6/16/76.]

WAC 332-10-130 Records index for the department. The department does not maintain a records index for its own use, and it would be unduly burdensome to develop an index just for public access to the records. The department does not use a central filing system. Records are maintained in each of the area offices spread throughout the state and in each of the divisions in the central office. Each organizational unit maintains a record system to meet its specific needs. The department and the board can respond to requests for records, by the public describing the type of information they are seeking. General correspondence related to governmental and regulatory activities and internal services can usually be identified by subject and usually in the division responsible for that activity. Regulatory permits and licenses may be identified by legal description or application number. Correspondence and other data related to proprietary activities are identified by application number and can be cross referenced by legal description.

[Order 262, § 332-10-130, filed 6/16/76.]

WAC 332-10-135 Records index for the board. The board will maintain a records index. The records index will be kept current by the board's public records officer.

[Order 262, § 332-10-135, filed 6/16/76.]

WAC 332-10-140 Address for communication requests. All communications with the department and the

board including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 1, Laws of 1973, and these rules, requests for copies of the department's decisions and other matters, shall be addressed as follows: Department of Natural Resources, c/o Public Records Officer, Olympia, Washington 98504.

[Order 262, § 332-10-140, filed 6/16/76.]

WAC 332-10-170 Fees for performing the following service. Charges for the following categories of services will be collected and transmitted to the state treasurer for deposit into the resource management cost account:

(1) Twenty-five dollars for the approval of any assignment of contract of sale, assignment of lease, assignment of bill of sale or assignment of right of way.

(2) Twenty-five dollars for the division of contracts or leases pursuant to RCW 79.01.236.

(3) Five dollars for certification of any document.

(4) Fifteen cents per page for copies of documents which do not exceed 8-1/2 x 14 inches in size.

(5) Copies of documents or nonstandard items beyond the size of documents set forth in subsection (4) above (e.g., computer printouts, films, recordings or) maps will be charged on the basis of the cost of reproduction including the time of department personnel as determined by the records officer for the department of natural resources.

[Statutory Authority: RCW 79.01.088 and 79.01.720. 83-24-055 (Order 406), § 332-10-170, filed 12/6/83. Statutory Authority: RCW 79.01.088. 80-17-021 (Order 349, Resolution No. 310), § 332-10-170, filed 11/13/80.]

WAC 332-10-180 Application fee. An applicant to purchase or lease any public land or valuable materials shall pay a twenty-five dollar application fee, except for prospecting leases or mining contracts fees as specified by WAC 332-16-040, and oil and gas leases as specified by WAC 332-12-230.

[Statutory Authority: RCW 79.01.088 and 79.01.720. 83-24-055 (Order 406), § 332-10-180, filed 12/6/83. Statutory Authority: RCW 79.01.088. 80-17-021 (Order 349, Resolution No. 310), § 332-10-180, filed 11/13/80.]

WAC 332-10-190 Exceptions. The following applicants are exempt from paying the fees set forth in WAC 332-10-170 and 332-10-180:

(1) Any agency, political subdivision or municipal corporation of this state, or any agency of the United States;

(2) Any lease or sale of land, valuable materials, minerals, coal, oil or gas, which is initiated by the department;

(3) Applicants for a coal mining option contract who shall instead pay the fees required by RCW 79.01.656.

(4) Assignment transferring contract or leasehold interest by operation of law.

[Statutory Authority: RCW 79.01.088 and 79.01.720. 83-24-055 (Order 406), § 332-10-190, filed 12/6/83. Statutory Authority: RCW 79.01.088. 80-17-021 (Order 349, Resolution No. 310), § 332-10-190, filed 11/13/80.]

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Chapter 332-12 WAC OIL AND GAS LEASES

WAC	
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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-12-010	Application for lease. [Statutory Authority: RCW 79.01.088. 80-17-020 (Order 348, Resolution No. 311), § 332-12-010, filed 11/13/80; Rule (I)(1), filed 8/7/62; Rule (I)(2), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-020	Approval or rejection of applications. [Statutory Authority: RCW 79.01.088. 80-17-020 (Order 348, Resolution No. 311), § 332-12-020, filed 11/13/80; Rule (I)(3), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-030	Land descriptions. [Rule (I)(4), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-040	Application for renewal of productive lease. [Rule (I)(5), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-050	Withdrawal of application. [Rule (I)(6), filed 3/23/60.] Repealed by 80-17-020 (Order 348, Resolution No. 311), filed 11/13/80. Statutory Authority: RCW 79.01.088.
332-12-060	Offer of oil and gas leases by competitive bidding. [Statutory Authority: RCW 79.01.088. 80-17-020 (Order 348, Resolution No. 311), § 332-12-060, filed 11/13/80; Rule (II), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-070	Issuance of leases. [Statutory Authority: RCW 79.01.088. 80-17-020 (Order 348, Resolution No. 311), § 332-12-070, filed 11/13/80; Rule (III), filed

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- 332-12-080 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120. Cooperative or unit plans. [Rule (IV), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
- 332-12-090 Right of inspection. [Rule (V), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
- 332-12-100 Surface rights. [Rule (VI), filed 3/23/60.] Repealed by 80-17-020 (Order 348, Resolution No. 311), filed 11/13/80. Statutory Authority: RCW 79.01.088.

WAC 332-12-150 Lands not under the jurisdiction of the department of natural resources. (1) **May be leased by the commissioner.** The commissioner of public lands is authorized to execute oil and gas leases, in accordance with and by authority of chapter 79.14 RCW, upon lands of the state of Washington not under the jurisdiction of the department of natural resources, when requested so to do by the agency of state government having and exercising jurisdiction over such lands.

(2) **Competitive bid requirements.** All oil and gas leases issued under this regulation shall be issued after competitive bidding unless otherwise requested by the agency requesting issuance.

(3) **Form of lease.** Oil and gas leases issued under this regulation shall contain, in addition to the statutory provisions required by chapter 79.14 RCW, such further terms, conditions, covenants, and limitations as the requesting agency may deem desirable.

(4) **Administrative expense.** The commissioner of public lands may enter into necessary agreements with the agency requesting the issuance of oil and gas leases under this regulation to provide for the reimbursement of the department of natural resources for expenses reasonably incurred.

(5) **Revenue from leases.** All revenue derived from oil and gas leases issued under the regulation upon lands of the state of Washington not under the jurisdiction of the department of natural resources shall be paid to the agency requesting the issuance of the lease for distribution as authorized by law.

[§ 2 (part), filed 8/7/62.]

WAC 332-12-210 Definitions. The following definitions are, unless the context otherwise requires, applicable to chapter 79.14 RCW and these rules and regulations.

(1) "Aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters.

(2) "Associated substances" means all gaseous or liquid substances produced in association with oil or gas but shall not include coal, lignite, oilshale, similar solid hydrocarbons, minerals, water, steam or any geothermal resources.

(3) "Base lease" means the first issued lease on a tract of land prior to any assignments of the lease or renewals.

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

(5) "Completion" means the well is capable of producing oil or gas through wellhead equipment from the

producing zone after the production string has been run. A dry hole shall be considered completed when the requirements for plugging and abandonment provided for in chapter 344-12 WAC have been complied with.

(6) "Continuous" as in "production in continuous paying quantities" means extracting oil and gas from the earth without cessation for a period of more than ninety days.

(7) "Department" means the department of natural resources.

(8) "Development" means work which generally occurs after exploration and furthers bringing in production including defining the extent of the oil and gas resource and construction of support facilities.

(9) "Drilling" means the drilling of a well and the activities associated therewith of permitting, staking, site preparation, testing, deepening or redrilling of the well.

(10) "Drill pads" means the location and surrounding area necessary to position a drill rig and support equipment.

(11) "Exploration" means the investigation of oil and gas resources by any geological, geophysical, geochemical or other suitable means.

(12) "Good standing" means in full compliance with all terms and conditions of the lease contract.

(13) "Hydrocarbon" means a compound containing only the two elements carbon and hydrogen.

(14) "Improvements" means anything considered a fixture in law placed upon or attached to the lease premises that has changed the value of the land or any change in the previous conditions of the fixtures that changes the value of the land.

(15) "Initial term" means the first period of time authorized under a lease or the exploration period of the lease.

(16) "In situ" means a process of in-place conversion of an energy resource in the ground by a thermal or liquifaction process in order to simplify extraction of the resource.

(17) "Lands" or "land" means both the surface and subsurface components of the lease or contract premises.

(18) "Lease premises" means public land including retained mineral rights held under an oil and gas lease.

(19) "Lessee" means any person holding an oil and gas lease.

(20) "Oil and gas" means all hydrocarbons which are present in the earth in a gaseous or liquid form and produced therefrom. It shall not include coal, lignite, oilshale, or similar solid hydrocarbons.

(21) "Paying quantities" means extraction of oil and/or gas in a sufficient amount to generate oil and gas production royalties to the state.

(22) "Person" means any natural person, corporation, association, organization, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or representative of any kind.

(23) "Plug and abandon" means to place permanent seals in well casings or drill holes in the manner as provided by chapter 344-12 WAC and applicable regulations and in a way and at such intervals as are necessary

to prevent future contamination; to remove all equipment from the site and rehabilitate the surface to its former state or usage as prescribed by the department.

(24) "Posted field price" means the announced price at which a crude oil or gas purchaser will buy the oil or gas of specified quality from a field.

(25) "Preliminary investigation" means geological, geophysical or geochemical investigation.

(26) "Production" means extracting oil and/or gas in paying quantities.

(27) "Public auction" means competitive lease offers either by oral or sealed bidding by qualified bidders or a combination of both.

(28) "Public lands" means lands and areas belonging to or held in trust by the state including state-owned aquatic lands and lands of every kind and nature including mineral rights reserved to the state, the trust or the department.

(29) "Reclamation" means the reasonable protection and rehabilitation of all land subject to disruption from exploration, development, and production of an oil and gas resource.

(30) "Refining" means improving the physical or chemical properties of oil or gas.

(31) "Shut-in" means to adequately cap or seal a well to control the contained oil and/or gas for an interim period.

(32) "String of tools" means a cable or rotary drill rig.

(33) "Surface rights" means full fee ownership of the surface of the property and the resources on and attached thereto, not including the mineral estate.

(34) "Undivided interest" means a total assignment of the lease to one person or an assignment which causes the total lease rights to be held jointly by more than one person including but not limited to joint or common tenancy and community property.

(35) "Waste" means the physical loss of a subsurface resource through damage, escape or inefficient extraction and as defined in chapter 78.52 RCW.

(36) "Well" means any bored, drilled, or redrilled hole for the exploration or production of oil, gas, and other hydrocarbon substances.

[Statutory Authority: RCW 79.14.120. 86-07-027 (Order 472), § 332-12-210, filed 3/13/86; 82-23-053 (Order 387), § 332-12-210, filed 11/16/82.]

WAC 332-12-220 Jurisdiction. These rules are applicable to all public lands of the state for which the commissioner is authorized or permitted to lease for the purpose of prospecting for, developing and producing oil, gas, or other hydrocarbon substances.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-220, filed 11/16/82.]

WAC 332-12-230 Forms. (1) Applications, leases, and related forms shall be on forms prepared and prescribed by the department.

(2) All applications shall be filed with the department. A twenty-five dollar nonrefundable application fee shall be submitted with each application.

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(3) Applications for leases on aquatic lands shall describe the area with reference to the abutting upland survey. The description shall conform as nearly as practicable to extensions of the upland subdivisional lines of the United States government survey or survey lines of other recorded plats. Such descriptions shall be subject to the approval of the department.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-230, filed 11/16/82.]

WAC 332-12-240 Applicant. Any person may apply for and hold oil and gas leases on public lands of the state of Washington. Any applicant may acquire, receive and hold more than one lease. The department may deny an application or lease to any person, firm, or corporation for which a lease has been terminated for nonpayment of royalties or for breach of any terms or conditions.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-240, filed 11/16/82.]

WAC 332-12-250 Lease area. Leases shall not exceed the acreage specified in RCW 79.14.020: *Provided*, That an entire government surveyed section may be involved in a single lease. No single lease will be issued including acreage from more than one township of land except that more than one township may be included in a single lease of aquatic lands, if the total lease area does not exceed six hundred forty acres.

If the available land is less than forty acres, the lease will be issued only for the available acreage. On lands which the department manages less than the entire interest in the mineral rights, a lease may be issued by the commissioner covering the state's interest independent of the joinder of the other co-tenant where otherwise permitted.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-250, filed 11/16/82.]

WAC 332-12-260 Term of lease. Oil and gas leases may be for an initial term of from five up to ten years and shall be extended for so long thereafter as lessee shall produce oil, gas or associated substances in paying quantities from the leased lands or is prosecuting development on the leased land with due diligence of a prudent operator upon encountering oil, gas or associated substances; or shall be engaged in drilling, deepening, repairing, or redrilling any well thereon; or shall be participating in a unit plan in accordance with RCW 79.14.020; or shall be prosecuting operations with due diligence of a prudent operator in accordance with RCW 79.14.050.

[Statutory Authority: RCW 79.14.120. 86-07-027 (Order 472), § 332-12-260, filed 3/13/86; 82-23-053 (Order 387), § 332-12-260, filed 11/16/82.]

WAC 332-12-262 Preliminary investigation permit. Entry to state lands not currently under lease as provided in chapter 79.14 RCW is permitted for preliminary investigations by obtaining a "preliminary investigation permit" from the department and paying

required fees as determined by the board of natural resources. Such permits are valid for one year from the date of issuance unless an earlier term is specified or it is revoked by the department. Permits will not be required for preliminary investigation activities that have little surface impact such as geological mapping.

[Statutory Authority: RCW 79.14.120. 86-07-027 (Order 472), § 332-12-262, filed 3/13/86.]

WAC 332-12-265 Application procedures—Surface rights in other agencies. Prior to offering mineral rights under the jurisdiction of the department of natural resources for oil and gas leasing where the surface rights are either owned or leased by other state agencies, the department will notify the applicable state agency. Such notification shall be within a reasonable time period prior to leasing to permit the other agencies to consult with the department as to the advisability and conditions of lease.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-265, filed 11/16/82.]

WAC 332-12-270 Award of lease. The department shall offer land for oil and gas leasing by the following procedures:

(1) Leases shall be offered at public auction after the approval of an application or initiation by the department. Public auction shall be by sealed or oral bidding or a combination as prescribed in the notice of leasing. Oil and gas leases shall be awarded to the highest cash bonus bidder. If two or more sealed bids tie for the highest bid on an individual tract, the department shall resolve the tie by commencement of oral bidding. If no oral bids are received on such tract the tie shall be resolved by the drawing by lot from the tie bids.

(2) If no bids, sealed or oral, are received on an individual tract, the lease may be awarded to the applicant for the minimum acceptable bid subject to approval by the commissioner.

(3) All awards of leases are subject to the commissioners authority to withhold any tract or tracts of land from leasing and to reject any or all applications or bids for an oil and gas lease if determined to be in the best interest of the state.

(4) Notice of the offer of land for leasing shall be given by publication in a newspaper of general circulation in Thurston County and in such other manner as the department may authorize. Such notice shall specify the place, date, and hour of the offering, a general description of the lands to be offered for lease, and the minimum acceptable bid.

(5) Competitive bid terms. Sealed bids must be submitted prior to the time set for the auction, and must be accompanied by a certified check equal to one-fifth of the total bonus bid offered. Following award of an oral bid, a successful oral bidder is required to submit payment equal to one-fifth of total bonus bid. Unless all bids are rejected, the commissioner will send to the successful bidder two copies of the lease. The bidder will be required within thirty days after receipt thereof to execute and return the lease, pay the balance of their bonus

bid, the first year's rental of one dollar twenty-five cents per acre, and all applicable taxes and other required payments. Upon failure of the successful bidder to fulfill the above requirements, the money tendered will be forfeited and the application rejected unless the department grants additional time pursuant to a written request made by the successful bidder prior to the expiration of the thirty-day period.

(6) Unsuccessful sealed bidders will be refunded their deposit. Application fees shall be refunded for applications rejected by the department.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-270, filed 11/16/82.]

WAC 332-12-280 Lease terms. (1) Leases issued under the provisions of chapter 79.14 RCW and these rules shall be on forms prepared and prescribed by the department.

(2) Leases shall contain, where applicable, provisions implementing the rules and regulations contained in chapter 332-12 WAC.

(3) Leases shall contain, where applicable, provisions which:

- (a) Protect the environment;
- (b) Provide for security for faithful performance of the lease terms and conditions;
- (c) Require a plan of operations;
- (d) Require reclamation;
- (e) Prevent waste;
- (f) Provide for plugging and abandonment;
- (g) Require compliance with the provisions of the Oil and Gas Conservation Act and its rules and regulations;
- (h) Require the drilling of wells for the purpose of offsetting producing wells on adjoining lands;
- (i) Require the lessee to furnish gas produced from the lease to state lessees for direct use where requested by the department;
- (j) Relate to the surface use and resources.

(4) Leases shall contain such terms as are customary and proper for the protection of the rights of the state, the lessee and the surface owner, and necessary to insure compliance with the applicable laws and regulations.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-280, filed 11/16/82.]

WAC 332-12-290 Reserved rights. The department reserves the right to lease any subsurface resource not covered by an existing oil and gas lease: *Provided*, That such leasing is subject to any existing subsurface lease rights and does not materially interfere with any established lease operations. The department shall require a cooperative work agreement to allow simultaneous or coordinated operations.

The department reserves the right to allow joint or several uses of existing sites, easements, or rights of way under control of the state, upon such terms as the department may determine.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-290, filed 11/16/82.]

WAC 332-12-300 Damages to encumbered lands. The lessee shall have the right to the surface use of the premises to the extent such use is reasonably necessary for operations under the lease as provided in the plan of operations.

(1) Where surface rights have been transferred from state ownership through sale or exchange with mineral rights reserved or are leased by the state, the oil and gas lessee, prior to exercising lease rights, shall:

(a) Secure the consent or waiver of the surface-right owner or lessee regarding oil and gas lease activities; or

(b) Provide full payment for damages to the surface of said land and improvements thereon to the surface-right owner or lessee; or

(c) Secure the agreement by the surface-right owner or lessee that damages cannot be determined at this time and there shall be the execution of a good and sufficient security acceptable to the department in favor of the surface-right owner or lessee for their use and benefit to secure the payment of such damages, as may be determined and fixed by later agreement or in action brought upon the security or undertaken in a court of law against the oil and gas lessee; or

(d) Institute an action by the oil and gas lessee in the superior court of the county in which the land is situated to ascertain and determine the amount of damages which will accrue to the surface-right owner or lessee by reason of entry thereon. In the event of any such action, the term of the oil and gas lease shall begin thirty days after the entry of the final judgment and payment therefore in such action provided such action was instituted and processed within a reasonable time; or

(e) Shall furnish to the department a good and sufficient security, acceptable to the department, to cover such compensation until such compensation is determined by agreement, arbitration, or judicial decision or is otherwise authorized to be determined.

(2) Where the surface rights are owned by the state, the oil and gas lessee, prior to exercising its lease rights, shall compensate the state for damages that may occur to the surface rights as determined by the department or by another state agency where it owns both the surface and mineral rights.

The department or such agency may, in the alternative, in lieu of immediate payment, require the furnishing of adequate security for payment of all damages.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-300, filed 11/16/82.]

WAC 332-12-310 Annual rental or minimum royalty. (1) The department shall require payment of not less than one dollar twenty-five cents per acre per year in annual rental. The lessee shall pay the first year's annual rental upon execution of the lease and pay a like rental in advance each year the lease remains in force: *Provided*, That at any time the lease starts production, a minimum royalty of five dollars per acre per year shall replace the annual rental and shall be credited against production royalties. Minimum royalties shall be paid at the end of the lease year in which production starts and

annually at the end of the lease year for the remainder of the term. When the production royalty is greater than the minimum royalty paid during any lease year, the lessee shall pay, in addition to the minimum royalty, the difference between the minimum royalty and the production royalties. Minimum royalties paid during the term of the lease are nonrefundable and nontransferable.

(2) On lands which the state owns less than entire fee simple mineral rights in common tenancy (undivided interests), the lessee shall pay the department rentals and minimum royalties in the amount equal to the state's undivided mineral interest percentage in such lands.

(3) If the annual rental or minimum royalty is not paid as prescribed in the lease, the lease shall be terminated as provided by RCW 79.14.090.

[Statutory Authority: RCW 79.14.120. 86-07-027 (Order 472), § 332-12-310, filed 3/13/86. Statutory Authority: RCW 43.30.150(6). 83-07-039 (Order 393, Resolution No. 409), § 332-12-310, filed 3/16/83. Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-310, filed 11/16/82.]

WAC 332-12-320 Production royalties. (1) Production royalty payments shall be payable to the department for oil and gas produced from the lease premises, or in the case of gas products from gas produced but not sold, the products manufactured. Royalty rates shall be not less than twelve and one-half percent of the gross value at the point of production as defined in WAC 332-12-330. In the case of production of gas from coal deposits by "in situ" or other newly developed technology for which there is little or no leasing experience, the commissioner may set applicable royalty rates.

(2) The state reserves the right that, in lieu of receiving royalty payment for the market value of the state's royalty share of oil or gas, the department may elect that such royalty share of oil or gas be delivered in kind at the mouth of the well into tanks or pipelines provided by the department.

(3) On lands which the state owns less than the entire fee simple mineral rights in common tenancy (undivided interests), the lessee shall pay production royalties in the proportion which the state's interests bear to the undivided whole or an amount established by agreement between co-tenants.

(4) Payments shall be in an amount to cover all royalties due the state from production. The department may approve the use of payment bonds, savings account assignments, or other security which guarantees payment to the state. Production royalty payments shall be scheduled in the lease and plan of operations. The lessee shall furnish the department a sworn statement showing production for accounting periods required by the department and pay any royalties due.

(5) The lessee shall not sell or deliver any oil and gas or manufactured products to any person who does not agree to file purchase invoices with the department stating the price, quantity, origin of oil and gas purchased from a state lease and to allow an audit as provided by these rules. The department may require and prescribe any other methods necessary to insure a full accounting

of oil and gas produced from the premises. Noncompliance with any accounting requirements may cause suspension of operation or termination as provided in WAC 332-12-400.

(6) Any past due royalty payment shall bear interest at the rate of one percent per month, compounded monthly, on the unpaid balance.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-320, filed 11/16/82.]

WAC 332-12-330 Computation of royalties. Production royalty payments shall be based upon the gross value at the point of production defined as follows:

(1) For oil. The posted field price, or, if no field price is posted, the fair market value prevailing for oil of like kind, character, quality or comparable source at the point of production. All field prices shall be approved by the department.

All royalties, whether in money or in kind, shall be delivered to the state free of cost and deductions.

Quantities of oil produced shall be determined by metering or measuring (by automatic custody transfer meter, tank gauge, or other approved method) at the first point of transfer it is in a condition of pipeline quality which shall be considered the point of production.

(2) For gas or other hydrocarbons. The posted field price or if no field price is posted, the fair market value prevailing for gas of like kind, character or comparable source at the point of production. All field prices shall be approved by the department. These royalties shall be delivered to the state free of costs and deductions.

If gas is not sold but is used by the lessee for the manufacture of gasoline or other products, the fair market price at point of sale shall be used for these products, less reasonable deductions for refining costs, as determined by the department.

(3) All prices shall be approved by the department.

(4) Quantity of gas produced shall be determined by metering or measuring at the point where it is first accurately metered or measured on or near the lease premises from which it is recovered. Where it is considered to be merchantable or pipeline quality shall be considered the point of production, less any quantities reinjected into a reservoir in the same field for purposes of repressuring and conservation. The quantity of gas products shall be determined by metering at the point of delivery for sale by the lessee.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-330, filed 11/16/82.]

WAC 332-12-340 Unit plans. The holder(s) of any oil and gas leases may apply to the department to unite with each other or with other entities, including lands not owned by the state, to collectively adopt and operate under a unit plan.

(2) To implement a plan and protect the state's interest, the commissioner may alter the terms and conditions of the lease(s) so involved with the consent of the leaseholder(s). Authorization by the department to include state leases in unit plans shall be conditioned on the following requirements:

(a) There shall be submitted to the department a plat showing the area to be unitized, together with geological and other information in support of the delineation of the area.

(b) A preliminary draft of the plan shall be submitted to the department for approval.

(c) If the plan is approved by the department, the proponent of the plan shall deliver one copy to the department when fully executed.

(d) Leases which are only partially covered by unit plans shall be segregated into separate leases as to the lands committed and not committed as of the effective date of the unitization. The annual rental or minimum royalty shall be paid on the leased acreage in the unit independently from other segregated lease areas.

(e) The term of any lease that has become the subject of a unit plan as approved by the department shall continue in force until the termination of such plan. In the event that such plan is terminated prior to the expiration of any such leases, the original term of the lease shall continue.

(f) Any apportionment of production or royalties among the separate tracts of land comprising the unit shall include an accounting system and the right of the department to audit such system to protect the interests of the state.

(g) Operations and production under a single unit plan shall be considered the operations and production of all leases included under the plan. Due diligence performed on any part of an area under a unit plan, may be credited by the department toward the requirement for all state leases included in the unit.

(3) Agreements for a cooperative or unit plan of development of an oil and gas pool, field or like area or any part thereof shall comply with the provisions of RCW 78.52.370. All unit or cooperative plans containing lands leased under the provisions of chapter 79.14 RCW require approval and consent by the department.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-340, filed 11/16/82.]

WAC 332-12-350 Performance security. The lessee shall file a corporate surety bond, cash bond, savings account assignment or other security satisfactory to the department in an amount determined by the department to be sufficient to guarantee performance of the terms and conditions of the lease. Such security shall be submitted prior to the beginning of operations or applying for a drilling permit. Such security shall not be less than ten thousand dollars. The lessee shall promptly advise the department of any changes in operation. The department may reduce or increase the amount of the security as a result of operational changes requiring different levels of performance. The department may allow a lessee to file a single security device, acceptable to the state, in an amount set by the department covering all of the lessee's state leases.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-350, filed 11/16/82.]

WAC 332-12-360 Plan of operations. An applicant or lessee shall submit to the department and obtain approval of an acceptable plan of operations when applying for a preliminary investigation permit or prior to applying for a drilling permit required under Oil and Gas Conservation Act chapter 78.52 RCW. The purpose of the plan of operations is to provide detailed information for intended activities regarding exploration and reclamation. The plan of operations shall be reformulated to include development, production and additional reclamation or prior to making any material change in operations or when requested by the department.

[Statutory Authority: RCW 79.14.120, 86-07-027 (Order 472), § 332-12-360, filed 3/13/86; 82-23-053 (Order 387), § 332-12-360, filed 11/16/82.]

WAC 332-12-370 Assignments. (1) Any lease may be assigned, mortgaged, sublet, or otherwise transferred as to a divided or undivided interest therein to any qualified applicant subject to the approval of the department. The lessee shall execute an assignment approved by the commissioner. A transfer of a separate zone or deposit under any lease or a part of a legal subdivision shall be considered an assignment and is subject to the approval of the department. All approved assignments shall take effect as of the first day of the lease month following the date of approval. A separate assignment fee is required for each separate lease in which an interest is assigned.

(2) Assignments of undivided interests in a lease or changes in controlling lease interest shall not create new leases or new obligations and shall be subject to the approval of the department. The approval of these assignments, a designation of a single agent or a power of attorney executed by all lessees shall be filed with the department and an acceptable agreement adequate to protect the state's interest including a designation of the lessee shall be executed and filed with the department.

(3) Any divided interest or partial assignment of a geographically distinct subdivision of a lease shall segregate the assigned and retained portions thereof and upon approval of such assignment by the commissioner, create a new lease as to the assigned lands. The rights and obligations of the lessees under the retained portion and the assigned portion of the original lease are separate and distinct but are identical as to terms and conditions. Execution of the assignment shall release or discharge the assignor from all obligations thereafter accruing with respect to the assigned lands. Such segregated leases shall continue in full force and effect for the primary term of the original lease.

(4) Owners of cost-free interests such as overriding royalties, where authorized by the department, shall not be considered lessees and shall be subject to the rights of the department against the lessee. All state assignment documents shall contain provisions which subject any cost-free interests created by an assignment to the authority of the commissioner to require the proper parties to suspend or modify such overriding royalties or payments out of production in such a manner as may be reasonable when and during such periods of time as they

may constitute an undue economic burden upon the reasonable development and operations of such lease.

(5) The approval of any assignment shall not waive compliance with any terms and conditions of the original lease. The department may subject the assignment to special requirements or conditions to correct any non-compliance with the original lease. Upon approval of any assignment, the assignee or sublessee shall be bound by the terms of the original lease to the same extent as if such assignee or sublessee were the original lessee.

[Statutory Authority: RCW 79.14.120, 82-23-053 (Order 387), § 332-12-370, filed 11/16/82.]

WAC 332-12-380 Surrender of leasehold. (1) Every lessee shall have the option of surrendering their lease as to all or any portion or portions of the land covered thereby at any time and shall be relieved of all future liability thereunder with respect to the land so surrendered except for monetary payments theretofore accrued, physical damage to the premises embraced by the lease which have been occasioned by their operation, physical damages occasioned by right of way passage across other state lands, and the duty to plug and abandon and reclaim the lease premises.

(2) The lessee shall notify the department in writing requesting surrender of leasehold and the department shall acknowledge the receipt of such notice.

(3) If no operations have been conducted under the lease and no surface disturbances or damages have occurred on the land to be surrendered, the lease shall terminate sixty days after the date of the receipt by the department of the notice of surrender, unless the department authorizes an earlier date: *Provided*, That all payments due up to the time of termination are paid.

(4) If operations have been conducted and surface disturbance or damage has occurred on land proposed for surrender, the leasehold shall not terminate until the land has been reclaimed and placed in an acceptable condition and approved by the department, all wells have been properly plugged and abandoned, and all applicable conditions of chapter 78.52 RCW have been complied with. Termination of the lease shall become effective after approval by the department and all payments which may be due up to the time of termination are paid.

[Statutory Authority: RCW 79.14.120, 82-23-053 (Order 387), § 332-12-380, filed 11/16/82.]

WAC 332-12-390 Due diligence. Oil and gas leases shall continue after their initial term as provided by RCW 79.14.020 and 79.14.050 if:

(1) The lessee has complied with the conditions of the lease and is actively exploring in which one string of tools is in operation on the lease premises, allowing not to exceed ninety days between the completion of one well and the start of the next; or

(2) The lessee shall be producing oil and/or gas in continuous paying quantities; or

(3) The lessee is proceeding and actively pursuing development in the opinion of the department to efficiently extract oil, gas or associated substances after discovery; or

(4) The lessee engages in drilling, deepening, repairing or redrilling any production well without a ninety-day cessation of such activities; or

(5) The lessee has constructed a well capable of producing oil, gas or associated substances in paying quantities which is shut-in by consent or order of the oil and gas conservation committee. Such lease extension shall continue for the duration of such consent or order.

[Statutory Authority: RCW 79.14.120. 86-07-027 (Order 472), § 332-12-390, filed 3/13/86; 82-23-053 (Order 387), § 332-12-390, filed 11/16/82.]

WAC 332-12-400 Termination of lease for default.

The department may cancel the lease for noncompliance with the lease agreement, plan of operations, or applicable laws, rules, and regulations. The lessee shall be notified of such noncompliance and the necessary corrective measures by certified mail to the last known address of the lessee. If the lessee shall diligently and in good faith prosecute the remedying of the default specified in such notice, then no cancellation of the lease shall occur. Otherwise termination or cancellation shall automatically become effective thirty days from the date of mailing the notice of default and shall be final. The lessee may make a written request for an extension of time outlining the circumstances such extension is warranted. The department may, upon receiving a written request prior to the end of the thirty-day period, grant an extension of time in which to comply with the terms and conditions of the lease. Termination shall not relieve the lessee of any obligation incurred under the lease.

Failure to pay required rental and/or royalty within the time prescribed shall automatically and without notice work a forfeiture of such leases and of all rights thereunder.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-400, filed 11/16/82.]

WAC 332-12-410 Condition of premises upon termination of lease. The lessee shall have thirty days from the termination date in which to remove all improvements, except buildings and structures, from the premises except as authorized by the state, leaving all existing development in good order and repair, and without unnecessarily hampering future development and operation of the lease premises. All such improvements remaining on the lease premises after thirty days, including the buildings and structures, shall become the property of the state: *Provided*, That the lessee may upon written request to the department be granted an extension of time where forces beyond the control of the lessee prevent removal of said improvements within thirty days. If the subsurface resource is exhausted, the lessee shall remove all improvements unless otherwise permitted by the department.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-410, filed 11/16/82.]

WAC 332-12-420 Reclamation. The lessee shall restore the lease premises as required by state and federal

law and the lease. The lessee shall submit final reclamation plans to the department for its approval prior to:

(1) Submission of such a plan to the oil and gas conservation committee; and

(2) Prior to notification to the department to plug and abandon any well; and

(3) Within ninety days prior to the end of the lease term.

All plans shall be subject to the approval of the department. All reclamation shall be completed within ninety days of the receipt of the final approved plan from the department. The department may, upon receiving a written request prior to the end of the ninety-day period, grant an extension of time for completion of reclamation.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-420, filed 11/16/82.]

WAC 332-12-430 Timber. No forest products owned by the department shall be cut, removed or destroyed unless approved in advance by the department. The lessee shall appropriately mark all forest products proposed to be cut. Unless the department elects to directly dispose of the forest products, the department will appraise the forest products and the lessee shall pay the appraised value of such forest products within thirty days of billing unless there is written extension of time by the department, and in any event, prior to their cutting.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-430, filed 11/16/82.]

WAC 332-12-440 Use of the premises. A lessee may use the lease premises as provided in the lease and the approved plan of operations, subject to existing rights and payments as otherwise provided. Such uses shall be those reasonably necessary for the exploration, operation, and production of oil and gas. All other uses shall require separate leases.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-440, filed 11/16/82.]

WAC 332-12-450 Prevention of waste and environmental protection. (1) The lessee shall conduct all operations in a manner to prevent waste and preserve property and resources. If the lessee fails to do so, the department may enter on the property to repair damages or prevent waste at the lessee's expense, in addition to other authorized actions.

(2) The lessee shall use all proper safeguards to prevent pollution of earth, air, and water. The lessee is responsible for all damage to public and private property caused by the lessee's operation and shall use all reasonable means to recapture escaped pollutants.

(3) The lessee shall explore for oil and gas with the minimum disturbance to the surface of the land. All drill holes shall be securely capped and/or plugged when not in use or abandoned. The lessee shall comply with all of the provisions of law governing surface and groundwater.

(4) Topsoil on lands to disturbed shall be removed and stockpiled on the site. The lessee shall take all necessary steps to insure the preservation of the stockpiled topsoil, including establishment of a temporary vegetative cover to prevent erosion. Upon the final abandonment or completion of a drilling operation, the lessee shall reclaim the lease premises, including restoration of the surface to acceptable contours, redistribution of the topsoil, and reseeded the land with native grasses and native plants prescribed by the department in the approved plan of reclamation.

(5) Upon completion of production or exhaustion of an oil and/or gas resource, the lessee shall reclaim the land, and plug and abandon all wells.

(6) The department may, in the plan of operations, require interim measures to reclaim the lease area and protect all resources and property.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-450, filed 11/16/82.]

WAC 332-12-460 Access road construction and maintenance standards. Access roads authorized to be constructed and/or maintained on public lands or easement agreements shall conform to those standards approved and specified by the department.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-460, filed 11/16/82.]

WAC 332-12-470 Rights of way over state lands. Any lessee shall have a right of way over state lands not included in the lease area when authorized by law, when necessary, for the exploration, development and production of oil and gas, provided that a right of way application and a plat showing the location of such right of way shall be filed with the department. Rights of way, when authorized, will be granted to the lessee upon approval of the location by the department or other agency owning in fee the surface rights and payment of charges.

The department retains the right to utilize all rights of way and grant such other rights not inconsistent with the lessees use of such rights of way.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-470, filed 11/16/82.]

WAC 332-12-480 Field inspections and audits. Any person designated by the department shall have the right at any time to inspect and examine the lease premises and production facilities, and shall have the right during lessee business hours to examine such books, records, tax returns, and accounts of the lessee as are directly connected with the determination of royalties.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-480, filed 11/16/82.]

WAC 332-12-490 Reports. The rules and regulations promulgated under the Oil and Gas Conservation Act, chapter 78.52 RCW require standardized reports of well history or record and well log, production, and methods used in plugging and abandoning a well. These reports shall be made available to the department through the oil and gas conservation committee.

If a lessee discovers any subsurface resource of possible recoverable value, not covered in the oil and gas lease, the discovery shall be reported to the department within ten days of the discovery date.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-490, filed 11/16/82.]

WAC 332-12-500 Compliance with other laws. All development or production activities authorized by the lease shall be conducted in accordance with all applicable laws, rules and regulations. The lessee(s) shall, before commencing any operations on the leased lands, inform themselves of and then abide by the laws, rules and regulations affecting such operations. Compliance with state and federal laws, rules and regulations shall be the sole responsibility of the lessee and not the responsibility of the department.

The filing of a bond or other security as a lease requirement does not remove the obligation to file bonds required by other laws.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-500, filed 11/16/82.]

Chapter 332-14 WAC

COAL LEASING RULES AND REGULATIONS

WAC

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WAC 332-14-010 Definitions. The following terms are applicable when used in the chapter and shall be defined as follows unless the context clearly requires otherwise:

(1) "Abandon" means the removal of all drilling and production equipment from the site and the restoration

of the surface of the site to standards set forth by the Office of Surface Mining in 30 CFR, Part 947, "Surface Mining and Reclamation Operation Under a Federal Program for the State of Washington" or a federally approved state program.

(2) "Auction" means competitive lease bidding by oral or sealed bids or a combination thereof.

(3) "Blending" means combining two or more grades of coal to achieve desired chemical or combustive properties.

(4) "Coal" means a black or brownish-black solid combustible substance which has been subjected to the natural process of coalification and which falls within the classification of coal by rank for lignite, subbituminous, bituminous or anthracite as defined in the American Society of Testing Material Standards.

(5) "Coal mining lease" means a lease not to exceed twenty years entitling the operator to develop, mine and market a known coal resource on state lands.

(6) "Coal option contract" means a one-year agreement entitling its holder to explore for coal on one section or 640 acres, whichever is larger and to remove up to 250 tons of coal for testing purposes.

(7) "Commingling" means the mixing of coal from the leased premises with coal from land other than the leased premises.

(8) "Department" means the department of natural resources.

(9) "Development" means any work which occurs after exploration and which furthers coal production.

(10) "Exploration" means investigation to determine presence, quantity and quality of coal resources by geologic, geophysical, geochemical or other means.

(11) "Exploration drill hole" means an exploratory drill hole constructed for the purpose of determining depth, thickness, quality and quantity of coal for the identification of underlying rock formations in which the coals occur and the determination of hydrological conditions.

(12) "Gross receipts from mining" means the fair market price per ton according to rank as prepared for market at the first point of sale or commercial use.

(13) "Grout" means a cementing agent which is used for plugging and sealing exploration drill holes.

(14) "Improvements, structures, and development work" means anything considered a fixture in law or the removal of overburden or the diversion of drainage or other work preparatory to removal of coal, placed upon or attached to state lands that has added value to the state's interest therein.

(15) "Logical mining unit" means contiguous lands or lands in reasonable proximity in which the recoverable coal reserves can be developed in an efficient, economical, and orderly manner as a unit with due regard to recoverable coal reserves. A logical mining unit may consist of one or more state leases under the control of a single lessee and may include intervening or adjacent lands in private or public ownership.

(16) "Mine" means any excavation made for production of coal for commercial sale or use.

(17) "Office of surface mining" means United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement or its successor.

(18) "Plug and abandon" means the placing of permanent plugs in a coal exploration drill-hole in such a way and at such intervals as are necessary to prevent future leakage of either fluid or gases from the drill hole to the surface or from one aquifer to another.

(19) "Production" means the work of extracting and preparing coal in commercial quantities for market or for consumption.

(20) "Reclamation" means rehabilitation of surface-mined areas to those required standards set forth by the Office of Surface Mining in 30 CFR, Part 947, "Surface Mining and Reclamation Operation Under a Federal Program for the State of Washington" or by a federally approved state program.

(21) "SEPA" means the State Environmental Policy Act, chapter 43.21C RCW.

(22) "State land" means land where all or part of the subsurface coal rights are owned by the state and are managed by the department.

(23) "Surface rights" means the rights to the use of the surface of the property not including subsurface rights.

(24) "Ton" means ton as defined by RCW 79.01.668.

(25) "Treatment" means improving the physical or chemical properties of coal.

(26) "Washing" means the separation of coal from undesired contaminants through use of a fluid medium.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-010, filed 4/29/85.]

WAC 332-14-020 Jurisdiction. These rules shall be applicable to all state lands which the department is authorized to lease for the purpose of prospecting, developing and extracting coal resources. These rules are promulgated pursuant to RCW 79.01.652 through 79.01.696.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-020, filed 4/29/85.]

WAC 332-14-030 Lands available for exploration and leasing--Authority to withhold. State lands subject to the management of the department shall be available for coal exploration in accordance with these regulations. The department is not required to offer any tract of land for coal exploration or coal mining unless it determines that the interests of the state would be served.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-030, filed 4/29/85.]

WAC 332-14-040 Applications. Applications for coal option contracts or coal mining leases shall be filed with the department in Olympia, Washington on forms provided by the department. An applicant may file more than one application and acquire more than one option contract or mining lease. Each application for a coal option contract or a coal mining lease shall be accompanied by a fee of one dollar per acre for the lands applied

for but in no case less than fifty dollars. Fees shall be based upon acreages as determined by the department.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-040, filed 4/29/85.]

WAC 332-14-050 Refund of application fees. If an application for a coal option contract or a coal mining lease is rejected by the department, application fees may be refunded after deducting expenses incurred in investigating the character of the land.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-050, filed 4/29/85.]

WAC 332-14-060 Coal option contract and coal mining lease--Area--Term. One government surveyed section of land or up to 640 acres, whichever is the larger area, may be the subject of a coal option contract or a coal mining lease. The term of a coal option contract may not exceed one year. The term of a coal mining lease may not exceed twenty years. The acreage in a single application does not need to be contiguous. The total area of a coal option contract or a coal mining lease shall be limited to a logical mining unit as determined by the department.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-060, filed 4/29/85.]

WAC 332-14-070 Coal option contract. The department may issue a coal option contract after investigation of the character of the state lands if the department deems it to be in the best interests of the state. An option contract may be conditioned or denied based upon the department's analysis of potential environmental impacts arising from applicant's proposed exploration activities upon the premises. Applications will be considered received by the department upon the date of its arrival at the department's Olympia office. Applications for an option contract will not be considered during the term of an existing option contract. If more than one application for a coal option contract is received on the same day for the same premises, the successful applicant will be chosen by drawing lots. The coal option contract will be prepared by the department and mailed to the applicant for execution. Applicant shall have thirty days from the date of the mailing to sign and return the option contract to the department. Failure to return the signed contract within the specified period may result in the rejection of the application.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-070, filed 4/29/85.]

WAC 332-14-080 Converting coal option contract--Lease. To convert a coal option contract to a coal mining lease, the holder must submit an application for conversion on a form provided by the department. Applicant shall provide a detailed report of the results of its investigation and exploration together with its proposed plan of development for the extraction and production of coal and a proposed reclamation plan. The plan will be used as a basis for SEPA analysis and evaluation of environmental impacts.

[Title 332 WAC—p 28]

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-080, filed 4/29/85.]

WAC 332-14-090 Coal mining leases--Environmental analysis. The department may condition or deny a coal mining lease based upon analysis of potential adverse environmental impacts. If a coal mining lease is awarded at public auction and is subsequently denied based upon potential adverse environmental impacts, all bid deposits will be refunded.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-090, filed 4/29/85.]

WAC 332-14-100 Procedure for award of coal mining lease at public auction. The department may offer coal mining leases for lands known to contain workable coal at public auction and award the lease to the highest bidder. Public bidding shall be by sealed bid followed by oral auction. Oral bidding will be confined to persons previously submitting sealed bids. Notice of the public auction shall be given at least thirty days prior to the auction in two newspapers of general circulation, one of which shall be in the county in which the premises are located. The notice shall specify the following:

- (1) Place, date, and hour of the auction;
- (2) Legal description of the premises;
- (3) Royalty rates per RCW 79.01.668;
- (4) The minimum acceptable bonus bid.

Sealed bids shall be submitted in accordance with the notice of auction and shall be accompanied by a certified check for one-fifth of the total bid, together with the entire first year's minimum annual per acre royalty as established in the proposed lease. Unsuccessful sealed bidders will have their deposits refunded. A successful oral bidder shall submit payment within ten days of an additional payment to equal one-fifth of its total bid.

The coal lease will be awarded to the highest bidder, provided that it is duly executed and returned to the department with the balance of the bid. If an executed coal lease and the required payments are not received by the department within thirty days of the date of the auction, the proposed lease may be awarded to the next highest bidder and any monies deposited by the defaulting bidder shall be forfeited to the department.

Award of a coal mining lease does not authorize any surface disturbing activities thereunder until SEPA requirements have been satisfied by the lessee.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-100, filed 4/29/85.]

WAC 332-14-110 Consolidation of leases. The holder of two or more coal mining leases may apply to the department for consolidation of leases in order to facilitate operations. If the department finds, after investigation and examination, that the proposed consolidation will be in the best interests of the state, approval will be issued.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-110, filed 4/29/85.]

WAC 332-14-120 Re-lease of coal leases. An existing lessee may make application to re-lease the premises for a like term from the department. If the department receives no other application and, after inspection and investigation regarding the development and improvement of the premises during original lease term, determines that it is in the best interests of the state to re-lease the premises, it shall fix the royalties for the ensuing term and issue a renewal lease for a term up to twenty years. If application is received from a new applicant, the state shall lease the premises at public auction.

If a person other than the original lessee shall be awarded the lease, they shall assume reclamation obligations and reimburse the original lessee for the value of the structures, improvements or development work which adds value to the premises as determined by the department. When bids are evaluated, the department shall extend a preference to the existing lessee to meet the terms of a higher competing offer.

An application for re-lease shall be filed with the department at least sixty days, but not more than one year prior to expiration of the lease. Unless a timely application for re-lease is made, the department will not recognize any added premises values nor will reimbursement be required of a new lessee.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-120, filed 4/29/85.]

WAC 332-14-130 Lease-minimum annual royalty. The lessee shall pay the first year's minimum annual per acre royalty prior to execution of the lease. Each subsequent minimum per acre royalty payment shall be paid in advance each year. Minimum per acre royalty payment shall be credited against production royalties due for the same lease year.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-130, filed 4/29/85.]

WAC 332-14-140 Late royalty payments—Interest rate. Past due royalty payments shall bear interest at the highest rate permitted by RCW 19.52.020 per month. Costs of collection, including attorney's fees, shall be recoverable in addition to interest.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-140, filed 4/29/85.]

WAC 332-14-150 Procedure where surface rights encumbered. The holder of a coal option contract or a coal lessee shall have a right of action in the superior court of the county in which the premises are located to ascertain and determine the amount of damages, if any, which will accrue to the holder of surface rights by reason of the exercise of any of the exploratory, prospecting or mining rights conveyed by the department if agreement cannot be reached regarding damages. The term of any coal option contract or coal mining lease shall begin thirty days after the entry of the final judgment in such action, if the action has been pursued with due diligence.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-150, filed 4/29/85.]

WAC 332-14-160 Surety arrangements. The lessee shall file a corporate surety bond, cash bond, savings account assignment or other surety arrangement satisfactory to the department, in an amount determined by the department, in order to guarantee performance of the terms and conditions of an option contract or mining lease. Such surety arrangement shall be submitted for approval prior to commencing operations and shall be not less than one thousand dollars for an option contract and not less than ten thousand dollars for a mining lease. The department may, during the term of contract or lease, increase the amount of the surety arrangement for operational changes requiring increased levels of performance. The department may authorize a single surety arrangement for more than one state lease held by a person.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-160, filed 4/29/85.]

WAC 332-14-170 Plan of activities—Coal option contract. The applicant for a coal option contract shall submit a plan of activities which shall include but is not limited to the following:

- (1) The type, location, and schedule of exploratory drilling and trenching activities;
- (2) Location of other significant activities, including type and depth of drilling, trenching, and adit construction;
- (3) Proposed roads;
- (4) Reclamation, including method of plugging and sealing drill holes and adits;
- (5) Proposed erosion control plans for roads, landings, drilling platforms, and trenches; and
- (6) Proximity to surface water including proposed stream crossings.

If the holder of a coal option contract desires changes to the approved plan of activities, department approval is required.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-170, filed 4/29/85.]

WAC 332-14-180 Plan of development/operation/reclamation—Coal mining lease. The successful bidder for a coal mining lease pursuant to RCW 79.01.672 shall submit a plan for mining to include a fully detailed plan for orderly development and extraction of coal and reclamation of the premises. The plan will be used as a basis for SEPA analysis and evaluation of environmental impacts.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-180, filed 4/29/85.]

WAC 332-14-190 Reclamation—Federal permit required. All surface mining and reclamation activities shall be in accordance with the terms of a surface mine reclamation permit obtained from the U.S. Department of the Interior, Office of Surface Mining and Enforcement or a federally approved state permit.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-190, filed 4/29/85.]

WAC 332-14-200 Diligence and forfeiture. The holder of any coal mining lease shall expend at least fifty thousand dollars per year in exploration, mine development, mine operation, or reclamation activities on the premises, or on the logical mining unit of which the lands are a part unless a written waiver is issued by the department. Proof of such expenditure shall be submitted to the department on the anniversary date of the lease. By mutual agreement the diligence requirement may be met by an in lieu payment of said amount to the state. Failure to expend this amount of money may result in forfeiture of the coal lease. Applicants for coal leases shall identify the logical mining unit in which the lands applied for lie. In the event the department, after investigation and examination, finds that the proposed logical mining unit will be in the best interest of the state, such designation of a logical mining unit will be approved. In the event the department finds that the proposed logical mining unit will not be in the best interest of the state, the diligence requirements shall apply only to the lands included within the lease. The boundaries of a designated logical mining unit may be adjusted if a coal lease is renewed.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-200, filed 4/29/85.]

WAC 332-14-210 Assignments. Coal mining leases are assignable in accordance with RCW 79.01.292. Coal option contracts are not assignable.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-210, filed 4/29/85.]

WAC 332-14-220 Timber. No timber owned by the state shall be cut, removed or destroyed by a holder of a coal option contract or coal mining lease prior to approval by the department. Holder shall mark all timber proposed to be cut, removed or destroyed and the department shall appraise the timber. The department shall have the option of selling the timber or allowing the holder to cut, remove or destroy it upon payment of the appraised value.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-220, filed 4/29/85.]

WAC 332-14-230 Use of premises. On premises consumption and blending, commingling, washing or storage of coal may be authorized as a part of an approved plan of development and mining without payment of additional compensation to the department.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-230, filed 4/29/85.]

WAC 332-14-240 Right to audit business records. The department may, during normal business hours, examine the premises, improvements, operations or production facilities and may inspect books, records or federal income tax returns of the lessee in order to ascertain the production of coal and to determine compliance with the terms and conditions of the coal lease, approved development, mining or reclamation plans or these regulations.

[Title 332 WAC—p 30]

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-240, filed 4/29/85.]

WAC 332-14-250 Plugging and abandonment procedures for exploration drill holes. All exploration drill holes shall be properly plugged and abandoned by the holder of any coal option contract or coal mining lessee according to the following requirements:

(1) No drill holes shall be plugged and abandoned until the method and manner of plugging has been approved by the department. Drill holes not necessary for hydrological monitoring measurements shall be plugged and abandoned as soon as practical following drilling and probing. Hydrological monitoring holes shall be cased and capped while in use.

(2) All drill holes in which gas is present, or which exhibit artesian ground water flow, or which encounter ground water zones, shall be plugged with grout, cement or approved gel. These plugs shall extend a minimum of 100 feet above and below all ground water zones or to the top and bottom of the hole.

(3) Plugs below the water level of the drill hole must be made by a method which precludes dilution of the plugging material.

(4) All exploration drill holes must have surface plugs sufficient to effect a permanent seal. The top of the plug must be installed deeper than three feet below the original surface with a permanent identification monument in the soil above the plug.

(5) Unused drilling supplies and debris extraneous to drilling operations must be removed from the premises and the excavation must be backfilled to its approximate original land surface. Each drill site shall be graded to its approximate original contour and shall be left in a stable condition. Within thirty days after completion of all exploration activities, the lessee shall file a sworn statement on a form provided by the department setting forth in detail the methods used in sealing all drill holes and restoring the premises to a stable condition.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-250, filed 4/29/85.]

WAC 332-14-260 Access road construction and maintenance standards. Access roads authorized to be constructed and/or maintained on state lands or under right of way easement agreements shall conform to standards approved by the department.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-260, filed 4/29/85.]

WAC 332-14-270 Exploration reports—Confidentiality. A coal option contract holder or a coal mining lessee shall submit a semi-annual report to the department of all geophysical, geologic and qualitative coal data, analyses and maps which are gathered or prepared during exploration activities on the premises. This report shall include sampling information, geologic, geophysical and driller's logs and all analytical results. Sampling or drilling points shall be referenced by bearing and distances from identifiable land marks or by legal description. Such data, analyses or maps shall be confidential

and not available for public inspection or copying for five years from the date of filing the report.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-270, filed 4/29/85.]

WAC 332-14-280 Compliance with other laws. All development or production activities authorized by the lease shall be conducted in accordance with applicable federal and state laws, rules and regulations. Compliance shall be the sole responsibility of the holder of any coal option contract or coal mining lessee and not the responsibility of the department.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-280, filed 4/29/85.]

Chapter 332-16 WAC

MINERAL PROSPECTING LEASES AND MINING CONTRACTS

WAC

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332-16-340	Administrative Procedure Act.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-16-280	Royalties—Gross income. [Order 3, § 332-16-280, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 86-14-015 (Order 478), filed 6/23/86. Statutory Authority: RCW 79.01.618.
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WAC 332-16-010 General objectives of mineral resource management. The general objective of the department of natural resources in its management of state-

owned mineral resources is to provide for the maximum dollar return to the state from those resources consistent with general conservation principles. In implementation of this general objective, the department shall seek to:

(1) Secure the highest dollar return to the state under good management practice.

(2) Achieve the maximum income from the utilization of mineral resources by encouraging exploration, development, and production consistent with accepted standards of good mineral industry practices.

(3) Encourage the mineral utilization of state lands through administrative policy and management practices which conform to the requirements of practical operation.

(4) Encourage the release of technical and scientific information regarding minerals on state lands and secure appropriate engineering records of all mineral exploration and utilization.

[Order 3, § 332-16-010, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67; Mineral prospecting lease rules, adopted 6/1/59.]

WAC 332-16-020 Lands subject to mineral leasing law and chapter 332-16 WAC. Lands subject to the provisions of the "mineral leasing law," i.e., chapter 56, Laws of 1965 (RCW 79.01.614 - 79.01.650), and chapter 332-16 WAC are all lands, or interest therein, under the administration of the department of natural resources.

[Order 3, § 332-16-020, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-030 Definitions. The following definitions are, unless the context otherwise required, applicable to chapter 56, Laws of 1965 (RCW 79.01.614 - 79.01.650), and to these rules and regulations. These definitions shall be used in connection with applications, reports, prospecting leases, mining contracts, and other documents issued in connection therewith:

(1) "Department" shall mean the department of natural resources.

(2) "Commissioner" shall mean the commissioner of public lands.

(3) "Board" shall mean the board of natural resources, as established by chapter 38, Laws of 1957 (chapter 43.30 RCW).

(4) "Proper office," as used in RCW 79.01.620 and 79.01.636 shall mean the authorized office of the department in Olympia, Washington.

(5) "Mineral leasing law" shall mean RCW 79.01.614 - 79.01.650.

(6) "Leased premises" shall mean public lands held under mineral prospecting lease or mining contract.

(7) "Lessee" shall mean any person holding a prospecting lease or mining contract.

(8) "Valuable minerals and specified materials" may include but are not restricted to peat, dolomite, limestone, pumice, and nonfuel or nonhydrocarbon gases, such as carbon dioxide, helium, nitrogen, and sulfur gas.

Such materials as those used for riprap, ballast, fill material, and road material shall not be considered as valuable minerals or specified materials except when they are the by-product of mining operations.

The determination of the department of whether any particular materials are "specified materials" within the meaning of the mineral leasing law shall be based on the best interests of the state.

(9) "Ore" shall mean any material containing "valuable minerals" or "specified materials," the nature and composition of which, in the judgment of the lessee, justifies either: (a) Mining or removing from place during the term of his lease and either shipping and selling the same or delivering the same to a processing plant for physical or chemical treatment; or (b) leaching and treating in place during the term of the lease.

(10) "Waste" shall mean earth, rock, or material mined or removed from place and/or premises during the term of lease, but which is not ore as defined above.

(11) "Product" shall mean: (a) All ore mined or removed from place in the leased premises during the term of the lease and shipped and sold by the lessee prior to treatment; and (b) all concentrates, precipitates, and mill products produced by or for the lessee from ore mined or removed from place in the premises, or from ore leached in the premises, during the term of the lease.

(12) "Treatment" shall mean beneficiation, concentration, crushing, screening, smelting, refining, leaching, and otherwise treating in any manner, any ore product and material mined and produced from the leased premises and from other lands.

(13) "Stockpiling" shall mean storing on the leased premises any ore or product mined or produced from the leased lands or other lands by the lessee or affiliated companies.

(14) "Commingling" shall mean the mixing of ores or materials or products from the leased premises with the ore, materials, or products from other lands.

(15) "Cross-mining" shall mean the mining or removal of ores and materials from the leased premises through, or by means of, shafts, openings, or pits, which may be in or upon adjoining or nearby property owned or controlled by the lessee.

[Order 3, § 332-16-030, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-040 Applications. Applications for prospecting leases or mining contracts will be received during business hours in the proper office of the Department of Natural Resources, Public Lands-Social Security Building, P.O. Box 168, Olympia, Washington 98501. An application fee of \$5.00 and the first year's rental must be submitted with each application. All applications received by any means other than the United States mail shall be stamped by the department with the date and time of receipt in the Olympia office. Applications will be accepted in the order received, and priority of leasing will be established on this basis, except as provided in WAC 332-16-050. Applications received through the United States mail on any business day shall be considered as having been received as of the close of

business on that day. An application may be submitted for a mining contract without first obtaining a prospecting lease.

[Order 3, § 332-16-040, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-050 Applications--Simultaneous. In the event more than one application for a prospecting lease and/or mining contract is received for the same land through the mail on the same day and no other applications are received that day, such applications will be considered to have been filed simultaneously and to be in conflict. Such applicants will be advised by mail of the fact of simultaneous filing and that their applications are in conflict. The conflict will be resolved by the drawing of lots in the Olympia office of the department.

[Order 3, § 332-16-050, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-060 Applications--Return of moneys. In the event an application for a prospecting lease or mining contract is rejected by the department, all moneys tendered by the applicant will be refunded. In the event an application is rejected in part, money tendered for rental of such rejected part will be refunded upon completion of processing. An applicant for a prospecting lease or a mining contract may submit to the department, in writing, a request that his application be withdrawn in whole or in part. If the request is received prior to processing of the lease or contract by the department, all moneys tendered for the area withdrawn will be refunded. If the request is received after the lease or contract processing, all moneys tendered shall be forfeited to the state, unless otherwise ordered by the department for good cause.

In the event an application is received for a prospecting lease or mining contract covering land that is encumbered by a prospecting lease or mining contract, all moneys tendered with such application will be refunded.

In the event of simultaneous filings, as defined in WAC 332-16-050, one or more of the applicants may request, in writing, that his application be withdrawn. All moneys tendered by such applicants shall be refunded. In simultaneous filing cases, all moneys tendered by unsuccessful applicants will be refunded.

The department may reject any and all applications for prospecting leases or for mining contracts when the interests of the state shall justify it, and in such case it shall forthwith refund to the applicant all moneys tendered.

[Order 3, § 332-16-060, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-070 Area and term of leases and contracts. A person may hold any number of leases or contracts at any time. No lease or contract may exceed the equivalent of one section or be less than the equivalent of one-sixteenth of a section in legal subdivisions, according to the United States government surveys, unless the available land managed by the department is less than one-sixteenth of a section. Scattered tracts may, at

the discretion of the department, be included in a single lease or contract, provided such leases or contracts are situated in the same or contiguous sections.

All prospecting leases shall be for a term of two years from the date of the lease unless converted to a mining contract prior to the expiration of the prospecting lease.

All mining contracts shall be for a term of not to exceed 20 years. The holder of a mining contract shall have the option to a new contract.

[Order 3, § 332-16-070, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-080 Leases and contracts in effect on June 10, 1965. All prospecting leases or mining contracts in effect June 10, 1965, shall be eligible, upon application, for a new prospecting lease or mining contract, as provided in chapter 56, Laws of 1965 (RCW 79.01.614 - 79.01.650).

[Order 3, § 332-16-080, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-090 Tide and shore land descriptions. Lease or contract descriptions of beds of navigable waters, tidelands, and shorelands may be based on projected sections according to the United States government survey of adjoining lands; however, the bed and shorelands of navigable rivers or lakes, where such descriptions would be impractical, may be described by metes and bounds or as follows:

- (1) "Bed and shorelands, or shorelands of _____ River as it flows through _____ (describe land) _____"; or
- (2) "Bed and shorelands, or shorelands of _____ (river or lake) _____ in _____ front of _____ (describe land) _____."

[Order 3, § 332-16-090, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-100 Conversion of leases to contracts. To convert a prospecting lease to a mining contract, the lessee, prior to the expiration of the prospecting lease, must submit an application to the department with the \$5.00 application fee, the first year's rental under the contract, and evidence of development work in an amount of not less than \$1.25 per acre per year or fractional year thereof. Any contract issued upon conversion from a prospecting lease shall have the time already expended on said prospecting lease deducted from the prospecting or exploration period of the contract, but said prospecting lease and contract shall be for a total term not to exceed 20 years.

[Order 3, § 332-16-100, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-110 Conversion of leases to contracts--Failure to convert. Any prospecting lease not converted as provided in WAC 332-16-100 shall not be renewable. The holder of an expired prospecting lease or his agents shall not be entitled to a new lease or a contract on the premises covered by the prior lease for one

year from the expiration date of the expired prospecting lease.

[Order 3, § 332-16-110, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-120 Forms. Application, lease, contract and related forms shall be developed and furnished by the department in accordance with established leasing procedures, statutory requirements, and necessary accountability. All leases and contracts shall contain terms and conditions in conformity with the law and these rules and regulations.

[Order 3, § 332-16-120, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-130 Time for return of executed leases and contracts. After processing by the department, leases and contracts will be mailed to the applicant for signature. Applicant will be allowed 30 days in which to sign and return the lease or contract. If the applicant fails to sign and return the lease or contract within 30 days, the lease or contract will be rejected and the application fee and the first year's rental will be forfeited to the state. Additional time in which to sign and return the lease or contract may be granted by the department if the applicant submits a request for such additional time, in writing, prior to the expiration of the 30-day period.

[Order 3, § 332-16-130, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-140 Cash or surety bond may be required. The department may, at its option, require the applicant to post a cash bond or an approved surety bond guaranteeing his compliance with the terms and conditions of a prospecting lease or mining contract. Such bonds may be required in those cases in which the applicant and the department cannot agree regarding the payment for damages to land, and in such other cases as the department may, at its discretion, require.

[Order 3, § 332-16-140, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-150 Timber. The department is responsible for managing the timber as well as the mineral resources on state lands. The department has the right to sell or otherwise dispose of timber on state lands. It is not obligated to withhold from sale any timber usable for prospecting or mining purposes.

The lessee may cut and use such timber located on the leased premises as is necessary to prospecting or mining operations. No timber may be removed from the leased premises for processing or manufacturing. No charge will be made for timber cut and used on the premises if such timber is necessary to the prospecting or mining operations. Prior to any cutting of timber from the leased premises, the lessee must contact the local district administrator of the department for approval. All timber to be cut must be marked by the lessee or otherwise designated by the department.

Prior approval of the department must also be obtained for the cutting and removing or destruction of forest products which is necessary to the lessees' operations and which will not be used on the premises. The lessee shall submit a request, in writing, and a plat indicating the area from which forest products are to be cut and removed or destroyed to either the department's local district administrator or its Olympia office. All forest products proposed to be cut and removed or destroyed must be appropriately marked by the lessee. The department will then appraise the forest products involved, utilizing its established techniques. Lessee shall, upon being billed, pay the appraised value of such forest products. Payment shall be made within 30 days of billing unless a longer period is approved, in writing, by the department, but in any event, prior to the cutting, removal, or destruction.

In cases where the appraised value of forest products, as provided in the paragraph last above, cannot be readily established in advance due to the nature of the proposed prospecting or mining operations, the lessee may, in lieu of advance payment, post a cash bond or approved surety bond, in an amount sufficient, in the opinion of the department, to cover possible damages.

In the event land clearings are required by the mining operation, the lessee shall so advise the department and, prior to the commencement of such clearing, obtain written approval from the department. The department, whenever possible, will attempt to sell the timber involved within a reasonable time. Should the department elect not to sell or is unable to sell, the lessee will be charged and payment made as provided in the paragraph next above.

[Order 3, § 332-16-150, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-160 Notice of rental or minimum royalty. Advance notice of rental or minimum royalty due is ordinarily sent by the department to the last-known address of the lessee approximately 30 days before such rental or minimum royalty is due. Failure to receive such notice shall not act to relieve the lessee from responsibility for making payments. Lessee will be considered in default if payment is not made as provided in the lease or contract. The lease or contract may be terminated upon the failure of the lessee to comply with these rules and regulations and statutes.

[Order 3, § 332-16-160, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-170 Right of entry. The state has retained title to mineral rights on public lands sold subsequent to June 11, 1907. The state, as provided in section 8, chapter 56, Laws of 1965 (RCW 79.01.633), transfers its right of entry to such lands to the lessee during the life of the lease or contract.

[Order 3, § 332-16-170, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-180 Damages to encumbered lands. When lands described in an application for a prospecting

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lease or mining contract shall have been previously encumbered for any other purpose than prospecting or mining, the applicant must provide for compensation to the holder of the surface rights for damages which may result from prospecting or mining. The applicant for a prospecting lease or mining contract must submit evidence of having reached agreement with the holder of the surface rights. In the event the applicant and the holder of the surface rights are unable to reach agreement as to compensation for damages, the department will estimate the amount of damages: *Provided*, That in the event an application is received for a prospecting lease or a mining contract on lands which have been withdrawn by the department, or which have been leased by the department to any other governmental entity for a public use, the department will participate in all negotiations between the applicant and the governmental entity concerned regarding the amount of damage that prospecting or mining will do to the land, giving consideration to the use to which the land is now being, or may reasonably foreseeably be put.

The applicant must post a cash bond or file a surety bond, issued by a bonding company authorized to do business in this state, in an amount sufficient in the opinion of the department to cover such damages, prior to the department issuing a prospecting lease or mining contract.

[Order 3, § 332-16-180, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-190 Use of leased premises. Lessee may use the leased premises and any shafts, openings or pits therein for the mining, removal, treatment, and transportation of ores and materials from the leased premises, adjoining property or nearby property, including cross-mining, or for any purpose connected therewith. In the event the leased premises are used for processing, treatment or stockpiling of ores and/or materials and such use does not result in fair rental compensation for the land so used, the department shall have the right to charge reasonable rentals for such use. No comingling shall take place except such ore, materials, or products shall have been sampled, where necessary, and weighed or measured by volumetric survey or other accepted industry practices, in such a manner as will permit computation of the royalty to be paid. The lessee shall, at all times, follow reasonable and accepted conservation practices in all operations on the leased premises.

[Order 3, § 332-16-190, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-200 Development work and improvements. Performance of development work or improvements is required on land held under mining contract in an amount of not less than \$2.50 per acre each year after termination of the prospecting or exploration period of a contract or upon commencement of actual mining, recovery, and saving of minerals or materials, whichever

is first. Development work or improvements, to be acceptable, must contribute directly to the mining or mineral potential of the property.

Development work or improvements actually accomplished during any one year in excess of the contract requirements may be applied toward the requirements for the next succeeding year only. To be credited against the next succeeding year, the excess work must be reported to the department at the end of the year such work was performed.

When two or more contracts are involved, development work accomplished on one contract, which exceeds the development requirements on said contract, may be credited on the other contracts subject to the approval of the department: *Provided*, That operation of the contracts has been consolidated under the provisions of section 13, chapter 56, Laws of 1965 (RCW 79.01.648).

[Order 3, § 332-16-200, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-210 Development work and improvements--Examples, acceptable. The following are examples of acceptable types of development work or improvements. These are examples only, and acceptable development work or improvements are not limited thereto; however, all work, to be acceptable, must be performed on the leased premises and, in the opinion of the department, directly add to the mineral or mining potential of the property.

(1) Mining operations involving excavation of tunnels, shafts, raises, inclines, drilling, clearing, trenching and related operations.

(2) Geophysical, geochemical, and geological surveys are acceptable for the year reported and the next succeeding year: *Provided*, That maps showing sampling or survey stations must be submitted to the department.

(3) Construction of roads, trails, or tramways to the property, or repair of such improvements, if giving direct access to or on the leased premises.

(4) Construction of buildings if used only for mining, such as: ore bunkers, mine equipment storage facilities, and shops.

(5) Dewatering of property, if performed to add to the development of the property.

(6) Moving machinery or materials, if they are used on the property.

(7) Property surveys deemed necessary by, and made to, department standards.

[Order 3, § 332-16-210, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-220 Development work and improvements--Examples, unacceptable. The following are examples of unacceptable development work. These are examples only, and unacceptable development work or improvements are not limited thereto.

(1) Travel or living expenses.

(2) Construction of buildings and facilities not strictly for mining, such as: Cookhouses, bunkhouses, and residences of any type.

(3) Milling and smelting.

(4) Legal and attorney fees.

(5) Development work paid for but not performed.

(6) Improvements and development work performed by a prior lessee, except by approved assignment.

[Order 3, § 332-16-220, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-230 Development work and improvements--Reports. Reports of development work or improvements performed on the leased premises shall be submitted with the rental or minimum annual royalty when due. Report forms will be furnished the lessee with the rental-due or minimum-annual-royalty-due notice. In the event the dates for reporting development work should be adjusted by reason of weather conditions or the type of operations, the lessee may apply, in writing, to the department for such adjustment.

Development-work reports shall contain sufficient information to indicate the amount and type of work or improvements accomplished on the property. Such report shall specify the length of tunnels, shafts, trenches, drill holes, roads constructed and related activities, and the costs thereof.

The department shall have the right at all times to enter into or upon the premises during the term of the lease or contract to inspect the work done and to examine all books and records pertaining to development work or improvements.

[Order 3, § 332-16-230, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-240 Development work and improvements--Additional time. The holder of a mining contract may be granted an additional period of not to exceed 45 days after notification to complete required development work or improvements if it is determined by the department that actual development work or improvements performed do not meet the requirements of the contract. The lessee may apply, in writing, to the department, 30 days prior to the end of the contract year, for permission to make payment of \$2.50 per acre per year to the state in lieu of performing actual development work or improvements. The lessee may, subject to approval by the department, be granted the right to pay the difference between actual work performed and the work required.

[Order 3, § 332-16-240, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-250 Advance payment of minimum annual royalty. The lessee shall pay, in advance, a minimum annual royalty of \$2.50 per acre each year after termination of the prospecting or exploration period of a contract or upon commencement of actual mining, recovery, and saving of minerals or materials, whichever is first. The minimum annual royalty shall become due and payable at the beginning of the next lease or contract year and for each year thereafter, following the commencement of mining.

Credit for minimum annual royalty for any one year shall be allowed against royalties payable from production for that same year.

Delayed credit may be granted the lessee if material is stockpiled and not sold until subsequent years. To qualify for delayed credit, it shall be mandatory for the lessee to notify the department of the amount of material placed in stockpiles during the lease year. Delayed credit will be granted for minimum-annual-royalty payments against the royalty due from material placed in stockpile each year.

[Order 3, § 332-16-250, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-260 Royalties. All valuable minerals and specified materials removed by any person from lands subject to the mineral leasing law shall be subject to payment of royalties to the department in accordance with these rules and regulations: *Provided*, That any lessee, during a prospecting lease or the prospecting or exploration period of a contract, may in any one year remove from the premises valuable minerals or specified materials of a value not exceeding \$100 for the purpose of testing and assaying, without the payment of royalties and without being construed as having commenced "actual mining, recovery, and saving of minerals and specified materials" in accordance with section 6 and section 10, chapter 56, Laws of 1965 (RCW 79.01.628 and 79.01.636, respectively). In the event that samples for testing and assaying having a value in excess of \$100 are required, the department may, upon application in writing by a lessee, give its consent to such removal for testing and assaying without the payment of royalties. All other valuable minerals and specified materials removed shall be subject to the payment of royalties.

[Order 3, § 332-16-260, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-270 Royalties—Computation. Royalties shall be payable to the department for all valuable minerals and specified materials removed from lands subject to the mineral leasing law computed in one of the following ways:

(1) **Established royalty.** The department may, from time to time, without notice, and at any time that no application for lease or contract is on file in regard to a specific tract of land, adopt a schedule of royalties for specific valuable minerals and specified materials to be collected upon production from such tract of land. All such established royalties shall be published from time to time and a current file shall be kept available in the office of the department in Olympia, Washington. Any valuable minerals or specified materials contained in a specific tract of land for which no schedule of royalties has been adopted shall be subject to a royalty established in accordance with subparagraph 2, below.

(2) **Standard royalty.** In the absence of a royalty established in accordance with subparagraph 1, above, and unless a different royalty has been adopted under the provisions of WAC 332-16-270(3), royalties shall be payable to the department upon production from lands held under any lease or mining contract on the basis of:

(a) In the case of valuable minerals or specified materials produced primarily for their metal content, 3% of

the gross value. "Gross value" shall mean the amount paid by any smelter, or other purchasers, for the products extracted from the leased premises, with allowance only for the following:

(i) Custom smelting costs and penalties including, but not limited to, metal losses, penalties for impurities and charges for refining, selling and handling by the smelter, or refinery; provided, however, that in the case of leaching operations or other solution mining techniques, where the metal being treated is precipitated or otherwise directly derived from such leach or solution, all processing and recovery costs incurred beyond the point at which the metal being treated is in solution shall be considered as refining charges;

(ii) Costs of handling, transportation and insuring the products from a concentrator, or other processing facility, to a smelter or refinery.

(iii) No allowances will be permitted for mining or milling, or similar beneficiation costs or charges, or for the transportation of ore to a mill or concentrator.

(b) In the case of valuable minerals or specified materials considered to be industrial minerals of value for their physical or chemical properties rather than their metal content, including, but not limited to, sulfur, potash, barite, gypsum, fluorspar, talc, phosphate rock, limestone, and silica and clays used in manufacturing processes produced from the leased premises, 3% of the gross value of the products at the point of sale as determined by the sales value of marketable products as shown by sales receipts.

(c) In the case of valuable minerals or specified materials produced for their uranium content, 3% of the gross value of the uranium oxide contained in the ore, concentrate or precipitate, as determined at the point of sale by the sales receipts.

(d) In cases where the use of the products takes place within a company, a point of sale shall be mutually agreed upon and the value of the products for the purpose of calculating the royalty shall be based upon prices published by the *Engineering and Mining Journal* in the markets section, or other prices mutually agreed upon, in writing, by the lessee and the department.

(3) **Negotiated royalty.** If either an established royalty or the standard royalty is unacceptable to a prospective lessee, he may, at the time of making application for a lease or mining contract, submit, in writing, a proposal for the basis for the payment of royalties. The department shall, within 45 days after receipt of such application and proposal, accept or reject the proposed royalty schedule. In the event the proposed royalty schedule is rejected by the department, the department shall enter into negotiations with the prospective lessee in an attempt to reach agreement upon a royalty schedule. In the event agreement is not reached within 60 days after the application is filed, the applicant for a lease or mining contract shall have the option of either (a) adopting the established royalty or the standard royalty, whichever royalty is in effect, or (b) withdrawing his application. If the application is withdrawn, the first year's payment, but not the application fee, shall be refunded forthwith. In the establishment of a negotiated royalty, a

royalty schedule may be adopted which provides for computation upon the basis of tonnage or quantity rather than of value, or which provides adjustment of royalty payments until after recoupment of agreed-upon exploration and development costs have occurred, or which provides for any other royalty arrangement which may be proposed and agreed upon.

[Statutory Authority: RCW 79.01.618, 86-14-015 (Order 478), § 332-16-270, filed 6/23/86; Order 3, § 332-16-270, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-290 Royalties--Production. Production royalties shall accrue upon any production of valuable minerals or specified materials at the time the same are sold, or are removed from the lands held under lease or contract, unless other arrangements are made in writing with the department. Unless a shorter period of accounting is elected by the department, all production royalties shall be payable within 30 days following the close of each calendar quarter, unless an extension is granted by the department, upon all valuable minerals or specified materials sold or removed during the calendar quarter. Adjustments in royalties which have been paid may be made between the department and the lessee within 45 days subsequent to the close of the lessee's fiscal year in the event that the records of the lessee reflect an adjustment is required or warranted.

[Order 3, § 332-16-290, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-300 Royalties--Audit and verification. In order to substantiate computation of royalties, the department may require that, upon reasonable notice to the lessee, supporting data, calculations, books, records, and other necessary materials will be made available to the department for audit and verification. The department may require the lessee to submit a copy of his federal and state tax returns, or such portions of them as may be relevant, for further verification. All such information submitted to the department shall be confidential and shall not be disclosed to anyone not an employee of the department without express written consent of the lessee.

[Order 3, § 332-16-300, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-310 Maps, reports, and assays. In the interest of further developing the mineral resources of the state of Washington, all lessees shall be required to submit to the department copies of all geologic maps, reports, and assays relating to the property held under lease or contract at the close of each lease year. Such maps, reports, and assays shall be considered as confidential by the department and shall not be made public unless written permission is granted by the lessee or the lease or contract is terminated.

[Order 3, § 332-16-310, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-320 Assignments. The assignment of any lease or contract may be made, subject to written

approval by the department, upon submitting the assignment in triplicate to the department together with the required assignment fee. The assignee shall be subject to and governed by the terms and conditions of the lease or contract. The approval of an assignment by the department shall not waive compliance with any terms and conditions of the lease or contract. An assignment shall not be approved by the department if any delinquencies exist on the current lease or contract unless the assignee, in writing, agrees to assume and rectify all such delinquencies.

[Order 3, § 332-16-320, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-330 Consolidation of mining contracts. The holders of two or more mining contracts may apply to the department for the consolidation of said contracts under a common management to facilitate proper operation of larger-scale development.

In the event the department, following such examination and investigation as it deems necessary, finds the consolidation applied for to be in the best interests of the state, such consolidation will be approved.

[Order 3, § 332-16-330, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-340 Administrative Procedure Act. In the event an applicant or lessee is not in agreement with the terms or conditions of the lease or contract or with the decision of any state official administering the same, he may take such action as is provided in the Administrative Procedure Act, chapter 34.04 RCW.

[Order 3, § 332-16-340, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

Chapter 332-17 WAC GEOTHERMAL DRILLING RULES AND REGULATIONS

WAC	
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332-17-430	Well designation.
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WAC 332-17-010 Inspection. The department shall inspect all geothermal operations for the purpose of obtaining compliance with the rules, regulations, and orders promulgated by authority of the Geothermal Resources Act, chapter 43, Laws of 1974 ex. sess.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-010, filed 1/4/79.]

WAC 332-17-020 General rules. General rules shall be state-wide in application unless otherwise specifically stated and shall be applicable to all lands within the jurisdiction of the state of Washington.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-020, filed 1/4/79.]

WAC 332-17-030 Supremacy of special rules and orders. Special rules and orders will be issued as required and shall prevail as against general rules if in conflict therewith.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-030, filed 1/4/79.]

WAC 332-17-100 Application for permit to commence drilling, redrilling or deepening. (1) The owner or operator of any well, or proposed well, before commencing the drilling, redrilling, or deepening of any wells shall file with the department a written application in triplicate of the intention to commence such drilling, redrilling or deepening accompanied by a fee of two hundred dollars as prescribed in RCW 79.76.070, except no fee is required for the drilling of core holes. The application shall be on forms as prescribed by the department and contain the following:

- (a) The name of operator or company and address.
- (b) Description of the lease or property including acres together with the name and address of the owner or owners of surface and mineral rights.
- (c) The proposed location of the well or wells including a typical layout showing the position of mud tanks, reserve pits, cooling towers, pipe racks, etc.
- (d) Existing and planned access and lateral roads.
- (e) Location and source of water supply and road building material.
- (f) Location of supporting facilities.
- (g) Other areas of potential surface disturbances.
- (h) The topographic features of the land, including drainage patterns.
- (i) Methods for disposing of waste materials.
- (j) The proposed drilling and casing plan.
- (k) A surveyed plat showing the surface and expected bottom-hole locations and the distances from the nearest section or tract lines as shown on the official plat of survey or protracted surveys of each well or wells. The scale shall not be less than 1:24,000.

(l) A narrative statement describing the proposed measures to be taken for protection of the environment, including, but not limited to, the prevention or control of:

- (i) Fires,
- (ii) Soil erosion,
- (iii) Pollution of surface and ground waters,

(iv) Damage to fish and wildlife or other natural resources,

(v) Air and noise pollution, and

(vi) Hazards to public health and safety during operational activities.

(m) Such other pertinent information or data which the department may require to support the application for the development of geothermal resources and the protection of the environment.

Provisions for monitoring may be required as deemed necessary by the department to ensure compliance with these regulations.

The collection of data concerning existing air and water quality, noise, seismic and land subsidence activities, and the ecological system of the area may be required as deemed necessary by the department.

(2) An application for the drilling of core holes shall contain the following:

- (a) Name and address of the operator or company.
- (b) Name and number, location of the core hole or holes to the nearest quarter-quarter section or lot.
- (c) Proposed depth of each core hole, but not to exceed 750 feet into bedrock.

(d) A map of sufficient scale to show topography and drainage patterns, access roads, and the proposed core hole locations. A metes and bounds description of each core hole location shall be provided to the department within thirty days of completion of the core hole or the approved core hole program.

(3) Well names and numbers shall not be changed without first obtaining the written approval of the department.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-100, filed 1/4/79.]

WAC 332-17-110 Casing requirements. (1) All wells shall be cased to protect or minimize damage to the environment, surface and ground waters, geothermal resources and health and property. The department shall approve proposed well spacing and well casing programs or prescribe such modifications to the programs as the department determines necessary for proper development, giving consideration to such factors as:

- (a) Topographic characteristics of the area.
- (b) Hydrologic, geologic, or reservoir characteristics of the area.
- (c) The number of wells that can be economically drilled to provide the necessary volume of geothermal resources for the intended use.
- (d) Protection of correlative rights.
- (e) Minimizing well interference.
- (f) Unreasonable interference with multiple use of lands.
- (g) Protection of the environment.

(2) Casing specifications shall be established on an individual well basis. The following specifications are general, but should be used as guidelines in submitting drilling permit applications.

(a) *Conductor pipe.* Annular space shall be cemented solid from the shoe to surface. An annular blowout preventer, or equivalent, remotely controlled hydraulically

operated including a drilling spool with side outlets or equivalent may be required by the department. A kill line and blowdown line with appropriate fittings shall be connected to the drilling spool when same is required.

Conductor casing shall be set to a minimum depth of 15 meters (50 feet).

(b) *Surface casing.* This casing shall be set at a depth equivalent to, or in excess of, ten percent of the proposed depth of the well, provided, however, such depth shall not be less than 60 meters (200 feet) or extend less than 30 meters (100 feet) into bedrock. Surface casing holes shall be logged with an induction electric log, or equivalent, prior to running surface casing.

(c) *Intermediate casing.* This casing shall be required whenever anomalous pressure zones, cave-ins, washouts, abnormal temperature zones, uncased fresh water aquifers, uncontrollable lost circulation zones, or other drilling hazards are present or occur, and whenever the surface casing has not been cemented through competent rock units. Intermediate casing strings shall be cemented solid if possible from the shoe to surface. If a liner is used as an intermediate string, the lap shall be tested by a fluid entry or pressure test to determine whether a seal between the liner top and the next casing string has been achieved. The liner overlap shall be a minimum of 30 meters (100 feet). The test shall be recorded in the driller's log and may be witnessed by a representative of the department.

(d) *Production casing.* This casing may be set above or through the producing or injection zone and cemented above the objective zones. Production casings shall be cemented to the surface or lapped into the intermediate string. Overlap shall not be less than 30 meters (100 feet) and shall be pressure tested. Lap or casing failure shall require repair, recementing, and successful retesting.

(e) *Cementing of casing.* Conductor and surface casing strings shall be cemented with a quantity of cement sufficient to fill the annular space from the shoe to surface. A high temperature resistant admix shall be used in cementing production casing unless waived by the department, and shall be cemented in a manner necessary to exclude, isolate, or segregate overlying formation fluids from the geothermal resources zone and to prevent the movement of fluids into possible fresh water zones.

A temperature or cement bond log may be required by the department if an unsatisfactory cementing job is indicated.

(f) *Pressure testing.* Prior to drilling out the casing shoe after cementing, all casing strings set to a depth of 152 meters (500 feet) or less except for conductor casing, shall be pressure tested to a minimum pressure of 35 bars (500 psi). Casing strings set to a depth of 152 meters (500 feet) or greater shall be pressure tested to a minimum pressure of 69 bars (1,000 psi) or 0.045 bars/meter (0.2 psi/ft) whichever is greater. Such test shall not exceed the rated working pressure of the casing or the blowout preventor stack assembly, whichever is lesser.

[Statutory Authority: RCW 79.76.050(2), 79-02-001 (Order), § 332-17-110, filed 1/4/79.]

(1986 Ed.)

WAC 332-17-120 Blowout prevention. Blowout prevention and related control equipment shall be installed, tested immediately thereafter, and properly maintained ready for use until drilling operations are completed. Certain components, such as packing elements and ram rubbers, shall be of high temperature resistant material as necessary. All kill lines, blowdown lines, manifolds, and fittings shall be steel and have temperature derated minimum working pressure rating equivalent to the maximum anticipated wellhead surface pressure. Unless otherwise specified, blowout prevention equipment shall have manually operated gates and remotely controlled hydraulic actuating systems and accumulators of sufficient capacity to close all of the hydraulically operated equipment and have a minimum pressure of 69 bars (1,000 psi) remaining on the accumulator. Dual control stations shall be installed with a high pressure backup system. One control panel shall be located at the driller's station and one control panel shall be located on the ground at least 15 meters (50 feet) away from the wellhead or rotary table. Blowout prevention assemblies involving the use of air or other gaseous fluid drilling systems may include, but are not limited to, a rotating head, a double ram blowout preventer or equivalent, a banjo-box or an approved substitute therefore and a blind ram blowout preventer or gate valve, respectively. Exceptions to the requirements of this paragraph will be considered by the department for areas of known surface stability and low subsurface formation pressure and temperatures.

(1) **Conductor casing.** One remotely controlled hydraulically operated expansion type preventer or acceptable alternative, including a drilling spool with side outlets or equivalent, may be required before drilling below conductor casing.

(2) **Surface, intermediate and production casing.** Prior to drilling below any of these strings, blowout prevention equipment shall include a minimum of:

(a) One expansion-type preventer and accumulator or a rotating head,

(b) A manual and remotely controlled hydraulically operated double ram blowout preventer or equivalent having a temperature derated minimum working pressure rating which exceeds the maximum anticipated surface pressure at the anticipated reservoir fluid temperature,

(c) A drilling spool with side outlets or equivalent,

(d) A fillup line,

(e) A kill line equipped with at least one valve, and

(f) A blowdown line equipped with at least two valves and securely anchored at all bends and at the end.

(3) **Testing and maintenance.** Ram-type blowout preventers and auxiliary equipment shall be tested to a minimum of 69 bars (1,000 psi) or to the working pressure of the casing or assembly, whichever is the lesser. Expansion-type blowout preventers shall be tested to 70 percent of the above pressure testing requirements.

(a) The blowout prevention equipment shall be pressure tested:

(i) When installed,

(ii) Prior to drilling out plugs and/or casing shoes,

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(iii) Not less than once each week, alternating the control stations, and

(iv) Following repairs that require disconnecting a pressure seal in the assembly.

(b) During drilling operations, blowout prevention equipment shall be actuated to test proper functioning as follows:

(i) Once each trip for blind and pipe rams, but not less than once each day for pipe rams, and

(ii) At least once each week on the drill pipe for expansion-type preventers.

All flange bolts shall be inspected at least weekly and retightened as necessary during drilling operations. The auxiliary control systems shall be inspected daily to check the mechanical condition and effectiveness and to ensure personnel acquaintance with the method of operation. Blowout prevention and auxiliary control equipment shall be cleaned, inspected and repaired, if necessary, prior to installation to assure proper functioning. Blowout prevention controls shall be plainly labeled, and all crew members shall be instructed on the function and operation of such equipment. A blowout prevention drill shall be conducted weekly for each drilling crew. All blowout prevention tests and crew drills shall be recorded on the driller's log.

(4) **Related well control equipment.** A full opening drill string safety valve in the open position shall be maintained on the rig floor at all times while drilling operations are being conducted. A kelly cock shall be installed between the kelly and the swivel.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-120, filed 1/4/79.]

WAC 332-17-130 Drilling fluid. The properties, use and testing of drilling fluids and the conduct of related drilling procedures shall be such as are necessary to prevent the blowout of any well. Sufficient drilling fluid materials to ensure well control shall be maintained in the field area readily accessible for use at all times.

(1) **Drilling fluid control.** Before pulling drill pipe, the drilling fluid shall be properly conditioned or displaced. The hole shall be kept reasonably full at all times, however, in no event shall the annular mud level be deeper than 30 meters (100 feet) from the rotary table when coming out of the hole with drill pipe. Mud cooling techniques shall be utilized when necessary to maintain mud characteristics for proper well control and hole conditioning. The conditions contained herein shall not apply when drilling with air or aerated fluids.

(2) **Drilling fluid testing.** Mud testing and treatment consistent with good operating practice shall be performed daily or more frequently as conditions warrant. Mud testing equipment shall be maintained on the drilling rig at all times. The following drilling fluid system monitoring or recording devices shall be installed and operated continuously during drilling operations, with mud, occurring below the shoe of the conductor casing:

(a) High-low level mud pit indicator including a visual and audio-warning device, if applicable,

(b) Degassers if applicable, and desilters and desanders if required for solids control,

(c) A mechanical, electrical, or manual surface drilling fluid temperature monitoring device. The temperature of the drilling fluid going into and coming out of the hole shall be monitored, read, and recorded on the driller's or mud log for a minimum of every 9 meters (30 feet) of hole drilled below the conductor casing, and

(d) A hydrogen sulfide indicator and alarm shall be installed in areas suspected or known to contain hydrogen sulfide gas which may reach levels considered to be dangerous to the health and safety of personnel in the area.

No exceptions to these requirements will be allowed without the specific prior permission of the department.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-130, filed 1/4/79.]

WAC 332-17-140 Well logging. All wells shall be logged with an induction electric log or equivalent from total depth to the shoe of the conductor casing. The department may grant an exception to this requirement when well conditions make it impractical or impossible to meet the above requirements.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-140, filed 1/4/79.]

WAC 332-17-150 Removal of casing. No person shall remove casing or any portion thereof from any well without first obtaining prior written approval from the department. In the request to remove casing, the applicant must describe the condition of the well, the proposed casing to be removed, all casing in the hole, location of plugs, and perforations.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-150, filed 1/4/79.]

WAC 332-17-160 Drilling bond. The owner or operator who proposes to drill, redrill, or deepen a well for geothermal resources shall file with the department a good and sufficient bond in the sum of fifteen thousand dollars for each well or a fifty thousand dollar blanket bond for one or more wells being drilled, redrilled, or deepened at any time. The bond shall be filed with the department at the time of filing the application to drill, redrill, or deepen a well or wells. Approval of the bond by the department must be obtained prior to the commencement of drilling, redrilling, or deepening. The bond shall be made payable to the state of Washington, conditioned for performance of the duty to properly:

(1) Drill all geothermal wells,

(2) Operate and maintain producing wells, and

(3) Plug each dry or abandoned well in accordance with applicable rules and regulations of the department.

The bond shall be executed by such owner or operator as principal and by a surety company authorized to do business in the state of Washington as surety, conditioned upon the faithful compliance by the principal with the laws, rules, regulations, and orders under the Geothermal Resources Act and shall secure the state against all losses, charges, and expenses incurred by the state in obtaining such compliance by the principal of the bond.

A single core-hole bond shall be in the sum of five thousand dollars and a blanket core-hole bond shall be in the sum of twenty-five thousand dollars.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-160, filed 1/4/79.]

WAC 332-17-165 Cancellation of bond. Termination and/or cancellation of any bond will not be permitted until the well, or wells, for which the bond has been issued have been properly abandoned or another valid bond for such well or wells has been submitted therefore and approved by the department. A bond may be canceled upon transfer of the jurisdiction of the well to and acceptance of jurisdiction by the department of ecology. No bond shall be released until the department in writing shall have authorized such release.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-165, filed 1/4/79.]

WAC 332-17-200 Transfer of jurisdiction to department of ecology. Transfer of jurisdiction over a well to the department of ecology may be permitted provided it has been established that it is not technologically practical to produce electricity commercially or usable minerals cannot be derived from the well and provided, further, the department of ecology has by affidavit indicated its willingness to assume such responsibility. Transfer of such jurisdiction will relieve the owner or operator of further compliance with the provisions of the Geothermal Resources Act and these rules and regulations, however, the owner or operator shall be subject to applicable laws and regulations relating to wells drilled for appropriation and use of ground waters.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-200, filed 1/4/79.]

WAC 332-17-300 Proper completion and abandonment. Completion and abandonment of any well or wells shall be conditioned upon implementation of adequate procedures to protect the environmental and esthetic qualities of the drill site, access roads, and other areas that were disturbed as a result of drilling or related operations.

(1) **Completion.** For the purposes of the Geothermal Resources Act and these rules and regulations, a well will be considered as properly completed when drilling has been completed and a production head has been installed on the well pending actual utilization in the production of geothermal resources as defined in this act. Suspension of a well after completion and prior to actual production shall not exceed six months duration unless approved in writing by the department.

(2) **Abandonment.** A well shall be properly abandoned for the purposes of this act when:

(a) Drilling, re-drilling, or deepening operations have ceased; or geothermal resources cannot be produced from the well; or the well no longer commercially produces geothermal resources; and proper cement plugs have been placed by the owner or operator and approved by the department; and

(b) The owner or operator has taken all appropriate steps to protect surface and ground waters and prevent the escape of deleterious substances to the surface.

(3) **Site restoration.** Cellars, pads, structures, and other facilities shall be removed. All drilling supplies and scrap shall be removed. The surface shall be graded and revegetated as appropriate to the immediate area or as otherwise specified by the department.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-300, filed 1/4/79.]

WAC 332-17-310 Abandonment procedures. No well shall be plugged and abandoned until the manner and method of plugging have been approved or prescribed by the department. The owner or operator shall give notice to the department of the intention to abandon the well and the date and time abandonment procedures will commence.

(1) The notice shall specify the condition of the well and the proposed method of abandonment. The owner or operator shall furnish such additional information concerning the well condition and abandonment procedures as may be required by the department.

(2) The owner or operator shall within twenty-four hours after giving notice of intent to abandon provide the department with a written notice setting forth the proposed abandonment procedures and the condition of the well.

(3) All wells to be abandoned shall have cement plugs placed in the well as prescribed herein. Such cement shall consist of a high temperature resistant admix unless waived by the department in accordance with the particular circumstances existing in the well.

(a) **Cased holes.**

(i) A cement plug shall be placed across all perforations in the casing, extending 30 meters (100 feet) below and 30 meters (100 feet) above the perforated interval.

(ii) A cement plug shall be placed across all casing stubs, laps, and liner tops, extending a minimum of 15 meters (50 feet) below and 15 meters (50 feet) above such stub, lap, or liner top.

(iii) Casing shoes shall be straddled by a cement plug with a minimum of 30 meters (100 feet) below and 30 meters (100 feet) above and below the shoe.

(iv) All annular space open to the surface shall be filled with cement to the surface.

(v) All casing exposed to the surface shall be cut off 6 feet below ground surface unless otherwise designated by the department.

(vi) A surface plug shall be placed in the casing extending for a minimum of 10 meters (30 feet) below the approved cut off top of the casing. The casing shall be capped by welding a steel plate on the casing stub.

(b) **Open holes.** Cement plugs shall be placed across fresh water zones, geothermal resource zones, to isolate formations, and to prevent interformational migration or contamination of fluids. Such plugs shall extend a minimum of 30 meters (100 feet) above and below all such zones.

(4) All intervals between plugs shall be filled with drilling mud.

(5) Within thirty days after plugging a well the owner or operator shall file an affidavit with the department setting forth in detail the method used in plugging the well and restoring the site. The affidavit shall be made on a form supplied by the department.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-310, filed 1/4/79.]

WAC 332-17-320 Suspension. Drilling equipment shall not be removed from any well where drilling operations have been suspended before adequate measures have been taken to close the well and protect the surface and subsurface resources including fresh water aquifers. A suspended well shall be mudded and cemented as set forth in WAC 332-17-310 of these rules and regulations or as otherwise approved by the department except that WAC 332-17-310 (3)(a)(iv) - (vi) will not be required.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-320, filed 1/4/79.]

WAC 332-17-340 Notice of change of ownership. Every person who acquires the right of ownership or right of operation of a geothermal well or wells shall within ten days notify the department in writing of the newly acquired ownership or right of operation and provide a bond equivalent to the bond supplied by the prior owner or operator. Each notice shall contain the following:

- (1) Name, address, and signature of the person from whom the well or land was acquired;
- (2) Name and location of such well or wells;
- (3) Date of acquisition; and
- (4) Description of the land upon which such well or wells is situated.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-340, filed 1/4/79.]

WAC 332-17-400 Records. The owner or operator of any well or wells shall keep or caused to be kept careful and accurate logs, core records, and history of the drilling of the well. The logs and tour reports shall be kept in the local office of the owner or operator and shall be subject during business hours to inspection by the department except during casing or abandonment operations when appropriate logs will be available at the well site.

Records that shall be filed with the department as set forth in RCW 79.76.210 are:

(1) The drilling log and core record showing the lithologic characteristics and depths of formations encountered, and the depths and temperatures of water-bearing and steam-bearing strata, and the temperature, chemical compositions, and other chemical and physical characteristics of fluids encountered. Core records shall show the depth, lithologic character, and the fluid content of cores obtained.

(2) The well history shall describe in detail in chronological order on a daily basis all significant operations

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carried out and equipment used during all phases of drilling, testing, completion, recompletion, and abandonment of the well.

(3) The well summary report shall accompany the drilling logs and well history report. It shall show the spud date, completion date, abandonment date, casing summary, fresh water zones, producing zones, total depth, well location, tops of formations penetrated and bottom hole temperature.

(4) Production records shall be submitted monthly to the department on or before the 10th of each month for the preceding month on a form approved by the department.

(5) Electric logs, directional logs, physical or chemical logs, tests, water analysis, surveys including temperature surveys, and such other logs or surveys as may be run.

(6) A set of ditch samples if taken at not less than 30 meters (100 feet) intervals.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-400, filed 1/4/79.]

WAC 332-17-410 Vertical and directional wells. Deviation surveys shall be taken on all wells during the normal course of drilling at intervals not to exceed 152 meters (500 feet). The department may require a directional survey giving both inclination and azimuth or a dipmeter to be obtained on all wells. In calculating all surveys, a correction from true north to Lambert-Grid north shall be made after making the magnetic to true north correction. All surveys shall be filed with department as set forth in WAC 332-17-400. Wells are considered to be directional if inclination from vertical exceeds an average of five degrees. In directional wells directional surveys shall be obtained at intervals not to exceed 30 meters (100 feet) prior to, or upon setting any casing string or lines (except conductor casing) and total depth.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-410, filed 1/4/79.]

WAC 332-17-420 Department to witness tests. Sufficient notice shall be given in advance to the department of the date and time when the owner or operator expects to run casing, test casing, conduct a drill stem test, or log a well in order that the department may have a representative on the drill site as a witness.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-420, filed 1/4/79.]

WAC 332-17-430 Well designation. The owner or operator shall place in a conspicuous location near the well site a sign setting forth the name of the owner or operator, lease name, well number, permit number, and the quarter-quarter section or lot, township, and range of the well location. Such well designation shall maintained until the well has been abandoned.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-430, filed 1/4/79.]

WAC 332-17-440 Well spacing. The department will approve proposed well spacing programs or prescribe such modifications to the programs as it determines necessary for proper development, giving consideration to such factors as:

- (1) Topography of the area;
- (2) Geologic conditions of the reservoir;
- (3) Minimum number of wells required for adequate development; and
- (4) Protection of environment.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-440, filed 1/4/79.]

WAC 332-17-450 Right of entry. Department representatives shall have the right to enter upon any lands and examine such records related to the drilling, redrilling, deepening, or the completion, or the abandonment of, or production from any geothermal well to ensure compliance with the Geothermal Resources Act and these rules. Any owner or operator who denies the right of entry of a department representative or willfully hinders or delays the enforcement of the provisions of the act and these rules or who otherwise violates, fails, neglects, or refuses to comply with any of the provisions of the act or these rules will be subject to the penalties as set forth in RCW 79.76.260.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-450, filed 1/4/79.]

WAC 332-17-460 Pits or sumps. The owner or operator shall provide pits and/or sumps of adequate capacity and design to retain all fluids and materials necessary to the drilling, production, and related operations on the well. No contents of pits and/or sumps shall be allowed to:

- (1) Contaminate streams, artificial canals, waterways, ground waters, lakes, or rivers;
- (2) Adversely affect the environment, persons, plants, and wildlife; and
- (3) Adversely affect esthetic values of the property or adjacent properties.

When pits and/or sumps are no longer needed, they shall be pumped out and the contents disposed of in approved disposal sites unless otherwise approved by the department.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-460, filed 1/4/79.]

Chapter 332-18 WAC SURFACE MINED LAND RECLAMATION

WAC

332-18-010	Definitions.
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332-18-030	Combined operating permits.
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332-18-090	Revegetation.

332-18-100	Water control.
332-18-110	Water impoundment.
332-18-120	Bonds.

WAC 332-18-010 Definitions. The following definitions shall be applicable to these rules and regulations:

(1) "The act" wherever referred to in these rules and regulations, shall mean the Washington Surface-Mined Land Reclamation Act.

(2) "Stagnant water" shall mean any nonflowing body of water which is, or is likely to become, noxious, odious, or foul.

(3) "Remote area" as contained in section 4(1) of the act, shall mean a rural area on which the operating area of a surface mining site is not visible from any state highway, county road, or any public street or highway, or, if visible, it is more than one mile away from the point on such road from which it is visible.

Other terms used in these rules are defined in the act.

[Order 86, § 332-18-010, filed 10/27/70, effective 11/28/70.]

WAC 332-18-015 Compliance with local regulations. A surface mining permit for an operation commencing after the effective date of the act will not be issued until satisfactory evidence has been submitted that the proposed surface mining will not be contrary to local land use ordinances and regulations.

[Order 94, § 332-18-015, filed 4/6/71.]

WAC 332-18-020 Provisional permit. A provisional permit shall not be issued if, on the basis of information set forth in the application or from information available to the department and the applicant, the department considers the proposed site to be unsuitable for surface mining. A site shall be considered unsuitable for surface mining if the materials to be disturbed are such that experience with conditions similar to those in the proposed site area has shown that reclamation cannot be accomplished in accordance with the purposes of the act.

[Order 86, § 332-18-020, filed 10/27/70, effective 11/28/70.]

WAC 332-18-030 Combined operating permits. An operator conducting more than one surface-mining operation in any one twelve month period may, subject to the approval of the department, submit a single application for a combined operating permit covering all his surface-mining operations.

Any public agency desiring a combined operating permit shall furnish to the department, prior to or with the application, evidence of established policies and procedures within the agency's organization that would show ability and means to comply with the act.

Any operator receiving approval for a combined operating permit shall submit a list of all operating sites subject to the act and shall maintain pertinent data, available for review, inspection, and approval by the department, for all sites operated under such combined operating permit. Such data and evidence shall include, but not be limited to, records supporting annual report requirements of the act and operator's reclamation plans for sites.

The operator may submit a consolidated reclamation program covering all his operations. However, a specific reclamation plan may be required for individual operations as designated by the department.

[Order 86, § 332-18-030, filed 10/27/70, effective 11/28/70.]

WAC 332-18-040 Multiple operations at one site.

Any time an operator proposes to surface mine at a site on which an operating permit to another operator is in effect, the subsequent operator shall present to the department the agreement, subject to approval by the department, signed by the first operator and the subsequent operator, providing for:

- (1) Accomplishment of the first operator's reclamation plan, or
- (2) Modification of the first operator's reclamation plan, or
- (3) An entirely new reclamation plan.

The owner or owners of a surface-mining site may request to be designated as an operator so as to provide for continuity of reclamation where multiple operations are to be conducted.

Approval shall be obtained from the department prior to the commencement of any operations by two or more operators on the same site.

[Order 86, § 332-18-040, filed 10/27/70, effective 11/28/70.]

WAC 332-18-050 Inspections and cancellations of permits. The department shall have the right to make inspections of any property at any reasonable time as deemed necessary to determine compliance with the act. Inspections shall be limited to those lands and such of the operator's records as pertain to surface mining and reclamation of such lands. The department shall notify, as deemed necessary, any operator of a proposed inspection. However, lack of such notification shall not be cause for denying the right to inspect. The operator shall have the option of accompanying the inspector.

Periodic inspections shall be made during the permit year by reclamation inspectors to insure compliance with the operating permit, reclamation plan, and the plan of surface mining. Any and all deficiencies shall be immediately brought to the attention of the operator, and written notice specifying deficiencies shall be given to the operator. The operator shall commence action within thirty days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected: *Provided*, That deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws, or shall immediately commence action to rectify deficiencies that involve health, safety, and water pollution if those deficiencies are not regulated by such laws.

The department shall have grounds to terminate and cancel the operating permit if the operator does not commence action to rectify any and all deficiencies as specified above, or as specified in the act. The operator and his surety shall be notified of such termination and cancellation, said notice to be mailed to the last known address of the operator and surety.

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The department shall not issue another permit to a deficient operator until any and all deficiencies on a specific site are corrected to the satisfaction of the department: *Provided*, That if the department's determination is under appeal a provisional permit may be issued, but an additional cash bond may be required if the department determines it necessary to assure rectification of the deficiencies.

[Order 86, § 332-18-050, filed 10/27/70, effective 11/28/70.]

WAC 332-18-060 Confidential material. Upon application, the department shall release information acquired through the administration of this act to proper interested persons. For these purposes "proper interested persons" are defined as follows:

(1) As to information relating to specific mining and reclamation costs or to processes of mining unique to the operator or owner thereof, or information that may affect adversely the competitive position of such operator or owner if released to the public or to a competitor, "proper interested persons" are those persons so designated by the operator and his authorized agents.

(2) As to reclamation plans, operator's reports, and all other information (except information specified in section 1 of this rule on confidential material) required through the administration of this act, all members of the public are "proper interested persons."

[Order 86, § 332-18-060, filed 10/27/70, effective 11/28/70.]

WAC 332-18-070 Time extensions. An operator unable to comply with the reclamation requirements of the operating permit due to circumstances, such as inclement weather or unusual conditions, clearly beyond the operator's control, may be granted a reasonable time extension in which to complete the required reclamation, but only when the operator is, in the opinion of the department, making every reasonable effort to comply.

No time extension shall be granted unless requested in writing by the operator and approved in writing by the department.

When a time extension has been granted by the department, a report of activities during the period of the extension in addition to those reports required in section 14 of the act shall be filed with the department within thirty days after completion of reclamation activities.

[Order 86, § 332-18-070, filed 10/27/70, effective 11/28/70.]

WAC 332-18-080 Preplanning. The department recognizes that it is desirable that reclamation be preplanned for surface mining that may extend beyond the area that will be surface mined within any twelve months consecutive period.

Operators may submit plans for the method of operation, for grading and backfilling (including water impoundment) and for reclamation of contiguous areas to be mined. The requirements for such plans (herein called continuing reclamation programs) shall be as specified in section 4(11) and section 10 of the act.

If the department approves a continuing reclamation program and the approved plan remains consistent with

the requirements and purposes of this act and regulations adopted pursuant thereto, the operator, without annually submitting additional plans for the method of operation, backfilling and grading, and reclamation, may have his permit amended to include areas that were not included in the original permit.

If the department approves a continuing reclamation program, the operator shall be obligated to conduct all operations in accordance with said continuing reclamation program.

Upon application of the operator, a continuing reclamation program may be modified in accordance with section 11 of the act. All modifications shall require written approval by the department.

Approval of a continuing reclamation program by the department shall not be construed as waiving or altering the payment of annual fees as required by the act.

[Order 86, § 332-18-080, filed 10/27/70, effective 11/28/70.]

WAC 332-18-090 Revegetation. Revegetation shall be required only where it is appropriate to the intended subsequent use of the surface-mined site, or where, on a temporary basis, it is needed to provide soil stability, to prevent erosion, or to provide screening.

For the purposes of this act, "revegetation" shall mean the reestablishment of a vegetative cover on land disturbed by surface-mining operations, and may include natural reseedling.

Objectives. The objectives in revegetation are to stabilize the soil cover to minimize erosion, to reclaim, and to screen the areas as quickly as possible after the soil cover has been disturbed.

Procedures. Where erosion and siltation will be a problem, grasses, trees, and plants that will produce a quick protective cover and enrich the soil shall be given priority.

Revegetation shall be accomplished as specified in the reclamation plan and as approved by the department. Modification of the revegetation part of the plan may be approved by the department, providing such modification is practical and within the intent of the act. Revegetation proposals must be compatible with soil conditions and with the objectives of this revegetation rule and be appropriate to the intended subsequent use of the site. All revegetation shall be accomplished within two years after completion or abandonment of surface mining on each segment of the permit area on which mining has been completed or at such other later date as may be authorized by the department.

Planting report. The operator shall file a planting report within the department ten days after planting or seeding has been completed, on a form to be furnished by the department.

[Order 86, § 332-18-090, filed 10/27/70, effective 11/28/70.]

WAC 332-18-100 Water control. Water diversion ditches or channels shall be constructed in surface mining areas to control surface water runoff, erosion, and siltation and to remove surface water runoff to a safe outlet, and shall be maintained until surface mining and reclamation have been completed. Diversion ditches or

channels shall be designed to carry the peak flow having the probable recurrence frequency of once in ten years or as approved by the department. The grade of such ditches and channels shall be constructed to limit erosion and siltation to currently accepted standards.

Natural drainage channels or drainways in the area of land affected by the operation shall be kept free of overburden and debris or may be diverted as approved by the department. Such drainways shall be designated on maps or aerial photos submitted with the application. If, in the operation, it is necessary to cross such a drainway, proper drainage structures shall be provided. Such structures shall require the approval of the department and shall be designed to carry the peak flow having a probable recurrence frequency as determined by the department.

Overburden shall be deposited and graded so that surface water runoff does not create erosion problems of the operating permit area or on adjoining lands.

[Order 86, § 332-18-100, filed 10/27/70, effective 11/28/70.]

WAC 332-18-110 Water impoundment. The impoundment of water is desirable, providing:

(1) Adequate sources of water are available to maintain the water level of the impoundment. Such sources of water supply for impoundments may be from springs, drainage areas of sufficient size, ground water percolation, a flowing stream, or any combination of these sources.

(2) Proper measures are taken to prevent undesirable seepage.

(3) Adequate spillways or other measures necessary to control overflow are provided.

(4) Stagnant water, as herein defined, is not permitted to develop.

[Order 86, § 332-18-110, filed 10/27/70, effective 11/28/70.]

WAC 332-18-120 Bonds. Performance bonds required by section 13 of the act shall be substantially in the following form, provided however that the department may, in considering any permit require a different form when in their opinion such is desirable or required.

SURFACE MINING RECLAMATION BOND

Permit No.

KNOW ALL MEN BY THESE PRESENTS, That we,

-----, as Principal, and ----- a corporation organized and existing under the laws of the State of -----, and duly authorized to transact business in the State of Washington, as Surety, are held and firmly bound unto the State of Washington, acting through the Board of Natural Resources, in the sum of ----- (\$-----) DOLLARS, for the payment of which sum, well and truly to be made, we bind ourselves, and each of our

legal representatives, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Principal has received from the Board of Natural Resources, State of Washington, a permit to conduct surface mining on the following described premises, to-wit: -----

NOW, THEREFORE, The conditions of this obligation are such that if the above bounden Principal shall, in conducting such surface mining operations faithfully perform the requirements of the permit and chapter 64, Laws of 1970 ex. sess., relating to mining and the Rules and Regulations adopted pursuant thereto, then this obligation shall be exonerated and discharged and become null and void; otherwise to remain in full force and effect.

PROVIDED, However, the Surety shall not be liable under this bond for an amount greater in the aggregate than the sum designated in the first paragraph hereof, and shall not be liable as respects any obligations related to surface mining operations performed after the expiration of thirty days from the date of the mailing by the Surety of a cancellation notice directed to the Principal and the Board of Natural Resources, Olympia, Washington. The bond shall remain in full force and effect as respects obligations related to surface mining operations performed prior to the effective date of such cancellation unless the Principal files a substitute bond, approved by the Board of Natural Resources, or unless the Board of Natural Resources shall otherwise release the Surety.

Signed, sealed and dated this ----- day of -----, 197...

[Order 86, § 332-18-120, filed 10/27/70, effective 11/28/70.]

Chapter 332-20 WAC GRAZING LANDS

WAC

332-20-010	Range management objectives.
332-20-020	Grazing management.
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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-20-040	Regulations for grazing leases and permits. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-060	Grazing leases—Limitation of leased area. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-070	Grazing leases—Assignment of. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-080	Grazing leases—Improvements become property of state upon cancellation of lease. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-090	Grazing leases—Ownership of improvements to be designated. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-100	Grazing leases—Re-lease—Application—Application for lease by a third party. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-110	Grazing leases—Prior lessee informed of third party application. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-120	Grazing leases—Preference to prior lessee. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-130	Grazing leases—Cooperation. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-140	Grazing leases—Rental. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-150	Grazing leases—Terms of leases and rental adjustments. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-190	Grazing permits—Special conditions of preference. [Rules (part), filed 12/3/63; Permit Range Regulations § III (part), effective 6/1/59.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-240	Grazing fees—Exceptions to usual fees. [Rules (part), filed 12/3/63; Permit Range Regulations § IV (part),

effective 6/1/59.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.

332-20-280 Organization and composition of advisory boards. [Rules (part), filed 12/3/63; Permit Range Regulation § VII (part), effective 6/1/59.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.

332-20-310 Range management. [Rules (part), filed 12/3/63; Permit Range Regulation § VIII, effective 6/1/59.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.

WAC 332-20-010 Range management objectives. The general objectives of the department in its management of state-owned range lands is to provide for the maximum utilization of the range resource consistent with the principles of multiple use and proper land conservation measures. Coincident with these general objectives, the department shall, with equal priority, seek to:

(1) Secure the highest return to the state under good management practices;

(2) Perpetuate the natural resources on both state and related lands through wise use, protection, and development;

(3) Provide the best practical, social, and economic correlation of the use of state lands with adjacent lands; and

(4) Stabilize that part of the livestock industry which makes use of state land through administrative policy and management practices which conform to the requirements of practical operation.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-010, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations (part), effective 6/1/59.]

WAC 332-20-020 Grazing management. Management of state lands for grazing purposes will be based upon that grazing capacity which permits maximum forage utilization and seeks to maintain or improve to "good" condition range as defined by the soil conservation service. Grazing capacity will be established after consideration of historical stocking rates, forage utilization, range condition, and trend. Pertinent range research findings of Washington State University and the advice of the soil conservation service will be considered in the management of the grazing resources.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-020, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations (part), effective 6/1/59.]

WAC 332-20-030 Definitions. For purposes of this chapter:

(1) "Carrying capacity" is the acreage required to adequately provide forage for an animal unit (AU) for a specified period without inducing deterioration of vegetation condition or soil;

(2) "Range condition" is the relation between current and potential condition of the range site;

(3) "Animal unit" (AU) is equal to one cow and her nursing calf or their equivalent;

(4) "Sheep unit" is equal to one ewe and her nursing lamb or their equivalent;

(5) "Free use permit" is a permit given in exchange for the use of land that is owned or controlled by a permittee and is within a permit range;

(6) "On and off permit" is a permit issued to an owner of range land within a permit range which authorizes the use of an entire range area but establishes no preference right;

(7) "Bonus bid" is a sum of money offered for a grazing permit on state land in addition to regular annual charges and is to be paid once at the time of the execution of the grazing permit;

(8) "Commissioner" means the commissioner of public lands;

(9) "Department" means the department of natural resources as defined in RCW 43.30.030;

(10) "Board" means the board of natural resources as defined in RCW 43.30.040;

(11) "Area" means the field administration unit of the department of natural resources;

(12) "Person" includes any public or private corporation as well as an individual or partnership;

(13) "Base ranch property" means a place on which to hold and feed the permitted units of livestock prior to and after the grazing season;

(14) "Nonuse" means that no livestock will be turned out on the permit range;

(15) "Demit" means that less than ninety percent of the permitted or allowed animal units are turned out on the permit range;

(16) "Crossing permit" is a temporary permit to allow livestock to utilize forage while crossing state-owned or controlled land;

(17) "Operational permit" is a temporary permit to allow horses or pack animals to be on state-owned or controlled land while operating a commercial enterprise.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-030, filed 10/7/83; Rules (part), filed 12/3/63.]

WAC 332-20-050 Grazing permit--Qualifications. No person shall hold a permit on state land until they have attained the age of eighteen. The applicant must have two years of experience in the grazing or handling of livestock or education in range or livestock management and financial resources to carry out the proposed grazing operation.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-050, filed 10/7/83; Rules (part), filed 12/3/63.]

WAC 332-20-160 Permit range allotments. State lands suitable for grazing may be divided into permit range allotments as may be deemed practical by the department. Allotments may include nonstate lands under special arrangements with the owner. For each allotment the department may:

(1) Establish the kind and number of livestock to be permitted thereon;

(2) Establish the period of grazing;

(3) Regulate the entry of livestock; and

(4) Develop and establish the most practical and efficient methods of stock management, forage utilization, and range improvements.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-160, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § I, effective 6/1/59.]

WAC 332-20-170 Special use grazing permits--Issuance. The department may issue special use grazing permits on range allotments under the following conditions:

(1) Every person must submit an application to the department for a special use grazing permit on state lands or other lands administered in connection therewith;

(2) The department may require permittees to give good and sufficient bond to insure payment of all damages sustained by the state through violation of regulations or terms of the permit;

(3) Special use permits may be issued for a term not to exceed five years;

(4) Special use permits shall be validated each year by letter from the department to the permittee;

(5) Special use permits may be issued for the following purposes:

(a) On and off permits may be issued and requirements imposed to herd or handle the livestock to prevent trespassing on range that is not subject to the permit;

(b) Crossing permits may be issued to those persons wishing to drive livestock across state lands or range allotments;

(c) Operational permits may be issued to persons for livestock actually needed in conducting permitted or commercial operations on state lands or range allotments;

(6) Special use permits may not be assigned or used by any person other than the permittee except by prior written consent of the department.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-170, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § II et seq., effective 6/1/59.]

WAC 332-20-180 Preference grazing permits. A preference establishes eligibility to persons for grazing permits on state range allotments. A permit authorizes the grazing of livestock under specific conditions and expires on a specified date. A preference continues until cancelled or revoked. Preference permits are issued under the following conditions:

(1) A person may acquire such permit by authorized prior use, gift, or by transfer through purchase or inheritance of base ranch property or livestock;

(2) The ownership or control of base ranch property must be maintained;

(3) A permittee must be the owner of the livestock placed on state ranges under his permit. Cattle must carry the brand of the person holding the preference permit;

(4) Preference permits may not be assigned or used by any person other than the permittee except by prior written consent of the department;

(5) No person shall hold a preference permit authorizing grazing in excess of 600 animal units;

(6) Preference permits may be granted to the holders of temporary permits only after such temporary permits have been held for a minimum period of five years;

(7) Nonuse of preference permits not in excess of three years for any seven-year period is permissible, provided approval of the department is first obtained and prescribed nonuse fees are paid; and

(8) Demits may be allowed provided approval of the department is first obtained and demit fees are paid.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-180, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § III (part), effective 6/1/59.]

WAC 332-20-191 Grazing permits--Legal effect. Grazing permits transfer no right, title, or interest in any lands or resources held by the department except authorized livestock forage.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-191, filed 10/7/83.]

WAC 332-20-200 Grazing preference permits--Established ranges. The department may grant preference permits for use of established livestock ranges upon consideration of the following factors:

(1) Authorized prior use;

(2) Base ranch property;

(3) Capacity of the range; and

(4) Conversion of a temporary permit.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-200, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § III (part), effective 6/1/59.]

WAC 332-20-210 Temporary grazing permits. Where new permit range allotments are established or where additional area is added to existing allotments, a temporary grazing permit may be issued for a maximum of five years.

A temporary grazing permit will be issued on the basis of the highest cash bonus offer received by sealed or oral public auction bids from qualified applicants. An applicant must qualify in base ranch property and ownership of livestock.

Before a temporary grazing permit is offered for sealed or oral public auction bidding the carrying capacity, permitted units, and grazing season for the range will be determined and advertised. The bidding will be on a cash bonus over and above the annual grazing fee. Temporary grazing permits will be annually validated and may be conditioned or limited by the department based upon range condition and carrying capacity.

When the increased capacity of a range results from range improvement work performed by the expenditures of a holder of a preference permit when such work is done with the department's written approval, the holder of the preference permit shall have the right to obtain a temporary grazing permit by meeting the highest cash bonus offer made by a qualified applicant at auction.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-210, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § III (part), effective 6/1/59.]

WAC 332-20-215 Free use authorization. Free use authorization will be for a specific number of animal units and will be incorporated in department permits. Authorization will be given in exchange for grazing use of lands owned or controlled by a permittee and used within a permit range. Such land will be a part of the total permit and will allow other permittees use of the grazing resource.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-215, filed 10/7/83.]

WAC 332-20-220 Grazing permits--Fees--Annual adjustments. A fee will be charged for the grazing of all livestock on state lands. The grazing fee will be determined by use of a formula indicated below. The fees so established shall be adjusted annually by relation to market prices of livestock for the previous year. Further adjustments in the formula may be made by the department as additional information or changing conditions require.

Grazing fee formula:
$$\frac{L \times S \times G \times P + A}{1 + LHT} = \text{AUM Fee}$$

AUM Fee x Unit Equivalent x M = AUM Charge

Symbol explanation:

- L – Proportion of average stockman's investment assigned to land.
- S – Landlord's fair share of land income.
- G – Average pound gain in livestock weight for permitted grazing season, cattle and sheep to be separately computed.
- P – Average past year's selling price of livestock per pound from the reports of the Agricultural Marketing Service of the United States Department of Agriculture.
- LHT – The leasehold tax as established by law and administered by the state department of revenue.
- M – Number of months in permitted grazing season.
- A – Permittee's share of assessments on permit range lands.
- AUM Fee – Fee to be charged per animal unit month of grazing.

For purposes of unit equivalent per animal, the following ratios will apply:

Cattle:	Cow and calf	1.0	Animal Unit
	Cow	1.0	
	Bull	1.0	
	Yearling	.66	
	Fall calf	.5	
	Two year old	1.0	
	Horses	1.5	

Sheep:	Ewe and one lamb	1.0	Sheep Unit
	Ewe and twin lambs	1.2	
	Ram	1.0	
	Ewe	1.0	

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-220, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § IV (part), effective 6/1/59.]

WAC 332-20-230 Grazing permits--Payment of fees in advance. All grazing permit fees will be paid in advance of the opening date of grazing periods or as otherwise authorized by the department.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-230, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § IV (part), effective 6/1/59.]

WAC 332-20-250 Grazing permit--Termination. The department may cancel or suspend grazing permits or preferences, in whole or in part, for a violation of the terms of the permit or of these regulations.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-250, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § V, effective 6/1/59.]

WAC 332-20-260 Decision review allowed. Any decision by the department on range matters may be reviewed with the area manager of the respective area. If the area manager cannot settle the matter, it will be forwarded to the department supervisor.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-260, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § VI, effective 6/1/59.]

WAC 332-20-270 Associations and boards. In order to obtain a collective expression of views and recommendations of the state grazing permittees concerning the management and administration of state lands, and to encourage maximum participation by permittees in actual management of the range where not provided for by other regulations, the department shall provide for recognition of and cooperation with the various groups of permittees as follows:

- (1) Livestock associations with advisory boards representing the range users of state lands; and
- (2) Advisory boards without associations representing the range users of state land.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-270, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § VII (part), effective 6/1/59.]

WAC 332-20-290 Informal recommendations. The department recognizes the public interest in its management of state lands and the multiple use of these lands. The department is directed to give full consideration to the expressions of the views of any interested person, industry, or organization for the equitable solution of competing public interests.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-290, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulation § VII (part), effective 6/1/59.]

WAC 332-20-300 Laws and regulations relating to livestock. The department will cooperate with the state, county, and federal officers in the enforcement of all the laws and regulations relating to livestock health including:

(1) Compliance with livestock quarantine regulations and such other sanitary measures as may appear necessary to prevent nuisances and ensure proper sanitary conditions on state range lands; and

(2) Requiring owners of all livestock which are allowed to cross any state range lands to comply with local livestock laws of the state of Washington and the county where the state land is located.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-300, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulation § VII (part), effective 6/1/59.]

WAC 332-20-320 Grazing permits--Range improvement. Agreements must be made with the department in connection with the construction of range improvements on state range lands. Such agreements must address ownership of the improvements and its disposition at the end of the permit term. Grazing permit fees may be adjusted to compensate permittees for the construction of range improvements or performance of range conservation practices where prior written approval has been given by the department.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-320, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulation § IX, effective 6/1/59.]

WAC 332-20-330 Management agreement. The department may enter into a coordinated resource management plan and other agreements with any person for the protection, preservation, and use of grazing areas in multiple ownership.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-330, filed 10/7/83; Rules (part), filed 12/3/63.]

WAC 332-20-340 Sale of grazing and other low priority lands--Objective. It is the objective of the department of natural resources in the management of public lands used primarily for grazing and similar low priority purposes to:

(1) Obtain the greatest possible monetary return for the trust to which such land is assigned, consistent with good management practices.

(2) Encourage the development of such lands for their highest and best use.

[Resolution No. 79, § 1, filed 10/5/67.]

WAC 332-20-350 Sale of grazing and other low priority lands--Definitions. The following definitions are applicable to RCW 79.01.301 and these rules shall be used in connection with applications, reports, leases, and other documents issued in connection therewith:

(1) "Department" shall mean the department of natural resources.

(2) "Commissioner" shall mean the commissioner of public lands.

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(3) "Board" shall mean the board of natural resources as established by chapter 38, Laws of 1957 (chapter 43-30 RCW).

(4) "Proper office" shall mean the authorized office of the department of natural resources in Olympia, Washington.

(5) "Grazing land" shall mean those granted trust lands which at the present are used primarily for grazing.

(6) "Irrigated agricultural lands" shall mean any lands under irrigation which are used for the production of any agricultural commodities.

(7) "Public land" shall mean those lands conveyed to the state of Washington by the federal government and managed in trust by the department for the support of common schools, university purposes, agricultural college purposes, scientific school purposes, state normal school purposes, the erecting of public buildings at the state capitol, and for state charitable, educational, penal and reformatory institution purposes.

(8) "Low priority land" shall mean that grazing or nonirrigated land which may appear to have its highest potential for maximizing returns when used as irrigated agricultural land.

(9) "Public interest" shall mean the interest of the public in obtaining the greatest possible monetary return from granted lands for the purposes set forth in the Enabling Act of the state Constitution.

[Resolution No. 79, § 2, filed 10/5/67.]

WAC 332-20-360 Sale of grazing and other low priority lands--Applications to purchase. All applications to purchase low priority land for the purpose of development as irrigated agricultural land shall be reviewed by the board.

Applications for the purchase of land for development as irrigated agricultural lands will be received during business hours in the proper office of the department. A deposit of not less than ten dollars per acre must be submitted with the application. Each application shall be accompanied by a complete and general plan of development of the area considered for purchase, including the following:

(1) Anticipated date of commencement of development.

(2) Anticipated date of completion of development.

(3) Type of development.

(4) Source of water and the total estimated cost of water, including the cost of wells or water diversion.

(5) Access or right of way available to the area.

(6) Type of proposed cropping.

(7) Anticipated production.

(8) Market for production.

(9) Anticipated gross return.

(10) Anticipated value per acre when irrigation development is completed and anticipated tax payment per acre based on present millage levies.

(11) A plat showing the area or areas to be developed for irrigation on the lands under application to purchase.

(12) Method of financing development.

(13) Plans for drainage.

(14) Any further information the board may require.

[Resolution No. 79, § 3, filed 10/5/67.]

WAC 332-20-370 Sale of grazing and other low priority lands--Protection. The board shall protect the public interest in the trust in considering applications to purchase. In considering the management of individual tracts of state land, the board shall include in its consideration of the financial benefits that may accrue to the particular beneficiary of such trust land any increased financial benefits that the beneficiary may receive from direct and indirect state and local taxes, including improvement in values resulting from private development and the local taxation benefits therefrom, if the property were to be sold into private ownership.

[Resolution No. 79, § 4, filed 10/5/67.]

WAC 332-20-380 Sale of grazing and other low priority lands--Information furnished the board. The department, in addition to the information provided by the applicant, shall also prepare for the board the following information:

(1) Department plans for development of the tract if retained in state ownership.

(2) A comparison of anticipated rental returns and appreciation in value and rental income to the trust in comparison with the anticipated economic benefits to the locality in classifying such properties for sale.

(3) A written recommendation to the board.

[Resolution No. 79, § 5, filed 10/5/67.]

WAC 332-20-390 Sale of grazing and other low priority lands--Written notice. Written notice shall be given to the applicant at least thirty days prior to the meeting of the board at which consideration will be given to his application. The applicant may appear at the board meeting in support of his application, but is not required to do so.

[Resolution No. 79, § 6, filed 10/5/67.]

WAC 332-20-400 Sale of grazing and other low priority lands--Contracts. When the board determines that a parcel of low priority lands shall be sold into private ownership for conversion to irrigated agricultural lands, the department shall enter into a contract with the purchaser for the conveyance of the lands to him upon such conditions as the board shall determine to be proper in each case. The conditions fixed by the board shall include the following:

(1) Payment to the department by the purchaser of the full purchase price, plus interest if sold on an installment basis, together with applicable fees.

(2) Completion by the purchaser of an irrigation system in conformity with the plan as set forth with the contract posted with notice of sales. The system must be completed within the time period fixed by the board which shall in no event be longer than five years.

(3) Such other conditions as the board may determine to be appropriate.

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In the event the purchaser fails to satisfy any of the conditions fixed by the board, the contract for the conveyance of the lands to him shall be forfeited. The value of any improvements, less damages, made by the defaulting purchaser in partial completion of his irrigation system shall be appraised and fixed by the department. The lands shall be offered at public auction and, if leased or sold within three years to other than the defaulting purchaser, the successful bidder shall pay to the department the value of such improvements for disbursement to the defaulting purchaser.

[Resolution No. 79, § 7, filed 10/5/67.]

Chapter 332-21 WAC STATE URBAN LANDS

WAC

332-21-010	Promulgation.
332-21-020	Identification of urban lands.
332-21-030	Management of urban lands.
332-21-040	Marketing lands not sold at public auction.
332-21-050	Land bank technical advisory committee.

WAC 332-21-010 Promulgation. This chapter is promulgated by the board of natural resources pursuant to the authority of chapter 79.66 RCW to establish procedures for the department of natural resources management of state-owned urban lands. These regulations are designed to establish practical procedures to achieve the best possible return to the designated trust beneficiary consistent with any other obligations imposed on such lands by law.

[Statutory Authority: Chapter 79.66 RCW. 84-19-008 (Resolution No. 465), § 332-21-010, filed 9/10/84.]

WAC 332-21-020 Identification of urban lands. The department shall, at intervals not greater than once every two years, identify trust lands expected to convert to commercial, residential, or industrial uses within the next ten years as provided in RCW 79.66.010. The board shall designate such trust lands as urban land if deemed suitable.

[Statutory Authority: Chapter 79.66 RCW. 84-19-008 (Resolution No. 465), § 332-21-020, filed 9/10/84.]

WAC 332-21-030 Management of urban lands. (1) The department, in addition to the economic evaluation required by RCW 79.01.095, shall periodically evaluate urban lands to determine the appropriate management prescription for each parcel.

(2) The department shall, as a part of its periodic evaluation, review the appropriate uses of urban lands with local governments in accordance with RCW 79.01.784.

(3) Where urban land is to be exchanged or sold, other than by public auction, the department shall have the value determined by a qualified appraiser. All appraisals shall be sent to the board at least ten days in advance of any board action on such exchange or sale.

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(4) The department shall annually report to the board on its major activities and accomplishments in the past year and its plans for the ensuing year.

[Statutory Authority: Chapter 79.66 RCW. 84-19-008 (Resolution No. 465), § 332-21-030, filed 9/10/84.]

WAC 332-21-040 Marketing lands not sold at public auction. The department may, upon approval of the board, market lands not sold at public auction in accordance with RCW 79.01.612. Such property may not be offered at less than the appraised price approved by the board. The department shall select the marketing proposal that demonstrates likelihood of successful marketing at the lowest cost. The department shall report completed sales to the board.

[Statutory Authority: Chapter 79.66 RCW. 84-19-008 (Resolution No. 465), § 332-21-040, filed 9/10/84.]

WAC 332-21-050 Land bank technical advisory committee. The technical advisory committee authorized by RCW 79.66.010 shall provide professional advice and counsel to the board regarding land bank sales, purchases, and exchanges involving urban property.

[Statutory Authority: Chapter 79.66 RCW. 84-19-008 (Resolution No. 465), § 332-21-050, filed 9/10/84.]

Chapter 332-22 WAC

STATE LAND LEASING PROGRAM RULES

WAC

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WAC 332-22-010 Promulgation. This chapter is promulgated by the board of natural resources pursuant to the authority granted by RCW 79.01.242 to establish procedures for the department's state land leasing program. The board of natural resources recognizes that in order to obtain a fair market return to the trust, certain of its lands should be retained and managed through leasing. These rules are designed to establish practical leasing procedures and achieve the best possible return to the designated trust beneficiary consistent with any other obligations imposed by law on such lands.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-010, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-010, filed 1/20/81.]

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WAC 332-22-020 Definitions. Insofar as these rules apply, these definitions will be utilized.

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

(2) "Department" means the department of natural resources as defined in RCW 43.30.030.

(3) "Board" means the board of natural resources as defined in RCW 43.30.040.

(4) "Fair market rental value" means the total rental that a property would command on the open market as determined by either comparable rental rates being paid for comparable uses or by the current fair market value of the property times the applicable capitalization rate.

(5) "Fair market value for improvements" is as defined in RCW 79.01.136.

(6) "Highest and best use" means the legal use that will produce the highest return to the trust over an extended period of time, including interim use.

(7) "Interim use" means any use of the land for which a rent can be charged before the planned use is attained.

(8) "State lands" means lands owned by the state or managed by the department excluding marine and aquatic lands.

(9) "Person" means a person at least 18 years of age, a partnership, a corporation or a government agency.

(10) "Bonus bid" means the dollar amount offered, to be paid one time only, over and above the periodic rent or the share of the crop.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-020, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-020, filed 1/20/81.]

WAC 332-22-025 Bonus bid. On a new lease or an existing lease advertised for negotiation there may be a bonus bid.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-025, filed 9/10/84.]

WAC 332-22-030 Applications to lease. (1) Application to lease will be considered only for state lands as may be shown to be available for lease in department records or when an existing lease will expire within one hundred twenty days or leases which can be considered for conversion to a higher and better use.

(2) Application to lease will be considered for lands owned by other governmental entities, which are being managed by the department, only after the owner has made a written request to the department or entered into an agreement with the department to make the same available for leasing pursuant to these rules.

(3) An application to lease shall be made upon forms prescribed by the department which shall be accompanied by fees prescribed by the board. The fee shall not be refunded unless the state lands applied for are not available for leasing. Applications not accompanied by the proper fees shall be rejected.

(4) The commissioner may withhold from leasing any state land either before or after an application to lease is made. The commissioner may reject any and all applications to lease.

(5) Any person authorized to do business in the state of Washington may apply for a lease of state lands.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-030, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-030, filed 1/20/81.]

WAC 332-22-040 Lease auction procedure. (1) The department will determine which parcels of state land will be offered for public auction from:

(a) Applications received;
 (b) Evaluation of land not presently leased; and
 (c) Land with a lease expiring, and on which it is in the best interest of the state to offer at auction for the same or different uses. The department shall give thirty days written notice to the existing lessee of such action.

(2) The department will establish the minimum qualifications required for a person to bid at public auction.

(3) Sealed bids will be accepted up to the time set and at the location specified in the notice of leasing (RCW 79.01.252). The successful bidder will be the person with the most acceptable proposal which complies with the criteria set forth in the notice of public auction.

(4) Oral auctions will be conducted by the auctioneer at the time and place designated in the notice of leasing and the lease shall be awarded to the highest bidder.

(5) The commissioner may reject any or all bids, if it is deemed in the best interest of the state.

(6) Any monies held on deposit from an applicant will be credited to the lease if they are the successful bidder or will be refunded.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-040, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-040, filed 1/20/81.]

WAC 332-22-050 Lease procedure--Amendment. Existing leases may be amended through negotiation between the lessee and the department but the term of any such amendment shall not exceed the specified maximum lease period as set forth in RCW 79.01.096 or 79.12.570. Such amendments shall be in writing and signed by both parties.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-050, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-050, filed 1/20/81.]

WAC 332-22-060 Lease procedure--Rental adjustments. All leases shall provide for periodic rental reevaluation and adjustment, except leases with rentals based upon a percentage of crop or income. The lessee may request rental adjustments as provided in RCW 79.01-096.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-060, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-060, filed 1/20/81.]

WAC 332-22-070 Lease procedure--Notice. Notice of all existing leases which will be negotiated by the department shall be published in two newspapers of general circulation in the locality of the state land, one of which shall be in the county where the land is located.

(1986 Ed.)

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-070, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-070, filed 1/20/81.]

WAC 332-22-080 Rights to re-lease denied. Claimed rights to re-lease or to renew a lease will not be authorized or recognized by the department.

[Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-080, filed 1/20/81.]

WAC 332-22-090 Notice to lessee of public auction. The current lessee will be notified if the state intends to offer the leased land at public auction.

[Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-090, filed 1/20/81.]

WAC 332-22-100 Existing lease negotiation. (1) Leases which will be used for the same or similar purposes may be offered for negotiation.

(2) A notice of intention to negotiate a lease must be published once in two newspapers of general circulation in the locality of the land, one of which shall be in the county where the land is located, within ninety days of the date of commencement of negotiations. Such notice shall give the legal description, the date of expiration, the intended land use, the office to which application can be made, the final date to file a written request to lease, and such other information as deemed necessary.

(3) The existing lessee will be mailed the criteria for leasing on the same date as mailing to the newspaper the notice of intention to negotiate.

(4) A written request to lease from a new applicant must be received in the designated office on the specified date to be considered. It must describe the proposed terms and conditions and the contemplated use of the land and contain a certified check or money order payable to the department of natural resources for the amount of any bonus bid plus a \$100.00 deposit. The envelope must be marked "Sealed bid for lease #____; expiration date ____ and give the applicant's name."

(5) The department shall review all written requests to lease before negotiation with the existing lessee is commenced. If negotiation is satisfactorily completed, award of the lease will be made to the existing lessee. If negotiation with the existing lessee is not successful, the highest qualified offer will be treated as a minimum bid at public auction and all lower offers will be returned. The lease will then be offered at public auction. If there are no bidders at the auction, the lease will be awarded to the applicant who has made the highest qualified offer.

(6) Negotiated leases may not exceed the maximum term authorized by RCW 79.01.096 or 79.12.570 and must have a term commencing within one hundred twenty days of date of starting negotiations.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-100, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-100, filed 1/20/81.]

WAC 332-22-105 Initial lease for commercial, industrial, or residential uses by negotiation. (1) The department may negotiate initial leases to authorize

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commercial, industrial, or residential uses on specific parcels of land zoned for such uses provided:

(a) Not more than one application is received by the department to lease the property.

(b) The department determines that a rent of at least fair market rental can be obtained through negotiation.

(c) The department publishes a notice of intent to lease which contains the legal description and zoning of the property, the office to which application to lease can be made, and the final date to submit a written request to lease. The notice shall be published not more than thirty days nor less than twenty days immediately preceding commencement of negotiation in two newspapers of general circulation in the locality of the state land, one of which shall be in the county where the land is located.

(d) The department shall report to the board of natural resources on each initial lease entered into by negotiation. The report shall include the fair market value of the property, rental and lease terms.

(2) The department may negotiate initial leases at fair market rental to authorize placement and maintenance of communication equipment in or on electronic site buildings and on electronic site towers.

[Statutory Authority: RCW 79.01.242. 85-11-012 (Order 442, Resolution No. 482), § 332-22-105, filed 5/8/85; 84-19-007 (Resolution No. 464), § 332-22-105, filed 9/10/84.]

WAC 332-22-110 Mandatory lease terms. Each lease negotiated or placed at public auction shall contain the following terms:

(1) The use or uses to which the land is to be employed. Provision must be made by insurance or otherwise, to protect the department against third-party claims arising from the uses made of the property by the lessee.

(2) Improvements which exist on the land at the time lease negotiation is completed or public auction is held shall be specifically described and, unless otherwise designated shall be considered as a part of the value of the land. Improvements may be required to be constructed as a condition of a lease. All existing improvements or those authorized or required under the conditions of the lease must be maintained at the sole cost of the lessee unless otherwise provided. All improvements must be protected against casualty loss in a manner satisfactory to the department unless otherwise provided. Improvements placed upon the land by the lessee shall become the property of the state at the end of lease term unless otherwise provided.

(3) Any lease with a term of more than ten years shall require a plan of development which includes scheduled completion dates for all required activities, improvements, or other actions.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-110, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-110, filed 1/20/81.]

WAC 332-22-120 Assignment. All assignments of leasehold rights, whether total, partial or for security

purposes, must be approved in writing by the department. Department approval of assignments may be conditioned upon a number of factors including rental adjustment; insurance coverage adjustment; renegotiation of improvement ownership; or changes in authorized land use. The department may require assurance of the performance capability of the proposed assignee by any feasible means, including the filing of an acceptable surety arrangement.

An assignment will not be considered to be a termination of the lease within the meaning of RCW 79.01.092.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-120, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-120, filed 1/20/81.]

WAC 332-22-130 Residential leases. A lessee desiring a waiver or modification of residential lease conditions, as authorized by RCW 79.01.242(5), may make a written request to the board and to the department setting forth the proposed change and its reasons. The department shall make recommendations to the board regarding any such proposal.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-130, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-130, filed 1/20/81.]

WAC 332-22-140 Expired leases—Occupancy. (1) Extension of any lease may be authorized by the department for a maximum of one year from date of expiration if it is deemed to be in the best interest of the state. Such extension shall be issued upon such terms and conditions as the department may prescribe which may include an adjustment in rent.

(2) If a proposed use for the premises has not been determined, the department may issue a permit for an interim use to the last lessee for up to a maximum period of five years from date of expiration of the lease.

The permit may be issued in the same general form as a lease for a similar use of the premises under such terms and conditions as the department may prescribe. Upon expiration or termination of the permit, the premises can only be leased at public auction.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-140, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-140, filed 1/20/81.]

WAC 332-22-150 Temporary use permits. The board authorizes the department to issue temporary use permits of state land not to exceed one year which may not be renewed. This permit will only be issued upon receipt of fair market value for the period of occupancy.

[Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-150, filed 1/20/81.]

Chapter 332-24 WAC FOREST PROTECTION

WAC

332-24-001 Invalidity of part of chapter not to affect remainder.
332-24-020 Promulgation.

332-24-025 Definition.
 332-24-027 Felling of snags.
 332-24-055 Definitions.
 332-24-056 Purpose of rules.
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 332-24-060 Definitions.
 332-24-063 Written burning permit requirements and exceptions.
 332-24-070 General rules—Outdoor fire for recreational or debris disposal purposes not requiring a written burning permit.
 332-24-090 Requirements—Outdoor fire for recreational or debris disposal purposes not requiring a written burning permit.
 332-24-095 Recreation and debris disposal fire requirements—Penalty.
 332-24-100 Burning permits—Portions of Clark and Skamania counties.
 332-24-105 Exemptions from burning permit requirements—Parts of Clark and Wahkiakum counties.
 332-24-10501 Exemptions from burning permit requirements—Parts of Wahkiakum County.
 332-24-10502 Exemptions from burning permit requirements—Parts of Okanogan County.
 332-24-150 Exemptions from burning permit requirements.
 332-24-160 Exemptions from burning permit requirements—Parts of Asotin County.
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 332-24-180 Exemptions from burning permit requirements—Parts of Columbia County.
 332-24-185 Exemptions from burning permit requirements—Parts of Cowlitz County.
 332-24-185001 Exhibit A—Map.
 332-24-190 Exemptions from burning permit requirements—Parts of Walla Walla County.
 332-24-192 Exemptions from burning permit requirements—Parts of Snohomish County.
 332-24-194 Exemptions from burning permit requirements—Parts of Snohomish and Skagit counties.
 332-24-196 Exemptions from burning permit requirements—Parts of Pacific and Grays Harbor counties.
 332-24-197 Burning permits—Extension of burning permit season.
 332-24-200 Satisfactory clearance of slash.
 332-24-210 Slash abatement west of the summit of the Cascade Mountains.
 332-24-220 Slash clearance east of the summit of the Cascade Mountains.
 332-24-230 Payment to certificate of clearance fund.
 332-24-310 Rules requiring use of approved spark arresters on railroad locomotives.
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 332-24-330 General rules.
 332-24-340 Penalties.
 332-24-350 Extension of time for removal of distressed timber.
 332-24-360 Promulgation.
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 332-24-380 Extreme fire hazard requiring abatement.
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 332-24-387 Responsibility.
 332-24-390 Preexisting hazards.
 332-24-395 Compliance.
 332-24-410 Recovery of costs.
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 332-24-415 Dumping mill waste, forest debris.
 332-24-418 Definitions.
 332-24-420 Creation of fire hazard—Dumping.
 332-24-430 Fire hazard dumping permits.
 332-24-440 Illegal dumping—Enforcement penalties.
 332-24-500 Forest fire protection and special forest fire suppression account minimum assessment refund procedure.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-24-010 Forest patrol rates—1960—Western counties—Notice to assessors. [1960 Notice, filed 3/24/60.] Repealed by Order 128, filed 11/24/71 and by adoption of House Bill 1034 enacted by the 1971 Legislature (1971 ex.s. c 207.)
 332-24-030 Forest patrol rates—1960—Eastern counties—Notice to assessors. [1960 Notice, filed 3/24/60.] Repealed by Order 128, filed 11/24/71 and by adoption of House Bill 1034 enacted by the 1971 Legislature (1971 ex.s. c 207.)
 332-24-050 Snags—County average per acre. [Rule of 1/15/54.] Repealed by 79-12-015 (Order 336), filed 11/14/79. Statutory Authority: RCW 76.04.222 and 1979 ex.s. c 8.
 332-24-061 U.S. Forest Service entry rules. [Order 256, § 332-24-061, filed 5/13/76. Formerly WAC 332-48-050.] Repealed by 80-12-018 (Order 347), filed 8/26/80. Statutory Authority: RCW 76.04.020.
 332-24-065 No burning permit required—Small outdoor fires. [Order 169, § 332-24-065, filed 8/7/73.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.
 332-24-080 Burning permits—Recreation and debris fires on state and other lands under the jurisdiction of the department of natural resources. [Order 16, § 332-24-080, filed 2/25/69.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.
 332-24-250 Permanent closure of extra fire hazard regions—Portions of Clark and Skamania counties. [Docket 242, § 1, filed 9/9/66.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.
 332-24-260 Permanent closure of extra fire hazard regions—Gates, display of signs. [Docket 242, § 2, filed 9/9/66.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.
 332-24-270 Permanent closure of extra fire hazard regions—Delegation of authority to issue notices. [Docket 242, § 3, filed 9/9/66.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.
 332-24-280 Permanent closure of extra fire hazard regions—Procedure for giving notice. [Docket 242, § 4, filed 9/9/66.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.
 332-24-290 Permanent closure of extra fire hazard regions—Description of closed region. [Docket 242, § 5, filed 9/9/66.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.
 332-24-300 Permanent closure of extra fire hazard regions—Closed region—Gifford Pinchot National Forest. [Docket 242, § 6, filed 9/9/66.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.
 332-24-400 Approved abatement. [Order 126, § 332-24-400, filed 12/19/72.] Repealed by Order 274, filed 4/8/77.

WAC 332-24-001 Invalidity of part of chapter not to affect remainder. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected.

[Order 16, § 332-24-001, filed 2/25/69.]

WAC 332-24-020 Promulgation. Pursuant to chapter 8, Laws of 1979 ex. sess., and RCW 76.04.222, the department of natural resources, recognizing the need to assure continued existence of snag dependent wildlife and continued forest growth while minimizing the risk of destruction by conflagration, promulgates the following regulations, WAC 332-24-020 through 332-24-027 defining and regulating the felling of snags which represent a substantial deterrent to effective fire control action in forest areas.

[Statutory Authority: RCW 76.04.222 and 1979 ex.s. c 8. 79-12-015 (Order 336), § 332-24-020, filed 11/14/79.]

WAC 332-24-025 Definition. "Snag" shall mean a standing dead conifer tree over twenty-five feet in height and sixteen inches and over in diameter measured at a point four and one-half feet above the average ground level at the base.

[Statutory Authority: RCW 76.04.222 and 1979 ex.s. c 8. 79-12-015 (Order 336), § 332-24-025, filed 11/14/79.]

WAC 332-24-027 Felling of snags. (1) Snags within areas of extreme fire hazard requiring abatement, as defined by WAC 332-24-380, shall be felled concurrently with the logging operation, unless:

(a) Such snag contains a visible nest of a species of wildlife designated by the United States Fish and Wildlife Service as threatened or endangered, or

(b) The department, upon written request of the landowner, determines in writing that such snag does not represent a substantial deterrent to effective fire control action.

(2) The department may designate in writing that additional snags be felled concurrently with the logging operation if, in the department's opinion, they represent a substantial deterrent to effective fire control action, unless such snag contains a visible nest of a threatened or endangered species.

[Statutory Authority: RCW 76.04.222 and 1979 ex.s. c 8. 79-12-015 (Order 336), § 332-24-027, filed 11/14/79.]

WAC 332-24-055 Definitions. Items defined herein have reference to RCW 76.04.251 and all other provisions relating to fire equipment. (1) "An operation" shall mean the use of equipment tools and supporting activities which are involved in the process of the management of forest land that may cause a forest fire to start. Such activities may include, but are not limited to, any phase of logging, landclearing, road and utility right-of-way clearing. The operating period shall be that time period when the activity is taking place.

(2) "Currently with the logging" and "current with the felling of live timber or with the current logging operation" shall mean during the logging operation on any landing, setting or similar part of the operation unless modified by the department in writing for special requests not to exceed thirty days after completion of the operation pursuant to RCW 76.08.030 and applying to RCW 76.04.222 and 76.04.223.

(3) "Fire extinguisher" shall mean, unless otherwise stated, a chemical fire extinguisher rated by Underwriters' Laboratories or Factory Mutual, appropriately mounted and located so as to be readily accessible to the operator. When two fire extinguishers are required, they are to be appropriately mounted and located so that one is readily accessible to the operator and the other is separate from the operator and readily accessible to other personnel.

(4) "Any tractor or other mobile machine" shall mean any machine that moves under its own power when performing any portion of a logging, landclearing, right-of-way clearing, road construction or road maintenance function, and includes any machine, whether crawler or wheel type, whether such machine be engaged in yarding or loading or in some other function at the time of its inspection by the department.

(5) "Any fixed position machine" shall mean any machine used for any portion of a logging, earth moving, right-of-way clearing, milling, road maintenance and construction, land clearing operation or other operation that performs its primary function from a fixed position even though said machine is capable of moving under its own power to a different fixed position.

(6) "An approved exhaust system" shall mean a well-mounted exhaust system free from leaks and equipped with spark arrester(s) rated and accepted under U.S.D.A., Forest Service current standard.

(a) An exhaust-driven supercharger, such as a turbo-charger, is acceptable in lieu of a spark arrester. The entire exhaust must pass through the turbine.

(b) Passenger vehicles and trucks may be equipped with an adequately baffled muffler of a type approved by the department in lieu of a spark arrester.

(c) Portable power saws purchased after June 30, 1977, and used on forest land must meet the performance levels set forth in the Society of Automotive Engineers "Multipositioned small engine exhaust fire ignition standard, SAE recommended practice J 335B." Requirements to obtain the SAE J 335B specifications are as follows:

(i) The spark arrester shall be designed to retain or destroy 90% of the carbon particles having a major diameter greater than 0.023 inches (0.584 mm).

(ii) The exhaust system shall be designed so that the exposed surface temperature shall not exceed 550°F (288°C) where it may come in direct contact with forest fuels.

(iii) The exhaust system shall be designed so that the exhaust gas temperature shall not exceed 475°F (246°C) where the exhaust flow may strike forest fuels.

(iv) The exhaust system shall be designed in such a manner that there are no pockets or corners where flammable material might accumulate. Pockets are permissible only if it can be substantiated by suitable test that material can be prevented from accumulating in the pockets.

(v) The exhaust system must be constructed of durable material and so designed that it will, with normal use and maintenance, provide a reasonable service life. Parts

designed for easy replacement as a part of routine maintenance shall have a service life of not less than fifty hours. Cleaning of parts shall not be required more frequently than once for each eight hours of operation. The spark arrester shall be so designed that it may be readily inspected and cleaned.

(vi) Portable power saws will be deemed to be in compliance with the Society of Automotive Engineers J 335 B requirements if they are certified by the United States Department of Agriculture, Forest Service, San Dimas Equipment Development Center.

(d) Portable power saws, which were purchased prior to June 30, 1977, which do not meet the Society of Automotive Engineers Standards must meet the following requirements:

(i) The escape outlet of the spark arrester shall be at an angle of at least 45° from a line parallel to the bar.

(ii) The configuration of the spark arrester shall be such that it will not collect sawdust, no matter in what position the saw is operated.

(iii) Spark arresters shall be designed and made of material that will not allow shell or exhaust temperature to exceed 850°F.

(iv) The arrester shall have a screen with a maximum opening size of 0.023 inch.

(v) The arrester shall be capable of operating, under normal conditions, a minimum of eight hours before cleaning is needed.

(vi) The screen shall carry a manufacturer's warranty of a minimum 50-hour life when installed and maintained in accordance with the manufacturer's recommendation.

(vii) The arrester shall be of good manufacture and made so that the arrester housing and screen are close fitting.

(viii) The arrester shall be at least 90% efficient in the destruction, retention or attrition of carbon particles over 0.023 inch.

(ix) Efficiency to be measured as described in Power Saw Manufacturers Association Standard Number S3-65.

(x) Construction of the arrester shall permit easy removal and replacement of the screen for field inspection and cleaning.

(7) "Shovel" shall mean a serviceable long handled or "D" handled round point shovel of at least "0" size with a sharpened, solid and smooth blade, and the handle shall be hung solid, smooth and straight.

(8) "Axe" shall mean a serviceable double bitted swamping axe of single bitted axe of at least a three pound head and thirty-two inch handle. The blades shall be sharpened, solid and smooth and the handle shall be hung solid, smooth and straight.

(9) "Pulaski" shall mean a serviceable axe and hoe combination tool with not less than 3-1/2 pound head and thirty-two inch handle. The blades shall be sharpened, solid and smooth and the handle shall be hung solid, smooth and straight.

(10) "Adze eye hoe" shall mean a serviceable forest fire fighting hoe with a blade width of at least 5-3/4

inches and a rectangular eye. The blade shall be sharpened, solid and smooth, and the handle shall be hung solid with no more than 3/4 inch nor less than 1/8 inch extending beyond the head, smooth, aligned, and at least thirty-two inches long.

(11) "Fire tool box" shall mean a box or compartment of sound construction, with a waterproof lid, provided with hinges and hasps, and so arranged that the box can be properly sealed. It shall be red in color and marked "FIRE TOOLS" in letters at least one inch high. It shall contain a minimum of:

(a) Two axes or Pulaskis.

(b) Three adze eye hoes. One Pulaski may be substituted for one adze eye hoe.

(c) Three shovels.

(12) "Pump truck or pump trailer" shall mean a serviceable truck or trailer which must be able to perform its functions efficiently, equipped with a water tank of not less than three hundred gallon capacity, filled with water. The complete pump truck or pump trailer shall be kept ready for instant use for suppressing forest fires. If a trailer is used, it shall be equipped with a hitch to facilitate prompt moving, and a serviceable tow vehicle shall be immediately available for attachment to the trailer. The pump truck or pump trailer with its tow vehicle must be available throughout the operating and watchman periods.

The pump may be a portable power pump or a suitable power take-off pump. It shall be plumbed with a bypass or pressure relief valve. The pump shall develop, at pump level, pressure sufficient to discharge a minimum of twenty gallons per minute, using a 1/4 inch nozzle tip, through a fifty foot length of one inch or 1-1/2 inch rubber-lined hose.

The pump truck or trailer shall be equipped with the following:

(a) A minimum of five hundred feet of one or 1-1/2 inch cotton or synthetic jacket hose.

(b) A fire tool box.

The tank shall be plumbed so that water may be withdrawn by one man by gravity feed. This outlet shall be adapted to accept the hose used and located for easy filling of pump cans.

The pump truck or trailer must be equipped with appropriate tools, fuel, accessories, and fittings to perform its functions for a continuous period of four hours. A recommended list of tools, fittings, and accessories may be obtained from any department office.

(13) "Watchman" shall mean one competent person to be at the site(s) for one hour following the operation of spark emitting equipment on fire action Class III low days and above as defined by the department of natural resources in the use of the national fire danger rating system, in burning permit Zones C and D. The watchman shall be vigilant and so located or positioned to be able to detect within five minutes fires which may originate at the site(s) of the equipment operation and to report a fire to the responsible protection agency within fifteen minutes of detection.

[Order 261, § 332-24-055, filed 6/10/76; Order 181, § 332-24-055, filed 3/21/74; Order 16, § 332-24-055, filed 2/25/69.]

WAC 332-24-056 Purpose of rules. This regulation recognizes the many instances of need of an outdoor fire and the general prudence of the people in the safety and use of fire to the extent that no written burning permit is required if certain rules and requirements are followed.

[Statutory Authority: RCW 76.04.150, 83-10-036 (Order 396), § 332-24-056, filed 4/29/83, effective 6/1/83; Order 169, § 332-24-056, filed 8/7/73.]

WAC 332-24-057 Spark emitting equipment regulated. It shall be unlawful for anyone to operate during the closed season as defined in RCW 76.04.252, any steam, internal combustion or electric engines or any other spark emitting equipment or devices on any forest land or in any place, where in the opinion of the department, within reason, fire could be communicated to the forest land, without first complying with the requirements for each situation and type of equipment listed as follows:

(1) Any fixed position machine unless equipped with the following:

(a) Two fire extinguishers each of at least a 5 B.C. rating.

(b) An approved exhaust system.

(c) An appropriately mounted shovel.

(2) Any tractor or mobile machine unless equipped with the following:

(a) One fire extinguisher of at least a 5 B.C. rating.

(b) An approved exhaust system.

(c) An appropriately mounted shovel.

(3) Any truck or vehicle used for hauling unless equipped with the following:

(a) One fire extinguisher of at least a 5 B.C. rating.

(b) An approved exhaust system.

(c) An appropriately mounted shovel.

(4) Any portable power saw unless equipped with the following:

(a) A chemical fire extinguisher of at least 8 ounce capacity, fully charged, and in good working order, to be kept in the immediate possession of the operator.

(b) An approved exhaust system.

(c) A shovel, which shall be kept within two minutes round trip of the operator.

Provided, A watchman shall be required on all operations identified in Items (1), (2), and (4) when located in burning permit Zones C and D on the west side of the Cascade Mountains or in other areas of the state as may be designated by the department in writing.

(5) Any passenger vehicle used for industrial or commercial operations unless equipped with the following:

(a) A fire extinguisher of at least a 5 B.C. rating.

(b) An approved exhaust system.

(6) During yarding, loading, milling, land clearing, and right of way clearing there must be kept at each landing, yarding tree, mill or more suitable place designated by the department, two five gallon back pack pump cans filled with water: *Provided*, That such operations in burning permit Zones C and D on the west side of the Cascade Mountains, or in other areas of the state as may be designated by the department in writing, must comply with the following additional requirements:

(a) A pump truck or pump trailer to be kept on the landing or within five minutes round trip of the operation.

(b) A watchman.

(c) Adequate facilities to report a fire to the responsible protection agency within fifteen minutes of detection.

(7) Each helicopter used for yarding, loading or land clearing unless first complying with the following additional requirements:

(a) VHF radio, maintained in operational use, at frequency 122.9.

(b) A portable water bucket of the appropriate following capacities, with necessary cargo hooks and tripping mechanism for dropping water on a fire, will be located at the heliport serving the operation.

External Payload of Helicopter	Minimum Required Bucket Size
780 pounds - & below	50 gallons
781 pounds - 1600 pounds	100 gallons
1601 pounds - 3900 pounds	200 gallons
3901 pounds - & larger	300 gallons

(c) A water source of sufficient capacity readily accessible to allow the bucket to be filled three times without refilling the source. The water source must be located within five minutes round trip flying time of every part of the operation.

(d) The following sized fire tool kit packaged for ready attachment to the cargo hook and located at the heliport serving the operation:

(i) Three axes or Pulaskis.

(ii) Six shovels.

(iii) Six adze eye hoes.

(e) Two fire extinguishers with a total UL or FM rating of at least 20 B.C. rating shall be kept with refueling equipment. They shall be appropriately mounted, suitably marked, and available for immediate use.

(8) Balloon, sky line and other similar long line or aerial logging systems with greater than 1,200 feet maximum distance between the yarder and the tailblock unless first complying with the following additional requirements:

(a) A pump truck(s) or trailer(s) shall be available and equipped in order to supply water to the furthest extremity of the operation in a maximum of 10 minutes from the time of detection. A portable water supply may be substituted provided it contains a minimum of three hundred gallons of water, and the complement of accessories and equipment identified in the definition of the pump truck or pump trailer, and a pump capable of delivering twenty gallons per minutes at the end of fifty feet of one inch hose and a nozzle with 1/4 inch aperture. The pump shall be plumbed with a bypass or pressure relief valve. The water supply shall be located and outfitted for immediate use at the landing and so that it may also be readily lifted and transported by using the rigging system or cargo hook. Logging systems which are not capable of lifting the portable water supply in one lift may substitute up to three separate packages to transport it.

(b) The following sized fire tool kit packaged and located for ready attachment to the rigging for delivery to the portable water supply while it is in operation:

- (i) Three axes or Pulaskis.
- (ii) Six shovels.
- (iii) Six adze eye hoes.

(9) Any railroad logging locomotive or common carrier locomotive unless:

(a) Followed by a speeder patrol at such times and in such locations as designated by the department. The speeder patrol shall be equipped with:

- (i) Two shovels.
- (ii) One Pulaski.
- (iii) One adze eye hoe.

(iv) Two five gallon back pack pump cans filled with water.

(v) An approved exhaust system.

(vi) Communications between the speeder and the dispatcher for reporting fires to the responsible protection agency.

(vii) One fire extinguisher of at least 5 B.C. rating.

(b) Equipped with an approved exhaust system.

(c) Equipped with communications between the train and dispatcher for reporting fires to the responsible protection agency.

(10)(a) Prior to beginning operations, all snags, stubs and dead trees over fifteen feet in height shall be cut within fifty feet of each fixed position machine which will operate for two consecutive days or more in one position.

(b) The ground shall be initially cleared of all flammable debris under four inches in diameter beneath and within ten feet of each fixed position machine which will operate for two consecutive days or more in one position.

(11) The area around the tail, corner, and haul back blocks, must be kept clear of all flammable debris under four inches in diameter for a distance of six feet in all directions. Suitable flame resistant blanket devices may be substituted for the clearing requirements. Each block must be equipped with one five gallon back pump can filled with water, one shovel and one Pulaski. Operations with multiple blocks must have this complement of tools and water within one hundred feet of each block.

(12) Any spark emitting engine used for purposes not specifically mentioned herein, which in the opinion of the department may cause a forest fire to start unless equipped with:

(a) An approved exhaust system.

(b) One fire extinguisher of at least a 5 B.C. rating.

(13) The department may designate certain areas which are known to have rapid fluctuations of extreme fire weather and/or concentrations of additional hazards. Operators in such areas may be required to monitor the humidity and/or the wind speed and maintain a daily log of such readings. Relative humidity readings and wind speed must be determined and recorded by instruments and methods approved by the department.

The department may further request operators in such areas to restrict operations when, in the opinion of the department, the recorded readings or current conditions

are such that if a fire starts in that area it would probably spread to conflagration proportions regardless of men and equipment available for initial fire suppression purposes.

[Order 272, § 332-24-057, filed 1/24/77; Order 255, § 332-24-057, filed 5/13/76; Order 181, § 332-24-057, filed 3/21/74.]

WAC 332-24-058 Substitutions and reduction of requirements. The department may accept serviceable equivalents to any of the requirements in these regulations. Such substitutions must be made in writing by the supervisor or his agent.

The department may by written permission reduce the requirements set forth herein whenever in its judgment the operation is of such type or location and/or weather is such that all the requirements herein are not needed for the protection of life and property.

[Order 181, § 332-24-058, filed 3/21/74.]

WAC 332-24-059 Penalties for violation—Work stoppage notice. Any person, firm or corporation who willfully violates these regulations shall by authority of RCW 76.04.120 be guilty of a misdemeanor, and by authority of RCW 76.04.270 shall cease operations upon written notification until the provisions have been complied with and be subject to, upon conviction, a fine of not less than twenty-five dollars and more than five hundred dollars.

[Order 181, § 332-24-059, filed 3/21/74.]

WAC 332-24-060 Definitions. The following definitions are applicable to this resolution:

(1) "Outdoor fire" shall mean the combustion of material in the open or in a container with no provisions for the control of such combustion or the control of the emissions from the combustion products.

(2) "Debris disposal fire" shall mean an outdoor fire for the prevention of a fire hazard and/or for the purpose of cleanup of natural vegetation, such as yard and garden refuse and residue of a natural character such as leaves, clippings, prunings, trees, stumps, brush, shrubbery and wood so long as it has not been treated by an application of prohibited material or substances in a pile no larger than ten feet in diameter.

(3) "Recreational fire" shall mean an outdoor fire for the purpose of sport, pastime, or refreshment, such as camp fires, bonfires, cooking fires, etc. in a hand-built pile no larger than four feet in diameter.

(4) "Fire hazard" shall mean the accumulation of combustible materials in such a condition as to be readily ignited and in such a quantity as to create a hazard from fire to nearby structures, forest areas, life and property.

(5) "Forest slash" shall mean an accumulation of forest debris resulting from the commercial growing, harvesting, or processing of timber.

(6) "Department" means the department of natural resources or its authorized representatives.

[Statutory Authority: RCW 76.04.150. 83-10-036 (Order 396), § 332-24-060, filed 4/29/83, effective 6/1/83; Order 169, § 332-24-060, filed 8/7/73; Order 126, § 332-24-060, filed 11/17/71; Order

59, § 332-24-060, filed 7/29/70; Order 16, § 332-24-060, filed 2/25/69.]

WAC 332-24-063 Written burning permit requirements and exceptions. Under authority granted in RCW 76.04.020 and 76.04.150, the following regulation is hereby promulgated:

(1) The commissioner of public lands and the department are responsible by law for the granting of burning permits for certain types of outdoor fire.

(2) The department aids in the protection of air quality under its smoke management plan.

(3) Pursuant to its authority and responsibility, the department has studied and determined the effects of such burning on life, property and air quality to be of year-round effect.

(4) IT IS THEREFORE DETERMINED that throughout the year, outdoor fire is prohibited within any department forest protection assessment area unless a written burning permit is obtained from the department and signed by the permittee and afterwards having the permit in possession while burning and complying with the terms of such permit.

EXCEPT a written burning permit for an outdoor fire is not required from the department under the following conditions:

(a) In certain geographical areas designated by the department.

(b) Outdoor fire contained in an approved camp stove or burning barrel in a safe location.

(c) General rules and requirements specified in WAC 332-24-070 and 332-24-090 for protection of life, property and air quality are met.

[Statutory Authority: RCW 76.04.150, 83-10-036 (Order 396), § 332-24-063, filed 4/29/83, effective 6/1/83; Order 181, § 332-24-063, filed 3/21/74.]

WAC 332-24-070 General rules—Outdoor fire for recreational or debris disposal purposes not requiring a written burning permit. (1) The department reserves the right to restrict, regulate, refuse, revoke, or postpone outdoor fires under RCW 76.04.150, 76.04.170, 76.04.180, and chapter 70.94 RCW due to adverse fire weather or to prevent restriction of visibility, excessive air pollution or a nuisance.

(2) The Yacolt Burn Area, located in portions of Clark and Skamania counties, is exempt from these rules, and that area requires a written burning permit throughout the year.

(3) These rules do not apply within incorporated city limits or where the department has contracted protection areas to the fire district except where such fire districts have incorporated these rules into their regulations, or in fire districts which have their own fire permit requirements on improved land, or where air pollution authorities have prohibited fires that fall under these regulations.

[Statutory Authority: RCW 76.04.150, 83-10-036 (Order 396), § 332-24-070, filed 4/29/83, effective 6/1/83; Order 169, § 332-24-070, filed 8/7/73; Order 126, § 332-24-070, filed 11/17/71; Order 16, § 332-24-070, filed 2/25/69.]

[Title 332 WAC—p 60]

WAC 332-24-090 Requirements—Outdoor fire for recreational or debris disposal purposes not requiring a written burning permit. (1) The fire must not include rubber products, plastics, asphalt, garbage, dead animals, petroleum products, paints or any similar materials that emit dense smoke or create offensive odors when burned pursuant to RCW 70.94.775(1).

(2) A person capable of extinguishing the fire must attend it at all times and the fire must be extinguished before leaving it.

(3) No recreational or debris disposal fires are to be within fifty feet of structures.

(4) A recreational fire shall be in a hand-built pile no larger than four feet in diameter. A serviceable shovel must be within the immediate vicinity of the fire.

(5) A debris disposal pile shall be no larger than ten feet in diameter. A serviceable shovel and a minimum of five gallons of water must be within the immediate vicinity of the fire. A bucket is acceptable, if the outdoor fire is adjacent to an accessible body of water. A charged garden hose line or other adequate water supply may be substituted for the five gallon water requirement.

(6) Only one pile at a time may be burned, and each pile must be extinguished before lighting another.

(7) No outdoor fire is permitted in or within five hundred feet of forest slash without a written burning permit.

(8) The material to be burned must be placed on bare soil, gravel, bars, beaches, green fields, or other similar areas free of flammable material for a sufficient distance adequate to prevent the escape of the fire.

(9) Burning must be done during periods of calm to very light winds. Burning when the wind will scatter loose flammable materials, such as dry leaves and clippings, is prohibited.

(10) If the fire creates a nuisance from smoke or fly ash, it must be extinguished.

(11) A landowner or his designated representative's written permission must be obtained before building an outdoor fire on the property of another.

(12) Persons not able to meet the requirements of subsections (1) through (10) of this section must apply for a written burning permit through the department.

[Statutory Authority: RCW 76.04.150, 83-10-036 (Order 396), § 332-24-090, filed 4/29/83, effective 6/1/83; Order 169, § 332-24-090, filed 8/7/73; Order 126, § 332-24-090, filed 11/17/71 and 3/8/72; Order 16, § 332-24-090, filed 2/25/69.]

WAC 332-24-095 Recreation and debris disposal fire requirements—Penalty. Failure to comply with the general rules in WAC 332-24-070 and requirements in WAC 332-24-090 voids permission to burn, and the person burning is in violation of RCW 76.04.150 and subject to the penalties therein.

[Statutory Authority: RCW 76.04.150, 83-10-036 (Order 396), § 332-24-095, filed 4/29/83, effective 6/1/83.]

WAC 332-24-100 Burning permits—Portions of Clark and Skamania counties. Under authority granted

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in RCW 76.04.150 and 76.04.020, the following regulation is hereby promulgated. Past experience has indicated that even during the period of October 15 to March 15 weather conditions periodically occur of such nature and duration that unregulated burning within the portions of Clark and Skamania counties lying within and immediately adjacent to the area known as the Yacolt Burn presents a very real and serious threat of forest fire within the Yacolt Burn. Therefore, the supervisor of forestry will require any individual, person, firm, or corporation wishing to burn inflammable material within this area specifically designated below, to first obtain permission in writing from the supervisor or a warden or ranger and thereafter comply with the terms of said permit unless said fire is contained in a suitable device sufficient in the opinion of the supervisor to prevent the fire from spreading. All of the rules and regulations applicable to the issuance of burning permits during the regular permit season of March 15 to October 15 shall be applicable. This promulgation shall be in effect for each year hereafter until such time as the supervisor deems it is no longer necessary.

The area encompassed within the boundaries of the Yacolt Burn for purposes of this promulgation are as follows:

Starting at the east quarter corner of Section 12, Twp. 5 North, Range 4 East, that point lying on the boundary of the Gifford Pinchot National Forest; thence west 1 mile; north 1/2 mile; west 2 miles, south 2 miles; west 1 mile; north 1 mile; west 1 mile; south 1 mile, west 2 miles to the southwest corner of Section 13, Twp. 5 North, Range 3 East; thence south 3 miles; east approximately 1/4 mile to the north quarter corner of Section 1, Twp. 4 North, Range 3 East; thence south 2 1/4 miles; westerly along the county road 1 1/2 miles; south 1/4 mile; to the east quarter corner of Section 15, Twp. 4 North, Range 3 East. Thence west 1 mile; south 2 1/2 miles; east 1 1/2 miles; south 6 miles; to the south quarter corner of Section 26, Twp. 3 North, Range 3 East, that point lying on the north boundary of the Camp Bonneville - U.S. Military Reservation. Thence east 1/2 mile; south 1 mile; east 1 mile; south 2 miles; east approximately 1 1/2 miles to the Little Washougal River; thence southwesterly approximately 2 1/4 miles along the Little Washougal River thence east along the Bonneville Power Line 5 miles; thence northeasterly along the county road to the northeast corner of Section 24, Twp. 2 North, Range 4 East. Thence north 1/2 mile to a Bonneville Power Line; thence east 1 mile to the West Fork of the Washougal River; thence southeasterly along said river to the East-West center line of Section 20, Twp. 2 North, Range 5 East and east along said center line to the east quarter corner of said Section 20; thence south 1/2 mile to a Bonneville Power Line; east 9 1/2 miles; thence south to the Evergreen Highway in the approximate center of Section 25, Twp. 2 North, Range 6 East and along said highway in a northeasterly direction approximately 3 miles to the

northwest city limits of North Bonneville; thence north to the Bonneville Power Line and northeasterly along it approximately 4 miles to where it intersects the north-south center line of Section 35, Twp. 3 North, Range 7 East; thence north approximately 2 3/4 miles to the center of Section 23, Twp. 3 North, Range 7 East; east 1 1/2 miles; south approximately 1/3 mile to the southwest corner of Section 24, Twp. 3 North, Range 7 1/2 East; thence east 1 mile; south 1 mile to the Bonneville Power Line; northeasterly along said power line to the east section line of Section 30, Twp. 3 North, Range 8 East, thence northerly to the northeast corner of Section 18, Twp. 3 North, Range 8 East; thence west 2 1/4 miles to the road running up from Carson Creek and westerly along said road through Section 12 along the south side of Sections 2 and 3, Twp. 3 North, Range 7 East. Thence southwesterly across Section 9 to the southwest corner of Section 9, Twp. 3 North, Range 7 East; thence west approximately 10 miles to the northwest corner of Section 14, Twp. 3 North, Range 5 East; south 1 mile; west 4 miles; north 13 1/2 miles to the point of beginning.

[Burning Permit Rule, effective 10/16/53.]

WAC 332-24-105 Exemptions from burning permit requirements--Parts of Clark and Wahkiakum counties.

(1) Pursuant to the authority of RCW 76.04.150 as amended by section 1, chapter 82, Laws of 1965, the parts of Clark and Wahkiakum counties described in subsections (2) and (3) below are exempted from the requirements of RCW 76.04.150, as amended, and permits for the burning of inflammable material will not, from the effective date of this rule, be required in such exempt parts: *Provided*, That nothing herein shall affect the operation and effectiveness of the rules of the rural fire protection district and/or local air pollution control authority in which said lands are situated.

(2) The following described parts of Clark County, Washington, are exempt from the burning permit requirements of RCW 76.04.150 in accordance with subsection (1) above:

All lands lying within the following described line:

(a) All lands west of Fire District No. 6 and the Vancouver city limits, and

(b) All lands west of the Burlington Northern Railroad main line from its intersection with N.W. 179th Street north to the Lewis River.

(3) The following described part of Wahkiakum County, Washington, is exempt from the burning permit requirements of RCW 76.04.150 in accordance with subsection (1) above:

Puget Island, which lies south and west of the town of Cathlamet.

[Order 169, § 332-24-105, filed 8/7/73.]

WAC 332-24-10501 Exemptions from burning permit requirements--Parts of Wahkiakum County. (1) Pursuant to the authority of RCW 76.04.150 as

amended by section 1, chapter 82, Laws of 1965, the parts of Wahkiakum County described below are exempted from the requirements of RCW 76.04.150, as amended, and permits for the burning of inflammable material will not, from the effective date of this rule, be required in such exempt parts: *Provided*, That nothing herein shall effect the operation and effectiveness of the rules of the rural fire protection district and/or local air pollution control authority in which said lands are situated.

(2) The following described parts of Wahkiakum County, Washington, are exempt from the burning permit requirements of RCW 76.04.150 in accordance with subsection (1) above:

The area between the cities of Skamokawa and Cathlamet south and west of State Highway No. 4 to the Columbia River, including Price and Hunting islands.

[Order 234, § 332-24-10501, filed 8/12/75.]

WAC 332-24-10502 Exemptions from burning permit requirements—Parts of Okanogan County. (1) Pursuant to the authority of RCW 76.04.150 as amended by section 1, chapter 82, Laws of 1965, the parts of Okanogan County described below are exempted from the requirements of inflammable material will not, from the effective date of this rule, be required in such exempt parts: *Provided*, That nothing herein shall effect the operation and effectiveness of the rules of the rural fire protection district and/or local air pollution control authority in which said lands are situated.

(2) The following described parts of Okanogan County, Washington, are exempt from the burning permit requirements of RCW 76.04.150 in accordance with subsection (1) above:

All lands lying within the following described line:

Highlands (North Okanogan Valley)

Starting at the junction of the Canada-United States boundary and the north end of the Boundary Point Road thence southerly along the Boundary Point Road to U.S. Highway 97, southerly along U.S. 97 to the Tom Dull Road, southerly along the Tom Dull Road to 23rd Avenue, then west approximately 500 feet to the Oroville Tonasket reclamation district irrigation ditch, southerly along the ditch to the siphon across the Similkameen River, thence southerly along the siphon and/or ditch to the Gunsolley Road (Ellemehan Mt. Road), thence northeasterly along the Gunsolley Road to the Golden Road, then southerly along the Golden Road to the Janis Oroville westside road, then southerly along the Janis Oroville westside road to a point west of the south end of the Janis Bridge on U.S. 97, then northerly along U.S. 97 to the McLoughlin Canyon Road, easterly along the McLoughlin Canyon Road to the State Frontage Road, then northerly along the State Frontage Road to the Clarkston Mill Road, then northerly

along the Clarkston Mill Road to the Longnecker Road, thence northwesterly along the Longnecker Road to U.S. 97, then northerly along U.S. 97 to the city limits of Tonasket, then along the south, east and north boundary of the town of Tonasket to U.S. 97, then northerly along U.S. 97 to the O'Neil Road, then northerly along the O'Neil Road to U.S. 97, then northerly along U.S. 97 to the East-side Oroville Road, then northerly along the East-side Oroville Road to the northeast end of the Thorndike Loop Road, then west to the east shore of Osoyoos Lake, then northerly along the east shore of Osoyoos Lake to the Canadian-United States boundary, then west along the Canadian-United States boundary to the point of origin.

South Okanogan County

Beginning at the intersection of U.S. Highway 97 and State Highway 16, in the town of Peteros, thence proceeding northerly along U.S. Highway 97 to the junction of Paradise Hill Road, within the town of Brewster, thence northerly along the Paradise Hill Road to the junction of the Paradise Hill Road and North Star-Paradise Hill Cutoff Road, located within the S-1/2 Section 35, T 31 N, R 24 East; thence northeast along the North Star-Paradise Hill Cutoff Road to the intersection at the North Star Road, thence south and east along the North Star Road until it intersects with Old Highway 97; thence northerly along Old Highway 97 to the junction with the Malott Road within the town of Malott; thence north and east along the Malott Road to the junction of State Highway 20; thence southeasterly along State Highway 20 to the junction of the Old Loop Loop Highway, thence east along the Old Loop Loop Highway into the town of Okanogan to the Junction of the Conconully Highway; thence north along Conconully Highway to the junction of Ross Canyon Road, thence east along Ross Canyon Road to the Junction of Johnson Creek Road, thence north along Johnson Creek Road to the junction of BIDE-A-WEE Road; Thence east along BIDE-A-WEE Road to the junction of Old Highway 97; thence north along Old Highway 97 to the junction with the Pharr Road, within the town of Riverside, thence northerly along the Pharr Road to a point on the north line of Section 6, Township 35 North, Range 27 East; thence east along that section line, across the Okanogan River to the Keystone Road, thence southerly along the Keystone Road to the Tunk Valley Road, thence southerly along the Tunk Valley Road into the town of Riverside at a point where the Tunk Valley Road and the west bank of the Okanogan River intersect; thence south along the west bank of the Okanogan River to the Columbia River, thence southwesterly along the west bank of the Columbia River to the point of origin.

[Order 235, § 332-24-10502, filed 8/12/75.]

WAC 332-24-150 Exemptions from burning permit requirements. Pursuant to the authority of RCW 76.04.150, as amended by section 1, chapter 82, Laws of 1965, the parts of Asotin, Garfield, Columbia, and Walla Walla counties described in sections 2, 3, 4, and 5, below, are exempted from the requirements of the said RCW 76.04.150, as amended, and permits for the burning of inflammable material will not, from the effective date of this rule, be required in such exempt parts: *Provided*, That nothing herein shall affect the operation and effectiveness of the rules of the rural fire protection district and/or local air pollution control authority in which said lands are situated.

[Order 157, § 332-24-150, filed 4/2/73; Rule of 4/29/66.]

WAC 332-24-160 Exemptions from burning permit requirements—Parts of Asotin County. All parts of Asotin County, lying north of Township 9 North, or east of the following described line are exempt from the burning permit requirements of RCW 76.04.150, as amended, in accordance with WAC 332-24-150:

Beginning at a point on the border between the states of Washington and Oregon where the Grande Ronde River crosses said border in Section 13, Township 6 North, Range 43 East, W.M.; thence northeasterly along said river to the west line of Section 36, Township 7 North, Range 44 East, W.M.; thence north to the southwest corner of Section 25, Township 7 North, Range 44 East, W.M.; thence east 1 mile, north 1 mile, east 3 miles, north 1 1/2 miles to the east quarter corner of Section 16, Township 7 North, Range 45 East, W.M., at Fields Spring State Park; thence east 2 miles, north 1/2 mile, west 1/2 mile, north 2 1/2 miles, to the center of Section 35, Township 8 North, Range 45 East, W.M.; thence west 1/2 mile, north 1/2 mile, west 1 mile, north 1/2 mile, west 1 mile, north 2 1/2 miles, west 4 miles to the southeast corner of Section 10, Township 8 North, Range 44 East, W.M.; thence north 1 mile, west 2 miles, north 7 miles, west 5 miles, to the northwest corner of Section 3, Township 9 North, Range 43 East, W.M. which is a point on the Garfield-Asotin county line.

[Rule of 4/29/66.]

WAC 332-24-170 Exemptions from burning permit requirements—Parts of Garfield County. All parts of Garfield County lying north of the following described line are exempt from the burning permit requirements of RCW 76.04.150, as amended, in accordance with WAC 332-24-150:

Beginning at the northeast corner of Section 4, Township 9 North, Range 43 East, W.M., which is a point on the Garfield-Asotin county line, thence west 2 miles, north 3 1/2 miles, west 4 miles, south 1/2 mile, west 2 miles, north 1/2 mile, west 1 mile, south 1/2 mile, to the northwest corner of Section 19, Township 10 North, Range 42 East, W.M., which is a point on the Garfield-Columbia county line.

[Rule of 4/29/66.]

WAC 332-24-180 Exemptions from burning permit requirements—Parts of Columbia County. All parts of Columbia County lying north of the following described line are exempt from the burning permit requirements of RCW 76.04.150, as amended, in accordance with WAC 332-24-150:

Beginning at the northeast corner of Section 24, Township 10 North, Range 41 East, W.M., which is a point on the Columbia-Garfield county line; thence west 1 mile, south 1/2 mile, west 1/2 mile, north 1 mile, west 3 miles, south 1 1/2 miles, to the north quarter corner of Section 29, Township 10 North, Range 41 East, W.M.; thence west 6 1/2 miles, south 1 mile, east 1/2 mile, south 1/2 mile, east 1/2 mile, south 1 mile, west 2 miles, to the west quarter corner of Section 6, Township 9 North, Range 40 East, W.M.; thence south 3 1/2 miles, west 4 miles, south 1 mile, west 1 mile, south 1 mile, west 1 mile, to the northeast corner of Township 8 North, Range 38 East, W.M., which is a point on the Walla Walla-Columbia county line.

[Rule of 4/29/66.]

WAC 332-24-185 Exemptions from burning permit requirements—Parts of Cowlitz County. (1) Pursuant to the authority of RCW 76.04.150, as amended by section 1, chapter 82, Laws of 1965, the parts of Cowlitz County described in section 2 are exempted from the requirements of RCW 76.04.150, as amended, and permits for the burning of inflammable material will not, from the effective date of this rule, be required in such exempt parts: *Provided*, That nothing herein shall affect the operation and effectiveness of the rules of the rural fire protection district and/or local air pollution control authority in which said lands are situated.

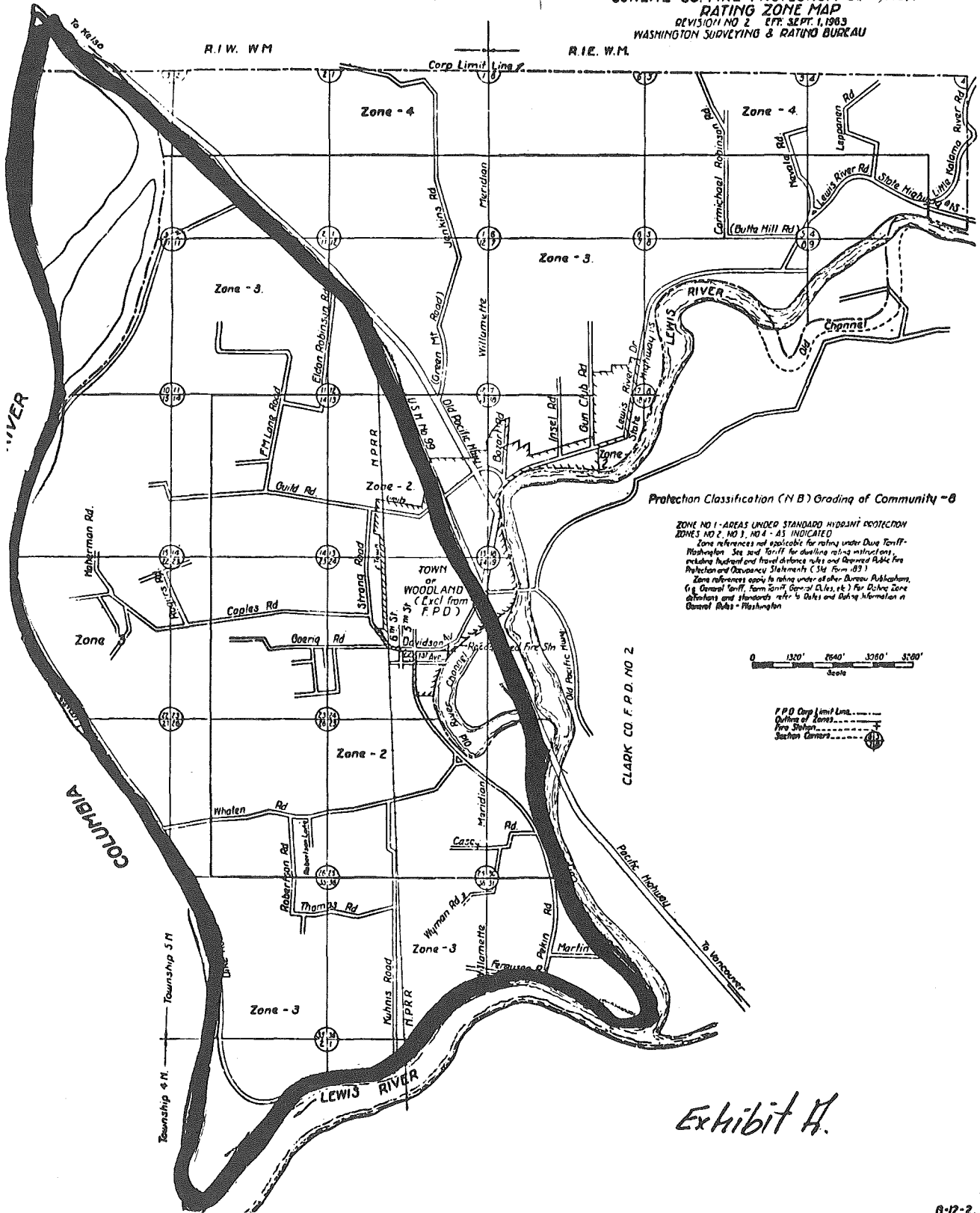
(2) The following described parts of Cowlitz County are exempt from the burning permit requirements of RCW 76.04.150, as amended, in accordance with as WAC 332-24-200(1) [codified as WAC 332-24-185(1)]:

An area consisting of all shorelands and uplands lying within the following described boundaries: Beginning at a point where Interstate Highway 5 intersects with the west line of section 34, township 6 north, range 1 west, W.M.; thence southeasterly along the west boundary of said Interstate Highway 5 to its junction with the Lewis River; thence southwesterly along the north bank of the Lewis River to its confluence with the Columbia River; thence northerly along the east bank of the Columbia River to the south tip of Burke Island; thence northerly along the west boundary of Burke Island to the southern tip of Martins Island; thence northerly along the west boundary of Martins Island to the north end thereof; thence northerly to the point of beginning.

[Order 157, § 332-24-185, filed 4/2/73; Order 16, § 332-24-200 (codified as WAC 332-24-185), filed 2/25/69.]

WAC 332-24-185001 Exhibit A--Map.

Plat No. 30, 1967, No. 21, Cowlitz Co. F.P.D. No. 1, Washing.
COWLITZ CO. FIRE PROTECTION DIST. NO. 1
RATING ZONE MAP
 REVISION NO. 2, EFF. SEPT. 1, 1983
 WASHINGTON SURVEYING & RATING BUREAU



[Order 16, § 332-24-185 (part), (codified as WAC 332-24-185001), Exhibit A--Map, filed 2/25/69.]

WAC 332-24-190 Exemptions from burning permit requirements--Parts of Walla Walla County. All parts of Walla Walla County lying north and west of the following described line are exempt from the burning permit requirements of RCW 76.04.150, as amended, in accordance with WAC 332-24-150:

Beginning at the northeast corner of Township 8 North, Range 38 East, W.M., which is a point on the Columbia-Walla Walla county line; thence west 1 mile, south 2 miles, west 2 miles, south 3 miles, west 1 mile, south 1 mile, to the southwest corner of Section 33, Township 8 North, Range 38 East, W.M.; thence south 1 1/2 miles, west 1 mile, south 2 1/2 miles, west 1/2 mile, south 1/4 mile, west 1/2 mile, south 1 3/4 miles, west 1 mile, south 1/4 mile, west 1 mile, south 3/4 miles, west 1 mile, south 1 1/2 miles to a point on the Washington-Oregon state boundary.

[Rule of 4/29/66.]

WAC 332-24-192 Exemptions from burning permit requirements--Parts of Snohomish County. (1) Pursuant to the authority of RCW 76.04.150, as amended by section 1, chapter 82, Laws of 1965, the parts of Snohomish County described in subsection (2), below, are exempted from the requirements of said RCW 76.04.150, as amended, and permits for the burning of inflammable material will not, from the effective date of this rule, be required in such exempt parts: *Provided*, That nothing herein shall affect the operation and effectiveness of the rules of the rural fire protection district and/or local air pollution control authority in which said lands are situated.

(2) All parts of Snohomish County lying within the following described line are exempt from the burning permit requirements of RCW 76.04.150, as amended, in accordance with subsection (1), above:

Beginning at the point on the east boundary of the city of Everett, Snohomish County, Washington, at which the Hewitt Avenue Bridge intersects the east boundary, thence southerly along said east boundary to Lowell-Larimer's Corner Road (Bluff Road); thence southeasterly along said road to its point of intersection with the north line of section 36, township 28 north, range 5 east, W.M.; thence easterly along the said north line and along the north line of sections 31 and 32, township 28 north, range 6 east, W.M., to the point said north line intersects 127th Avenue (Lord's Hill Road), thence northerly one-half mile along said avenue to the Snohomish-Monroe Road; thence southeasterly along said road to 164th Street; thence easterly along said street to Primary State Highway No. 522; thence southwesterly along said highway to the Snoqualmie-King County Road; thence southeasterly along said road to the point of its intersection with the Snohomish-King county line; thence easterly along said county line to the point of its intersection with Secondary State Highway No. 203 (Monroe-Duvall Highway);

thence northerly along said highway to the boundary of the city of Monroe; thence northerly along said boundary to United States Highway No. 2; thence northwesterly along said highway to Roosevelt Road; thence northerly along said road to 159th Avenue (Zuber Road); thence northerly along said avenue to 100th Street (Westwick Road); thence westerly along said street to the southwest corner of section 15, township 28 north, range 6 east, W.M., and 147th Avenue (Jauntz and Nelson Road); thence northerly along said avenue to 68th Street (Three Lakes Road); thence westerly along said street to the east bank of the Pilchuck River; thence northerly along said east bank to a point due east of 52nd Street (Foss Road); thence westerly across said river and continuing westerly along said street to 87th Avenue (Fobes Cutoff Road); thence northerly along said avenue to its point of intersection with the north line of section 36, township 29 north, range 5 east, W.M.; thence westerly along the said north line and continuing along the north line of section 35, township 29 north, range 5 east, W.M., to its point of intersection with United States Highway No. 2; thence northwesterly along said highway to Hewitt Avenue East (Calaveros Corner); thence westerly along said avenue to the point of beginning.

[Statutory Authority: RCW 76.04.020 and 76.04.190. 79-09-120 (Order 331), § 332-24-192, filed 9/4/79; Order 157, § 332-24-192, filed 4/2/73; Docket 236, filed 7/20/66.]

WAC 332-24-194 Exemptions from burning permit requirements--Parts of Snohomish and Skagit counties.

(1) Pursuant to the authority of RCW 76.04.150 the parts of Snohomish and Skagit counties, Washington, described in subsections (2) and (3) below, are exempted from the requirements of the said RCW 76.04.150, and permits, issued by the state department of natural resources, for the burning of flammable material will not, from the effective date of this rule be required in such exempt parts: *Provided*, That nothing herein shall affect the operation and effectiveness of the rules of the rural fire protection district and/or local air pollution control authority in which said lands are situated.

(2) The following described parts of Snohomish County, Washington, are exempt from the burning permit requirements of RCW 76.04.150 in accordance with subsection (1), above:

All lands lying within the following described line:

Beginning at the intersection of Secondary State Highway 1-E (Sign Route 530) with the Snohomish-Skagit county line, thence southerly along said Secondary State Highway 1-E to the point of intersection with 102nd Avenue Northwest, thence southerly along 102nd Avenue Northwest to the point of intersection with Lund Road, thence southeasterly along Lund Road to the point of intersection with said Secondary State Highway 1-E, thence southeasterly on said Secondary State Highway 1-E to the point of its intersection with the Stillaguamish River, thence westerly along the

south bank of the Stillaguamish River to the point of its intersection with Hat Slough and continuing westerly along the south bank of Hat Slough to the point of its intersection with the Stanwood Road, thence southerly along the Stanwood Road to the south line of Section 6, Township 31 North, Range 4 East, W.M., thence west along the south line of said Section 6 and of Section 1, same township and range, to its intersection with the line of ordinary high tide in Port Susan Bay, thence northerly along the line of ordinary high tide of Port Susan Bay, Davis Slough, and Skagit Bay, to the Skagit-Snohomish line, thence east along the county line to the point of beginning.

(3) The following described parts of Skagit County, Washington, are exempt from the burning permit requirements of RCW 76.04.150 in accordance with subsection (1), above:

All lands enclosed within the following described line:

Beginning at a point on the Skagit-Snohomish county line, at its intersection with the Conway-Stanwood Highway (old U.S. Highway Alternate 99) thence northerly along the said Conway-Stanwood Highway to the old English Lumber Company railroad grade, thence east along said old railroad grade to the Hill Slough, thence northeasterly along the Hill Slough to the Hill Ditch, thence northerly along the Hill Ditch to Carpenter Creek, thence northerly along Carpenter Creek to the intersection of Hickox Road and Bacon Road, thence west along Hickox Road to the Blodgett Road, thence northerly along Blodgett Road to the Anderson Road, thence northeasterly through the Anderson Gully to the southeastern city limits of the city of Mount Vernon, thence easterly and northerly along the said city limits to the intersection of Francis Road, thence north along the west line of Section 9 and Section 4, Township 34 North, Range 4 East, W.M., to the north bank of the Skagit River, thence easterly along the north bank of the Skagit River to Township Street, thence north along Township Street to the city limits of the city of Sedro-Woolley, thence west and north along the said city limits of the city of Sedro-Woolley to the F and S Grade Road, thence northwesterly along the Grade Road to the Kelleher Road, thence westerly along the Kelleher Road to the Burlington-Alger Road (old U.S. Highway 99) thence due west to the Samish River, thence southwesterly along the south bank of the Samish River to the Great Northern Railroad right-of-way, thence northwesterly along the west boundary of the right-of-way of the Great Northern Railway to Samish Bay, thence southerly and westerly along the line of ordinary high tide of Samish Bay (excluding Samish Island) and Padilla Bay to the juncture of Padilla Bay and the north bank of the Joe Leary Slough, thence easterly up the north

bank of the Joe Leary Slough to the Avon-Allen Road, thence southerly along the Avon-Allen Road to the Anacortes Branch Line of the Great Northern Railway, thence southwesterly along the northerly border of the Great Northern Railway right-of-way to Fredonia, thence northwesterly to the west quarter corner of Section 9, Township 34 North, Range 3 East, W.M., thence north one-quarter mile, thence west one-half mile to the North Fork of Indian Slough, thence northwesterly along the northerly bank of Indian Slough to Padilla Bay, thence southwesterly along the line of ordinary high tide of Padilla Bay to the juncture of Swinomish Slough, thence southerly along the east bank of the Swinomish Slough to Skagit Bay, thence southeasterly along the line of ordinary high tide of Skagit Bay to the Skagit-Snohomish county line, thence east along the county line to the point of beginning at the Conway-Stanwood Road: EXCEPT, the following described parcel of lands within the foregoing described parcel of lands is not exempt from the burning permit requirements of the said RCW 76.04.150:

Beginning at a point on the north bank of the North Fork of the Skagit River where said bank is intersected by the west line of Section 8, Township 33 North, Range 3 East, W.M., thence easterly along the north bank of the said North Fork of the Skagit River to the point of intersection with the east line of Section 9, Township 33 North, Range 3 East, W.M., thence northwesterly along the westerly edge of the county road to the west quarter corner of Section 33, Township 34 North, Range 3 East, W.M., thence west one-quarter mile, thence south one and one-half miles, thence west three-quarter mile, thence south along the west line of Section 8, Township 33 North, Range 3 East, W.M., to the point of beginning.

[Order 157, § 332-24-194, filed 4/2/73; Docket 275, filed 5/29/67.]

WAC 332-24-196 Exemptions from burning permit requirements—Parts of Pacific and Grays Harbor counties. (1) Pursuant to the authority of RCW 76.04.150 the parts of Pacific and Grays Harbor counties, Washington, described in subsections (2) and (3) below, are exempted from the requirements of the said RCW 76.04.150, and permits, issued by the state department of natural resources, for the burning of flammable material will not, from the effective date of this rule, be required in such exempt parts: *Provided*, That nothing herein shall affect the operation and effectiveness of the rules of the rural fire protection district and/or local air pollution control authority in which said lands are situated.

(2) The following described parts of Grays Harbor County, Washington, are exempt from the burning permit requirements of RCW 76.04.150 in accordance with subsection (1) above:

(a) A coastal strip of tidelands lying below and twenty feet seaward of the line of ordinary high tide

as marked on the ground by the driftwood accumulation beginning at the south boundary of the Quinalt Indian Reservation and running southerly to the south bank of the Copalis River.

(b) A coastal strip of uplands and tidelands lying to the west of Secondary State Highway 9C (Sign Route 109) as said public road is now located and constructed beginning at the south bank of the Copalis River and running southerly to the junction of the said highway with the Grays Harbor County road to Oyhut.

(c) A coastal strip of uplands and tidelands lying to the west of the Grays Harbor County road to Oyhut as said public road is now located and constructed beginning at the junction of the said road with Secondary State Highway 9C (Sign Route 109) and running southerly to the north boundary of Grays Harbor County Rural Fire Protection District No. 13, as said boundary is now located.

(d) All uplands and tidelands of the Oyhut Peninsula lying to the south of the said north boundary to Grays Harbor County Rural Fire Protection District No. 13.

(e) All uplands and tidelands of the Westport Peninsula lying north of the south boundary of Grays Harbor County Rural Fire Protection District No. 3, as said boundary is now located.

(f) A coastal strip of uplands and tidelands lying to the west of Secondary State Highway 13A (Sign Route 105) as said public road is now located and constructed beginning at the said south boundary of Grays Harbor County Rural Fire Protection District No. 3 and running southerly to Grays Harbor-Pacific county line.

(3) The following described part of Pacific County, Washington, is exempt from the burning permit requirements of RCW 76.04.150 in accordance with subsection (1), above:

A coastal strip of tidelands lying below and seaward of the line of ordinary high tide as marked on the ground by the line of vegetation or the line of driftwood accumulation, whichever is at any point the lower, beginning at the Grays Harbor County-Pacific county line and running southerly and easterly to the west boundary of the Showwalter Indian Reservation.

[Order 157, § 332-24-196, filed 4/2/73; Docket 256, filed 10/28/66, 3/30/67.]

WAC 332-24-197 Burning permits--Extension of burning permit season. (1) Written burning permits will be required for the period October 15 to April 15 in Eastern Washington and the period October 15 to March 15 in Western Washington for fires set under any of the following conditions:

- (a) Broadcast burning of logged areas, or
- (b) Burning of logging landings, or
- (c) Burning of debris resulting from the scarification of forest lands, or

(1986 Ed.)

(d) Burning of waste forest material resulting from the clearing of utility or public road rights-of-way that run through or adjacent to forested land, or

(e) Burning of mill waste from forest products or any other material which has been transported to and dumped in concentrations on forested land.

(2) All outdoor fires within the department of natural resources protection areas which are not herewith required to have a written burning permit shall not:

(a) Include rubber products, plastics, asphalt, garbage, dead animals, or any similar materials that emit dense smoke or create offensive odors when burned, or

(b) Cause visibility to be obscured on public roads and highways by the smoke from such fires, or

(c) Endanger life or property.

[Order 130, § 332-24-197, filed 1/19/72, effective 2/23/72.]

WAC 332-24-200 Satisfactory clearance of slash. Unless a certificate of clearance evidencing satisfactory abatement of slash and forest debris resulting from logging or clearing operations has been issued at an earlier date by the department of natural resources in accordance with RCW 76.04.230, the department will, after January 1, 1967, consider slash and forest debris to have been satisfactorily abated under the conditions described in the following three sections. When such conditions have been met, the records of the department will so reflect and no certificate of clearance will be issued.

[Order 4, § 332-24-200, filed 3/1/68.]

WAC 332-24-210 Slash abatement west of the summit of the Cascade Mountains. In that portion of the state of Washington lying west of the summit of the Cascade Mountains and in that portion of Klickitat County lying west of the line between ranges 11 and 12 east of the Willamette Meridian, slash and forest debris will be considered to have been satisfactorily abated on October 1 of the 12th year following completion of the operation creating the slash and forest debris on any particular parcel of land unless the department has prior to that October 1, as to any particular parcel, issued a notice to the responsible parties that the provisions of this rule do not apply to this particular parcel and setting a new date for termination of slash responsibility, or unless the slash and forest debris was generated from a stand of trees consisting of fifty percent, or more, cedar by number of trees harvested or destroyed.

[Order 4, § 332-24-210, filed 3/1/68.]

WAC 332-24-220 Slash clearance east of the summit of the Cascade Mountains. In that portion of the state of Washington lying east of the summit of the Cascade Mountains, excepting therefrom that portion of Klickitat County lying west of the line between ranges 11 and 12 east of the Willamette Meridian, slash and forest debris will be considered to have been satisfactorily abated on October 1 of the 7th year following completion of the operation creating the slash and forest

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debris on any particular parcel of land unless the department has, prior to that October 1, as to any particular parcel, issued a notice to the responsible parties that the provisions of this rule do not apply to this particular parcel and setting a new date for termination of slash responsibility, or unless the slash and forest debris was generated from a stand of trees consisting of fifty percent, or more, cedar by number of trees harvested or destroyed.

[Order 4, § 332-24-220, filed 3/1/68.]

WAC 332-24-230 Payment to certificate of clearance fund. Payment by owners or operators into the certificate of clearance fund shall be calculated on the basis of satisfactory abatement as appropriate for the area in which the slash and forest debris was generated.

[Order 4, § 332-24-230, filed 3/1/68.]

WAC 332-24-310 Rules requiring use of approved spark arresters on railroad locomotives. Increasing incidents of fires on forest lands, many of which are ignited by particles from the exhaust systems of railroad locomotives, necessitates the promulgation of the following rules and regulations pertaining to the use of approved spark arresters on railroad locomotives.

[Order 30, § 332-24-310, filed 8/7/70, 8/11/70, 8/19/70.]

WAC 332-24-320 Definitions. The following definitions are applicable to section 1, chapter 172, Laws of 1929, (RCW 9.40.040); section 6, chapter 125, Laws of 1911, (RCW 76.04.070); section 15, chapter 125, Laws of 1911, (RCW 76.04.280); and to these rules and regulations.

(1) "Railroad" shall mean any common carrier railroad or logging railroad.

(2) "Spark arrester" shall mean a device constructed of nonflammable material specifically designed for the purpose of removing and retaining at least 80 percent of the carbon and other flammable particles greater than 0.0232 of an inch in diameter from the exhaust flow of an internal combustion railroad locomotive engine.

(3) "Forest land" shall mean any land which has enough timber, standing or down, or inflammable material, to constitute a fire menace to life or property, including but not limited to grass and sagebrush when adjacent to or intermingled with areas supporting tree growth or other inflammable material.

(4) "Director" shall mean the commissioner of public lands.

[Order 30, § 332-24-320, filed 8/7/70, 8/11/70, 8/19/70.]

WAC 332-24-330 General rules. (1) Every company or corporation shall install and maintain, on all railroad equipment using internal combustion engines as a source of power, a spark arrester approved by the director, when such equipment is operating through forest land or lands over which fire may spread to forest lands from April 15 - October 15 of each year, unless the period is extended by the supervisor.

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(2) This rule does not apply to a locomotive with a properly functioning turbocharger.

(3) The commissioner may allow substitutions or modifications by written permission whenever in his judgment such are warranted.

[Order 30, § 332-24-330, filed 8/7/70, 8/11/70, 8/19/70.]

WAC 332-24-340 Penalties. Each violation of these rules and regulations shall constitute a misdemeanor. Where violations occur in more than one county, violations in each county shall constitute a separate offense. Further, each day of operation shall constitute a separate offense.

[Order 30, § 332-24-340, filed 8/7/70, 8/11/70, 8/19/70.]

WAC 332-24-350 Extension of time for removal of distressed timber. The commissioner of public lands may grant an extension of time for removal of all timber, fallen timber, or other valuable material, for all existing timber sales where the applicant requires such extension because he is engaged in the removal of distressed timber or fallen timber in timber areas declared officially distressed because of the extensive area of damage by order of the commissioner of public lands, whether such purchases or contracts to remove such distressed timber or fallen timber are on state, federal, or private lands: *Provided, however,* The commissioner of public lands finds extension is necessary to preserve the value of and to protect state owned timber.

The commissioner of public lands may on all timber purchases made prior to August 11, 1969, grant such an extension of time on payment of the amount of \$1.00 per acre per annum, not to be less than \$10.00 per annum for the extension.

The commissioner of public lands may on all timber purchases or sales made after August 11, 1969, grant such extensions upon payment of the amount of \$50.00 per annum and may further dispense with the requirement of interest on the unpaid portion of the state contract if the commissioner determines it is necessary to protect and preserve the value of state owned timber.

[Order 70, § 332-24-350, filed 10/21/70.]

WAC 332-24-360 Promulgation. Pursuant to chapter 207, Laws of 1971, RCW 76.04.370, the department of natural resources promulgates the following rules and regulations, WAC 332-24-360 through 332-24-412, regulating and defining areas of extreme fire hazard requiring measures for abatement, isolation or reduction.

[Order 274, § 332-24-360, filed 4/8/77; Order 126, § 332-24-360, filed 12/19/72.]

WAC 332-24-370 Definitions. The definitions contained in RCW 76.04.010 shall apply to WAC 332-24-360 through 332-24-412, except where stated to the contrary or where the context clearly requires a different meaning. The following additional definitions will also apply:

(1) **Contiguous area** shall mean those areas of additional fire hazard which are not (1) separated one from the other by a natural barrier or constructed barrier as

provided in the definition of isolation, or (2) separated one from the other by areas not comprising an additional fire hazard of a width at the narrowest point of at least 300 feet.

(2) **Isolation** shall mean the division or separation of an additional fire hazard into compartments by natural barriers, such as streams or ridge tops and/or a constructed barrier, but in no instance shall the fire barrier be less than 100 feet in width at its narrowest point and must be free and clear of forest debris as defined in RCW 76.04.010. As an alternative, the owner(s) and/or person(s) responsible, may implement a plan of increased protection, which has received prior written approval of the department for the specific location.

(3) **Reduction** shall mean the elimination of that amount of additional fire hazard necessary to produce a remaining average volume of forest debris no greater than 9 tons per acre of material 3 inches in diameter and less.

(4) **Abatement** shall mean the elimination of additional fire hazard by burning, physical removal, or other means.

[Order 274, § 332-24-370, filed 4/8/77; Order 126, § 332-24-370, filed 12/19/72.]

WAC 332-24-380 Extreme fire hazard requiring abatement. An extreme fire hazard requiring abatement shall exist under the following conditions:

(1) An additional fire hazard within a distance of 100 feet from the closest edge of the running surface of any state or federal highway, county road or railroad.

(2) An additional fire hazard within a distance of 100 feet from the closest edge of the running surface of any other road, as hereinafter defined, that is generally open to and frequently used by the public during periods of fire danger. For the purpose of these rules and regulations, the term "other road" shall be defined as those roads owned or controlled by private individuals, partnerships, or corporations, or by public agencies, including without limitation the department or the United States Forest Service, and which provide the principal access during periods of fire danger (Class 111 days or higher as measured by the National Fire Danger Rating System) where normal use is 75 vehicles or more per week to geographic features of significant public interest and use such as lakes, streams, established viewpoints, lava tubes, ice caves, features of unique geological interest, recreational parks and developments or other facilities intended for frequent public use.

(3) An additional fire hazard within a distance of 200 feet and up to a maximum of 500 feet, if required in writing by the department, which is adjacent to public campgrounds, school grounds, other areas of frequent concentrated public use, buildings in use as residences (furnished and being occupied or available for immediate occupancy), and other buildings or structures valued at \$1,000.00 or more, which are not owned by the owner of the land upon which such additional fire hazard exists.

(1986 Ed.)

(4) The department may identify other specific areas of additional fire hazard, of comparable high risk of ignition, and/or a threat to life and property, and upon written notification, require abatement.

[Order 274, § 332-24-380, filed 4/8/77; Order 126, § 332-24-380, filed 12/19/72.]

WAC 332-24-385 Extreme fire hazard requiring isolation or reduction. Extreme fire hazard requiring isolation or reduction shall exist when there are contiguous areas of additional fire hazard having an origin of less than five years and so arranged that their unisolated compartments comprise 800 acres or more regardless of ownership or logging pattern and its composition comprises an average tonnage greater than nine tons per acre of material three inches or less in diameter with the following exceptions:

(1) When the material is 50% or more Douglas fir by volume, the time of origin considered shall be less than eight years.

(2) When the material is 50% or more cedar by volume, the time of origin considered shall be less than twenty years.

The department may identify areas comprising 800 acres or more of additional fire hazard extending beyond these limitations of time, with comparable high hazard and/or a threat to life or property and upon written notification, require isolation or reduction.

[Order 274, § 332-24-385, filed 4/8/77.]

WAC 332-24-387 Responsibility. The owner(s) and/or person(s) responsible for the existence of an extreme fire hazard requiring abatement as defined in WAC 332-24-380, shall abate the extreme fire hazard. The owner(s) and/or person(s) responsible for the existence of an extreme fire hazard, as defined in WAC 332-24-385, shall isolate and/or reduce the extreme fire hazard, so that it no longer constitutes an extreme fire hazard. The obligation to abate, isolate and/or reduce extreme fire hazards defined in WAC 332-24-380 and 332-24-385 shall extend equally to all acreages of the extreme fire hazard regardless of the number of owner(s) and/or person(s) responsible for its existence. Isolation, when used, must be maintained for a period of 8 years from creation of the additional fire hazard unless the extreme fire hazard is otherwise eliminated prior to that time. At the option of the owner(s) and/or person(s) responsible, isolation and/or reduction may be performed in any manner consistent with existing statutes, these regulations, or as approved in writing by the department.

[Order 274, § 332-24-387, filed 4/8/77.]

WAC 332-24-390 Preexisting hazards. For the purpose of these rules and regulations, the term "additional fire hazard" shall be limited to such hazards created subsequent to January 1, 1969: *Provided*, That preexisting hazards, resulting from operations in stands which contained by gross volume, 50% or more of cedar shall have a 20-year limitation as to time. With respect to any such preexisting hazards, the owner(s) and/or

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person(s) responsible may request, and the department may approve of alternatives to abating, isolating or reducing such hazard in lieu of the requirements set forth in WAC 332-24-380, 332-24-387. The effective date of these rules will be July 1, 1977.

[Order 274, § 332-24-390, filed 4/8/77; Order 126, § 332-24-390, filed 12/19/72.]

WAC 332-24-395 Compliance. When, in the opinion of the department, the owner(s) and/or person(s) responsible have refused, neglected, or failed to abate the extreme fire hazard, as required in WAC 332-24-380, or to isolate or reduce an extreme fire hazard as required in WAC 332-24-385, the department shall notify in writing the affected owner(s) and/or person(s) responsible that the condition exists. This notice will contain one or more suggested methods of abatement, isolation or reduction and the estimated cost thereof. The owner(s) and/or person(s) responsible, upon receipt of such notice, may arrange for a meeting with the department to occur within 30 days to discuss conditions and procedures to abate, isolate or reduce the area of additional fire hazard to a condition where it will no longer constitute an extreme fire hazard.

[Order 274, § 332-24-395, filed 4/8/77.]

WAC 332-24-410 Recovery of costs. If the owner(s) and/or person(s) responsible for the extreme fire hazard fails, for any reason, to arrange for the meeting, or refuses, neglects, or fails to abate, isolate or reduce the extreme fire hazard within the time-frame recommended by the department at the meeting, the department may, following 10 days' notice to the owner(s) and/or person(s) responsible, summarily cause it to be abated, isolated or reduced, except that broadcast burning shall not be used by the department as an abatement procedure without prior written consent of all the owner(s) and/or person(s) responsible. This summary action may be taken 10 days after notice as required by RCW 76.04.370. Obligations for recovery of costs incurred by the department shall be in accordance with RCW 76.04.370 and shall be prorated by the department to the owner(s) and/or person(s) responsible for the extreme fire hazard on the ratio of their acres of involvement to the total acres involved.

[Order 274, § 332-24-410, filed 4/8/77; Order 126, § 332-24-410, filed 12/19/72.]

WAC 332-24-412 Approved isolation, reduction or abatement. The owner(s) and/or person(s) responsible for an extreme fire hazard may identify, in writing, the procedures, or the natural or other processes which were taken to abate, isolate, or reduce the extreme fire hazard, and request the department to declare, in writing, whether the area does or does not constitute an extreme hazard. Absence of such a request on the part of the owner(s) and/or person(s) responsible for an extreme fire hazard will not prejudice his defense in the event of a fire.

[Order 274, § 332-24-412, filed 4/8/77.]

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WAC 332-24-415 Dumping mill waste, forest debris. Purpose. The purpose of these rules is to set forth when dumping of mill waste from forest products or forest debris of any kind in such amounts or locations will constitute a forest fire hazard requiring a permit under chapter 134, Laws of 1971 ex. sess., RCW 76.04.242; to promulgate a permit system and to provide for issuance of permits on certain terms and conditions protecting forest lands from fire. The permit system outlines terms and conditions for the purpose of eliminating a forest fire hazard caused by dumping.

[Order 169, § 332-24-400, codified as WAC 332-24-415, filed 8/7/73.]

WAC 332-24-418 Definitions. The following definitions are applicable to this resolution:

- (1) "Person" shall mean any person, firm corporation, private or governmental agency or entity.
- (2) "Dump" shall include, without limitation, dumping, depositing or placing.
- (3) "Forest lands" shall mean forest lands as defined in RCW 76.04.010.
- (4) "Forest debris" shall mean forest slashings, choppings and any other vegetative residue from activities on forest lands.
- (5) "Mill waste" shall mean waste of all kinds from forest products, including, but not limited to, sawdust, bark, chips, slabs, and cuttings from lumber or timber.

[Order 169, § 332-24-410, codified as WAC 332-24-418, filed 8/7/73.]

WAC 332-24-420 Creation of fire hazard—Dumping. Forest debris or mill waste when dumped in the following manner on or near forest lands shall constitute a forest fire hazard and require a dumping permit.

- (1) Piles of fifty cubic yards or more, or
- (2) Two or more piles totalling fifty cubic yards or more, less than three hundred feet apart, or
- (3) A pile less than three hundred feet from a pile placed by another where such piles would total fifty cubic yards or more, or
- (4) When dumped adjacent to piles of fifty cubic yards or more which were in existence before August 9, 1971, or
- (5) When dumped in smaller quantities or greater distances than above when such dumpings are likely to support, intensify or further the spread of fire, thereby threatening forest lands and endangering life or property:

Provided, That forest debris accumulated on forest lands from logging or silvicultural activities on the land on which such activities took place, or activities regulated by RCW 76.04.310, shall not be subject to the permit requirements of these rules except when forest debris accumulated on land clearing or right-of-way projects regulated by RCW 76.04.310 is taken from such areas and dumped.

[Order 169, § 332-24-420, filed 8/7/73.]

WAC 332-24-430 Fire hazard dumping permits. No person shall dump or cause to be dumped a forest fire

hazard on or threatening forest lands without first obtaining a written permit from the department of natural resources, except that in the case of (5) above, the department of natural resources may notify the appropriate persons, and such person or persons shall be required to obtain a permit for the continued existence of the dumping of such fire hazard. This permit is required to insure that such dumping does not create a forest fire hazard and outlines required terms and conditions to eliminate or abate any forest fire hazard that may be created by dumping.

Anyone desiring to dump mill waste from forest products or forest debris may make application to the department of natural resources or authorized employees thereof for a permit to do so. The application shall state the location, approximate quantity and description of material to be dumped and a map illustrating the proposed dump site and by whom the dumping is to be done.

Upon receipt of an application, the department of natural resources will inspect the area described in the application. The department in issuing a permit may impose reasonable terms and conditions in such permits to prevent the creation of a forest fire hazard.

A permit shall be effective only under the conditions and for the period stated therein. Compliance with the terms of the permit shall create a presumption of due care with respect to dumping.

[Order 169, § 332-24-430, filed 8/7/73.]

WAC 332-24-440 Illegal dumping--Enforcement penalties. (a) "This permit valid only if permittee has legal authority to dump on described property. Dumping material requiring a permit under RCW 76.04.242 without a permit, or in violation of the permit, shall be a gross misdemeanor. Permittee must obtain any and all other permits required by law."

(b) The department shall have the authority to rescind this permit upon failure to comply with any of its terms.

[Order 169, § 332-24-440, filed 8/7/73.]

WAC 332-24-500 Forest fire protection and special forest fire suppression account minimum assessment refund procedure. This section implements the provisions of chapter 299, Laws of 1983, which provides that an owner of forest land owning two or more parcels, each containing less than thirty acres in a county, may obtain a refund of the assessments paid on all such parcels over one as provided in RCW 76.04.360 and 76.04.515.

(1) The forest landowner must:

(a) Obtain a forest fire protection assessment refund form from any department of natural resources office.

(b) Complete refund form per instructions on form.

(c) Pay taxes and assessments to county treasurer and obtain treasurer's signature on refund form to verify assessments have been paid in full.

(d) Mail refund form before December 31st of the year the assessments are due to: Department of Natural Resources, Division of Fire Control, Olympia, WA 98504.

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(2) The department of natural resources, division of fire control will compute the refund due the landowner, prepare a refund voucher and process for payment through the department of natural resources, division of financial services. The division of financial services will prepare the refund check and send the check and a copy of the refund voucher to the landowner.

[Statutory Authority: RCW 76.04.020, 83-23-105 (Order 405), § 332-24-500, filed 11/23/83; 83-01-099 (Order 388), § 332-24-500, filed 12/20/82.]

Chapter 332-26 WAC

EMERGENCY AND SHORT TERM RULES

Reviser's note: The department of natural resources frequently promulgates regulations of a temporary or emergency nature relating to forest closures due to fire conditions, insect infestation control districts and other special matters concerning the industry. Such regulations are filed and may be inspected at the Office of the Code Reviser, Legislative Building, Olympia, but because of their transitory nature they are (on authority of RCW 34.04.050(3)) omitted from this code. Copies thereof may be procured from the Director of Natural Resources, Public Lands Building, Olympia.

Chapter 332-28 WAC

HARBOR LINE COMMISSION

WAC

332-28-010 Meydenbauer Bay--Harbor area--Line of navigability.

WAC 332-28-010 Meydenbauer Bay--Harbor area--Line of navigability. (1) This resolution has application to that portion of Meydenbauer Bay on Lake Washington lying southeasterly of a line formed by the extension southwesterly of the southeasterly line of S. E. Bellevue Place, Bellevue, Washington, and the extension northeasterly of the northwesterly line of Lot 39, Shorelands, according to plat recorded in volume 330 of plats at page 8, records of King County, Washington.

(2) That portion of Meydenbauer Bay above described lies within, in front of or within one mile of the corporate limits of the city of Bellevue, Washington, but the commission finds that there presently exists no necessity to reserve any part thereof for landings, wharves, streets and other conveniences of navigation and commerce, and for this reason declines to establish harbor area therein.

(3) The following described line lying within the above described portion of Meydenbauer Bay, to wit:

Commencing at the east quarter section corner of Section 31, Township 25 North, Range 5 East, W.M., whose "X" coordinate is 1,661,520.58 and whose "Y" coordinate is 225,661.29 referred to the Washington coordinate system, North Zone, and running thence on an azimuth of 78°51'17" a distance of 963.76 feet to a point whose "X" coordinate is 1,660,575.00 and whose "Y" coordinate is 225,475.00 referred to said coordinate system; thence on an azimuth of 312°06'17" a distance of 420.00 feet to a point hereinafter referred to as Point

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"A"; thence on an azimuth of 2°21'10" to an intersection with the southwesterly extension of the southeasterly margin of S.E. Bellevue Place, said intersection being the true point of beginning of this line description.

Thence continuing on an azimuth of 2°21'10" to a point 167.66 feet distance from said Point "A"; thence on an azimuth of 312°06'17" a distance of 415.00 feet, thence on an azimuth of 37°24'19" a distance of 125.00 feet and thence on an azimuth of 127°24'19" to an intersection with the northeasterly extension of the northwesterly line of Lot 39, Shorelands as recorded in vol. 33 of plats, page 8, records of King County, Washington, said point of intersection being the terminus of this line description, has been established by the superior court for King County in Cause No. 513081, entitled *Grill v. Meydenbauer Bay Yacht Club*, to be the boundary line between privately owned shorelands and the publicly owned lake bed. The commission confirms, approves, ratifies and adopts the line so located and established, or as it may be changed and relocated by decree of the supreme court of this state in appeal of the above cause, as the line of navigability in said portion of Meydenbauer Bay. In the event said supreme court shall decree in said appeal that the courts of this state have no jurisdiction to locate and establish the line of navigability, then the above described line shall be and is hereby adopted as the line of navigability in said portion of Meydenbauer Bay.

(4) In the event that the establishment of harbor area within the above described portion of Meydenbauer Bay should become necessary at some time in the future, such harbor area shall be restricted exclusively to lands publicly owned and no part thereof shall be established upon privately owned shorelands.

[Resolution No. 1, filed 8/16/60.]

Chapter 332-30 WAC AQUATIC LAND MANAGEMENT

WAC

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332-30-123	Aquatic land use rentals for water-dependent uses.
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332-30-126	Sand and gravel extraction fees.
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332-30-128	Rent review.
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332-30-144	Private recreational docks.
332-30-145	Booming, rafting and storage of logs.
332-30-148	Swim rafts and mooring buoys.
332-30-151	Reserves (RCW 79.68.060).
332-30-154	Marine aquatic plant removal (RCW 79.68.080).
332-30-157	Commercial clam harvesting.
332-30-161	Aquaculture.
332-30-163	River management.
332-30-166	Open water disposal sites.
332-30-169	Artificial reefs (RCW 79.68.080).

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-30-112	Establishment of new areas for navigation and commerce outside of harbor areas. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-112, filed 7/3/80.] Repealed by 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.
332-30-121	Aquatic land use classes (excluding harbor areas). [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-121, filed 7/3/80.] Repealed by 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.
332-30-124	Aquatic land use authorization. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-124, filed 7/3/80.] Repealed by 84-23-014 (Resolution No. 470), filed 11/9/84. Statutory Authority: 1984 c 221 and RCW 79.90.540.
332-30-130	Public use. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-130, filed 7/3/80.] Repealed by 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.
332-30-133	Environmental concerns. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-133, filed 7/3/80.] Repealed by 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.
332-30-136	Houseboats. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-136, filed 7/3/80.] Repealed by 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.
332-30-160	Renewable resources (RCW 79.68.080). [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-160, filed 7/3/80.] Repealed by 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.

WAC 332-30-100 Introduction. Subsection (2)(e) of this section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114). State-owned aquatic lands include approximately 1,300 miles of tidelands, 6,700 acres of constitutionally established harbor areas and all of the submerged land below extreme low tide which amounts to some 2,000 square miles of marine beds of navigable waters and an undetermined amount of fresh water shoreland and bed. These lands are managed as a public

trust and provide a rich land base for a variety of recreational, economic and natural process activities. Management concepts, philosophies, and programs for state-owned aquatic lands should be consistent with this responsibility to the public.

These lands are "a finite natural resource of great value and an irreplaceable public heritage" and will be managed to "provide a balance of public benefits for all citizens of the state." (RCW 79.90.450 and 79.90.455)

(1) **Management goals.** Management of state-owned aquatic lands will strive to:

- (a) Foster water-dependent uses;
- (b) Ensure environmental protection;
- (c) Encourage direct public use and access;
- (d) Promote production on a continuing basis of renewable resources;
- (e) Allow suitable state aquatic lands to be used for mineral and material production; and
- (f) Generate income from use of aquatic lands in a manner consistent with the above goals.

(2) **Management methods.** To achieve the above, state-owned aquatic lands will be managed particularly to promote uses and protect resources of state-wide value.

(a) Planning will be used to prevent conflicts and mitigate adverse effects of proposed activities involving resources and aquatic land uses of state-wide value. Mitigation shall be provided for as set forth in WAC 332-30-107(6).

(b) Areas having unique suitability for uses of state-wide value or containing resources of state-wide value may be managed for these special purposes. Harbor areas and scientific reserves are examples. Unique use requirements or priorities for these areas may supersede the need for mitigation.

(c) Special management programs may be developed for those resources and activities having state-wide value. Based on the needs of each case, programs may prescribe special management procedures or standards such as lease auctions, resource inventory, shorter lease terms, use preferences, operating requirements, bonding, or environmental protection standards.

(d) Water-dependent uses shall be given a preferential lease rate in accordance with RCW 79.90.480. Fees for nonwater-dependent aquatic land uses will be based on fair market value.

(e) Research and development may be conducted to enhance production of renewable resources.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-100, filed 11/5/85. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-100, filed 7/3/80.]

WAC 332-30-103 Purpose and applicability. (1) This chapter applies to all state-owned aquatic lands. Except when specifically exempted, this chapter applies to aquatic lands covered under management agreements with port districts (WAC 332-30-114).

(2) These regulations do not supersede laws and regulations administered by other governmental agencies

covering activities falling under their jurisdiction on these same lands.

(3) These regulations contain performance standards as well as operational procedures to be used in lease management, land use planning and development actions by the department and port districts. These regulations shall apply each to the department and to the port districts, when such districts manage aquatic lands as the result of management agreements, and neither entity shall impose management control over the other under these regulations except as provided for in such management agreements.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-103, filed 11/5/85. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-103, filed 7/3/80.]

WAC 332-30-106 Definitions. All definitions in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114). For the purpose of this chapter:

(1) "Accretion" means the natural buildup of shoreline through the gradual deposit of alluvium. The general principle of common law applicable is that a riparian or littoral owner gains by accretion and reliction, and loses by erosion. Boundary lines generally will change with accretion.

(2) "Alluvium" means material deposited by water on the bed or shores.

(3) "Anniversary date" means the month and day of the start date of an authorization instrument unless otherwise specified in the instrument.

(4) "Aquaculture" means the culture and/or farming of food fish, shellfish, and other aquatic plants and animals in fresh water, brackish water or salt water areas. Aquaculture practices may include but are not limited to hatching, seeding or planting, cultivating, feeding, raising, harvesting of planted crops or of natural crops so as to maintain an optimum yield, and processing of aquatic plants or animals.

(5) "Aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters (RCW 79.90.010). Aquatic lands are part of the public lands of the state of Washington (see subsection (49) of this section). Included in aquatic lands are public places subsection (51) of this section, waterways subsection (74) of this section, bar islands, avulsively abandoned beds and channels of navigable bodies of water, managed by the department of natural resources directly, or indirectly through management agreements with other governmental entities.

(6) "Aquatic land use classes" means classes of uses of tideland, shorelands and beds of navigable waters that display varying degrees of water dependency. See WAC 332-30-121.

(7) "Authorization instrument" means a lease, material purchase, easement, permit, or other document authorizing use of state-owned aquatic lands and/or materials.

(8) "Avulsion" means a sudden and perceptible change in the shoreline of a body of water. Generally no change in boundary lines occurs.

(9) "Beds of navigable waters" means those submerged lands lying waterward of the line of extreme low tide in navigable tidal waters and waterward of the line of navigability in navigable lakes, rivers and streams. The term, "bedlands" means beds of navigable waters.

(10) "Commerce" means the exchange or buying and selling of goods and services. As it applies to aquatic land, commerce usually involves transport and a land/water interface.

(11) "Covered moorage" means slips and mooring floats that are covered by a single roof with no dividing walls.

(12) "Department" means the department of natural resources.

(13) "Dredging" means enlarging or cleaning out a river channel, harbor, etc.

(14) "Educational reserves" means accessible areas of aquatic lands typical of selected habitat types which are suitable for educational projects.

(15) "Enclosed moorage" means moorage that has completely enclosed roof, side and end walls similar to a car garage i.e. boathouse.

(16) "Environmental reserves" means areas of environmental importance, sites established for the continuance of environmental baseline monitoring, and/or areas of historical, geological or biological interest requiring special protective management.

(17) "Erosion" means the gradual cutting away of a shore by natural processes. Title is generally lost by erosion, just as it is gained by accretion.

(18) "Extreme low tide" means the line as estimated by the federal government below which it might reasonably be expected that the tide would not ebb. In Puget Sound area generally, this point is estimated by the federal government to be a point in elevation 4.50 feet below the datum plane of mean lower low water, (0.0). Along the Pacific Ocean and in the bays fronting thereon and the Strait of Juan de Fuca, the elevation ranges down to a minus 3.5 feet in several locations.

(19) "Fair market value" means the amount of money which a purchaser willing, but not obligated, to buy the property would pay an owner willing, but not obligated, to sell it, taking into consideration all uses to which the property is adapted and might in reason be applied (Donaldson v. Greenwood, 40 Wash.2d [Wn.2d] 238, 1952). Such uses must be consistent with applicable federal, state and local laws and regulations affecting the property as of the date of valuation.

(20) "First class shorelands" means the shores of a navigable lake or river belonging to the state not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, or the inner harbor line where established and within or in front of the corporate limits of any city, or within two miles thereof upon either side (RCW 79.90.040). These boundary descriptions represent the general rule; however exceptions do exist. To determine if the shorelands are within two

miles of the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(21) "First class tidelands" means the shores of navigable tidal waters belonging to the state lying within or in front of the corporate limits of any city, or within one mile thereof upon either side and between the line of ordinary high tide and the inner harbor line; and within two miles of the corporate limits on either side and between the line of ordinary high tide and the line of extreme low tide (RCW 79.90.030). In general, the line of ordinary high tide is the landward boundary. The line of extreme low tide, or the inner harbor line where established, is the waterward boundary. To determine if the tidelands are within two miles of the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(22) "Fiscal year" means a period of time commencing on the first day of July and ending on the thirtieth day of June of the succeeding year. A fiscal year is identified by the year in which it ends, e.g., fiscal year 1985 is the period July 1, 1984 through June 30, 1985.

(23) "Governmental entity" means the federal government, the state, county, city, port district, or other municipal corporation or political subdivision thereof.

(24) "Harbor area" means the area of navigable waters determined as provided in section 1 of Article XV of the state Constitution which shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce (RCW 79.90.020). Harbor areas exist between the inner and outer harbor lines as established by the state harbor line commission.

(25) "Harbor area use classes" means classes of uses of harbor areas that display varying degrees of conformance to the purpose for which harbor areas were established under the Constitution.

(26) "Harbor line" means either or both: (a) A line [outer harbor line] located and established in navigable waters as provided for in section 1 of Article XV of the state Constitution beyond which the state shall never sell or lease any rights whatever to private persons (RCW 79.90.015). (b) A line [inner harbor line] located and established in navigable waters between the line of ordinary high tide and the outer harbor line, constituting the inner boundary of the harbor area (RCW 79.90.025).

(27) "Houseboat" means a floating structure normally incapable of self propulsion and usually permanently moored that serves as a place of residence or business. Otherwise called a floating home.

(28) "Inflation rate" means, for a given year, the percentage rate of change in the previous calendar year's all commodity producer price index of the Bureau of Labor Statistics of the United States department of commerce (RCW 79.90.465). The rate published by the bureau during May of each year for the previous calendar year shall be the rate for the previous calendar year.

(29) "Interest rate" means, for a given year, the average rate of return for the prior calendar year on conventional real property mortgages as reported by the Federal Home Loan Bank Board (RCW 79.90.520).

(30) "Interim uses" means certain uses which may, under special circumstances, be allowed to locate in harbor areas (see WAC 332-30-115(5)).

(31) "Inventory" means both a compilation of existing data on man's uses, and the biology and geology of aquatic lands as well as the gathering of new information on aquatic lands through field and laboratory analysis. Such data is usually presented in map form such as the *Washington Marine Atlas*.

(32) "Island" means a body of land entirely and customarily surrounded by water. Land in navigable waters which is only surrounded by water in times of high water, is not an island within the rule that the state takes title to newly formed islands in navigable waters.

(33) "Line of navigability" means a measured line at that depth sufficient for ordinary navigation as determined by the board of natural resources for the body of water in question.

(34) "Log booming" means placing logs into and taking them out of the water, assembling and disassembling log rafts before or after their movement in water-borne commerce, related handling and sorting activities taking place in the water, and the temporary holding of logs to be taken directly into a processing facility (RCW 79.90.465).

(35) "Log storage" means the water storage of logs in rafts or otherwise prepared for shipment in water-borne commerce, but does not include the temporary holding of logs to be taken directly into a vessel or processing facility (RCW 79.90.465).

(36) "Marine land" means those lands from the mean high tide mark waterward in marine and estuarine waters, including intertidal and submerged lands. Marine lands represents a portion of aquatic lands.

(37) "Meander line" means fixed determinable lines run by the federal government along the banks of all navigable bodies of water and other important rivers and lakes for the purpose of defining the sinuosities of the shore or bank and as a means of ascertaining the areas of fractional subdivisions of the public lands bordering thereon.

(38) "Motorized vehicular travel" means movement by any type of motorized equipment over land surfaces.

(39) "Multiple use management" means a management philosophy which seeks to insure that several uses or activities can occur at the same place at the same time. The mechanism involves identification of the primary use of the land with provisions such as performance standards to permit compatible secondary uses to occur.

(40) "Navigability or navigable" means that a body of water is capable or susceptible of having been or being used for the transport of useful commerce. The state of Washington considers all bodies of water meandered by government surveyors as navigable unless otherwise declared by a court.

(41) "Navigation" means the movement of vessels to and from piers and wharves.

(42) "Nonwater-dependent use" means a use that can operate in a location other than on the waterfront. Examples include, but are not limited to, hotels, condominiums, apartments, restaurants, retail stores, and warehouses not part of a marine terminal or transfer facility (RCW 79.90.465).

(43) "Open moorage" means moorage slips and mooring floats that have completely open sides and tops.

(44) "Optimum yield" means the yield which provides the greatest benefit to the state with particular reference to food production and is prescribed on the basis of the maximum sustainable yield over the state-wide resource base as modified by any relevant economic, social or ecological factor.

(45) "Ordinary high tide" means the same as mean high tide or the average height of high tide. In Puget Sound, the mean high tide line varies from 10 to 13 feet above the datum plane of mean lower low water (0.0).

(46) "Ordinary high water" means, for the purpose of asserting state ownership, the line of permanent upland vegetation along the shores of nontidal navigable waters. In the absence of vegetation, it is the line of mean high water.

(47) "Port district" means a port district created under Title 53 RCW (RCW 79.90.465).

(48) "Public benefit" means that all of the citizens of the state may derive a direct benefit from departmental actions in the form of environmental protection; energy and mineral production; utilization of renewable resources; promotion of navigation and commerce by fostering water-dependent uses; and encouraging direct public use and access; and generating revenue in a manner consistent with RCW 79.90.455.

(49) "Public lands" means lands belonging to or held in trust by the state, which are not devoted to or reserved for a particular use by law, and include state lands, tidelands, shorelands and harbor areas as herein defined, and the beds of navigable waters belonging to the state (RCW 79.01.004).

(50) "Public interest" means ... [reserved]

(51) "Public place" means a part of aquatic lands set aside for public access through platted tidelands, shorelands, and/or harbor areas to the beds of navigable waters.

(52) "Public tidelands" means tidelands belonging to and held in public trust by the state for the citizens of the state, which are not devoted to or reserved for a particular use by law.

(53) "Public trust" means that certain state-owned tidelands, shorelands and all beds of navigable waters are held in trust by the state for all citizens with each citizen having an equal and undivided interest in the land. The department has the responsibility to manage these lands in the best interest of the general public.

(54) "Public use" means to be made available daily to the general public on a first-come, first-served basis, and may not be leased to private parties on any more than a day use basis.

(55) "Public use beach" means a state-owned beach available for free public use but which may be leased for other compatible uses.

(56) "Public utility line" means pipes, conduits, and similar facilities for distribution of water, electricity, natural gas, telephone, other electronic communication, and sewers, including sewer outfall lines (RCW 79.90.465).

(57) "Real rate of return" means the average for the most recent ten calendar years of the average rate of return on conventional real property mortgages as reported by the Federal Home Loan Bank Board or any successor agency, minus the average inflation rate for the most recent ten calendar years (RCW 79.90.465).

(58) "Reliction" means the gradual withdrawal of water from a shoreline leaving the land uncovered. Boundaries usually change with reliction.

(59) "Renewable resource" means a natural resource which through natural ecological processes is capable of renewing itself.

(60) "Riparian" means relating to or living or located on the bank of a natural water course, such as a stream, lake or tidewater.

(61) "Scientific reserves" means sites set aside for scientific research projects and/or areas of unusually rich plant and animal communities suitable for continuing scientific observation.

(62) "Second class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, and more than two miles from the corporate limits of any city (RCW 79.90.045). These boundary definitions represent the general rule; however, exceptions do exist. To determine if shorelands are more than two miles from the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(63) "Second class tidelands" means the shores of navigable tidal waters belonging to the state, lying outside of and more than two miles from the corporate limits of any city and between the line of ordinary high tide and the line of extreme low tide (RCW 79.90.035). In general, the line of ordinary high tide is the landward boundary. The line of extreme low tide is the waterward boundary. To determine if the tidelands are more than two miles from the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(64) "Shore" means that space of land which is alternately covered and left dry by the rising and falling of the water level of a lake, river or tidal area.

(65) "State-owned aquatic lands" means those aquatic lands and waterways administered by the department of natural resources or managed under department agreement by a port district. "State-owned aquatic lands" does not include aquatic lands owned in fee by, or withdrawn for the use of, state agencies other than the department of natural resources (RCW 79.90.465).

(66) "State-wide value." The term state-wide value applies to aquatic land uses and natural resources whose use, management, or intrinsic nature have state-wide implications. Such uses and resources may be either localized or distributed state-wide. Aquatic land uses of

state-wide value provide major state-wide public benefits. Public use and access, renewable resource use and water-dependent use have been cited by the legislature as examples of such uses. Aquatic land natural resources of state-wide value are those critical or uniquely suited to aquatic land uses of state-wide value or to environmental quality. For example, wild and scenic rivers, high quality public use beaches and aquatic lands fronting state parks are of state-wide value for public use and access. Commercial clam and geoduck beds and sites uniquely suited to aquaculture are of state-wide value to renewable resource use. Harbor areas are of state-wide value to water-dependent navigation and commerce. Certain aquatic land habitats and plant and animal populations are of state-wide value to recreational and commercial fisheries, wildlife protection, and scientific study.

(67) "Streamway" means stream dependent corridor of single or multiple, wet or dry channel, or channels within which the usual seasonal or storm water run-off peaks are contained, and within which environment the flora, fauna, soil and topography is dependent on or influenced by the height and velocity of the fluctuating river currents.

(68) "Terminal" means a point of interchange between land and water carriers, such as a pier, wharf, or group of such, equipped with facilities for care and handling of cargo and/or passengers (RCW 79.90.465).

(69) "Thread of stream - thalweg" means the center of the main channel of the stream at the natural and ordinary stage of water.

(70) "Town" means a municipal corporation of the fourth class having not less than three hundred inhabitants and not more than fifteen hundred inhabitants at the time of its organization (RCW 35.01.040).

(71) "Water-dependent use" means use which cannot logically exist in any location but on the water. Examples include, but are not limited to, waterborne commerce; terminal and transfer facilities; ferry terminals; watercraft sales in conjunction with other water dependent uses; watercraft construction, repair, and maintenance; moorage and launching facilities; aquaculture; log booming; and public fishing piers and parks (RCW 79.90.465).

(72) "Waterfront" means a parcel of property with upland characteristics which includes within its boundary, a physical interface with the existing shoreline of a body of water.

(73) "Water oriented use" means use which historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, fish processing, petroleum refining, sand and gravel processing, log storage, and house boats (RCW 79.90.465).

(74) "Waterway" means an area platted across aquatic lands or created by a waterway district providing for access between the uplands and open water, or between navigable bodies of water.

(75) "Wetted perimeter" means a fluctuating water line which separates submerged river beds from the dry shoreland areas at any given time.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-106, filed 11/5/85. Statutory Authority: 1984 c 221 and RCW 79.90.540, 84-23-014 (Resolution No. 470), § 332-30-106, filed 11/9/84. Statutory Authority: RCW 43.30.150, 80-09-005 (Order 343), § 332-30-106, filed 7/3/80.]

Revisor's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear herein pursuant to the requirements of RCW 34.08.040.

WAC 332-30-107 Aquatic land planning. Subsection (4) of this section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) **Multiple use.** The aquatic lands of Washington are a limited and finite resource. Management of these lands will allow for multiple use by compatible activities to the greatest extent feasible.

(2) **Planning objectives.** Aquatic land management will strive for the best combination of aquatic uses to achieve the goals in WAC 332-30-100. Planning should allow for a variety of uses and activities, such as navigation; public use; production of food; energy; minerals and chemicals; and improvement of aquatic plant and animal habitat, occurring simultaneously or seasonally on state-owned aquatic lands.

(3) **Shoreline management.** The Shoreline Management Act and shoreline master program planning, together with supplemental planning as described in subsection (5) of this section, will be the primary means for identifying and providing appropriate uses of state-wide value.

(4) **Coordination.** Coordination with shoreline management programs will be accomplished by:

(a) Identifying aquatic land areas of particular state-wide value for public access, habitat and water-dependent and renewable resource use.

(b) Informing appropriate shoreline planning bodies of the location and particular value of aquatic lands identified in (a) of this subsection.

(c) Participating in shoreline planning and suggesting ways to incorporate and balance state-wide values.

(d) Proposing to the appropriate local jurisdiction that shoreline plans be updated when new information concerning state-wide values becomes available or when existing plans do not adequately address state-wide values.

(5) **Supplemental planning.** The department (for aquatic lands not covered under port management agreements) or port districts (for aquatic lands managed under port management agreements) may supplement the shoreline master program planning process with management plans necessary to meet the constitutional and statutory proprietary responsibilities for state-owned aquatic lands. Plans developed and implemented under this subsection will involve aquatic lands, resources, and activities requiring intensive management,

special protection, or conflict resolution and will be developed when these needs are not provided for by shoreline master program planning. Aquatic land uses and activities implemented through this supplemental planning process will be consistent with adopted shoreline master programs and the Shoreline Management Act. Planning activities will be closely coordinated with local, state, and federal agencies having jurisdiction and public participation will be encouraged.

(6) **Mitigation.** Shoreline master program planning and additional planning processes described in subsection (5) of this section will be the preferred means for identifying and mitigating adverse impacts on resources and uses of state-wide value. In the absence of such planning directed to these values and uses, the department (for aquatic lands not covered under port management agreements) or port districts (for aquatic lands managed under port management agreements) will mitigate unacceptable adverse impacts on a case-by-case basis by the following methods in order of preference:

(a) Alternatives will be sought which avoid all adverse impacts.

(b) When avoidance is not practical, alternatives shall be sought which cause insignificant adverse impacts.

(c) Replace, preferably on-site, impacted resources and uses of state-wide value. It must be demonstrated that these are capable of being replaced.

(d) Payment for lost value, in lieu of replacement, may be accepted from the aquatic land user in limited cases where an authorized use reduces the economic value of off-site resources, for example, bacterial pollution of nearby shellfish beds.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-107, filed 11/5/85. Statutory Authority: RCW 43.30.150, 80-09-005 (Order 343), § 332-30-107, filed 7/3/80.]

WAC 332-30-108 Establishment of new harbor areas. (1) The policies and standards in this section apply to establishment of new harbor areas by the harbor line commission under Article XV of the Washington Constitution and to establishment of new harbor areas in Lake Washington by the commissioner of public lands under RCW 79.94.240.

(2) New harbor areas will only be established to serve the following purposes:

(a) Reserving adequate urban space for navigation and commerce facilities; and

(b) Preventing urban development from disrupting navigation.

(3) New harbor areas will only be established when a need is demonstrated by existing development or by plans, studies, project proposals or other evidence of development potential in, or waterward of, the proposed harbor area.

(4) Unless there is an overriding state-wide navigation and commerce need, new harbor areas will only be established when:

(a) Compatible with local land use and shoreline management plans;

(b) Supported by the city, county and port district;

(c) The area is physically and environmentally suitable for navigation and commerce purposes; and

(d) Necessary support facilities and services are likely to be available.

(5) The shoreline length of a new harbor area established along a city's waterfront will be determined by the need and purposes to be served and by conformance with subsection (4) of this section.

(6) Harbor line placement standards.

(a) Harbor lines will be placed to serve constitutional harbor area purposes as they relate to the individual site in question.

(b) Harbor lines will be placed to provide practical development guidance. Harbor lines will relate to navigation and commerce development which has occurred or can reasonably be expected to occur.

(c) Inner harbor lines will be placed at the boundary of public aquatic land ownership. Inner harbor lines may be placed waterward of the boundary of public ownership to avoid conflicts with other guidelines in this section.

(d) Outer harbor lines will generally be placed near the ends of existing conforming structures located on public aquatic lands. The lines shall provide adequate space for navigation and commerce and prevent development from interfering with navigation.

(e) Unless there is an overriding state-wide navigation and commerce need, harbor lines will be placed in accordance with:

(i) Local, state and federal land use plans and environmental regulations;

(ii) Maintenance of environmental quality;

(iii) Existing abutting harbor lines; and

(iv) Existing aquatic land development.

[Statutory Authority: RCW 79.90.080, 79.92.010, 79.94.240 and 79.94.250. 84-23-008 (Resolution No. 469), § 332-30-108, filed 11/9/84.]

WAC 332-30-109 Harbor area. (1) Harbor areas shall be reserved for landings, wharves, streets and other conveniences of navigation and commerce.

(2) Water dependent commerce shall be given preference over other uses of harbor areas.

(3) Every consideration shall be given to meeting the expanding need for navigation and water dependent commerce in existing harbor areas.

(4) Several industries using the same harbor area facility shall be given preference over single industry use.

(5) Shallow draft uses, such as barge terminals and marinas, shall be preferred over deep draft uses, in areas requiring extensive maintenance dredging.

(6) Harbor lines may be adjusted, when authorized by the legislature, to provide reasonable opportunity to meet the present and future needs of commerce and navigation.

(7) In harbor areas where no current constitutional use (navigation and commerce) is called for or practical and other uses are in demand, interim uses may be authorized by the board of natural resources if in the public interest.

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(8) The department will, where in the public interest, promote the conversion of existing nonconforming uses to conforming uses by assisting if possible, such users in resiting their operations and by withdrawing renewal options on affected state harbor area leases.

(9) The department will promote full development of all existing suitable harbor areas for use by water dependent commerce.

(10) Abandoned structures determined to be unsightly or unsafe by the department shall be removed from harbor areas by the owner of the structures upon demand by the department or by the department in which case the owner will be assessed the costs of such removal.

(11) Houseboats are not permitted in harbor areas.

(12) Resource management cost account portion of the revenue from leasing of harbor areas shall be used to reduce the general tax burden and for aquatic land management programs that are of benefit to the public.

(13) Harbor areas will be managed to produce revenue for the public unless withdrawn as a public place.

(14) Harbor area lease renewal applications must be returned to the department within sixty days of expiration of prior lease term. If not timely returned, the harbor area involved will be put up for public auction.

(15) The department will encourage local government, state and federal agencies to cooperate in planning for the following state-wide harbor management needs:

(a) Reserve adequate and appropriate space within the jurisdiction to serve foreseeable navigation and commerce development needs.

(b) Coordinate plans for aquatic land and upland development so that areas reserved for navigation and commerce will be usable in the future.

(c) Identify areas where interim uses may be allowed.

(d) Identify needed changes in harbor lines.

(e) Minimize the environmental impacts of navigation and commerce development.

(f) Prevent existing and future interim uses in harbor areas from lowering the suitability of harbor areas for navigation and commerce development.

[Statutory Authority: Chapter 79.92 RCW. 83-21-004 (Order 404, Resolution No. 433), § 332-30-109, filed 10/6/83. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-109, filed 7/3/80.]

WAC 332-30-114 Management agreements with port districts. By mutual, formal, written agreement the department may authorize a port district to manage some or all of those aquatic lands within the port district meeting the criteria stated in subsection (2) of this section. The port district shall adhere to the aquatic land management laws and policies of the state as specified in chapters 79.90 through 79.96 RCW. Port district management of state aquatic lands shall be consistent with all department regulations contained in chapter 332-30 WAC. These requirements shall govern the port's management of state aquatic lands. The administrative procedures used to carry out these responsibilities shall be those provided for port districts under Title 53 RCW.

(1986 Ed.)

(1) Interpretations. Phrases used in legislation (RCW 79.90.475) providing for management agreements with ports shall have the following interpretation:

(a) "Administrative procedures" means conducting business by the port district and its port commission.

(b) "Aquatic lands abutting or used in conjunction with and contiguous to" means state-owned aquatic lands which share a common or coincident boundary with an upland parcel or in the event the state aquatic land does not attach to an upland parcel (i.e., bedlands, harbor areas, etc.), this term shall include the aquatic land adjacent to and waterward of the port owned or controlled aquatic parcel which has a common or coincident boundary to the upland parcel.

(c) "Diligently pursued" means such steady and earnest effort by the port district and the department which results in the resolution of any deficiencies preventing the issuance of a management agreement to the port.

(d) "Leasehold interest" means the benefits and obligations of both the lessor and lessee resulting from a lease agreement.

(e) "Model management agreement" means a document approved by the board of natural resources to be used for all individual management agreements with port districts.

(f) "Operating management" means the planning, organizing, staffing, coordinating, and controlling for all activities occurring on a property.

(g) "Otherwise managed" means having operating management for a property.

(h) "Revenue attributable" means all rentals, fees, royalties, and/or other payments generated from the use of a parcel; or the most likely amount of money due for the use of a parcel as determined by procedures in chapter 332-30 WAC, whichever is greater.

(2) Criteria for inclusion. State-owned parcels of aquatic lands, including those under lease or which may come under lease to a port, abutting port district uplands may be included in a management agreement if criteria set forth in RCW 79.90.475 are met and if there is documentation of ownership, a lease in good standing, or agreement for operating management, in the name of the port district for the upland parcel.

(3) A model management agreement and any amendments thereto shall be developed by the department and representatives of the port industry. The board of natural resources shall review and approve the model management agreement and any subsequent amendments.

(4) Processing requests. The following application requirements, review procedures, and time frame for responses involved in the issuance of a management agreement to a port district shall apply.

(a) Application requirements. The following items must be submitted to the department by the port district in order for its request to be an application for a management agreement:

(i) A copy of a resolution of the port commission that directs the port district to seek a management agreement;

(ii) An exhibit showing the location of and a description adequate to allow survey for each parcel of state-

owned aquatic land to be included in the agreement, plus sufficient information on abutting port parcels to satisfy the requirements of subsection (2) of this section;

(iii) The name, address, and phone number of the person or persons that should be contacted if the department has any questions about the application.

(b) Time frames for responses:

(i) Within thirty days of receipt of an application, the department shall notify the port district if its application is complete or incomplete;

(ii) Within thirty days of receipt of notification by the department of any incompleteness in their application, the port district shall submit the necessary information;

(iii) Within ninety days of receipt of notification by the department that the application is complete, the port district and department shall take all steps necessary to enter into an agreement.

[Statutory Authority: 1984 c 221 and RCW 79.90.540. 84-23-014 (Resolution No. 470), § 332-30-114, filed 11/9/84.]

WAC 332-30-115 Harbor area use classes. These classes are based on the degree to which the use conforms to the intent of the constitution that designated harbor areas be reserved for landings, wharves, streets and other conveniences of navigation and commerce.

(1) **Water-dependent commerce.** Water-dependent commerce are all uses that cannot logically exist in any other location but on the water and are aids to navigation and commerce. These are preferred harbor area uses. Leases may be granted up to the maximum period allowed by the Constitution and may be renewed. Typical uses are:

(a) Public or private vessel terminal and transfer facilities which handle general commerce including the cargo handling facilities necessary for water oriented uses.

(b) Public and private terminal facilities for passenger vessels.

(c) Watercraft construction, repair, maintenance, servicing and dismantling.

(d) Marinas and mooring areas.

(e) Tug and barge companies facilities.

(f) Log booming.

(2) **Water-oriented commerce.** Water oriented commerce are commercial uses which historically have been dependent on waterfront locations, but with existing technology could be located away from the waterfront. Existing water-oriented uses may be asked to yield to water dependent commercial uses when the lease expires. New water-oriented commercial uses will be considered as interim uses. Typical uses are:

(a) Wood products manufacturing.

(b) Watercraft sales.

(c) Fish processing.

(d) Sand and gravel companies.

(e) Petroleum handling and processing plants.

(f) Log storage.

(3) **Public access.** Facilities for public access are lower priority uses which do not make an important contribution to navigation and commerce for which harbor areas are reserved, but which can be permitted providing that

the harbor area involved is not needed, or is not suitable for water-dependent commerce. Leases may be issued for periods up to thirty years with possible renewals. Typical uses are:

- (a) Public fishing piers.
- (b) Public waterfront parks.
- (c) Public use beaches.
- (d) Aquariums available to the public.
- (e) Underwater parks and reefs.
- (f) Public viewing areas and walkways.

(4) **Residential use.** Residential uses include apartments, condominiums, houseboats, single and multifamily housing, motels, boatels and hotels. Residential uses do not require harbor area locations and are frequently incompatible with water-dependent commerce. New residential uses will not be permitted to locate in harbor areas. This restriction on new leases differentiates residential uses from interim uses. Existing residential uses may be asked to yield to other uses when the lease expires. Proposed renewals of residential leases will require the same analysis as specified for interim uses.

(5) **Interim uses.** Interim uses are all uses other than water-dependent commerce, existing water-oriented commerce, public access facilities, and residential uses. Interim uses do not require waterfront locations in order to properly function. Leases may only be issued and re-issued for interim uses in exceptional circumstances and when compatible with water dependent commerce existing in or planned for the area. See WAC 332-30-137 Nonwater-dependent uses for evaluation standards.

(6) Areas withdrawn are harbor areas which are so located as to be currently unusable. These areas are temporarily withdrawn pending future demand for constitutional uses. No leases are issued.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-115, filed 11/5/85. Statutory Authority: Chapter 79.92 RCW. 83-21-004 (Order 404, Resolution No. 433), § 332-30-115, filed 10/6/83. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-115, filed 7/3/80.]

WAC 332-30-116 Harbor line relocation. Harbor areas are established to meet the needs of navigation and commerce. Harbor line relocations must be consistent with this purpose.

(1) Harbor line relocations should:

(a) Maintain or enhance the type and amount of harbor area needed to meet long-term needs of water dependent commerce; and

(b) Maintain adequate space for navigation beyond the outer harbor line.

(2) When in agreement with the above guidelines, consideration of harbor line relocations should include:

(a) Plans and development guidelines of public ports, counties, cities, and other local, state, and federal agencies;

(b) Economic and environmental impacts;

(c) Public access to the waterfront;

(d) Indian treaty rights;

(e) Cumulative impacts of similar relocations on water dependent commerce; and

(f) The precedent setting effect on other harbor areas.

(3) Procedure.

(a) Upon receipt of a completed harbor line relocation proposal form and SEPA checklist (if necessary), department of natural resources staff shall arrange for a public hearing.

(b) Notice of the hearing shall be mailed at least thirty days in advance to the concerned city, county, port district, interest groups, adjacent tide, shore or upland owners and others who indicate interest; and shall be published at least twenty days in advance in a local newspaper of general circulation.

(c) The hearing, conducted by a hearings officer, shall be held in the county in which the relocation is proposed. Department staff shall present the proposal and preliminary recommendations. The hearing shall be recorded.

(d) Comments may be submitted at the hearing or mailed to the department. Written comments must be postmarked no later than fourteen days after the hearing.

(e) Department of natural resources staff will finalize SEPA compliance (if necessary) and prepare a final report of recommendations to the harbor line commission.

(f) No later than sixty days after the date of the public hearing, the harbor line commission shall consider the staff report and public comments, then approve, modify or deny the relocation. A copy of the commission's resolution shall be sent within ten days to the proponent, the city, county, port district and other parties who have requested it.

[Statutory Authority: Chapter 79.92 RCW. 83-21-004 (Order 404, Resolution No. 433), § 332-30-116, filed 10/6/83.]

WAC 332-30-117 Waterways. (1) **Purpose and applicability.** This section describes the requirements for authorizing use and occupation of waterways under the department's authority as proprietor of state-owned aquatic lands. This section applies to waterways established in accordance with RCW 79.93.010 and 79.93.020. This section does not apply to uses of Salmon Bay Waterway, or to the East and West Duwamish Waterways in Seattle authorized under RCW 79.93.040.

(2) **Priority use.** Providing public navigation routes between water and land for conveniences of navigation and commerce is the priority waterway use.

(3) **Permit requirement.** In order to assure availability of waterways for present and future conveniences of navigation and commerce, moorage (other than transient moorage for fewer than 30 days), and other waterway uses shall require prior authorization from the department. Permits may be issued for terms not exceeding one year if there will be no significant interference with the priority waterway use or short-term moorage. Permits may be issued for terms not exceeding five years for uses listed in subsection (4) of this section in instances in which existing development, land use, ownership, or other factors are such that the current and projected demand for priority waterway uses is reduced or absent.

(4) **Permit priority.** In cases of competing demands for waterways, the following order of priority will apply:

(a) Facilities which provide public access to adjacent properties for loading and unloading of watercraft;

(b) Water-dependent commerce, as defined in WAC 332-30-115(1), related to use of the adjacent properties;

(c) Other water-dependent uses;

(d) Facilities for nonnavigational public access;

(e) Other activities consistent with the requirements in WAC 332-30-131(4) for public use facilities.

(5) **Waterway permits.** All necessary federal, state, and local permits shall be acquired by those proposing to use waterways. Copies of permits must be furnished to the department prior to authorizing the use of waterways.

(6) **Obstructions.** Permanent obstruction of waterways, including filling is prohibited. Structures associated with authorized uses in waterways shall be capable of ready removal. Where feasible, anchors and floats shall be preferred over pilings.

(7) **Permit process.** Applications for waterway permits will be processed as follows:

(a) Local government review of permit applications will be requested.

(b) Public comment will be gathered through the shoreline permit process, if applicable. If no shoreline permit is required, public comment will be gathered through the methods described in WAC 332-41-510(3).

(c) Applications will be reviewed for consistency with the policy contained in this chapter.

(d) Evaluation will consider existing, planned, and foreseeable needs and demands for higher priority uses in the waterway and in the associated water body.

(8) The department will require waterway permittees to provide security in accordance with WAC 332-30-122(5) to insure the provisions of waterway permits are fulfilled.

(9) **Cancellation.** Permission to use waterways is subject to cancellation in order to satisfy the needs of higher priority waterway uses. Transient moorage may be required to move at any time. Waterway permits are cancellable upon ninety days' notice when the sites are needed for higher priority uses.

(10) **Monitoring.** Local governments will be encouraged to monitor waterway use and to report any uses not in compliance with this regulation.

(11) **Planning.** Planning for waterway use will be encouraged. The shoreline planning process should provide for the long range needs of preferred waterway uses and other state-wide values. Planning should also consider the availability of other public property, such as platted street ends, to serve anticipated needs.

(12) **Existing uses.** Existing waterway uses, structures, and obstructions will be reviewed for compliance with this section. Uses not in compliance shall be removed within one year from the date notification of noncompliance is mailed unless the public interest requires earlier removal. Unless early removal is required, removal may be postponed if the department receives a request for vacation of the waterway from the city or port district in accordance with RCW 79.93.060. If the request for waterway vacation is denied, the structure must be removed

within six months of mailing of notice of denial or within one year of the original date of notification of noncompliance, whichever is later.

(13) **Fees.** Waterway permit fees will be determined on the same basis as required for similar types of uses on other state-owned aquatic lands.

(14) **Filled areas.** Certain waterways contain unauthorized fill material. The filled areas have generally assumed the characteristics of the abutting upland. Nonwater-dependent uses may be allowed on existing fills when there will be no interference with priority or other permitted waterway uses and when permitted under applicable local, state, and federal regulations.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-117, filed 11/5/85.]

WAC 332-30-118 Tideland, shoreland and beds of navigable waters. (1) These aquatic lands, unless withdrawn by the commissioner of public lands, will be managed for the public benefit.

(2) Resource management cost account revenue from leasing of these aquatic lands shall be used to reduce the general tax burden and for aquatic land management programs that are of benefit to the public.

(3) Water dependent uses shall be given preference over other uses of these aquatic lands.

(4) Development of additional sites for waterborne commerce and terminal and transfer facilities will generally not be authorized on second class tidelands and shorelands if existing first class tidelands, shorelands and harbor areas can meet the need.

(5) Shallow draft uses, such as barge terminals and marinas, shall be preferred over deep draft uses in areas requiring extensive maintenance dredging except the Columbia River.

(6) Multiple use of existing pier and wharf facilities will be encouraged, to reduce the need for adding new facilities.

(7) Renewable resource utilization is a high priority use of aquatic lands.

(8) Whenever structures are used for aquaculture on the beds of navigable waters, they shall be located in such a way as to minimize the interference with navigation and fishing and strive to reduce adverse visual impacts.

(9) Open water disposal sites shall be provided on beds of navigable waters for certain materials that are approved for such disposal by regulatory agencies and have no beneficial value.

(10) Nonrenewable resource utilization may be allowed when not in conflict with renewable resource production and utilization, public use, or chapter 90.58 RCW.

(11) Certain lands may be modified in order to improve their productivity by adding structures such as artificial reefs or materials and by establishment of biological habitats such as eel grass and kelp beds as well as marsh areas.

(12) Insofar as possible uses of these aquatic lands shall have a minimum interference with surface navigation.

(13) Abandoned structures determined to be unsightly or unsafe by the department shall be removed from these aquatic lands by the owner of the structures upon demand by the department or by the department in which case the owner will be assessed the costs of such removal.

(14) State-owned second class tidelands and shorelands will be maintained free of bulkheads and residences except when in the public interest.

(15) The use of beach material from tidelands or shorelands for backfill of bulkheads and seawalls, land-fill and as aggregate will not be allowed except when in the public interest.

(16) Filling on second class tidelands or shorelands will not be permitted except when in the public interest.

(17) When permitted, any fill on these aquatic lands must be stabilized to prevent washout into the marine environment.

(18) Material from aquatic lands will not be used for stream bank stabilization and revetments except when in the public interest.

(19) Bedlands abutting upland parks will be considered for underwater parks.

(20) Anchorage areas on the beds of navigable waters may be designated by the department for mooring boats.

(21) Houseboats are considered to be a low priority use of aquatic land.

(22) Motorized vehicular travel shall not be permitted on public use tidelands and shorelands except under limited circumstances such as a boat launch ramp.

(23) Use and/or modification of any river system shall recognize basic hydraulic principles, as well as harmonize as much as possible with the existing aquatic ecosystems, and human needs.

[Statutory Authority: RCW 43.30.150, 80-09-005 (Order 343), § 332-30-118, filed 7/3/80.]

WAC 332-30-119 Sale of second class shorelands.

(1) Under RCW 79.01.474 state-owned second class shorelands on lakes legally determined or considered by the department of natural resources to be navigable, may be sold to private owners of abutting upland property where it is determined by the board of natural resources that the shorelands have minimal public value for uses such as providing access, recreation or other public benefit. The amount of shoreland subject to sale to any one individual shall be the amount fronting a lot within a recorded subdivision plat; or the greater of 100 feet or ten percent of the frontage owned by the applicant outside of a recorded subdivision. However, it shall be in the public interest to retain ownership of publicly-owned second class shorelands on navigable lakes where any of the following conditions exist:

(a) The shorelands are natural, conservancy, or equivalent designated areas under the local shoreline master program.

(b) The shorelands are located in front of land with public upland ownership or public access easements.

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(c) Further sales of shorelands would preclude the establishment of public access to the lake, or adversely affect the public use and access to the lake.

(2) Prior to the sale of second class shorelands on a navigable lake, the department will:

(a) Depict on a suitable map the current ownership of all shorelands and identify those shorelands potentially available for sale as provided under WAC 332-30-119(1).

(b) Identify any privately owned shorelands, acquisition of which would benefit the public.

(c) Identify and establish the waterward boundary of the shorelands potentially available for sale or acquisition.

(d) Make an appraisal of the value of the shorelands potentially available for sale or acquisition in accordance with as many of the following techniques as are appropriate to the parcels in question:

(i) The market value of shorelands as of the last equivalent sale before the moratorium multiplied by the percentage increase in value of the abutting upland during the same period, i.e.,

$$FMV = (V2/V1) \times (S1)$$

FMV = Current fair market value of shorelands

S1 = Value of shorelands at time of last equivalent sale

V1 = Value of abutting upland at time of last equivalent shoreland sale

V2 = Current fair market value of upland to a maximum of 150 feet shoreward

(ii) Techniques identified in adopted aquatic land management WACs e.g. WAC 332-30-125

(iii) The sales price of the shoreland shall be the fair market value as determined in (2)(d)(i)(ii) but not less than five percent of the fair market value of the abutting uplands, less improvements, to a maximum depth of one hundred fifty feet landward from the line of ordinary high water.

(e) If necessary, prepare a lake management plan in cooperation with local government to guide future department activities on the publicly-owned aquatic lands.

(3) The board of natural resources shall determine whether or not the sale would be in the public interest, and a sales price shall be established by the department of natural resources in a reasonable period of time.

[Statutory Authority: RCW 43.30.150 and 79.01.474, 80-08-071 (Order 342), § 332-30-119, filed 7/1/80.]

WAC 332-30-122 Aquatic land use authorization.

All requirements in this section shall apply to the department. Subsection (2) of this section (except subsection (2)(a)(iii) and (b)(iii) of this section), subsections (3)(a), and (4)(a) shall apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) General requirements.

(a) In addition to other requirements of law, aquatic land activities that interfere with the use by the general public of an area will require authorization from the department by way of agreement, lease, permit, or other instrument.

(i) Suitable instruments shall be required for all structures on aquatic lands except for those federal structures serving the needs of navigation.

(ii) The beds of navigable waters may be leased to the owner or lessee of the abutting tideland or shoreland. This preference lease right is limited to the area between the landward boundary of the beds and the -3 fathom contour, or 200 feet waterward, whichever is closer to shore. However, the distance from shore may be less in locations where it is necessary to protect the navigational rights of the public.

(iii) When proposing to lease aquatic lands to someone other than the abutting property owner, that owner shall be notified of the intention to lease the area. When not adverse to the public's ownership, the abutting owner's water access needs may be reasonably accommodated.

(b) Determination of the area encumbered by an authorization for use shall be made by the department based on the impact to public use and subsequent management of any remaining unencumbered public land.

(i) Operations involving fixed structures will include the area physically encumbered plus the open water area needed to operate the facility.

(ii) Areas for individual mooring buoys will be a circle with a radius equal to the expected swing of the vessel or object moored. Only the area encumbered at any given point in time shall be used to calculate any rentals due.

(iii) Areas for utility line easements will normally be ten feet wider than the overall width of the structure(s) placed in the right of way.

(c) All necessary federal, state and local permits shall be acquired by those proposing to use aquatic lands. Copies of permits must be furnished to the department prior to authorizing the use of aquatic lands. When evidence of interest in aquatic land is necessary for application for a permit, an authorization instrument may be issued prior to permit approval but conditioned on receiving the permit.

(2) **Application review.** In addition to other management considerations, the following special analysis shall be given to specific proposed uses:

(a) Environment.

(i) Authorization instruments shall be written to insure that structures and activities on aquatic lands are properly designed, constructed, maintained and conducted in accordance with sound environmental practices.

(ii) Uses which cause adverse environmental impacts may be authorized on aquatic lands only upon compliance with applicable environmental laws and regulations and appropriate steps as may be directed are taken to mitigate substantial or irreversible damage to the environment.

(iii) Nonwater-dependent uses which have significant adverse environmental impacts shall not be authorized.

(b) Public use and access.

(i) Wherever practical, authorization instruments for use of aquatic lands shall be written to provide for public access to the water.

(ii) Areas allocated for first-come, first-served public use shall not be managed to produce a profit for a concessionaire or other operator without a fee being charged.

(iii) Notice will be served to lessees of tidelands and shorelands allocated for future public use that prior to renewal of current leases, such leases will be modified to permit public use or will be terminated.

(c) Authorization to use aquatic lands shall not be granted to any person or organization which discriminates on the basis of race, color, creed, religion, sex, age, or physical or mental handicap.

(d) Authorization instruments for the installation of underwater pipelines, outfalls and cables may be granted when proper provisions are included to insure against substantial or irreversible damage to the environment and there is no practical upland alternative.

(3) **Rents and fees.**

(a) When proposed uses of aquatic lands requiring an authorization instrument (other than in harbor areas) have an identifiable and quantifiable but acceptable adverse impact on state-owned aquatic land, both within and without the authorized area, the value of that loss or impact shall be paid by the one so authorized in addition to normal rental to the department or port as is appropriate.

(b) Normal rentals shall be calculated based on the classification of the aquatic land use(s) occurring on the property. Methods for each class of use are described in specific WAC sections.

(c) Advance payments for two or more years may be collected in those situations where annual payments are less than document preparation and administration costs.

(d) Rentals for leases will normally be billed annually, in advance. If requested by a lessee in good standing, billings will be made:

(i) Quarterly on a prorated basis when annual rental exceeds four thousand dollars; or

(ii) Monthly on a prorated basis when annual rental exceeds twelve thousand dollars.

(e) A one percent per month charge shall be made on any amounts which are more than thirty days past due, unless those amounts are appealed. Users of aquatic properties shall not be considered in good standing when they have amounts more than thirty days past due.

(4) **Structures and improvements on aquatic lands.**

(a) Authorization for placing structures and improvements on public aquatic lands shall be based on the intended use, other uses in the immediate area, and the effect on navigational rights of public and private aquatic land owners. Structures and improvements shall:

(i) Conform to the laws and regulations of any public authority;

(ii) Be kept in good condition and repair by the authorized user of the aquatic lands;

(iii) Not be, nor become, a hazard to navigation;

(iv) Be removed by the authorized user as stipulated in the authorization instrument.

(b) In addition to aquatic land rentals and fees, rent shall be charged for use of those structures and improvements:

(i) Owned by the department, under contract to the department for management; or that become state property under RCW 79.94.320;

(ii) As may be agreed upon as part of the authorization document;

(iii) Installed on an authorized area without written concurrence of the department; or

(iv) Not covered by an application for use of aquatic lands, or a lawsuit challenging such requirements, within ninety days after the date of mailing of the department's written notification of unauthorized occupancy of public aquatic lands.

(c) Only land rental and fees shall be charged for public aquatic lands occupied by those structures and improvements that are:

(i) Authorized in writing by the department;

(ii) Installed prior to June 1, 1971 (effective date of the Shoreline Management Act) on an area authorized for use from the department; or

(iii) Covered by an application for use of aquatic lands within ninety days after the date of mailing of the department's written notification of unauthorized occupancy of public aquatic lands.

(5) Insurance, bonds, and other security.

(a) The department may require authorized users of aquatic lands to carry insurance, bonding, or provide other forms of security as may be appropriate for the use or uses occurring on public property, in order to ensure its sustained utility and future value.

(b) Proof of coverage shall be acceptable to the department if provided by any of the following:

(i) Insurance and/or bonding companies licensed by the state;

(ii) Recognized insurance or bonding agent for the authorized user;

(iii) Savings account assignment from authorized user to department; or

(iv) Cash deposit.

(c) The amount of security required of each user shall be determined by the department and adjusted periodically as needed.

(i) Any portion of the required security relating to payment of rent or fees shall be limited to an amount not exceeding two year's rental or fees.

(ii) Required security related to other terms of the agreement shall be based on the estimated cost to the department of enforcing compliance with those terms.

(iii) Cash deposits shall not be required in an amount exceeding one-twelfth of the annual rental or fees. If this amount is less than the total required security, the remainder shall be provided through other forms listed in (b) of this subsection.

(d) Security must be provided on a continual basis for the life of the agreement. Security arrangements for less than the life of the agreement shall be accepted as long as those arrangements are kept in force through a series of renewals or extensions.

[Statutory Authority: 1984 c 221 and RCW 79.90.540. 84-23-014 (Resolution No. 470), § 332-30-122, filed 11/9/84.]

WAC 332-30-123 Aquatic land use rentals for water-dependent uses. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114). The annual rental for water-dependent use leases of state-owned aquatic land shall be: The per unit assessed value of the upland tax parcel, exclusive of improvements, multiplied by the units of lease area multiplied by thirty percent multiplied by the real rate of return. Expressed as a formula, it is: $UV \times LA \times .30 \times r = AR$. Each of the letter variables in this formula have specific criteria for their use as described below. This step by step presentation covers the typical situations within each section first, followed by alternatives for more unique situations.

(1) Overall considerations.

(a) Criteria for use of formula. The formula:

(i) Shall be applied to all leases having structural uses that require a physical interface with upland property when a water-dependent use occurs on such uplands (in conjunction with the water-dependent use on the aquatic lands);

(ii) Shall be used for remote moorage leases by selecting an upland parcel as detailed in subsection (2) of this section;

(iii) Shall not be used for areas of filled state-owned aquatic lands having upland characteristics where the department can charge rent for such fills (see WAC 332-30-125), renewable and nonrenewable resource uses, or areas meeting criteria for public use (see WAC 332-30-130); and

(iv) Shall cease being used for leases intended for water-dependent uses when the lease area is not actively developed for such purposes as specified in the lease contract. Rental in such situations shall be determined under the appropriate section of this chapter.

(b) Criteria for applicability to leases. The formula shall be used to calculate rentals for:

(i) All new leases and all pending applications to lease or re-lease as of October 1, 1984;

(ii) All existing leases, where the lease allows calculation of total rent by the appropriate department methods in effect at the time of rental adjustment. Leases in this category previously affected by legislated rental increase limits, shall have the formula applied on the first lease anniversary date after September 30, 1984. Other conditions of these leases not related to rent shall continue until termination or amendment as specified by the lease contract. Leases in this category not previously affected by legislated rental increase limits and scheduled for a rent adjustment after October 1, 1985, shall have the option of retaining the current rent or electing to pay the formula rent under the same conditions as specified in (iii) of this subsection.

(iii) Leases containing specific rent adjustment procedures or schedules shall have the rent determined by the formula when requested by the lessee. Holders of such leases shall be notified prior to their lease anniversary date of both the lease contract rent and formula rent. A selection of the formula rent by the lessee shall require

an amendment to the lease which shall include all applicable aquatic land laws and implementing regulations.

(2) Physical criteria of upland tax parcels.

(a) Leases used in conjunction with and supportive of activities on the uplands. The upland tax parcel used shall be waterfront and have some portion with upland characteristics. If no upland tax parcel meets these criteria, then an alternative shall be selected under the criteria of subsection (4) of this section.

(b) Remote moorage leases. The upland tax parcel used shall be waterfront, have some portion with upland characteristics; and

(i) If the remote moorage is associated with a local upland facility, be an appropriate parcel at the facility; or

(ii) If the remote moorage is similar in nature of use to moorages in the area associated with a local upland facility, be an appropriate parcel at the facility; or

(iii) If the remote moorage is not associated with a local upland facility, be the parcel closest in distance to the moorage area.

(c) Priority of selection. If more than one upland tax parcel meets the physical criteria, the priority of selection shall be:

(i) The parcel that is structurally connected to the lease area;

(ii) The parcel that abuts the lease area;

(iii) The parcel closest in distance to the lease area.

If more than one upland tax parcel remains after this selection priority, then each upland tax parcel will be used for its portion of the lease area. If there is mutual agreement with the lessee, a single upland tax parcel may be used for the entire lease area. When the unit value of the upland tax parcels are equal, only one upland tax parcel shall be used for the lease area.

(d) The unit value of the upland tax parcel shall be expressed in terms of dollars per square foot or dollars per acre, by dividing the assessed value of the upland tax parcel by the number of square feet or acres in the upland tax parcel. This procedure shall be used in all cases even if the value attributable to the upland tax parcel was assessed using some other unit of value, e.g., front footage, or lot value. Only the "land value" category of the assessment record shall be used; not any assessment record category related to improvements.

(3) Consistent assessment. In addition to the criteria in subsection (2) of this section, the upland tax parcel's assessed value must be consistent with the purposes of the lease and method of rental establishment. On this basis, the following situations will be considered inconsistent and shall either require adjustment as specified, or selection of an alternative upland tax parcel under subsection (4) of this section:

(a) The upland tax parcel is not assessed. (See chapter 84.36 RCW Exemptions);

(b) Official date of assessment is more than four years old. (See RCW 84.41.030);

(c) The "assessment" results from a special tax classification not reflecting fair market value. Examples include classifications under: State-regulated utilities

(chapter 84.12 RCW), Reforestation lands (chapter 84.28 RCW), Timber and forest lands (chapter 84.33 RCW), and Open space (chapter 84.34 RCW). This inconsistency may be corrected by substituting the full value for the parcel if such value is part of the assessment records;

(d) If the assessed valuation of the upland tax parcel to be used is under appeal as a matter of record before any county or state agency, the valuation on the assessor's records shall be used, however, any changes in valuation resulting from such appeal will result in an equitable adjustment of future rental;

(e) The majority of the upland tax parcel area is not used for a water-dependent purpose. This inconsistency may be corrected by using the value and area of the portion of the upland tax parcel that is used for water-dependent purposes if this portion can be segregated from the assessment records; and

(f) The size of the upland tax parcel in acres or square feet is not known or its small size results in a nominal valuation, e.g., unbuildable lot.

(4) Selection of the nearest comparable upland tax parcel. When the upland tax parcel does not meet the physical criteria or has an inconsistent assessment that can't be corrected from the assessment records, an alternative upland tax parcel shall be selected which meets the criteria. The nearest upland tax parcel shall be determined by measurement along the shoreline from the inconsistent upland tax parcel.

(a) The alternative upland tax parcel shall be located by order of selection priority:

(i) Within the same city as the lease area, and if not applicable or found;

(ii) Within the same county and water body as the lease area, and if not found;

(iii) Within the same county on similar bodies of water, and if not found;

(iv) Within the state.

(b) Within each locational priority of (a) of this subsection, the priority for a comparable upland tax parcel shall be:

(i) The same use class within the water-dependent category as the lease area use;

(ii) Any water-dependent use within the same upland zoning;

(iii) Any water-dependent use; and

(iv) Any water-oriented use.

(5) Aquatic land lease area. The area under lease shall be expressed in square feet or acres.

(a) Where more than one use class separately exist on a lease area, the formula shall only be applied to the water-dependent use area. Other use areas of the lease shall be treated according to the regulations for the specific use.

(b) If a water-dependent and a nonwater-dependent use exist on the same portion of the lease, the rent for such portion shall be negotiated taking into account the proportion of the improvements each use occupies.

(6) Real rate of return.

(a) Until July 1, 1989, the real rate of return to be used in the formula shall be five percent.

(b) On July 1, 1989, and on each July 1 thereafter the department shall calculate the real rate of return for that fiscal year under the following limitations:

(i) It shall not change by more than one percentage point from the rate in effect for the previous fiscal year; and

(ii) It shall not be greater than seven percent nor less than three percent.

(7) **Annual inflation adjustment of rent.** The department shall use the inflation rate on a fiscal year basis e.g., the inflation rate for calendar year 1984 shall be used during the period July 1, 1985 through June 30, 1986. The rate will be published in a newspaper of record. Adjustment to the annual rent of a lease shall occur on the anniversary date of the lease except when the rent is redetermined under subsection (9) of this section. The inflation adjustment each year is the inflation rate times the previous year's rent except in cases of stairstepping.

(8) Stairstepping rental changes.

(a) Initial increases for leases in effect on October 1, 1984. If the application of the formula results in an increase of more than one hundred dollars and more than thirty-three percent, stairstepping to the formula rent shall occur over the first three years in amounts equal to thirty-three percent of the difference between each year's inflation adjusted formula rent and the previous rent.

Example

Previous rent= \$100.00 Formula rent= \$403.00 Inflation= 5%/yr.

Yr.	Formula Rent	Previous Rent	Difference	33%	Stairstep Rent
1	\$403.00	\$100.00	\$303.00	\$100.00	\$200.00
2	423.15	100.00	323.15	106.64	306.64
3	444.31	100.00	344.31	113.62	420.26
4	466.52	-	-	-	466.52

(b) Initial decreases for leases in effect on October 1, 1984. If the application of the formula results in a decrease of more than thirty-three percent, stairstepping to the formula rent shall occur over the first three years in amounts equal to thirty-three percent of the difference between the previous rent and each year's inflation adjusted formula rent.

Example

Previous rent= \$403.00 Formula rent= \$100.00 Inflation= 5%/yr.

Yr.	Previous Rent	Formula Rent	Difference	33%	Stairstep Rent
1	\$403.00	\$100.00	\$303.00	\$100.00	\$303.00
2	403.00	105.00	298.00	98.34	204.66
3	403.00	110.25	292.75	96.61	108.05
4	-	115.76	-	-	115.76

(c) If a lease in effect on October 1, 1984, contains more than one water-dependent or water-oriented use and the rental calculations for each such use (e.g., log booming and log storage) result in different rentals per unit of lease area, the total of the rents for those portions of the lease area shall be used to determine if the stairstepping provisions of (a) or (b) of this subsection apply to the lease.

(d) If a lease in effect on October 1, 1984, contains a nonwater-dependent use in addition to a water-dependent or oriented use, the stairstepping provisions of (a) or (b) of this subsection:

(i) Shall apply to the water-dependent use area if it exists separately (see subsection (5)(a) of this section);

(ii) Shall not apply to any portion of the lease area jointly occupied by a water-dependent and nonwater-dependent use (see subsection (5)(b) of this section).

(e) Subsequent increases. After completion of any initial stairstepping under (a) and (b) of this subsection due to the first application of the formula, the rent for any lease or portion thereof calculated by the formula shall not increase by more than fifty percent per unit area from the previous year's per unit area rent.

(f) All initial stairstepping of rentals shall only occur during the term of existing leases.

(9) The annual rental shall be redetermined by the formula every four years or as provided by the existing lease language. If an existing lease calls for redetermination of rental during an initial stairstepping period, it shall be determined on the scheduled date and applied (with inflation adjustments) at the end of the initial stairstep period.

[Statutory Authority: 1984 c 221 and RCW 79.90.540, 84-23-014 (Resolution No. 470), § 332-30-123, filed 11/9/84.]

WAC 332-30-125 Aquatic land use rental rates for nonwater-dependent uses. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) The value of state-owned aquatic lands withdrawn from general public use for private nonwater-dependent use shall be recognized by charging lessees the full fair market rental. No rent shall be charged for improvements, including fills, on aquatic lands unless owned by the state. The fair market rental is based on: (a) Comparable non-DNR market rents, whether based on land value exclusive of improvements, a percent of gross revenues, or other appropriate basis, or if not available (b) the full market value (same as true and fair value) multiplied by the use rate percentage as determined under subsection (2) of this section and published in the Washington State Register.

(2) Use rate percentage.

(a) The percentage rate will be based on nondepartmental market rental rates of return for comparable properties leased on comparable terms in the locality, or when such do not exist;

(b) The percentage rate of return shall be based on the average rate charged by lending institutions in the area for long term (or term equivalent to the length of the lease) mortgages for comparable uses of real property.

(3) Appraisals: The determination of fair market value shall be based on the indications of value resulting from the application of as many of the following techniques as are appropriate for the use to be authorized:

(a) Shore contribution; utilizing differences in value between waterfront properties and comparable

nonwaterfront properties. Generally best for related land-water uses which are independent of each other or not needed for the upland use to exist.

(b) Comparable upland use (substitution); utilizing capacity, development, operation, and maintenance ratios between a use on upland and similar use on aquatic land with such ratios being applied to upland value to provide indication of aquatic land value for such use. Generally best for aquatic land uses which are totally independent of adjacent upland yet may also occur on upland totally independent of direct contact with water.

(c) Extension; utilizing adjacent upland value necessary for total use as the value of aquatic lands needed for use on a unit for unit basis. Generally best for aquatic land uses which are integrated with and inseparable from adjacent upland use.

(d) Market data; utilizing verified transactions between knowledgeable buyers and sellers of comparable properties. Generally best for tidelands or shorelands where sufficient data exists between knowledgeable buyers and sellers.

(e) Income; utilizing residual net income of a commercial venture as the indication of investment return to the aquatic land. This can be expressed either as a land rent per acre or as a percent of gross revenues. Generally best for income producing uses where it can be shown that an owner or manager of the operation is motivated to produce a profit while recognizing the need to obtain returns on all factors of production.

(4) Negotiation of rental amounts may occur when necessary to address the uniqueness of a particular site or use.

(5) Rental shall always be more than the amount that would be charged if the aquatic land parcel was used for water-dependent purposes.

[Statutory Authority: 1984 c 221 and RCW 79.90.540, 84-23-014 (Resolution No. 470), § 332-30-125, filed 11/9/84. Statutory Authority: RCW 43.30.150, 80-09-005 (Order 343), § 332-30-125, filed 7/3/80.]

WAC 332-30-126 Sand and gravel extraction fees. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) **Public auction or negotiation.** The royalty for sand, gravel, stone or other aggregate removed from state-owned aquatic lands shall be determined through public auction or negotiation.

(2) **Royalty rate.** A negotiated royalty shall reflect the current fair market value of the material in place.

The "income approach" appraisal technique will normally be used to determine fair market value. Factors considered include, but are not limited to:

(a) The wholesale value of similar material, based on a survey of aggregate producers in the region or market area;

(b) Site specific cost factors including, but not limited to:

- (i) Homogeneity of material;
- (ii) Access;

(iii) Regulatory permits;

(iv) Production costs.

(3) **Adjustments to initial royalty rate.**

(a) **Inflation.** Annual inflation adjustments to the initial royalty rate shall be based on changes in the Producer Price Index (PPI) for the commodities of sand, gravel, and stone, as published by the United States Department of Commerce, Bureau of Labor Statistics. Annual PPI adjustments to the initial royalty rate shall begin one year after the effective date of establishment of each contract's royalty rate pursuant to subsection (1) of this section.

(b) **Flood control.** Initial negotiated royalty rates may be adjusted downward, depending on the degree to which removal of the material will enhance flood control.

(i) Any adjustment shall be based on hydrologic benefit identified in an approved comprehensive flood control management plan adopted by a general purpose local government and any state or federal agency with jurisdiction.

(ii) The department, prior to approving any proposed royalty rate adjustment for flood control benefits, may review the flood control plan to determine whether the material removal actually reduces the potential for flooding.

(4) **Payments.** Royalty payments may be paid monthly or quarterly based on the volume of material sold, transferred from control of the contract holder, or otherwise utilized for purposes of the contract.

(5) **Stockpiling.** Stockpiling of removed material may be permitted.

(a) Material will be stockpiled separately from other material owned or controlled by the contract holder.

(b) Bonding or other satisfactory security will be required to cover the value of stockpiled material.

(6) **Appeals.** The state's determination of royalty rates set under subsections (2) and (3) of this section, are appealable through WAC 332-30-128.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-126, filed 11/5/85.]

WAC 332-30-127 Unauthorized use and occupancy of aquatic lands (see RCW 79.01.471). (1) Aquatic lands determined to be state owned, but occupied for private use through accident or without prior approval, may be leased if found to be in the public interest.

(2) Upon discovery of an unauthorized use of aquatic land, the responsible party will be immediately notified of his status. If the use will not be authorized, he will be served notice in writing requiring him to vacate the premises within thirty days. If the law and department policy will permit the use, the occupant is to be encouraged to lease the premises.

(3) The trespassing party occupying aquatic lands without authority will be assessed a monthly use and occupancy fee for such use beginning at the time notification of state ownership is first provided to them and

continuing until they have vacated the premises or arranged for a right to occupy through execution of a lease as provided by law.

(4) The use and occupancy fee is sixty percent higher than full fair market rental and is intended to encourage either normal leasing or vacation of aquatic land.

(5) In those limited circumstances when a use cannot be authorized by a lease even though it may be in the public interest to permit the structure or activity, the fair market rental will be charged and billed on an annual basis.

(6) The use and occupancy billing is to be made after the use has occurred and conveys no rights in advance. Payment is due by the tenth of the month following the original notification, and if not received, a notice is to be sent. If payment is not received within thirty days of this notice and monthly thereafter by the tenth of each month during the period of the use and occupancy lease or if the improvement has not been removed from the aquatic land, an unlawful detainer action against the party in trespass will be filed along with an action to collect past due rental.

[Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-127, filed 7/3/80.]

WAC 332-30-128 Rent review. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) **Eligibility to request review.** Any lessee or applicant to lease or release state-owned aquatic lands may request review of any rent proposed to be charged by the department.

(2) **Dispute officers.** The manager of the marine lands division will be the rental dispute officer (RDO). The supervisor of the department, or his designee, will be the rental dispute appeals officer (RDAO).

(3) **Submittals.** A request for review of the rent (an original and two copies) shall be submitted within thirty days of notification by the department of the rent due from the lessee/applicant. The request for review shall contain sufficient information for the officers to make a decision on the appropriateness of the rent initially determined by the department. The burden of proof for showing that the rent is incorrect shall rest with the lessee/applicant.

(4) **Rental due.** The request for review shall be accompanied by one year's rent payment based on the preceding year's rate, or a portion thereof as determined by RCW 79.90.530; or based on the rate proposed by the department, or a portion thereof as determined by RCW 79.90.530, whichever is less. The applicant shall pay any additional rent or be entitled to a refund, with interest, within thirty days after completion of the review process provided in this section.

(5) **Contents of request.** The request for review shall state what the lessee/applicant believes the rent should be and shall contain, at the minimum, all necessary documentation to justify the lessee/applicant's position. This information shall include but not be limited to:

(a) **Rationale.** Why the rent established by the department is inappropriate. The supporting documentation for nonwater-dependent leases may include appraisals by professionally accredited appraisers.

(b) **Lease information.** A description of state-owned aquatic land under lease which shall include, but not be limited to:

- (i) Lease or application number;
- (ii) Map showing location of lease or proposed lease;
- (iii) Legal description of lease area including area of lease;
- (iv) The permitted or intended use on the leasehold; and
- (v) The actual or current use on the leasehold premises.

(c) **Substitute upland parcel.** A lessee/applicant whose lease rent is determined according to RCW 79.90.480 (water-dependent leases) and who disputes the choice of the upland parcel as provided by WAC 332-30-123, shall indicate the upland parcel that should be substituted in the rental determination and shall provide the following information on the parcel:

- (i) The county parcel number;
- (ii) Its assessed value;
- (iii) Its area in square feet or acres;
- (iv) A map showing the location of the parcel; and
- (v) A statement indicating the land use on the parcel and justifying why the parcel should be substituted.

(6) **RDO review.**

(a) The RDO shall evaluate the request for review within fifteen days of filing to determine if any further support materials are needed from the lessee/applicant or the department.

(b) The lessee/applicant or the department shall provide any needed materials to the RDO within thirty days of receiving a request from the RDO.

(c) The RDO may, at any time during the review, order a conference between the lessee/applicant and department staff to try to settle the rent dispute.

(d) The RDO shall issue a decision within sixty days of filing of the request. Such decision shall contain findings of fact for the decision. If a decision cannot be issued within that time, the lessee/applicant's request will automatically be granted and the rent proposed by the lessee/applicant will be the rent for the lease until the next rent revaluation; provided that, the RDO may extend the review period for one sixty-day period.

(7) **RDAO review.**

(a) The RDAO may, within fifteen days of the final decision by the RDO, be petitioned to review that decision.

(b) If the RDAO declines to review the petition on the decision of the RDO, the RDO's decision shall be the final decision of the RDAO.

(c) If the RDAO consents to review the decision, the review may only consider the factual record before the RDO and the written findings and decision of the RDO. The RDAO shall issue a decision on the petition containing written findings within thirty days of the filing of the petition. This decision shall be the RDAO's final decision.

(8) Board review.

(a) The board of natural resources (board) may, within fifteen days of the final RDAO decision, be petitioned to review that decision.

(b) If the board declines to review the petition, the RDAO decision shall be the final decision of the board.

(c) If the board decides to review the petition, the department and the lessee/applicant shall present written statements on the final decision of the RDAO within fifteen days of the decision to review. The board may request oral statements from the lessee/applicant or the department if the board decides a decision cannot be made solely on the written statements.

(d) The board shall issue a decision on the petition within sixty days of the filing of the written statements by the lessee/applicant and the department.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-128, filed 11/5/85.]

WAC 332-30-131 Public use and access. This section shall not apply to private recreational docks. Subsections (2) and (3) of this section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114). Public use and access are aquatic land uses of state-wide value. Public access and recreational use of state-owned aquatic land will be actively promoted and protected.

(1) **Access encouraged.** Other agencies will be encouraged to provide, in their planning, for adequate public use and access and for protection of public use and access resources.

(2) **Access grants.** Aquatic Land Enhancement Account funds will be distributed to state and local agencies to encourage provision of public access to state-owned aquatic lands.

(3) **Access advertised.** State-owned aquatic lands particularly suitable for public use and access will be advertised through appropriate publications.

(4) **No-fee access agreements.** No-fee agreements may be made with other parties for provision of public use and access to state-owned aquatic lands provided the other party meets the following conditions:

(a) The land must be available daily to the public on a first-come, first-served basis and may not be leased to private parties on any more than a day-use basis.

(b) Availability of free public use must be prominently advertised by appropriate means as required. For example, signs may be required on the premises and/or on a nearby public road if the facility is not visible from the road.

(c) When the use is dependent on the abutting uplands, the managing entity must own, lease or control the abutting uplands.

(d) User fees shall not be charged unless specifically authorized by the department and shall not exceed the direct operating cost of the facility.

(e) Necessary nonwater-dependent accessory uses will be allowed in the no-fee agreement area only under exceptional circumstances when they contribute directly to

the public's use and enjoyment of the aquatic lands and comply with WAC 332-30-137. Such nonwater-dependent uses shall be required to pay a fair-market rent for use of aquatic lands.

(f) Auditable records must be maintained and made available to the state.

(5) **Rent reduction for access.** Leased developments on state-owned aquatic lands which also provide a degree of public use and access may be eligible for a rent reduction. Rental reduction shall apply only to the actual area within the lease that meets public access and use requirements of subsection (4) of this section.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-131, filed 11/5/85.]

WAC 332-30-134 Aquatic land environmental protection. (1) **Planning.** Coordinated, interagency planning will be encouraged to identify and protect natural resources of state-wide value.

(2) **Reliance on other agencies.** Aquatic land natural resources of state-wide value are protected by a number of special state and federal environmental protection programs including: State Shorelines Management Act, Environmental Policy Act, Hydraulics Project Approval, National Environmental Policy Act, Federal Clean Water Act, Fish and Wildlife Coordination Act and section 10 of the Rivers and Harbors Act. Governmental agencies with appropriate jurisdiction and expertise will normally be depended on to evaluate environmental impacts of individual projects and to incorporate appropriate protective measures in their respective project authorizations.

(3) **Method.** Leases and other proprietary aquatic land conveyances may include environmental protection requirements when: (a) Regulatory agencies' approvals are not required; (b) unique circumstances require long-term monitoring or project performance; or (c) substantial evidence is present to warrant special protection.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-134, filed 11/5/85.]

WAC 332-30-137 Nonwater-dependent uses. Policy. Nonwater-dependent use of state-owned aquatic lands is a low priority use providing minimal public benefits. Nonwater-dependent uses shall not be permitted to expand or be established in new areas except in exceptional circumstances and when compatible with water-dependent uses existing in or planned for the area. Analysis under this section will be used to determine the terms and conditions of allowable nonwater-dependent use leases. The department will give public notice of sites proposed for nonwater-dependent use leases.

(1) **Exceptional circumstances.** The following are exceptional circumstances when nonwater-dependent uses may be allowed:

(a) Nonwater-dependent accessory uses to water-dependent uses such as delivery and service parking, lunch rooms, and plant offices.

(b) Mixed water-dependent and nonwater-dependent development. The water-dependent component shall be a major project element. The nonwater-dependent use shall significantly enhance water-dependent uses and/or resources of state-wide value.

(c) Nonwater-dependent uses in structures constructed, or on sites filled, prior to June 30, 1985.

(d) Expansion or realignment of essential public nonwater-dependent facilities such as airports, highways and sewage treatment plants where upland topography, economics, or other factors preclude alternative locations.

(e) When acceptable sites and circumstances are identified in adopted local shoreline management master programs which provide for the present and future needs of all uses and resources of state-wide value, identify specific areas or situations in which nonwater-dependent uses will be allowed, and justify the exceptional nature of those areas or situations.

(2) **Compatibility with water-dependent uses.** Nonwater-dependent uses will only be allowed when they are compatible with water-dependent uses existing in or planned for the area. Evaluation of compatibility will consider the following:

(a) Current and future demands for the site by water-dependent uses.

(b) The effect on the usefulness of adjacent areas for water-dependent uses.

(c) The probability of attracting additional water-dependent or nonwater-dependent uses.

(d) Subsidies offered to water-dependent uses.

(3) **Evaluation.** Proposed nonwater-dependent uses will be evaluated individually. Applicants must demonstrate the proposed nonwater-dependent uses are consistent with subsections (1) and (2) of this section and any other applicable provisions of this chapter.

(4) **Re-leases.** Re-leases of nonwater-dependent uses will be evaluated as new uses. If continuance of the nonwater-dependent use substantially conflicts with uses or resources of state-wide value or with shoreline master program planning or supplemental planning developed under WAC 332-30-107(5), or if the site is needed by a use of state-wide value, the re-lease will not be approved.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-137, filed 11/5/85.]

WAC 332-30-139 Marinas and moorages. (1) Moorage facilities developed on aquatic lands should meet the following design criteria:

(a) Moorage shall be designed so as to be compatible with the local environment and to minimize adverse esthetic impacts.

(b) Open moorage is preferred in relatively undeveloped areas and locations where view preservation is desirable, and/or where leisure activities are prevalent.

(c) Covered moorage may be considered in highly developed areas and locations having a commercial environment.

(d) Enclosed moorage should be confined to areas of an industrial character where there is a minimum of esthetic concern.

(e) In general, covered moorage is preferred to enclosed moorage and open moorage is preferred to covered moorage.

(f) View encumbrance due to enclosed moorage shall be avoided in those areas where views are an important element in the local environment.

(g) In order to minimize the impact of moorage demand on natural shorelines, large marina developments in urban areas should be fostered in preference to numerous small marinas widely distributed.

(h) The use of floating breakwaters shall be considered as protective structures before using solid fills.

(i) Dry moorage facilities (stacked dry boat storage) shall be considered as an alternative to wet storage in those locations where such storage will:

(i) Significantly reduce environmental or land use impacts within the water area of the immediate shoreline.

(ii) Reduce the need for expansion of existing wet storage when such expansion would significantly impact the environment or adjacent land use.

(2) Anchorages suitable for both residential and transient use will be identified and established by the department in appropriate locations so as to provide additional moorage space.

(3) Upland sewage disposal approved by local government and appropriate state agencies is required for all vessels used as a residence at a marina or other location.

(4) The department shall work with federal, state, local government agencies and other groups to determine acceptable locations for marina development, properly distributed to meet projected public need for the period 1980 to 2010.

[Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-139, filed 7/3/80.]

WAC 332-30-142 Piers. (1) Piers within harbor areas will be authorized as needed to serve the needs of commerce and navigation but may not extend beyond the outer harbor line.

(2) No piers or other fixed structures are permitted within waterways established under RCW 79.01.428.

(3) Multiple use of pier and wharf facilities will be encouraged, rather than the addition of new facilities.

(4) Piers on first class tidelands and shorelands will be permitted as needed for commercial and residential purposes without any restriction as to frequency; however, the length will be restricted as needed so as not to unduly interfere with navigation. The type of structure may be restricted so as to minimize impact on environment and other users.

(5) Public and common use residential piers may be considered on public use - general beaches so designated on selected second class tideland and shoreland tracts.

(6) No piers or structures of any kind are permitted on public use - wilderness beaches so designated on selected second class tideland and shoreland tracts.

(7) Piers may be approved for installation on second class tideland and shoreland tracts not designated as

public use beaches. They must follow the pier spacing and length standards.

(8) Pier spacing and length standards:

(a) New piers intended for resort and recreational use on second class tidelands and shorelands extending beyond the line of extreme low tide or line of navigability may be authorized if more than five times the pier length from any other pier on either side.

(b) Leases covering such installations may require that the owner of the pier allow the adjacent shoreline owners to utilize the pier for loading and unloading purposes.

(c) Unauthorized existing piers will be considered as new piers and offered leases which may provide for joint use.

(d) New piers should not extend seaward further than immediately adjacent similar structures except in harbor areas where harbor lines control pier lengths.

(9) Pier design criteria:

(a) Floating piers minimize visual impact and should be used where scenic values are high. However, floating piers constitute an absolute impediment to boat traffic or shoreline trolling and should not be used in areas where such activities are important and occur within the area of the proposed pier. Floating piers provide excellent protection for swimmers from high-speed small craft and may be desirable for such protection.

Floating piers interrupt littoral drift and tend to starve down current beaches. This effect should be considered before approval.

(b) Pile piers have a greater visual impact than do floating piers, and their use should be minimized in areas where scenic values are high. Pile piers cause less interference with littoral drift and do provide a diverse habitat for marine life. In areas where near-shore trolling is important, pile piers should be used with bents spaced 16 feet apart and with a minimum of 5 feet clearance above extreme high tide. Single pile bents are preferred where possible.

[Statutory Authority: RCW 43.30.150, 83-02-055 (Order 389, Resolution No. 403), § 332-30-142, filed 1/4/83; 80-09-005 (Order 343), § 332-30-142, filed 7/3/80.]

WAC 332-30-144 Private recreational docks. (1) Applicability. This section implements the permission created by RCW 79.90.105, Private recreational docks, which allows abutting residential owners, under certain circumstances, to install private recreational docks without charge. The limitations set forth in this section apply only to use of state-owned aquatic lands for private recreational docks under RCW 79.90.105. No restriction or regulation of other types of uses on aquatic lands is provided. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(2) **Eligibility.** The permission shall apply only to the following:

(a) An "abutting residential owner," being the owner of record of property physically bordering on public aquatic land and either used for single family housing or

for a multi-family residence not exceeding four units per lot.

(b) A "dock," being a securely anchored or fixed, open walkway structure visible to boaters and kept in good repair extending from the upland property, primarily used as an aid to boating by the abutting residential owner(s), and accommodating moorage by not more than four pleasure boats typical to the body of water on which the dock is located. Two or more abutting residential owners may install and maintain a single joint-use dock provided it meets all other design requirements of this section; is the only dock used by those owners; and that the dock fronts one of the owners' property.

(c) A "private recreational purpose," being a nonincome-producing, leisure-time, and discretionary use by the abutting residential owner(s).

(d) State-owned aquatic lands outside harbor areas designated by the harbor line commission.

(3) **Uses not qualifying.** Examples of situations not qualifying for the permission include:

(a) Yacht and boat club facilities;

(b) Houseboats;

(c) Resorts;

(d) Multi-family dwellings, including condominium ownerships, with more than four units;

(e) Uses other than docks such as launches and railways not part of the dock, bulkheads, landfills, dredging, breakwaters, mooring buoys, swim floats, and swimming areas.

(4) **Limitations.**

(a) The permission does not apply to areas where the state has issued a reversionary use deed such as for shellfish culture, hunting and fishing, or park purposes; published an allocation of a special use and the dock is inconsistent with the allocation; or granted an authorization for use such as a lease, easement, or material purchase.

(b) Each dock owner using the permission is responsible for determining the availability of the public aquatic lands. Records of the department are open for public review. The department will research the availability of the public aquatic lands upon written request. A fee sufficient to cover costs shall be charged for this research.

(c) The permission is limited to docks that conform to adopted shoreline master programs and other local ordinances.

(d) The permission is not a grant of exclusive use of public aquatic lands to the dock owner. It does not prohibit public use of any aquatic lands around or under the dock. Owners of docks located on state-owned tidelands or shorelands must provide a safe, convenient, and clearly available means of pedestrian access over, around, or under the dock at all tide levels. However, dock owners are not required to allow public use of their docks or access across private lands to state-owned aquatic lands.

(e) The permission is not transferable or assignable to anyone other than a subsequent owner of the abutting upland property and is continuously dependent on the nature of ownership and use of the properties involved.

(5) **Revocation.** The permission may be revoked or canceled if:

(a) The dock or abutting residential owner has not met the criteria listed in subsection (2) or (4) of this section; or

(b) The dock significantly interferes with navigation or with navigational access to and from other upland properties. This degree of interference shall be determined from the character of the shoreline and waterbody, the character of other in-water development in the vicinity, and the degree of navigational use by the public and adjacent property owners;

(c) The dock interferes with preferred water-dependent uses established by law; or

(d) The dock is a public health or safety hazard.

(6) **Appeal of revocation.** Upon receiving written notice of revocation or cancellation, the abutting residential owner shall have thirty days from the date of notice to file for an administrative hearing under the contested case proceedings of chapter 34.04 RCW. If the action to revoke the permission is upheld, the owner shall correct the cited conditions and shall be liable to the state for any compensation due to the state from the use of the aquatic lands from the date of notice until permission requirements are met or until such permission is no longer needed. If the abutting residential owner disclaims ownership of the dock, the department may take actions to have it removed.

(7) **Current leases.** Current lessees of docks meeting the criteria in this section will be notified of their option to cancel the lease. They will be provided a reasonable time to respond. Lack of response will result in cancellation of the lease by the department.

(8) **Property rights.** No property rights in, or boundaries of, public aquatic lands are established by this section.

(9) **Lines of navigability.** The department will not initiate establishment of lines of navigability on any shorelands unless requested to do so by the shoreland owners or their representatives.

(10) Nothing in this section is intended to address statutes relating to sales of second class shorelands.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-144, filed 11/5/85.]

WAC 332-30-145 Booming, rafting and storage of logs. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) Unless specifically exempted in writing, all log dumps located on aquatic lands, or operated in direct association with booming grounds on aquatic land, must provide facilities for lowering logs into the water without tumbling, which loosens the bark. Free rolling of logs is not permitted.

(2) Provision must be made to securely retain all logs, chunks, and trimmings and other wood or bark particles of significant size within the leased area. Lessee will be

responsible for regular cleanup and upland disposal sufficient to prevent excessive accumulation of any debris on the leased area.

(3) Unless permitted in writing, aquatic land leased for booming and rafting shall not be used for holding flat rafts except:

(a) Loads of logs averaging over 24" diameter.

(b) Raft assembly, disassembly and log sort areas.

(4) Unless permitted in writing, grounding of logs or rafts is not allowed on tidelands leased for booming and rafting. However, tidelands which were leased for booming and rafting prior to January 1, 1980, are exempt from this provision.

(5) No log raft shall remain on aquatic land for more than one year, unless specifically authorized in writing.

(6) For leases granted to serve the general needs of an area such as an island, the leased area shall be made available to others for booming and rafting and at a reasonable charge.

(7) Areas within a lease boundary meeting the definition of log booming are water-dependent uses. The rent for these areas will be calculated according to WAC 332-30-123.

(8) Areas leased for log storage shall have the rent calculated by applying a state-wide base unit rent per acre. Temporary holding of logs alongside a vessel for the purpose of loading onto the vessel is neither booming nor storage.

(9) The base unit rent, application to existing leases, and subsequent annual rents will be determined as provided for water-dependent uses under WAC 332-30-123 except for the following modifications:

(a) A formula rental calculation will be made for each such area leased as of July 1, 1984, as though the formula applied on July 1, 1984.

(b) The assessment for an upland parcel shall not be used when the following situations exist:

(i) The parcel is not assessed.

(ii) The size of the parcel in acres or square feet is not known.

(c) When necessary to select an alternative upland parcel, the nearest assessed waterfront parcel shall be used if not excluded by the criteria under (b) of this subsection.

(d) Because of the large size and shape of many log storage areas, there may be more than one upland parcel that could be used in the formula. The department shall treat such multiple parcel situations by using:

(i) The per unit value of each upland parcel applied to its portion of the lease area. If it is not possible or feasible to delineate all portions of the lease area by extending the boundaries of the upland parcel, then;

(ii) The total of the assessed value of all the upland parcels divided by the total acres of all the upland parcels shall be the per unit value applied in the formula.

(e) The total formula rents divided by the total acres under lease for log storage equals the annual base unit rent for fiscal years 1985-1989. That figure is \$171.00 per acre.

(f) For purposes of calculating stairstepping of rentals allowed under WAC 332-30-123, the base unit rent

multiplied by the number of acres shall be the formula rent. In cases of mixed uses, the log storage formula rent shall be added to the formula rent determinations for the other uses under leases before applying the criteria for stairstepping.

(g) Inflation adjustments to the base rent shall begin on July 1, 1990.

(10) On July 1, 1989, and each four years thereafter, the department shall establish a new base unit rent.

(a) The new base rent will be the previous base rent multiplied by the result of dividing the average water-dependent lease rate per acre for the prior fiscal year by the average water-dependent lease rate per acre for the fiscal year in which the base unit rent was last established. For example, the formula for the base unit rent for fiscal year 1990 would be:

$$\text{FY90 BUR} = \text{FY85 BUR} \times \frac{(\text{FY89 AWLR})}{(\text{FY85 AWLR})}$$

(b) When necessary to calculate the average water-dependent lease rate per acre for a fiscal year, it shall be done on or near July 1. The total formula rent plus inflation adjustments divided by the total acres of water-dependent uses affected by the formula during the prior fiscal year shall be the prior fiscal year's average.

(11) If portions of a log storage lease area are open and accessible to the general public, no rent shall be charged for such areas provided that:

(a) The area meets the public use requirements under WAC 332-30-130(9);

(b) Such areas are in a public use status for a continuous period of three months or longer during each year;

(c) The lease includes language addressing public use availability or is amended to include such language;

(d) The department approves the lessee's operations plan for public use, including safety precautions;

(e) Changes in the amount of area and/or length of time for public use availability shall only be made at the time of rental adjustment to the lease; and

(f) Annual rental for such areas will be prorated by month and charged for each month or part of a month not available to the general public.

[Statutory Authority: 1984 c 221 and RCW 79.90.540. 84-23-014 (Resolution No. 470), § 332-30-145, filed 11/9/84. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-145, filed 7/3/80.]

WAC 332-30-148 Swim rafts and mooring buoys.

(1) Swim rafts or mooring buoys will not be authorized where such structures will interfere with heavily traveled routes for watercraft, commercial fishing areas or on designated public use - wilderness beaches.

(2) Swim rafts or mooring buoys may be authorized on aquatic lands shoreward of the -3 fathom contour or within 200 feet of extreme low water or line of navigability whichever is appropriate. The placement of rafts and buoys beyond the -3 fathom contour or 200 feet will be evaluated on a case by case basis.

(3) No more than one structure may be installed for each ownership beyond extreme low water or line of

navigability. However, ownerships exceeding 200 feet as measured along the shoreline may be permitted more installations on a case by case basis.

(4) Swim rafts or buoys must float at least 12" above the water and be a light or bright color.

(5) Mooring buoys may be authorized beyond the limits described above on land designated by the department for anchorages.

[Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-148, filed 7/3/80.]

WAC 332-30-151 Reserves (RCW 79.68.060). (1) Types of reserves: Educational, environmental, scientific - see definitions (WAC 332-30-106).

(2) Aquatic lands of special educational or scientific interest or aquatic lands of special environmental importance threatened by degradation shall be considered for reserve status. Leases for activities in conflict with reserve status shall not be issued.

(3) The department or other governmental entity or institution may nominate specific areas for consideration for reserve status.

(4) Such nominations will be reviewed and accepted or rejected by the commissioner of public lands based upon the following criteria:

(a) The site will accomplish the purpose as stated for each reserve type.

(b) The site will not conflict with other current or projected uses of the area. If it does, then a determination must be made by the commissioner of public lands as to which use best serves the public benefit.

(c) Management of the reserve can be effectively accomplished by either the department's management program or by assignment to another governmental agency or institution.

(5) The department's reserves management program consists of prevention of conflicting land use activities in or near the reserve through lease actions. In those cases where physical protection of the area may be necessary the management of the area may be assigned to another agency.

(6) When DNR retains the management of reserve areas the extent of the management will consist of a critical review of lease applications in the reserve area to insure proposed activities or structures will not conflict with the basis for reserve designation. This review will consist of at least the following:

(a) An environmental assessment.

(b) Request of agencies or institutions previously identified as having a special interest in the area for their concerns with regard to the project.

(7) Proposed leases for structures or activities immediately adjacent to any reserve area will be subjected to the same critical review as for leases within the area if the structures and/or activities have the potential of:

(a) Degrading water quality,

(b) Altering local currents,

(c) Damaging marine life, or

(d) Increasing vessel traffic.

(8) All management costs are to be borne by the administering agency. Generally, no lease fee is required.

[Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-151, filed 7/3/80.]

WAC 332-30-154 Marine aquatic plant removal (RCW 79.68.080). (1) Any species of aquatic plant may be collected from aquatic land for educational, scientific and personal purposes up to 50 pounds wet weight per year, except that no annual species can be collected in excess of fifty percent of its population's total wet weight in any 1 acre area or any perennial in excess of seventy-five percent of its population's total wet weight in any 1 acre area.

(2) Aquatic plants listed on the commercial species list may be collected without a permit from aquatic land for commercial purposes up to the limits noted on the list, except that no annual species can be collected in excess of fifty percent of its population's total wet weight in any 1 acre area or any perennial in excess of seventy-five percent of its population's total wet weight in any 1 acre.

(3) Aquatic plants may be collected from aquatic land for educational, scientific or personal purposes beyond the weight limitations stated in subsection (1) only through benefit of an aquatic plant removal permit from the department. Payment of a royalty dependent on species, volume and use shall be a condition of the permit.

(4) Aquatic plants as listed on the commercial species list may be collected from aquatic land for commercial purposes beyond the weight limitations stated in subsection (2) only through benefit of an aquatic plant removal permit from the department. Payment of a royalty dependent on species, volume and use shall be a condition of the permit.

(5) Aquatic plants may not be removed from the San Juan Marine Reserve except as provided for in RCW 28B.20.320 and from other areas where prohibited.

(6) Removal of perennial plants must be in such a manner as to maintain their regeneration capability at the site from which they have been collected.

(7) Species may be deleted or added to the commercial species list through petition to the department.

(8) Species not on the commercial species list may be collected for purposes of market testing, product development, or personal use through either written authorization from the department or through an aquatic plant removal permit depending on the amount of plant material required.

(9) Commercial species list.

Species Name	Maximum Free Collection Weight
<i>Alaria marginata</i>	
Post. et Rupr.	50 pounds wet weight
<i>Cymathere triplicata</i>	
(Post. et Rupr) J.Ag.	50 pounds wet weight
<i>Gracilaria sjoestedtii</i>	
Kylin.	10 pounds wet weight
<i>Gracilaria verrucosa</i>	
(Huds) Papenf.	10 pounds wet weight

Species Name	Maximum Free Collection Weight
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<i>Iridaea cordata</i>	
(Turner) Bory.	50 pounds wet weight
<i>Laminaria dentigera</i>	
(Kjellm.) (<i>L. setchellii</i> Silva) ...	50 pounds wet weight
<i>Laminaria groenlandica</i>	
Rosenvinge.	50 pounds wet weight
<i>Laminaria saccharina</i>	
(L.) Lamouroux.	100 pounds wet weight
<i>Macrocystis integrifolia</i> Bory..	100 pounds wet weight
<i>Monostroma</i> spp.	20 pounds wet weight
<i>Neogardhiella baileyi</i>	
(Harvey et Kutzing)	
Wynne et Taylor.	30 pounds wet weight
<i>Porphyra</i> spp.	10 pounds wet weight
<i>Ulva</i> spp.	20 pounds wet weight

(10) Harvesting of fishery resources adhering to marine aquatic plants, such as fish eggs, must be according to the law and as specified by the department of fisheries. A permit may also be required according to WAC 332-30-154(4).

[Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-154, filed 7/3/80.]

WAC 332-30-157 Commercial clam harvesting. (1) Commercial clam beds on aquatic lands shall be managed to produce an optimum yield.

(2) The boundaries of clam tracts offered for lease shall be established and identified to avoid detrimental impacts upon significant beds of aquatic vegetation or areas of critical biological significance as well as prevent unauthorized harvesting.

(3) The methods of harvest may only be those as established by law and certified by the department of fisheries.

(4) Surveillance methods will be employed to insure that trespass as well as off-tract harvesting is prevented.

(5) Harvesters must comply with all lease provisions. Noncompliance may result in lease suspension or cancellation upon notification.

(6) Harvesters must comply with all applicable federal, state and local rules and regulations. Noncompliance may result in lease suspension or cancellation upon notification.

(7) If appropriate, the department may secure all necessary permits prior to leasing.

[Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-157, filed 7/3/80.]

WAC 332-30-161 Aquaculture. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114). Aquaculture is an aquatic land use of state-wide value. Aquaculture will be fostered through research, flexible lease fees, and assistance in permitting and planning.

(1) **Research.** The department will conduct or sponsor research and development work on aquaculture species and techniques suitable for culture on state-owned

aquatic lands. Research will be coordinated with, and not duplicate, research undertaken by other agencies.

(2) **Fees.** Lease fees for aquaculture operations are subject to negotiation. Negotiations will consider the operational risks, maturity of the industry, and ability to further research.

(a) Fees may be reduced during the initial start-up period of the lease.

(b) Fees over the life of the lease will not exceed rents paid by other water-dependent uses.

(3) **Permit acquisition.** The department may obtain local, state, and/or federal permits for aquacultural use of state-owned aquatic lands having high aquaculture potential and lease these areas to aquaculturists.

(4) **Site protection.** The department will identify areas of state-owned aquatic land of state-wide value for aquaculture. Local governments will be encouraged to reserve and protect these lands from incompatible uses.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-161, filed 11/5/85.]

WAC 332-30-163 River management. (1) Use and/or modification of any river system shall recognize basic hydraulic principles, as well as harmonize as much as possible with the existing aquatic ecosystems, and human needs.

(2) Priority consideration will be given to the preservation of the streamway environment with special attention given to preservation of those areas considered esthetically or environmentally unique.

(3) Bank and island stabilization programs which rely mainly on natural vegetative systems as holding elements will be encouraged.

(4) Research will be encouraged to develop alternative methods of channel control, utilizing natural systems of stabilization.

(5) Natural plant and animal communities and other features which provide an ecological balance to a streamway, will be recognized in evaluating competing human use and protected from significant human impact.

(6) Normal stream depositions of logs, uprooted tree snags and stumps which abut on shorelands and do not intrude on the navigational channel or reduce flow, or adversely redirect a river course, and are not harmful to life and property, will generally be left as they lie, in order to protect the resultant dependent aquatic systems.

(7) Development projects will not, in most cases, be permitted to fill indentations such as mudholes, eddies, pools and aeration drops.

(8) Braided and meandering channels will be protected from development.

(9) River channel relocations will be permitted only when an overriding public benefit can be shown. Filling, grading, lagooning or dredging which would result in substantial detriment to navigable waters by reason of erosion, sedimentation or impairment of fish and aquatic life will not be authorized.

(10) Sand and gravel removals will not be permitted below the wetted perimeter of navigable rivers except as authorized under a departments of fisheries and game hydraulics permit (RCW 75.20.100). Such removals may be authorized for maintenance and improvement of navigational channels.

(11) Sand and gravel removals above the wetted perimeter of a navigable river (which are not harmful to public health and safety) will be considered when any or all of the following situations exist:

(a) No alternative local upland source is available, and then the amount of such removals will be determined on a case by case basis after consideration of existing state and local regulations.

(b) The removal is designed to create or improve a feature such as a pond, wetland or other habitat valuable for fish and wildlife.

(c) The removal provides recreational benefits.

(d) The removal will aid in reducing a detrimental accumulation of aggregates in downstream lakes and reservoirs.

(e) The removal will aid in reducing damage to private or public land and property abutting a navigable river.

(12) Sand and gravel removals above the wetted perimeter of a navigable river will not be considered when:

(a) The location of such material is below a dam and has inadequate supplementary feeding of gravel or sand.

(b) Detached bars and islands are involved.

(c) Removal will cause unstable hydraulic conditions detrimental to fish, wildlife, public health and safety.

(d) Removal will impact esthetics of nearby recreational facilities.

(e) Removal will result in negative water quality according to department of ecology standards.

(13) Bank dumping and junk revetment will not be permitted on aquatic lands.

(14) Sand and gravel removal leases shall be conditioned to allow removal of only that amount which is naturally replenished on an annual basis.

[Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-163, filed 7/3/80.]

WAC 332-30-166 Open water disposal sites. (1) Open water disposal sites are established primarily for the disposal of dredged material obtained from marine or fresh waters. These sites are generally not available for disposal of material derived from upland or dryland excavation except when such materials would enhance the aquatic habitat.

(2) Material may be disposed of on state-owned aquatic land only at approved open water disposal sites and only after authorization has been obtained from the department. Applications for use of any area other than an established site shall be rejected. However, the applicant may appeal to the interagency open water disposal site evaluation committee for establishment of a new site.

(3) Application for use of an established site must be for dredged material that meets the approval of federal and state agencies and for which there is no practical

alternative upland disposal site or beneficial use such as beach enhancement.

(4) The department will only issue authorization for use of the site after:

(a) The environmental protection agency and department of ecology notify the department that, in accordance with Sections 404 and 401, respectively, of the Federal Clean Water Act, the dredged materials are suitable for in-water disposal and do not appear to create a threat to human health, welfare, or the environment; and

(b) All necessary federal, state, and local permits are acquired.

(5) Any use authorization granted by the department shall be subject to the terms and conditions of any required federal, state, or local permits.

(6) The department shall suspend or terminate any authorization to use a site upon the expiration of any required permit.

(7) All leases for use of a designated site must require notification to DNR in Olympia twenty-four hours prior to each use. DNR Olympia must be notified five working days prior to the first use to permit an on-site visit to confirm with dump operator the site location.

(8) Pipeline disposal of material to an established disposal site will require special consideration.

(9) An application and a lease fee will be charged at a rate sufficient to cover all departmental costs associated with management of the sites. Fees will be reviewed and adjusted annually or more often as needed. A penalty fee may be charged for unauthorized dumping or dumping beyond the lease site. Army Corps of Engineers navigation channel maintenance projects are exempt from this fee schedule.

FEES

(a) Application fee

(i) Puget Sound and Strait of Juan De Fuca: \$.15 per cubic yard (c.y.) for the first 200,000 c.y.; Negotiated fee for project volumes exceeding 200,000 c.y.; Minimum fee \$2,000.00

(ii) Grays Harbor/Willapa Harbor: Minimum fee \$300.00

(b) Lease fee - \$100.00 all sites

(c) Penalty fee - \$5.00/cubic yard

(10) Open water disposal site selection. Sites are selected and managed by the department with the advice of the interagency open water disposal site evaluation committee (a technical committee of the aquatic resources advisory committee). The committee is composed of representatives of the state departments of ecology, fisheries, game, and natural resources as well as the Federal Army Corps of Engineers, National Marine Fisheries Service, Environmental Protection Agency, and Fish and Wildlife Service. The department chairs the committee. Meetings are irregular. The committee has developed a series of guidelines to be used in selecting disposal sites. The objectives of the site selection guidelines are to reduce damage to living resources known to

utilize the area, and to minimize the disruption of normal human activity that is known to occur in the area. The guidelines are as follows:

(a) Select areas of common or usual natural characteristics. Avoid areas with uncommon or unusual characteristics.

(b) Select areas, where possible, of minimal dispersal of material rather than maximum widespread dispersal.

(c) Sites subject to high velocity currents will be limited to sandy or coarse material whenever feasible.

(d) When possible, use disposal sites that have substrate similar to the material being dumped.

(e) Select areas close to dredge sources to insure use of the sites.

(f) Protect known fish nursery, fishery harvest areas, fish migration routes, and aquaculture installations.

(g) Areas proposed for dredged material disposal may require an investigation of the biological and physical systems which exist in the area.

(h) Current velocity, particle size, bottom slope and method of disposal must be considered.

(i) Projects transporting dredged material by pipeline will require individual review.

(j) Placement of temporary site marking buoys may be required.

(k) The department will assure disposal occurs in accordance with permit conditions. Compliance measures may include, but are not limited to, visual or electronic surveillance, marking of sites with buoys, requiring submittal of operator reports and bottom sampling or inspection.

(l) Special consideration should be given to placing material at a site where it will enhance the habitat for living resources.

(m) Locate sites where surveillance is effective and can easily be found by tugboat operators.

(11) The department shall conduct such subtidal surveys as are necessary for siting and managing the disposal sites.

[Statutory Authority: RCW 79.90.100 and 43.30.150. 85-15-050 (Order 451, Resolution No. 492), § 332-30-166, filed 7/16/85. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-166, filed 7/3/80.]

WAC 332-30-169 Artificial reefs (RCW 79.68.080). Artificial reefs constructed of a variety of materials is an accepted method of increasing habitat for rock dwelling fish and invertebrates. In areas devoid of natural reefs, artificial reefs serve to increase the recreational potential of the area.

(1) Artificial reefs may be installed on aquatic lands by public groups or government agencies. However the sponsoring group or agency proposing such installation must submit their plan for review and approval to the reef siting committee prior to applying for permits. The artificial reef siting committee is a technical committee of the aquatic resources advisory committee and is composed of representatives of the departments of fisheries, ecology, environmental protection agency, national marine fisheries service and fish and wildlife service. The department chairs the committee. All permits must be

acquired by the sponsoring group or agency prior to installation. The department may assist in and/or undertake reef design, construction, location, permit application and site inspection.

(2) Artificial reefs may be installed on aquatic lands under the following guidelines.

(a) Large reefs built by community groups rather than smaller reefs built by individuals are encouraged.

(b) Artificial reefs shall have a marking buoy meeting coast guard regulations and shall be marked on authorized navigation charts.

(c) Leasing of bedlands is not required for artificial reefs established for public use, however, a public use agreement (see WAC 332-30-130(9)) must be issued. A public reef in harbor areas requires a lease. Private reefs are not permitted.

(d) Artificial reefs should be located so that public upland access to the water is available, i.e., county or city parks, road frontage or endings adjacent to public aquatic lands. Due to the predominance of private shorelands, tidelands and uplands, public access may be restricted to boats only. The department does not promote or condone trespass on private property.

(e) A proposed artificial reef shall not conflict with existing natural rocky fish habitats.

(f) In selecting an artificial reef site shipping lanes, designated harbor areas and areas of marine traffic concentration shall be avoided. A thousand feet of horizontal clearance is recommended.

(g) Artificial reefs shall be of sufficient depth to allow unimpeded surface navigation. A general rule of thumb is that clearance be equivalent to the greatest draft of ships or barges using the area, plus ten feet as measured from mean lower low water.

(h) Artificial reefs shall not conflict with commercial or recreational fishing, shellfish harvesting areas or with known or potential aquaculture areas.

(i) Artificial reef design shall optimize "edge effect." Reef materials should not be scattered but clumped with small open spaces between clumps.

(j) Artificial reefs shall be constructed of long-lasting, nonpolluting materials.

(i) Tires used as construction material shall be tied together to form sub units. The ties must not deteriorate in the marine environment and should consist of such material as polypropylene rope, stainless steel or plastic strapping. Tires must be cut or drilled to allow easy escapement of trapped air. Tires must be weighted in areas where currents or wave action may move them.

(ii) Cement pipe may be used as construction material. The pipe should be transported and positioned on the bottom so as to minimize breakage.

(iii) Rock or concrete chunks may be used as construction material.

(iv) Vessels may be used as an artificial reef. Size and type of vessels will be considered on a case by case basis.

(k) Artificial reefs shall normally be located seaward of the minus 18 foot contour as measured from mean lower low water.

(l) If a reef is for the exclusive use of either line fishermen or divers, it shall be so identified at the site.

[Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-169, filed 7/3/80.]

**Chapter 332-32 WAC
INSECT AND WORM CONTROL**

WAC

- 332-32-010 Spruce budworm—Klickitat and Yakima counties.
- 332-32-020 Hemlock looper—Pacific and Wahkiakum counties.
- 332-32-030 European pine shoot moth—Walla Walla County.

WAC 332-32-010 Spruce budworm--Klickitat and Yakima counties. Be it resolved by the board of natural resources, department of natural resources, state of Washington: . . .

(1) The board declares and certifies an infestation control district be established for the control, destruction, and eradication of said insect in Klickitat and Yakima counties, to be known as Simcoe Butte Infestation Control District No. 3, and shall include lands within the following boundary:

Those portions of Township 6 North, Range 14 East, W.M., Townships 5, 6, and 7 North, Range 15 East, W.M., and Townships 5 and 6 North, Ranges 16 and 17 East, W.M., included in a tract described as follows:

Beginning at the northeast corner of Section 25, Township 7 North, Range 15 East, W.M., and running thence westerly along the north lines of Sections 25, 26, 27, 28, and 29, Township 7 North, Range 15 East, W.M., to the northwest corner of said Section 29, thence southerly along the west lines of Sections 29 and 32, Township 7 North, Range 15 East, W.M., to the north line of Section 6, Township 6 North, Range 15 East, W.M., thence easterly along said north line to the northeast corner of said Section 6, thence southerly along the east line of said Section 6 to the southeast corner thereof, thence westerly along the south line of said Section 6 and the north line of Section 12, Township 6 North, Range 14 East, W.M., to the northwest corner of said Section 12, thence southerly along the west line of said Section 12 to the southwest corner thereof, thence westerly along the north lines of Sections 14 and 15, Township 6 North, Range 14 East, W.M., to the northwest corner of said Section 15, thence southerly along the west lines of Sections 15, 22, 27, and 34, Township 6 North, Range 14 East, W.M., to the southwest corner of said Section 34, thence easterly along the south lines of Sections 34, 35, and 36, Township 6 North, Range 14 East, W.M., to the southeast corner of said Section 36, thence continue easterly along the south lines of Sections 31 and 32, Township 6 North, Range 15 East, W.M., to the northwest corner of Section 4, Township 5 North, Range 15 East, W.M., thence southerly along the west lines of Sections 4 and 9, Township 5 North, Range 15 East, W.M., to the southwest corner of said Section 9, thence easterly along the south line of said Section 9 to the southeast corner thereof, thence southerly along the west lines of Sections 15 and 22, Township 5 North, Range 15 East, W.M., to the southwest corner of said Section 22, thence easterly along the south lines of Sections 22, 23, and 24, Township 5

North, Range 15 East, W.M., to the southeast corner of said Section 24, thence continue easterly along the south lines of Sections 19, 20, 21, 22, 23, and 24, Township 5 North, Range 16 East, W.M., to the southeast corner of said Section 24, thence continue easterly along the south line of Section 19, Township 5 North, Range 17 East, W.M., to the southeast corner of said Section 19, thence northerly along the east lines of Sections 19, 18, 7, and 6, to the northeast corner of said Section 6, thence continue northerly along the east lines of Sections 31, 30, and 19, Township 6 North, Range 17 East, W.M., to the northeast corner of said Section 19, thence westerly along the north line of said Section 19 to the northwest corner thereof, thence continue westerly along the north lines of Sections 24, 23, 22, 21, and 20, Township 6 North, Range 16 East, W.M., to the northwest corner of said Section 20, thence northerly along the east line of Section 18, Township 6 North, Range 16 East, W.M., to the northeast corner thereof, thence westerly along the north line of said Section 18 to the northwest corner thereof, thence along the east lines of Sections 12 and 1, Township 6 North, Range 15 East, W.M., to the northeast corner of said Section 1, and thence continue northerly along the east lines of Sections 36 and 25, Township 7 North, Range 15 East, W.M., to the northeast corner of said Section 25 and the point of beginning, containing an area of 81,272.49 acres according to the government surveys thereof.

(2) The administrator of the department of natural resources is directed to serve notice upon all owners of timber lands or their agents (in the manner prescribed by law) to proceed without delay to control, destroy and eradicate the spruce budworm (*choristoneura fumiferana*) by spraying DDT insecticide on the forests infested or threatened with infection by this insect pest.

(3) If within 30 days after notice has been given as prescribed in subsection 2 of this resolution, an owner or agent shall fail, refuse, neglect or is unable to comply with the terms thereof, the administrator of the department of natural resources shall proceed with the control, eradication, and destruction of the spruce budworm (*choristoneura fumiferana*), with or without the cooperation of the owner, by aerial spraying with DDT the forests infested or threatened with infection by this insect pest.

(4) The Simcoe Butte infestation control district shall remain in effect until the board of natural resources has determined that the insect control work within said district is no longer necessary or feasible, whereupon the board of natural resources may by resolution dissolve the district.

[Resolution No. 29, filed 1/12/62.]

WAC 332-32-020 Hemlock looper--Pacific and Wahkiakum counties. Be it resolved by the board of natural resources, department of natural resources, state of Washington: . . .

(1) The board declares and certifies an infestation control district be established for the control, destruction, and eradication of said insect in Pacific and

Wahkiakum Counties, to be known as Willapa infestation control district No. 4, and shall include lands within the following boundary:

Those portions of Townships 9 North in Ranges 7, 8, 9, and 10 West, W.M., lying north of the Columbia River; All of Townships 10 North, in Ranges 7, 8, 9, and 10 West, W.M.; Sections 1, 11, 12, 13, 14, 23, 24, 25, 26, 35, and 36, Township 10 North, Range 11 West, W.M.; All of Townships 11 North in Ranges 7, 8, 9, and 10 West, W.M.; Those portions of Township 11 North, Range 11 West, W.M., located on Long Island In Willapa Bay; All of Townships 12 North in Ranges 8, 9, and 10 West, W.M.; Those portions of Township 12 North, Range 11 West, W.M., located on Long Island; and All of Townships 13 North in Ranges 8, 9, and 10 West, W.M.

(2) The administrator of the department of natural resources is directed to serve notice upon all owners of timber lands or their agents (in the manner prescribed by law) to proceed without delay to control, destroy, and eradicate the hemlock looper (*lambdina fiscellaria lugubrosa* hult) by spraying DDT or other insecticides approved by the administrator of the department of natural resources on the forests infested or threatened with infection by this insect pest.

(3) If within 30 days after notice has been given as prescribed in subsection 2 of this resolution, an owner or agent shall fail, refuse, neglect, or is unable to comply with the terms thereof, the administrator of the department of natural resources shall proceed, as prescribed, with the control, eradication, and destruction of the hemlock looper (*lambdina fiscellaria lugubrosa* hult), with or without the cooperation of the owner.

(4) The Willapa infestation control district No. 4 shall remain in effect until the board of natural resources has determined that the insect control work within said district is no longer necessary or feasible, whereupon the board of natural resources may by resolution dissolve the district.

[Resolution No. 37, filed 3/6/63.]

WAC 332-32-030 European pine shoot moth--Walla Walla County. (1) The board declares and certifies an infestation control district be established for the control, destruction, and eradication of European Pine Shoot Moth (*Rhyacionia buoliana* (Schiff.)) in Walla Walla County, to be known as the Walla Walla Infestation Control District, and shall include all the lands within said county.

(2) The administrator of the department of natural resources is directed to serve notice upon all owners of timber lands or their agents (in the manner prescribed by law) to proceed without delay to control, destroy, and eradicate the European Pine Shoot Moth by fumigating or by destroying each infested tree or shrub.

(3) If within thirty days after notice has been given as prescribed in subsection (2) of this section, an owner or agent shall fail, refuse, neglect, or is unable to comply with the terms thereof, the administrator of the department of natural resources shall proceed, as prescribed,

with the control, eradication, and destruction of the European Pine Shoot Moth, with or without the cooperation of the owner.

(4) The Walla Walla infestation control district shall remain in effect until the board of natural resources has determined that the insect control work within said district is no longer necessary or feasible, whereupon the board of natural resources may by resolution dissolve the district.

[Order 5, § 332-32-030, filed 3/8/68.]

**Chapter 332-36 WAC
ROAD RULES ON STATE OWNED LANDS**

WAC
332-36-010 State land management roads.

WAC 332-36-010 State land management roads. Be it resolved

(1) All roads now existing on lands owned by the state of Washington under the jurisdiction of the department of natural resources, which roads are not presently under the jurisdiction or control of any individual, public or private corporation, the United States, or the state or agency or subdivision thereof other than the department of natural resources, or which roads are not presently the subject of an application to the department of natural resources for a right of way under RCW 79.01.332 or 79.36.290, made prior in time to an application made by the department of natural resources, by an individual, public or private corporation, the United States, or the state or an agency or subdivision thereof other than the department of natural resources, are designated, and included, as a part of state land management roads, under the jurisdiction and control of the department of natural resources.

(2) All roads now existing or hereinafter constructed on lands owned by the state of Washington under the jurisdiction of the department of natural resources, which roads are presently or hereinafter shall come under the jurisdiction or control of any individual, public or private corporation, the United States, or state or agency or subdivision thereof other than the department of natural resources, and which roads are thereafter conveyed to, abandoned, forfeited, or otherwise returned to the jurisdiction of or received by the department of natural resources, shall be designated and included as a part of state land management roads under the jurisdiction and control of the department of natural resources.

(3) All roads hereinafter constructed by the department of natural resources, or constructed in conjunction with the sale of timber or other valuable material located on the lands under the jurisdiction of the department of natural resources, shall be designated and included as a part of state land management roads under the jurisdiction and control of the department of natural resources.

(4) Whenever the department of natural resources finds that the use of any roads which make up a part of the said state land management roads by parties other

than the department of natural resources will not unreasonably interfere with the department's needs, the department shall upon request by said parties authorize use of the roads described in subsections (1), (2), and (3) of this resolution. Said land management roads shall be under the jurisdiction and control of the department of natural resources, and any use thereof as hereinbefore authorized, shall be subject to the rules and regulations as prescribed by said agency.

(5) The department of natural resources is directed to accomplish all requirements necessary to carry out the policy contained in this resolution.

[Resolution 35, filed 10/16/62.]

**Chapter 332-41 WAC
SEPA POLICIES AND PROCEDURES**

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WAC 332-41-010 Authority. These rules are promulgated under RCW 43.21C.120 (the State Environmental Policy Act) and chapter 197-11 WAC (SEPA rules).

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-010, filed 9/5/84. Formerly WAC 332-40-010.]

WAC 332-41-020 Adoption by reference. The department of natural resources adopts the following sections or subsections of chapter 197-11 WAC by reference.

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- 197-11-040 Definitions.
 - 197-11-050 Lead agency.
 - 197-11-055 Timing of the SEPA process.
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 - 197-11-080 Incomplete or unavailable information.
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 - 197-11-305 Categorical exemptions.
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197-11-340 Determination of nonsignificance (DNS).
 197-11-350 Mitigated DNS.
 197-11-360 Determination of significance (DS)/initiation of scoping.
 197-11-390 Effect of threshold determination.
 197-11-400 Purpose of EIS.
 197-11-402 General requirements.
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 197-11-435 Cover letter or memo.
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 197-11-680 Appeals.
 197-11-700 Definitions.
 197-11-702 Act.
 197-11-704 Action.
 197-11-706 Addendum.
 197-11-708 Adoption.
 197-11-710 Affected tribe.
 197-11-712 Affecting.
 197-11-714 Agency.
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 197-11-718 Built environment.
 197-11-720 Categorical exemption.
 197-11-722 Consolidated appeal.
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 197-11-726 Cost-benefit analysis.
 197-11-728 County/city.
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197-11-734 Determination of nonsignificance (DNS).
 197-11-736 Determination of significance (DS).
 197-11-738 EIS.
 197-11-740 Environment.
 197-11-742 Environmental checklist.
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 197-11-746 Environmental review.
 197-11-748 Environmentally sensitive area.
 197-11-750 Expanded scoping.
 197-11-752 Impacts.
 197-11-754 Incorporation by reference.
 197-11-756 Lands covered by water.
 197-11-758 Lead agency.
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 197-11-766 Mitigated DNS.
 197-11-768 Mitigation.
 197-11-770 Natural environment.
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 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.

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- 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
- 197-11-938 Lead agencies for specific proposals.
- 197-11-940 Transfer of lead agency status to a state agency.
- 197-11-942 Agreements on lead agency status.
- 197-11-944 Agreements on division of lead agency duties.
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- 197-11-960 Environmental checklist.
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- 197-11-985 Notice of assumption of lead agency status.
- 197-11-990 Notice of action.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-020, filed 9/5/84.]

WAC 332-41-030 Purpose. This chapter implements the state-wide rules in chapter 197-11 WAC as they apply to the department of natural resources.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-030, filed 9/5/84. Formerly WAC 332-40-020.]

WAC 332-41-040 Additional definitions. In addition to the definitions contained in WAC 197-11-700 through 197-11-799, the following terms shall have the listed meanings:

(1) Assistant area manager means a principal assistant to an area manager with responsibility for either area governmental or proprietary programs.

(2) Area manager means the person responsible for the administration of a geographic field unit, as designated by the organization plan of the department.

(3) Commissioner means the commissioner of public lands who is the administrator of the department of natural resources as established by chapter 43.30 RCW.

(4) Department means the Washington state department of natural resources.

(5) Division means any one of the eleven principal units of the department's headquarters staff administering a program.

(6) Division manager means the person with overall responsibility for the functioning of one of the eleven divisions.

(7) Environmental coordinator means the person who coordinates SEPA compliance procedures for the department.

(8) Public lands mean state forest lands as described in chapter 76.12 RCW, and lands belonging to or held in trust by the state of Washington as described in RCW 79.01.004.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-040, filed 9/5/84. Formerly WAC 332-40-040.]

WAC 332-41-055 Timing of the SEPA process. (1) Distribution to planning commissions and advisory bodies. Environmental documents required to be submitted to the department of ecology under provisions of WAC 332-41-508 will also be submitted to affected planning commissions and similar advisory bodies within the respective time frames as established by these rules and chapter 197-11 WAC.

(2) Timing of review of proposals. Environmental reviews will be made upon receipt of a completed permit application and environmental checklist.

(3) Additional timing considerations.

(a) Department staff receiving a completed permit application and environmental checklist should determine whether DNR or another agency is SEPA lead agency (see WAC 197-11-050 and 197-11-922 through 197-11-940) within five working days. If DNR is not the lead agency, the staff person shall notify the environmental coordinator, who will send the completed environmental checklist, and a copy of the permit application, to the lead agency, and an explanation of the determination to the identified lead agency.

(b) Department staff receiving a permit application will determine whether the proposal is an "action" and, if so, whether it is "categorically exempt" from SEPA. If the proposal is an action and is not exempt, the staff person will ask the applicant to complete an environmental checklist. A checklist is not needed if the department and applicant agree an EIS is required, SEPA compliance has been completed, SEPA compliance has been initiated by another agency, or a checklist is included with the application.

(c) If the department's action is a decision on a permit that requires detailed project plans and specifications, the department shall provide, upon request by the applicant, preliminary environmental review prior to submittal of detailed plans and specifications. This preliminary review will be advisory only and not binding on the department. Final review and determination will be made only upon receipt of detailed project plans and specifications if these are essential to a meaningful environmental analysis.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-055, filed 9/5/84. Formerly WAC 332-40-055.]

WAC 332-41-310 Threshold determination required. (1) A threshold determination is required for any proposal which meets the definition of action and is not categorically exempt.

(2) The responsible official of the department shall make the threshold determination, which shall be made as close as possible to the time an agency has developed or is presented with a proposal (WAC 197-11-784).

(3) In most cases, the time to complete a threshold determination should not exceed fifteen days, except for Class IV - special forest practices, in which case the threshold determination will be made within ten days. Complex proposals, those where additional information is needed, and/or those accompanied by an inaccurate checklist may require additional time. Upon request by

an applicant, the responsible official shall select a date for making the threshold determination and notify the applicant of such date in writing.

(4) All threshold determinations shall be documented in:

(a) A determination of nonsignificance (DNS) (WAC 197-11-340); or

(b) A determination of significance (DS) (WAC 197-11-360).

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-310, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-350 Mitigated DNS. (1) An applicant may ask the department whether issuance of a DS is likely for a proposal. This request for early notice must:

(a) Be written;

(b) Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and

(c) Precede the department's actual threshold determination for the proposal.

(2) The responsible official or designee shall respond to the request within ten working days of receipt of the letter; the response shall:

(a) Be written;

(b) State whether the department is considering issuance of a DS;

(c) Indicate the general or specific area(s) of concern that led the department to consider a DS; and

(d) State that the applicant may change or clarify the proposal to mitigate the impacts indicated in the letter, revising the environmental checklist as necessary to reflect the changes or clarifications.

(3) The department shall not continue with the threshold determination until receiving a written response from the applicant changing or clarifying the proposal or asking that the threshold determination be based on the original proposal.

(4) If the applicant submits a changed or clarified proposal, along with a revised environmental checklist, the department will make its threshold determination based on the changed or clarified proposal.

(a) If the department's response to the request for early notice indicated specific mitigation measures that would remove all probable significant adverse environmental impacts, and the applicant changes or clarifies the proposal to include all of those specific mitigation measures, the department shall issue a determination of nonsignificance and circulate the DNS for comments as in WAC 197-11-350(2).

(b) If the department indicated general or specific areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the department shall determine if the changed or clarified proposal may have a probable significant environmental impact, issuing a DNS or DS as appropriate.

(5) The department may specify mitigation measures that would allow it to issue a DNS without a request for

early notice from an applicant. If it does so, and the applicant changes or clarifies the proposal to include those measures, the department shall issue a DNS and circulate it for review under WAC 197-11-350(2).

(6) When an applicant changes or clarifies the proposal, the clarifications or changes may be included in written attachments to the documents already submitted. If the environmental checklist and supporting documents would be difficult to read and/or understand because of the need to read them in conjunction with the attachment(s), the department may require the applicant to submit a new checklist.

(7) The department may change or clarify features of its own proposals before making the threshold determination.

(8) The department's written response under subsection (2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarification of or changes to a proposal, as opposed to a written request for early notice, shall not bind the department to consider the clarification or changes in its threshold determination.

(9) When an applicant submits a changed or clarified proposal pursuant to this section, it shall be considered part of the applicant's application for a permit or other approval for all purposes, including enforcement of the permit or other approval. Unless the department's decision expressly states otherwise, when a mitigated DNS is issued for a proposal, any decision approving the proposal shall be based on the proposal as changed or clarified pursuant to this section.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-350, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-420 EIS preparation. For draft and final EISs and SEISs:

(1) Preparation of the EIS is the responsibility of the department, by or under the direction of its responsible official, as specified by the department's procedures. No matter who participates in the preparation of the EIS, it is the EIS of the department. The responsible official, prior to distributing an EIS, shall be satisfied that it complies with these rules and chapter 197-11 WAC.

(2) The department may have an EIS prepared by department staff, an applicant or its agent, or by an outside consultant retained by either an applicant or the department. The department shall assure that the EIS is prepared in a professional manner and with appropriate interdisciplinary methodology. The responsible official shall direct the areas of research and examination to be undertaken as a result of the scoping process, as well as the organization of the resulting document.

(3) If a person other than the department is preparing the EIS, the department shall:

(a) Coordinate any scoping procedures so that the individual preparing the EIS receives all substantive information submitted by any agency and the public that is needed by the person;

(b) Assist in obtaining any information on file with another agency that is needed by the person preparing the EIS;

(c) Allow any party preparing an EIS access to all public records of the department that relate to the subject of the EIS, under chapter 42.17 RCW (public disclosure and public records law).

(4) Normally, the department will prepare EISs for its own proposals.

(5) For applicant proposals, the department normally will require the applicant to prepare or help prepare the EIS at the applicant's expense, under provisions of these rules and chapter 197-11 WAC.

(6) The department may require an applicant to provide information that the department does not possess, including specific investigations. The applicant is not required to supply information that is not required under these rules.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-420, filed 9/5/84. Formerly WAC 332-40-420.]

WAC 332-41-504 Availability and costs of environmental documents. (1) SEPA documents required by these rules shall be retained by the department at the SEPA public information center, and made available in accordance with chapter 42.17 RCW.

(2) The department shall make copies of environmental documents available in accordance with chapter 42.17 RCW, charging only those costs allowed plus mailing costs. Allowable costs for environmental documents may be indicated in the documents and made payable to the department. However, no charge shall be levied for circulation of documents to other agencies as required by these rules. If requested, the department will normally waive the charge for an environmental document provided to a public interest organization.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-504, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-508 Notice of environmental documents. (1) The department shall submit environmental documents required to be sent to the department of ecology for weekly publication in the SEPA register under these rules, specifically:

- (a) DNSs under WAC 197-11-340(2);
- (b) DSs (scoping notices) under WAC 197-11-408;
- (c) EISs under WAC 197-11-455, 197-11-460, 197-11-620, and 197-11-630; and
- (d) Notices of action under RCW 43.21C.080 and 43.21C.087.

(2) The department shall submit the environmental documents listed in subsection (1) of this section promptly and in accordance with procedures established by the department of ecology.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-508, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-510 Public notice requirements. (1) The department shall give public notice when issuing a

DNS under WAC 197-11-340(2), a mitigated DNS under WAC 332-41-350, a scoping notice under WAC 332-41-360, or a draft EIS under WAC 197-11-455.

(2) Whenever possible, the department shall integrate the public notice required under this section (WAC 197-11-340, 197-11-360, 197-11-455, 197-11-502, and 197-11-535) with existing notice procedures for the department's permit or approval required for the proposal.

(3) The department shall use one or more of the following reasonable methods of public notice, taking into consideration the geographic area affected by the proposal, the size and complexity of the proposal, the public notice requirements for the permit or approval required from the department, public interest expressed in the proposal, and whether the proposal is a project or regulation:

(a) Notifying persons or groups who have expressed interest in the proposal, that type of proposal, or proposals in the geographic area in which the proposal will be implemented if approved;

(b) Publication in a newspaper of general circulation in the area in which the proposal will be implemented; and/or

(c) Posting the property.

(4) The department may require an applicant to perform the public notice requirement at his or her expense.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-510, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-665 Policies and procedures for conditioning or denying permits or other approvals. (1) Policies - specific. The department adopts the following SEPA policies:

(a) Geothermal resources. The department recognizes the need to protect the public from geothermal drilling effects such as the contamination of the ground water, the surface water, the possibility of a blowout, fire hazards, drilling fluids, and surface disturbance. The department may, when necessary, condition the following actions to mitigate specific adverse environmental impacts:

- (i) Location of the well;
- (ii) Casing program;
- (iii) Makeup of drilling fluids.

(b) Surface mining. To provide that the usefulness, productivity, and scenic values of all lands and waters involved in surface mining within the state will receive the greatest practical degree of protection and restoration, the following aspects of surface mining may be conditioned:

(i) Proposed practices to protect adjacent surface resources;

(ii) Specifications for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and proposed method of accomplishment;

(iii) Matter and type of revegetation or other surface treatment of disturbed areas;

(iv) Method of prevention or elimination of conditions that will create a public nuisance, endanger public

safety, damage property, or be hazardous to vegetative, animal, fish, or human life in or adjacent to the area;

(v) Method of control of contaminants and disposal of surface mining refuse;

(vi) Method of diverting surface waters around the disturbed areas;

(vii) Method of restoration of stream channels and stream banks to a condition minimizing erosion and siltation and other pollution.

(c) Upland right of way grants. Recognizing that construction and/or reconstruction under upland right of way grants can create adverse impacts to the elements of the environment, it is the policy of the department to condition grants where necessary:

(i) To protect all surface resources including but not limited to soil and water, through authorized right of way operations on public lands, and to cause rehabilitation or reestablishment on a continuing basis the vegetative cover, soil stability and water condition appropriate to intended subsequent use of the area;

(ii) To meet air quality standards; and

(iii) To protect recreational and special use areas under lease by requiring mitigating action.

(d) Marine lands. In managing state-owned aquatic lands, the department shall consider the natural values of state-owned aquatic land such as wildlife habitat, natural area preserves, representative ecosystems, or spawning area prior to issuing any initial lease or authorizing any change in use. The department may withhold from leasing lands which it finds to have significant natural values or may provide within any lease for the protection of such values.

(e) Public lands leases and contracts. Under authority granted by chapters 76.12, 79.01, 79.08, 79.12, 79.14, and 79.28 RCW, the department has authority to set terms and conditions in granting a lease or contract as long as such terms and conditions are not inconsistent with state law. For public lands, the department may condition or withhold a lease or contract where significant adverse environmental impacts associated with a lease proposal or contract proposal will occur.

(f) Timber sales. Department policies for the sale of timber from public lands are found in the Forest Land Management Program, 1984-1993.

(g) Forest practices. A Class IV-Special forest practice approval will be conditioned when necessary to mitigate specific adverse impacts which are identified in the environmental documents prepared under SEPA. An application for a Class IV-Special forest practice will be denied when the proposal would result in significant adverse impacts identified in a final or supplemental environmental impact statement prepared under SEPA, and reasonable mitigation measures are insufficient to mitigate the identified impacts and denial is consistent with chapters 43.21C and 76.09 RCW and chapter 197-11 WAC.

(h) Fire control.

(i) Burning permits. The department may condition or deny the issuance of a burning permit for the protection of life, property, or air quality standards.

(ii) Dumping permits. The department may condition or deny the issuance of a dumping permit for the protection of forest lands from fire.

(2) Policies - general. The policies set out in subsection (1) of this section do not anticipate all situations which may result in placing conditions on a permit or denial of a proposal, following environmental review. The department therefore adopts the policies set forth in the State Environmental Policy Act, RCW 43.21C.020, as further basis for conditioning or denying a public or private proposal under SEPA. Those policies are to:

(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 esthetically 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) Decisions to condition or deny.

(a) When the environmental document for a proposal shows it will cause adverse impacts that the proponent does not plan to mitigate the decision maker shall consider whether:

(i) The environmental document identifies mitigation measures that are reasonable and capable of being accomplished;

(ii) Other local, state, or federal requirements and enforcement would mitigate the significant adverse environmental impacts; and

(iii) Reasonable mitigation measures are sufficient to mitigate the adverse impacts.

(b) The decision maker may:

(i) Condition the approval for a proposal if mitigation measures are reasonable and capable of being accomplished and the proposal, without such mitigation measures, is inconsistent with the policies in subsections (1) and (2) of this section;

(ii) Deny the permit or approval for a proposal if reasonable mitigation measures are insufficient to mitigate significant adverse environmental impacts and the proposal is inconsistent with the policies in subsections (1) and (2) of this section.

(iii) The procedures in WAC 197-11-660 must be followed when conditioning or denying permits or other approvals.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-665, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-833 Timber sales categories. (1) Under the provisions of WAC 197-11-830(7) the department may determine which decisions to sell timber from public lands do not have potential for significant impact on the environment. Such decisions are categorically exempt from the threshold determination and EIS requirements of SEPA under WAC 197-11-830(7). This determination applies only to public lands.

(2) The department determines that such decisions to sell timber from public lands do not have potential for a significant impact on the environment if they are sales appraised by the department at an amount not exceeding the amount specified in RCW 79.01.200 as the upper limit for sale under terms and conditions prescribed by the department, and if such sales, other than thinning or salvage sales, do not involve harvest units larger than twenty acres. These sales are small sales not requiring approval by the board of natural resources and have low volume and low acreage. The department has not extended this determination to sales requiring approval by the board because of the public values associated with public lands. However, this determination is not intended to alter the department's SEPA compliance responsibility for regulatory decisions concerning forest practice applications for state and private lands under RCW 76.09.050 and WAC 222-16-050.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-833, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-910 Designation of responsible official. The responsible official for a specific proposal shall be a division manager or designated area manager or assistant area manager. The responsible official for the harbor line commission shall be the manager of the marine land management division.

(1) Each division manager or designee shall review the environmental checklists under the division's authority and determine if the department is the lead agency. When the department is not the lead agency, the environmental checklists shall be forwarded to the environmental coordinator for processing under procedures set forth in WAC 197-11-924.

(2) When the department is the lead agency, the responsible division manager or designee will review the environmental checklists and make the threshold determinations under the provisions of WAC 197-11-330.

(3) The division manager or designee shall carry out further SEPA compliance under WAC 197-11-340, 197-11-350, or 197-11-360, as appropriate.

(4) When an environmental impact statement is required based on the threshold determination, scoping and EIS preparation under chapter 197-11 WAC shall begin under direction of the responsible official.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-910, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-920 Agencies with environmental expertise. In addition to those agencies listed under WAC 197-11-920(7), the oil and gas conservation committee

shall be regarded as possessing special expertise relating to oil and gas.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-920, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-950 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-950, filed 9/5/84. Formerly chapter 332-40 WAC.]

Chapter 332-44 WAC STRAY LOGS

WAC

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332-44-020	Log patrol—Activity in Everett harbor.
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332-44-050	Closed portion of Everett harbor—Licensed log patrolmen—Duties.
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332-44-070	Closed portion of Everett harbor—Violations—Penalty.
332-44-080	Closed portion of Everett harbor—Supersession of prior agreements.
332-44-090	Severability.

WAC 332-44-010 Stray logs—Possession marks.

(1) It is the purpose of this resolution to provide licensed log patrolmen with a means whereby they can mark stray logs that they have recovered under the provisions of chapter 76.40 RCW, so that identification of their recovery may be made in the event of theft or the commingling with stray logs recovered by other licensed log patrolmen. It is also the purpose of this resolution to provide protection to log owners by establishing a new method of marking the stray logs to indicate recovery rights. This will permit enforcement of RCW 76.36.090, regarding the proper usage of catch brands, and prevent catch brands from being used for the purpose of identifying possession, when, in fact, no change of ownership has occurred or is intended.

(2) Definitions:

(a) "Waters of this state" means the same as defined in RCW 76.40.010(5).

(b) "Log patrol" means the same as defined in RCW 76.40.010(1).

(c) "Stray logs" means the same as defined in RCW 76.40.010(2).

(d) "Possession mark" means an identifying mark registered and assigned to licensed log patrolmen to be impressed upon stray logs recovered by that log patrolman.

(3) Every log patrolman who recovers or puts into any of the waters of this state any stray logs may have a possession mark, previously registered in the manner

hereinafter provided, plainly impressed or cut in a conspicuous place on each stray log so recovered or put into any of such waters.

(4) A separate and exclusive possession mark shall be established, assigned and registered to each existing log patrolman within a reasonable time after the passage of this resolution. Newly licensed log patrolmen shall be assigned a possession mark, and registered, upon the issuance of their license. There shall be no fees for the registration of these possession marks.

(5) The possession mark shall be registered by the supervisor, of the department of natural resources, or his deputy, in a segregated portion of the "forest products brand register" provided for in RCW 76.36.030 entitled "Log patrolman marks," by entering therein the name of the owner, character of the mark, date of registration, and such other details as he may see fit to enter therein.

(6) Every log patrolman wishing to use a possession mark may be informed of the character of the mark assigned and registered to him upon application to the office of the Law Enforcement and Log Patrol Section of the Department of Natural Resources, P.O. Box 168, Olympia, Washington.

(7) No possession marks registered under this resolution shall be assignable, and shall be considered to be attached to and a part of the log patrol license as issued under RCW 76.40.030.

(8) All stray logs having impressed thereon a registered possession mark shall be presumed to have been recovered by the log patrol appearing in the possession mark registry. A possession mark shall not indicate or be presumed to indicate ownership of the stray log. The possession mark shall not be necessary when the stray log is, in fact, owned by the log patrolman, or has been conveyed to him as indicated by the proper usage of a catch brand.

[Resolution No. 1, filed 1/27/65.]

WAC 332-44-020 Log patrol—Activity in Everett harbor. Pursuant to the provisions of chapter 76.40 RCW that portion of Everett harbor, Snohomish County, Washington, which is more particularly described in WAC 308-44-030, below, is, except as herein provided, closed to activities of the log patrol.

[Docket 255, § 1, filed 10/28/66.]

WAC 332-44-030 Closed portion of Everett harbor. That portion of Everett harbor closed to activities of the log patrol is described as follows:

Those parts of Townships 29 and 30 North, Range 5 East, W.M., lying easterly of a line beginning at the Stone House on Priest Point, running thence southeasterly to that point on the north end of the jetty known as the Hole in the Wall, thence southerly along the jetty to the south end thereof, thence southwesterly to the south bank of Pigeon Creek at the point it enters Everett harbor, being the point of termination of this line description.

[Docket 255, § 2, filed 10/28/66.]

[Title 332 WAC—p 106]

WAC 332-44-040 Closed portion of Everett harbor—Exception. Nothing herein shall preclude use by the log patrol of log storage areas now, or hereafter approved by the department of natural resources and which are easterly of the line described in WAC 332-44-030, above, in connection with the otherwise lawful activities of the log patrol.

[Docket 255, § 3, filed 10/28/66.]

WAC 332-44-050 Closed portion of Everett harbor—Licensed log patrolmen—Duties. Upon request to a licensed log patrolman by the United States Coast Guard Station, Everett, by the office of the Snohomish County sheriff, or by the department of natural resources, said log patrolman shall enter the closed area and remove therefrom such log or logs as have been referred to him by one of the above agencies as being a danger to property or a hazard to navigation. Licensed log patrolmen shall respond and enter the closed area only at the request of one of the above agencies. A list of currently licensed log patrolmen operating in the Everett area will be furnished, from time to time, to the United States Coast Guard Station, Everett, and to the office of the Snohomish County sheriff by the department of natural resources. Each agency will keep a record of all references to licensed log patrolmen concerning the removal of logs from the closed area in Everett harbor.

[Docket 255, § 4, filed 10/28/66.]

WAC 332-44-060 Closed portion of Everett harbor—Opening closed area—Notice. When in the judgment of the department of natural resources such quantity of stray logs has accumulated within a closed area of Everett harbor as to justify or require the removal thereof, the closed area will be opened to the activities of the log patrol for such period as is considered necessary to remove the stray logs. Notice of such opening, and the period thereof shall be given by mail to each licensed log patrolman operating in the Everett harbor and by mailing to such others as request such notice.

[Docket 255, § 5, filed 10/28/66.]

WAC 332-44-070 Closed portion of Everett harbor—Violations—Penalty. Any violation in the provisions of WAC 332-44-020 through 332-44-090 shall be punishable as a misdemeanor and may, in addition, constitute grounds for the suspension or revocation of the license of a log patrolman.

[Docket 255, § 6, filed 10/28/66.]

WAC 332-44-080 Closed portion of Everett harbor—Supersession of prior agreements. This WAC 332-44-020 through 332-44-090 supersedes any prior agreement concerning log patrol activities in the Everett harbor.

[Docket 255, § 7, filed 10/28/66.]

WAC 332-44-090 Severability. If any section or provision of WAC 332-44-020 through 332-44-090 is

held to be, for any reason, ineffectual or unconstitutional, such holding shall not affect the validity or enforceability of the remainder.

[Docket 255, § 8, filed 10/28/66.]

Chapter 332-48 WAC
FIRE AND GAME DAMAGE

WAC

332-48-010 Electrical fence controllers.
332-48-020 Unauthorized use of Colockum airstrip.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-48-050 Fire rules. [Resolution 21, filed 6/6/61.] Repealed by Order 256, filed 5/13/76. Later promulgation, see WAC 332-24-061.

WAC 332-48-010 Electrical fence controllers. (1) **Purpose.** The purpose of this resolution is to protect the health and safety of the people of Washington from the danger of electrically caused fires, and to protect property situated in Washington from the hazards of electrically caused fires.

(2) Definitions.

(a) "Persons" include individuals, corporations, associations, firms, partnerships, joint stock companies, municipal corporations, state agencies, and any political subdivision thereof.

(b) "Electrical fence controller" includes any controller, equipment, appliance, device, or apparatus used as an electrical fence, controller, energizer, or pulsator which uses or conveys an electrical current.

(c) "Certified electrical fence controller" means an electrical fence controller listed in the published list of Underwriters Laboratories entitled "Electrical Appliance and Utilization Equipment List," dated May, 1963, and the supplements thereto, as an approved electrical product, and which has not been decertified.

(d) "Uncertified electrical fence controller" includes all electrical fence controllers which are not listed in the Underwriters Laboratories Electrical Appliance and Utilization Equipment List dated May, 1963, and the supplements thereto.

(e) "Forest land" means any land which has enough slashing, chopping, woodland, brushland, timber, standing or down, grass and sagebrush when adjacent to or intermingled with areas supporting tree growth, or other inflammable material to constitute a fire menace to life or property.

(f) "Label" means a card furnished by the department of natural resources to all those parties dealing with the sale or other transfers of electrical fence controllers, indicating to all interested persons that the usage of such fence controllers is limited. The form of such labels shall be substantially as follows:

NOTICE

This fence controller is not approved by Underwriters Laboratories as free from fire hazard. It is unlawful to use this fence controller on forest land or land over which fire may spread to forest land at any time other than the months of November, December, January, February, and March.

(3) **Underwriters Laboratories, Inc., as Standard.** On or before the 2nd day of June, 1964, the division of fire control, department of natural resources, shall obtain an authentic copy of the Underwriters Laboratories Electrical Appliance and Utilization and Equipment List, May, 1963, and supplements thereto, and shall annually thereafter obtain new sets of such lists. These lists shall be kept on file in the office of the division of fire control, department of natural resources.

(4) Regulations.

(a) No person shall use or energize any uncertified electrical fence controller on any forest land in the state of Washington except during the months of November, December, January, February, and March; *Provided*, That this section shall not be construed to mean that the person may not have, establish, install, or erect such an uncertified electrical fence controller which does not contain a current of electricity during the prohibited months.

(b) No person shall sell, offer for sale, or dispose of by gift or otherwise to any consumer or user in the state of Washington, any uncertified electrical fence controller that is not labeled. It is the responsibility of those persons selling or otherwise disposing of these fences to attach the label. Labels shall be issued upon request and without charge by the Division of Fire Control, Department of Natural Resources, P.O. Box 110, Olympia, Washington, to those persons responsible for their attachment.

(c) Certified electrical fence controllers may be maintained, used, sold, offered for sale, disposed of by gift or otherwise under this resolution without restriction.

(5) Administration.

(a) The department of natural resources, division of fire control, shall inspect all electrical fence controllers for which a label is required by subsection (4)(b) above. The division of fire control shall also inspect the installation to which such fence controllers are being used for violation of subsection (4) above. The responsibility of presenting sufficient evidence of certification such as the Underwriters Laboratories label, brand name, model number, etc., for these inspections, shall be upon the user.

(b) Failure to present sufficient evidence of certification such as Underwriters Laboratories label, brand name, model number, etc., at an inspection of the usage of electrical fence controllers during the months prohibited by subsection (4) above shall be prima facie evidence of noncompliance with the provisions of this resolution.

(6) **Violations.** Any person who wilfully violates these rules and regulations made by the board of natural resources shall by authority of RCW 76.04.120 be guilty of a misdemeanor.

[Resolution No. 54, filed 6/3/64.]

WAC 332-48-020 Unauthorized use of Colockum airstrip. (1) The Colockum airstrip located in Section 15, Township 20 North, Range 20 East, W.M., is necessary to the public welfare for the use in forest protection and game management.

(2) Unauthorized usage of the airstrip is detrimental to the game of that area and increases the risks of forest fires. The unauthorized usage of this airstrip by persons in their private, sporting, or recreational activities is hereby prohibited. Vehicular traffic is also prohibited except upon the extreme west edge of the airstrip. Any person knowingly violating this regulation, except in the case of airborne emergency, shall by authority of RCW 76.04.120, be guilty of a misdemeanor.

[Resolution No. 44, filed 11/5/63.]

Chapter 332-52 WAC

MANAGED LANDS AND ROADS--USE OF

WAC

332-52-010	Definitions.
332-52-020	Applicability and scope.
332-52-030	General rules.
332-52-040	Public behavior—Recreation sites.
332-52-050	Vehicles.
332-52-055	Capital forest—Organized events—Prohibited without prior written approval.
332-52-060	Use of fire.
332-52-065	Milwaukee Railroad right of way—Recreational use.
332-52-066	Milwaukee Railroad right of way—Permits.
332-52-067	Milwaukee Railroad right of way—Restrictions on use.
332-52-068	Milwaukee Railroad right of way—Protection of adjoining property.
332-52-069	Milwaukee Railroad right of way—Penalties.
332-52-070	Penalties.
332-52-080	Enforcement.
332-52-090	Effective dates.

WAC 332-52-010 Definitions. The following definitions shall apply to all of the listed regulations[:] [.]

(1) The term "developed recreation sites" means all improved observation, swimming, boating, camping and picnic sites.

(2) The term "camping equipment" includes tent or vehicle used to accommodate the camper, the vehicles used for transport, and the associated camping paraphernalia.

(3) The term "department" shall mean the department of natural resources.

(4) The term "vehicle" shall mean any motorized device capable of being moved upon a road and in, upon, or by which any persons or property is or may be transported or drawn upon a road. It shall include, but not be limited to automobiles, trucks, motorcycles, motor bikes, motor-scooters and snowmobiles, whether or not they can legally be operated on the public highways.

[Title 332 WAC—p 108]

(5) The term "organized event" shall mean any event involving more than fifty participants which is advertised in advance, sponsored by any recognized club(s), and conducted at a predetermined time and place.

(6) The term "corridor" shall mean that portion of the Milwaukee Railroad right of way under the jurisdiction of the department of natural resources.

[Statutory Authority: RCW 79.08.277 and 79.08.279, 84-21-038 (Order 435), § 332-52-010, filed 10/11/84. Statutory Authority: RCW 46.09.180 and chapter 77.68 RCW, 79-06-039 (Order 313), § 332-52-010, filed 5/18/79; Order 29, § 332-52-010, filed 4/17/70, effective 5/20/70.]

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 332-52-020 Applicability and scope. The following public use rules are aimed at protecting recreational, economic and industrial activities on land and roads under the jurisdiction of the department of natural resources of the state of Washington. These rules are designed to allow Washington's trust lands to fulfill their historic roles of revenue production. The rules cover public use activities on developed recreation sites and all other lands under the jurisdiction of the department of natural resources. They cover the public use of roads and trails under the jurisdiction of the department of natural resources and the recreational use of fire. These public use rules are not applicable to persons, or their assignees or representatives, engaged in industrial harvest, commercial leases or agriculture or grazing activities carried on under sale, lease or permit from the department on lands under its jurisdiction if such application is incompatible with state contracts or agreements. Nor shall these rules, except the provisions of WAC 332-52-060, apply on lands under [the] department's jurisdiction that are withdrawn or leased by a public agency having rules governing public use on the lands withdrawn or leased, provided that these rules may apply upon request of the applicable public agency. Public notices of these rules shall be posted by the department of natural resources in such locations as will reasonably bring them to the attention of the public. The department will also set forth conditions with respect to any areas on which special restrictions are imposed and post in same manner. A copy of the rules shall be made available to the public in the office of the commissioner of public lands, Olympia, and in area offices.

[Statutory Authority: RCW 79.08.277 and 79.08.279, 84-21-038 (Order 435), § 332-52-020, filed 10/11/84; Order 29, § 332-52-020, filed 4/17/70, effective 5/20/70.]

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 332-52-030 General rules. The following acts or omissions are prohibited on any lands under the jurisdiction of the department of natural resources:

(1) Sanitation

(a) Disposal of all garbage, including paper, cans, bottles, waste materials and rubbish except by removal from the area, or disposal at designated disposal areas.

(b) Draining or dumping refuse or waste from any trailer, car or other vehicle except in designated disposal areas.

(c) Cleaning fish or food, or washing clothing or articles for household use in any drinking water source.

(d) Polluting or contaminating water through failure to use due and reasonable care with regard to activities involving lakes, streams or other sources of water.

(e) Depositing, except into receptacles provided for that purpose, any body waste in or on any portion of any comfort station or any public structure, or upon the ground, or depositing any bottles, cans, cloths, rags, metal, wood, stone or any other damaging substance in any of the fixtures in such stations or structures.

(f) Using refuse containers or other refuse facilities for dumping household or commercial garbage or trash brought as such from private property.

(2) Public behavior

(a) Inciting or participating in riots, or indulging in abusive, threatening or indecent conduct or indulging in conduct that destroys the normal recreational experience of other users. Persons violating this rule may be evicted from lands under the jurisdiction of the department of natural resources.

(b) Destroying, injuring, defacing, removing or disturbing in any manner any public building, sign, equipment, marker or other structure or property.

(c) Selling or offering for sale any merchandise without the written consent of the department of natural resources.

(d) Posting, placing or erecting any bills, notices, papers or advertising devices or matter of any kind without the written consent of the department of natural resources.

(e) Erecting or using unauthorized buildings. Persons violating this rule may be evicted from lands under the jurisdiction of the department of natural resources.

(f) Exploding or igniting firecrackers, rockets or fireworks of any kind.

(3) Audible devices

(a) Operating or using any audible devices, including radio, television and musical instruments and other noise producing devices, such as electrical generating plants and equipment driven by motors or engines, in such a manner and at such times so as to unreasonably disturb other persons.

(b) Operating or using portable public address system, whether fixed, portable, or vehicle mounted, except when such use or operation has been approved by the department in writing.

(4) Vehicles and road use

It is the policy of the department of natural resources to encourage public use of all roads and trails, land and water under its jurisdiction consistent with its trust responsibilities, conservation of soil and water, timber and grass and the natural environment, while maintaining a

reasonable balance between the proper needs of conflicting user groups. Therefore, the following rules shall pertain to all lands under the jurisdiction of the department of natural resources and to all access roads across private lands through which the department has obtained the right of public use. Rules and regulations bearing upon recreational access to department managed lands and roads may be waived (in writing) by the department for special situations provided that the events are consistent with the above department policy.

(a) Vehicles may travel over all roads adequate for conventional 2-wheel drive passenger automobiles unless posted against such use.

(b) Roads, abandoned railway grades, skid roads, and similar routes inadequate for conventional 2-wheel drive automobiles and all trails are closed to vehicular use unless designated or posted as open for such use.

(c) Vehicular travel off-road or off-trails is prohibited except in areas designated or posted by the department as open for vehicular travel.

(d) Snowmobiles may travel over roads and trails on department managed lands except where posted against such use.

(e) Snowmobiles are prohibited from off-roads and off-trails travel except in areas designated or posted as open by the department.

(f) All regulations having to do with safety, noise abatement, speed and fire precautions which apply to other motorized vehicles in developed recreation sites or on other lands managed by the department shall apply to snowmobiles provided that: One headlight in working order shall be deemed sufficient lighting system for snowmobiles.

(g) Operating a motor vehicle at any time without a muffler in good working order or operating a vehicle in such a manner as to create excessive or unusual noise or annoying smoke or using a muffler, cutoff, bypass or similar device or operating a motor vehicle with an exhaust system that has been modified so that the noise emitted by the engine of such vehicle is amplified or increased above that emitted by the muffler originally equipped on the vehicle is prohibited.

(h) Every motor vehicle during the "closed season" as defined in RCW 76.04.252 shall be equipped with a spark arresting muffler approved by the supervisor of the department of natural resources whenever such vehicle shall traverse over any state lands other than on roads from which the inflammable vegetation has been cleared of sufficient width to pass a four-wheel vehicle and such road is surfaced with a noninflammable material.

(i) Driving in a careless or negligent manner or driving while under the influence of intoxicating liquors or under the influence of narcotic or hallucinogenic drugs is prohibited.

(j) Headlights must be turned on whenever the visibility is reduced to 200 feet or less due to darkness, dust, smoke, fog or other weather or atmospheric conditions.

(k) Speed limits—The driver shall operate his vehicle at a safe speed at all times and not in excess of any posted speed.

(l) Right-of-way—The driver of any vehicle, other than an emergency vehicle, shall yield the right of way to log hauling or gravel trucks, except as otherwise provided:

(i) The driver of a vehicle approaching an intersection, not otherwise posted, shall look out for and yield the right of way to any vehicle on his right simultaneously approaching the intersection regardless of which vehicle first reaches and enters the intersection.

(ii) The driver of a vehicle intending to turn to the left shall yield the right of way to any vehicle approaching from the opposite direction.

(iii) The driver of a vehicle shall yield the right of way to animal-drawn vehicles and persons riding animals and shall make reasonable effort to avoid frightening or startling such animals.

(m) Following—A vehicle whose driver does not intend to pass shall not follow another vehicle closer than 150 feet provided that vehicles driven by a single organized group may follow one another at a lesser but reasonable following distance.

(n) Pedestrians' rights and duties—Every driver of a vehicle shall yield the right of way to pedestrians. Pedestrians should clear traffic lanes as soon as practicable.

(o) Animals—Every person in control of an animal or animal-drawn vehicle shall remove same from the roads to allow vehicles to pass as soon as practicable.

Whenever the driver of a vehicle encounters a herd of livestock which is in control of any person, he shall not move through the herd until directed to do so by the person in control of the herd. The person in charge of the herd shall remove the herd from the road or trail as soon as possible.

(p) Drive to avoid damage—No person shall operate any vehicle in such a way as to cause damage to the roads, bridges, cattleguards, gates or other structures or appurtenances which form a part of the road.

(q) Parking—No person shall stop, part or leave standing any vehicle or obstacle upon the main-traveled part of the road; any vehicles otherwise parked must leave sufficient room for the passage of at least normal traffic, provided, that this does not apply to the driver of: (i) A disabled vehicle, (ii) an emergency vehicle, (iii) a fire vehicle.

(r) Engine noise—Excessively accelerating the engine of any type of vehicle when such vehicle is not moving or is starting from a stopping place is prohibited.

[Order 29, § 332-52-030, filed 4/17/70, effective 5/20/70.]

WAC 332-52-040 Public behavior—Recreation sites. The following acts or omissions are further prohibited at department of natural resources developed recreation sites:

(1) Destroying, defacing or removing any natural feature or vegetation.

(2) Discharging firearms. No person shall discharge across, in, or into any portion of the developed recreation site a firearm, bow and arrow, or air or gas device or any device capable of injuring or killing any animal or person or damaging or destroying any public or private

property except where the department has authorized otherwise.

(3) Occupying a site for other than primarily recreational purposes.

(4) Entering or using a site or a portion of a site posted closed to public use.

Notices establishing closure shall be posted in such locations as will reasonably bring them to the attention of the public.

(5) Building a fire outside of stoves, grills, fireplaces or outside of fire rings provided for such purposes.

(6) Camping overnight in places restricted to day use only.

(7) Failure to clean their rubbish from the place occupied by the person or persons before departure.

(8) Pitching tents or parking trailers or other camping equipment except in places provided for such purposes.

(9) Camping within a campground for a longer period of time than that established by the department of natural resources. Notices establishing limitations on the period of time persons may camp within a campground shall be posted in such locations as will reasonably bring them to the attention of the public. There may be different time limits in the various recreation sites depending upon conditions, time of the year, or available facilities.

(10) Failing to maintain quiet in campground between the hours of 10 p.m. and 6 a.m. All persons shall maintain reasonable quiet, and adults accompanied by children or pets shall be responsible to insure that children and/or pets maintain a reasonable quiet.

(11) Bringing saddle, pack or draft animals into the site unless it has been developed to accommodate them and is posted accordingly.

(12) Bringing pets or other animals into campground unless under physical restrictive control at all times.

(13) Leaving a camp unit unoccupied during the first night after camping equipment has been set up or leaving unattended camping equipment for more than 24 hours. Such unattended camping equipment which is not removed is subject to removal.

[Order 29, § 332-52-040, filed 4/17/70, effective 5/20/70.]

WAC 332-52-050 Vehicles. The following acts or omissions are further prohibited at department of natural resources developed recreation sites:

(1) Driving or parking any vehicle or trailer except in places designed for this purpose.

(2) Driving any vehicle at a speed or in a manner likely to endanger any person or property.

(3) Driving bicycles, motorbikes and motorcycles on trails unless such trails are posted for vehicular traffic.

(4) Driving motorbikes, motorcycles, or other motor vehicles on roads in developed recreation sites for any purpose other than access into, or egress out of, the site unless authorized and posted by the department of natural resources.

[Order 29, § 332-52-050, filed 4/17/70, effective 5/20/70.]

WAC 332-52-055 Capital forest—Organized events—Prohibited without prior written approval. (1)

Organized events are prohibited in the capital forest without the prior written approval of the department. Any group or organization desiring to utilize department lands or recreational facilities within the capital forest for an organized event shall make written request at least thirty days in advance of such event to the department's central area office in Chehalis on a form designated by the department for this purpose.

(2) All requests for an organized event in the capital forest shall include the following information:

- (a) The name of the group;
- (b) The name, address, and telephone number of the designated group representative;
- (c) A general description of the organized event;
- (d) The location and description of the land and facilities to be used;
- (e) The date and time of the organized event;
- (f) A legible map clearly delineating the facility and routes to be used and the direction of travel;
- (g) The kind of markers, if any, to be used.

(3) The department's central area office shall make a determination regarding the organized event within ten calendar days of receiving a written request by approving, disapproving or conditionally approving the same. The department's determination will be based upon the nature of the proposed use, seasonal factors and other environmental conditions, other known uses of affected areas, and other requests for organized events in the affected vicinity. The department's determination on the request shall be in writing and will explain the basis for any disapproval or conditional approval.

(4) The sponsoring group, in carrying out any organized event, shall, unless specifically waived in writing by the department:

- (a) Limit participants to the maximum number specified by the department;
- (b) Identify all route markers with the sponsor's name and the date of the use;
- (c) Post and maintain signs clearly warning participants and others of any hazardous conditions and all road and trail intersections throughout the entire route;
- (d) Post signs to warn nonparticipants of the organized event and the flow of traffic;
- (e) Remove all route markers and posted signs within forty-eight hours after completion of the organized event.

[Statutory Authority: RCW 46.09.180 and chapter 77.68 RCW. 79-06-039 (Order 313), § 332-52-055, filed 5/18/79.]

WAC 332-52-060 Use of fire. Chapter 76.04 RCW and all rules and regulations duly promulgated thereunder apply to recreational fires on lands under the jurisdiction of the department of natural resources other than developed recreation sites. The written permission required under WAC 332-24-080 may be waived for recreational fires by the area manager in designated areas within his jurisdiction.

[Statutory Authority: RCW 79.08.277 and 79.08.279. 84-21-038 (Order 435), § 332-52-060, filed 10/11/84; Order 29, § 332-52-060, filed 4/17/70, effective 5/20/70.]

WAC 332-52-065 Milwaukee Railroad right of way--Recreational use. Motorized vehicles including snowmobiles are prohibited at all times, except for motorized use for authorized administrative purposes or motorized use approved by the department for reasons of health and safety. Through December 31, 1986 the corridor will be open for non-motorized use, by permit only, from April 15 through May 31 and during the month of October. The remainder of the year the corridor will be closed to all recreational use. The department may close portions of the corridor, at any time of the year, to reduce fire danger or protect public safety in consultation with local legislative authorities or fire districts. After December 31, 1986 the department may, if determined necessary to better carry out the purposes of chapter 174, Laws of 1984, adjust the designated periods of the year during which permits will be issued, after first giving public notice and holding at least one public hearing each in eastern and western Washington.

[Statutory Authority: RCW 79.08.277 and 79.08.279. 84-21-038 (Order 435), § 332-52-065, filed 10/11/84.]

WAC 332-52-066 Milwaukee Railroad right of way--Permits. (1) Any individual, group or organization wishing to use the corridor shall make written application at least thirty days in advance of such intended use to the department's southeast area office in Ellensburg on a form designated by the department for this purpose. The department, on request of an applicant, may provide for a shorter period of advance notice for good cause.

(2) Upon request of abutting landowners, the department shall notify the landowners of permits issued for use of the corridor adjacent to their property.

(3) For portions of the corridor where no abutting landowner has requested notification of permits issued and no gates have been constructed by lessees of the corridor, the department may issue permits without advance application to parties of five or fewer individuals, for day use only, confined to such portion of the corridor. In this case, one permit may be issued which covers such use on any number of days within the use period specified in WAC 332-52-065.

(4) All requests for use of the corridor shall include the following information:

- (a) The name and address of the applicant.
- (b) The name, title, address, and telephone number of the group leader.
- (c) A brief description of the planned use of the corridor.
- (d) The size of the group.
- (e) The period of use, including the starting and ending dates.
- (f) The locations of the starting point and destination of the proposed trip.
- (g) The portions of the corridor planned to be covered each day of the proposed trip.
- (h) The mode of travel to be used while on the corridor.
- (i) Whether there is to be overnight use of the corridor and if so the location of the overnight use.

(5) The department's southeast area office shall make a determination regarding the application within ten calendar days of receiving the application, and shall notify the applicant in writing of its determination to approve or disapprove the application. All permits shall include appropriate conditions on use including appropriate indemnity and waiver of liability clauses. The department's determination and the conditions included in the permit will be based on providing for the orderly and safe use of the corridor, the protection of adjoining landowners, the nature of the proposed use, environmental conditions, other known uses, and other requests for use.

(6) The permit will be valid for not more than one trip in each direction over the route identified on the application, except as specified in subsection (3) of this section.

(7) A permit fee will be charged, the amount of the fee to be based on the cost of processing the permit application plus the cost of notifying adjacent landowners under subsection (2) of this section. The permit fee shall be no greater than one hundred dollars and not less than ten dollars. The permit fee for one person using the corridor for fewer than two nights shall be ten dollars. No fee will be charged for use permitted under subsection (3) of this section.

(8) While traveling the corridor, the permit must be in the possession of the permit holder at all times. For groups, the permit holder is the person designated on the application as the group leader, or the group leader's designee. The permit holder is required to show the permit, if requested by an authorized department representative.

[Statutory Authority: RCW 79.08.277 and 79.08.279. 84-21-038 (Order 435), § 332-52-066, filed 10/11/84.]

WAC 332-52-067 Milwaukee Railroad right of way—Restrictions on use. The following acts are prohibited on the corridor:

(1) Sanitation

(a) Disposal of all garbage or refuse of any kind whatsoever.

(b) Depositing any human waste in a manner which could cause pollution of any surface or ground water or threat to human health. No human waste shall be deposited within one-quarter mile of any building, water source, lake, pond, or stream whether running or dry. In all other cases human waste shall be buried. Permit conditions for groups may include a requirement to remove human waste from the corridor.

(2) Public behavior

(a) Destroying, injuring, defacing, removing, or disturbing in any manner any public or private building, sign, equipment, marker or other structure or property.

(b) Erecting unauthorized shelters, entering any structure without permission, or camping in locations not designated on the permit.

(c) Destroying, defacing, or removing any natural feature or vegetation or the surface of the corridor.

(d) Hunting or discharging of firearms, or having in possession shotguns or rifles. Other firearms will be unloaded and stored. No person shall discharge on any portion of the corridor a firearm, bow and arrow, or air or gas device or any device capable of injuring or killing any animal or person or damaging or destroying any public or private property. However, the department may allow hunting on portions of the corridor leased by or covered by an agreement with another public agency which owns or controls adjoining property.

(e) Exploding or igniting firecrackers, rockets or fireworks of any kind.

(f) Operating or using any audible devices, including radio, television, and musical instrument and other noise producing devices, such as electrical generating plants and equipment driven by motors or engines, in such a manner and at such times so as to unreasonably disturb other persons.

(g) Operating or using portable public address system, whether fixed or portable.

(h) Building of open fires, without a written burning permit from the department.

(i) Having animals on the corridor which are not under physical restrictive control at all times.

[Statutory Authority: RCW 79.08.277 and 79.08.279. 84-21-038 (Order 435), § 332-52-067, filed 10/11/84.]

WAC 332-52-068 Milwaukee Railroad right of way—Protection of adjoining property. The following acts are prohibited:

(1) Entering onto adjoining property from the corridor by any person or animal.

(2) Destroying, injuring, defacing, removing, or disturbing in any manner any public or private building, sign, equipment, marker, or other structure or property on adjoining property.

(3) Discharging of firearms. No person shall discharge at or onto any adjoining property a firearm, bow and arrow, or air or gas device or any device capable of injuring or killing any animal or person or damaging or destroying any public or private property.

(4) Leaving gates in a condition other than the condition in which they are found.

[Statutory Authority: RCW 79.08.277 and 79.08.279. 84-21-038 (Order 435), § 332-52-068, filed 10/11/84.]

WAC 332-52-069 Milwaukee Railroad right of way—Penalties. Any violations of WAC 332-52-065 through 332-52-068, chapter 174, Laws of 1984 or the terms or conditions of the permit shall subject the permittee to the revocation of the permit and the penalties under WAC 332-52-070.

[Statutory Authority: RCW 79.08.277 and 79.08.279. 84-21-038 (Order 435), § 332-52-069, filed 10/11/84.]

WAC 332-52-070 Penalties. Failure to comply with any of the rules set forth in the preceding sections subjects the party or parties to the penalties provided by chapter 160, Laws of 1969 ex. sess., and the loss of access to and exercise of privileges on state-owned lands

under the jurisdiction of the department of natural resources for such period of time as the duly authorized representative of the department of natural resources determines.

[Order 29, § 332-52-070, filed 4/17/70, effective 5/20/70.]

WAC 332-52-080 Enforcement. These rules and regulations will be enforced by the commissioner of public lands and such of his employees as he may designate.

(1) Provisions of the above rules and regulations may be waived by written permission by the department of natural resources except for those activities controlled by statute or ordinance. Waivers may be granted when they are determined by the department to be in the best public interest and will result in minimal damage to department managed land or resources.

(2) No rule or regulation adopted for the public use of the department of natural resources managed lands and roads shall interfere with operations conducted for the purpose of the saving of life or property when such operations are directed by the proper authority.

(3) All rules and regulations listed above are adopted by the department of natural resources pursuant to chapter 43.30 RCW.

[Order 29, § 332-52-080, filed 4/17/70, effective 5/20/70.]

WAC 332-52-090 Effective dates. These rules and regulations shall become effective upon the expiration of thirty days after said rules and regulations are filed with the code reviser, except WAC 332-52-030 (4)(a), (b), (c), (d), and (e), which shall become effective August 1, 1970.

[Order 29, § 332-52-090, filed 4/17/70, effective 5/20/70.]

Chapter 332-60 WAC

NATURAL AREAS--NATURAL AREA PRESERVES

WAC

- 332-60-010 Authority.
- 332-60-020 Purpose.
- 332-60-030 Invalidation of part of chapter not to affect remainder.
- 332-60-040 Cooperation with government agencies or private entities.
- 332-60-050 Definitions.

NATURAL AREAS--REGISTRATION

- 332-60-060 Site criteria for registration.
- 332-60-070 Procedures for registration of natural areas.
- 332-60-080 Removal of a natural area from the register.

NATURAL AREA PRESERVE--DEDICATION

- 332-60-090 Natural area preserve by instrument of dedication.
- 332-60-100 Instrument of dedication--Form.
- 332-60-110 Instrument of dedication--Interest conveyed.
- 332-60-120 Effective date of dedication.
- 332-60-130 Termination of dedication.

NATURAL AREA PRESERVE--COOPERATIVE AGREEMENT

- 332-60-140 Natural area preserve by cooperative agreement.
- 332-60-150 Cooperative agreement.
- 332-60-160 Termination of natural area preserve by cooperative agreement.

WAC 332-60-010 Authority. This chapter is promulgated pursuant to the authority granted in RCW 79.70.030 and 79.70.090.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-010, filed 12/7/83.]

WAC 332-60-020 Purpose. The purpose of this chapter is to establish rules for implementing a statewide system of registration of natural areas and creation of natural area preserves.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-020, filed 12/7/83.]

WAC 332-60-030 Invalidation of part of chapter not to affect remainder. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-030, filed 12/7/83.]

WAC 332-60-040 Cooperation with government agencies or private entities. The department may cooperate or contract with any federal, state or local government agency, private organization, or individual, in carrying out the purpose of this chapter.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-040, filed 12/7/83.]

WAC 332-60-050 Definitions. (1) "Department" means the department of natural resources.

(2) "Council" means the natural heritage advisory council as established in RCW 79.70.070.

(3) "Plan" means the state of Washington natural heritage plan as established under RCW 79.70.030.

(4) "Natural heritage resource" means the plant community types, aquatic types, unique geologic types, and special plant and animal species and their critical habitat as defined in the plan.

(5) "Natural area" means a unit of land or water or both which contains a natural heritage resource, and which has been registered by the landowner and may be considered for dedication or commitment as a natural area preserve.

(6) "Natural area preserve" means a natural area which has been:

(a) Dedicated under the provisions of RCW 79.70.090; or

(b) Formally committed to protection by a cooperative agreement between a government landholder and the department.

(7) "Registration" means a voluntary commitment by the landowner for protection of a specific natural heritage resource located on the landowner's land. No real property interest is transferred. Registration is memorialized by a certificate of registration issued by the department.

(8) "Dedication" means the formal recognition and protection of a natural area for natural heritage conservation purposes accomplished by the voluntary transfer

by a landowner to the department of an interest in real property less than fee simple.

(9) "Register" means the Washington Register of Natural Area Preserves which lists the sites which have been formally registered, dedicated or formally protected by cooperative agreement, for natural area purposes.

(10) "Instrument of dedication" means a written document intended to convey an interest in real property, pursuant to chapter 64.04 RCW.

(11) "Landowner" means any individual, partnership, private, public, nonprofit, or municipal corporation, city, county, state agency, agency of the United States or any other governmental agency or entity, which exercises control over a natural heritage resource whether such control is based on legal or equitable title, or which manages or holds in trust land in Washington state.

(12) "Government landholder" means any city, municipal corporation, county, state agency, agency of the United States, or any other government agency which manages, owns, holds in trust or otherwise has jurisdiction over land in Washington state.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-050, filed 12/7/83.]

NATURAL AREAS--REGISTRATION

WAC 332-60-060 Site criteria for registration. The criteria for identification for registration are set forth in the plan.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-060, filed 12/7/83.]

WAC 332-60-070 Procedures for registration of natural areas. (1) After a site has been identified, the department or its designee shall notify the landowner, in writing, of the site's natural heritage resource and the site's eligibility for the register.

(2) The department or its designee must obtain from the landowner written permission to proceed with the site evaluation process.

(3) Once permission is granted by the landowner to proceed with the site evaluation process, the department nominates the site to the council.

(4) The council shall review each site nomination and approve or reject registration of the site.

(5) The department shall notify the landowner of the council's determination and, for an approved site, offer the landowner the opportunity to voluntarily place the site on the register.

(6) If the landowner agrees to register the site, the department shall place the site on the register and provide the landowner with a certificate of registration.

(7) The department may offer voluntary management guidelines and may enter into a management agreement with the landowner of a registered natural area.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-070, filed 12/7/83.]

[Title 332 WAC--p 114]

WAC 332-60-080 Removal of a natural area from the register. (1) The department shall remove natural areas from the register at any time:

(i) Upon written request by the landowner to the department; or

(ii) If the council determines that the site is no longer managed for the natural heritage resources present, or the site no longer meets the original criteria for selection.

(2) Landowners are to be notified in writing of removal of a natural area from the register.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-080, filed 12/7/83.]

NATURAL AREA PRESERVE--DEDICATION

WAC 332-60-090 Natural area preserve by instrument of dedication. Upon such terms as the department and landowner agree, a registered natural area may be dedicated as a natural area preserve through the execution of an instrument of dedication in a form approved by the council.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-090, filed 12/7/83.]

WAC 332-60-100 Instrument of dedication--Form. The instrument of dedication shall be in accordance with the requirements of RCW 64.04.130. The instrument of dedication shall be substantially in the form required by law for the conveyance of any land or other real property.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-100, filed 12/7/83.]

WAC 332-60-110 Instrument of dedication--Interest conveyed. The instrument of dedication shall transfer a real property interest for the purpose of providing protection to a natural heritage resource. Interests which may be transferred include, but are not limited to: Water, timber, grazing, development rights, rights to hunt, fish, drain or fill, access easements, or rights of way.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-110, filed 12/7/83.]

WAC 332-60-120 Effective date of dedication. Dedication shall be effective upon the recording of the instrument of dedication in the real property records of the county or counties in which the natural area is located.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-120, filed 12/7/83.]

WAC 332-60-130 Termination of dedication. A dedication shall not be terminable except as provided by the instrument of dedication.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-130, filed 12/7/83.]

NATURAL AREA PRESERVE—COOPERATIVE AGREEMENT

WAC 332-60-140 Natural area preserve by cooperative agreement. A government landholder of a registered natural area may commit the area as a natural area preserve by executing with the department a cooperative agreement in a form approved by the council and upon such terms as the department and government landholder agree.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-140, filed 12/7/83.]

WAC 332-60-150 Cooperative agreement. The cooperative agreement must include a description of the legal or administrative commitment by the government landholder to manage the land for the protection of a natural heritage resource.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-150, filed 12/7/83.]

WAC 332-60-160 Termination of natural area preserve by cooperative agreement. The site may be removed from a natural area preserve status as provided by the cooperative agreement.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-160, filed 12/7/83.]

Chapter 332-100 WAC LEASES, SALES, RIGHTS OF WAY, ETC.

WAC

- 332-100-020 Leasing—Priority to public school districts.
- 332-100-030 Rate of interest for sales.
- 332-100-040 Deduction determination.
- 332-100-050 Rate of interest for contracts.
- 332-100-060 Rate of interest for repayment.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 332-100-010 Percentage of proceeds to management account. [Resolution No. 16, filed 4/5/61.] Repealed by 78-10-039 (Order 308, Resolution No. 241), filed 9/18/78. Statutory Authority: RCW 79.64.040.

WAC 332-100-020 Leasing—Priority to public school districts. Acting under the authority as hereinbefore set forth and RCW 79.01.096, the board of natural resources declares it to be the policy of the department of natural resources to grant priority to public school districts in the leasing of common school lands under the jurisdiction of the department of natural resources: *Provided, however,* That the needs of such lands for public school purposes is clearly demonstrated and the request is not in excess of actual or reasonably foreseeable needs.

[Resolution No. 32, filed 4/3/62.]

WAC 332-100-030 Rate of interest for sales. The interest rate to be charged on all sales requiring the same pursuant to RCW 79.01.132 shall be the average prime interest rate as quoted by Seattle First National

(1986 Ed.)

Bank, National Bank of Washington, Rainier National Bank, and Peoples' National Bank on the first day of the last full quarter preceding approval of a sale by the board of natural resources. Said rate shall not be less than six percent per annum.

[Statutory Authority: RCW 79.01.132, 79.01.216 and 79.64.030. 80-11-013 (Order 346, Resolution No. 304), § 332-100-030, filed 8/11/80; Order 27, § 332-100-030, filed 11/19/69.]

WAC 332-100-040 Deduction determination. (1) The board of natural resources hereby determines that a deduction from the gross proceeds of all leases, sales, contracts, licenses, permits, easements, and rights of way issued by the department of natural resources and affecting public lands as provided for in subsection (2) hereof is necessary in order to achieve the purposes of chapter 79.64 RCW.

(2) The department of natural resources shall deduct the maximum percentages as provided for in RCW 79.64.040 and related statutes except that deductions from the gross proceeds of harbor area leases shall be at twenty percent. Except for transactions involving aquatic lands, harbor areas and trust land categories that have a deficit revenue/expenditure status, the deductions may be temporarily discontinued by a resolution of the board of natural resources at such times as the balance in the resource management cost account exceeds an amount equal to twelve months operating expenses for the department of natural resources or when the board determines such discontinuation is in the best interest of the trust beneficiaries. The board shall specify the trust lands subject to such discontinuation. The duration of such orders shall be for a specified time period calculated to allow a reduction of the resource management cost account balance to an amount approximately equal to three months operating expenses for the department. Operating expense needs will be determined by the board based on pro rata increments of biennial legislative appropriations. All sums so deducted shall be paid into the resource management cost account in the state general fund created by chapter 79.64 RCW.

[Statutory Authority: RCW 79.64.040. 83-11-008 (Order 398, Resolution No. 419), § 332-100-040, filed 5/6/83, effective 6/30/83; 78-10-039 (Order 308, Resolution No. 241), § 332-100-040, filed 9/18/78.]

WAC 332-100-050 Rate of interest for contracts. The interest rate to be charged on all contracts requiring the same pursuant to RCW 79.01.216 shall be the average rate of interest charged in the general area of the property to be sold by the six largest lending institutions in such area for conventional mortgages on the first day of the last full quarter preceding approval of a contract by the board of natural resources. Said rate shall not be less than six percent.

[Statutory Authority: RCW 79.01.132, 79.01.216 and 79.64.030. 80-11-013 (Order 346, Resolution No. 304), § 332-100-050, filed 8/11/80.]

WAC 332-100-060 Rate of interest for repayment. The interest rate to be charged for repayment of expenditures to the resource management cost account

pursuant to RCW 79.64.030 shall be the average interest obtainable by the state finance committee on investments of state funds for investments of not greater than fifteen years for the ten preceding years. Such interest rate shall be determined on January 1 of each year and be applicable to all required repayments for the ensuing year.

[Statutory Authority: RCW 79.01.132, 79.01.216 and 79.64.030. 80-11-013 (Order 346, Resolution No. 304), § 332-100-060, filed 8/11/80.]

Chapter 332-110 WAC
LEASES OF STATE OWNED LAND

WAC

332-110-010 Commissioner's authority.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-110-001 Certificate of filing. [Filed 3/2/66.] Decodified 12/31/77.

WAC 332-110-010 Commissioner's authority. It was moved by Governor Rosellini, seconded by Dean Marckworth, and passed, that the commissioner be authorized to administer all leases of state owned lands under the department's direction on the same principle as school grant lands, subject to periodic review and power of intervention by the board.

[Motion No. 78, minutes of April 1, 1958, meeting of board of natural resources (codified as WAC 332-110-010), filed 3/2/66.]

Reviser's note: The above section is an excerpt from the minutes of the April 1, 1958, meeting of the board of natural resources, which were filed in their entirety in order that motion number 78 may be given effect as a rule under the Administrative Procedure Act.

Chapter 332-120 WAC
SURVEY MONUMENTS--REMOVAL OR DESTRUCTION

WAC

- 332-120-010 Definition.
332-120-020 Application.
332-120-030 Permit.
332-120-040 Standards.
332-120-050 Report.

WAC 332-120-010 Definition. Monument: Any physical object or structure of record which marks or accurately references a corner or other survey point established by or under the supervision of a qualified party, including any corner or natural monument established by the general land office and its successor, the bureau of land management; section subdivision corners down to and including one-sixteenth corners and any permanently monumented boundary, rights of way alignment, horizontal and vertical control points established by any governmental agency or private surveyor including street intersections but excluding dependent interior lot corner points.

[Order 131, § 332-120-010, filed 3/1/72, effective 4/7/72.]

WAC 332-120-020 Application. All persons desiring to temporarily remove or destroy a section corner or any other land boundary mark or monument shall submit an application in substantially the following form to the commissioner of public lands, giving all pertinent information regarding existing conditions at the monument, necessity for its temporary removal or destruction, and methods proposed for referencing or witnessing the monument to preserve its position. The application form shall be signed by a registered professional engineer or land surveyor and shall bear his seal and license number.

State of Washington
Department of Natural Resources

APPLICATION FOR PERMIT TO TEMPORARILY REMOVE OR DESTROY SECTION CORNER, OR OTHER LAND BOUNDARY MARK OR MONUMENT

To the Commissioner of Public Lands:

Pursuant to the provisions of Paragraph 6, section 25, chapter 271, Laws of 1969 ex. sess., the undersigned

(name) acting in and for (person, firm, corporation, or association) hereby applies for permit to

(temporarily remove) (destroy)
(strike out one)

the following described survey monument in Section
, Township North, Range
in County.

EXISTING CONDITIONS AT MONUMENT

Type of Monument: Sect. Cor. (), Triangulation Sta. (), Bench Mark (), Other

Established By: GLO(), Federal (), State (), Other

Marked By: Pipe (), Rock (), Tree (), Conc. Mon. (), Brass Cap (), Other

Original and/or Supporting Evidence Found:

Coordinates: State (Lambert) (), Zone, Other (specify)
Y (N) X (E)

Source of Coordinates:

Accuracy of Coordinates:

SKETCH (Indicate Meridian)

NECESSITY FOR TEMPORARY REMOVAL OR DESTRUCTION OF MONUMENT

PROPOSED METHOD OF REFERENCING and/or REESTABLISHING MONUMENT

SEAL Date -----

Signature of Registered Engineer or Land Surveyor

Lic. No. Address -----

Mail completed form to:
Department of Natural Resources
Bureau of Surveys and Maps
P.O. Box 168 Tel. No. 753-5337
Olympia, WA 98504

[Order 131, § 332-120-020, filed 3/1/72, effective 4/7/72.]

WAC 332-120-030 Permit. When satisfied that the application complies with all laws and regulations, the officer in charge of the bureau of surveys and maps, designated as the issuing officer for such permit, acting for the commissioner of public lands, shall issue a permit in substantially the following form for the temporary removal or destruction of the mark or monument. He shall maintain on file a public record of such permits issued, and provide copies of said permits on request and within 5 working days to the respective county or local governmental agencies where required.

Permit No. -----

State of Washington
Department of Natural Resources
Olympia, Washington

PERMIT TO TEMPORARILY REMOVE OR DESTROY SECTION CORNER, OR OTHER LAND BOUNDARY MARK OR MONUMENT

To: -----
(applicant)

(street) (city) (state) (zip)

Pursuant to the authority vested in me by chapter 271, Laws of 1969 ex. sess., and in conformity with your application dated ----- 19--, you are hereby authorized to (temporarily remove) (destroy) the following described survey monument:

This permit is granted subject to the provisions of law and the regulations promulgated by me, as given on the reverse side of the application form. The work performed by you under this permit is to be reported to the issuing officer on the Report form below, and is subject to field inspection at his discretion.

The requirement for reference to the Washington Coordinate System is hereby waived. Yes () No ()

BERT L. COLE
Commissioner of Public Lands

Date of Issue by -----
----- (Authorized Issuing Officer)

(Detach at perforations)

State of Washington
Department of Natural Resources
Olympia, Washington

REPORT ON TEMPORARY REMOVAL OR DESTRUCTION OF SECTION CORNER OR OTHER LAND BOUNDARY MARK OR MONUMENT

(date)

To the Commissioner of Public Lands:

In accordance with your Permit No. ----- dated ----- 19--, I have (temporarily removed) (destroyed) monument named therein. There follows a description of monuments and accessories I established to perpetuate the original location of this point.

(Sketch-attach sheet if necessary)

(signature)

(address)

(Seal)
License No. -----

Except, applications concerning any monument of the Federal horizontal or vertical geodetic networks will be referred for appropriate action to the National Ocean

Survey and as applicable and if so identified, the establishing party or agency of any monument will be immediately notified of the pending action.

Except, under extraordinary circumstances, to prevent hardship and delay, the issuing officer upon assurance by an authorized party that proper precautions are being taken to perpetuate a point, may verbally grant permission to proceed pending the processing and issuance of a written permit.

[Order 131, § 332-120-030, filed 3/1/72, effective 4/7/72.]

WAC 332-120-040 Standards. The issuing officer may waive the requirement for referencing to the Washington state coordinate system where such referencing is deemed to be impractical. Replacement and/or reference monuments to be of a permanent nature suitable for local conditions, and identified as to the responsible party or agency and the month and year when set. Replacement monuments or reference monuments established in lieu thereof shall be of a kind or a higher standard than the monument being replaced. Said issuing officer shall be guided by the following recommended standards for remonumentation as published by the department of natural resources pursuant to section 27, chapter 271, Laws of 1969 ex. sess.:

(1) All concrete monuments used must contain reinforcing steel or other magnetic material, except those enclosed in monument cases.

(2) A minimum of 2" diameter iron pipe should be used for monuments in unpaved streets.

(3) Monument cases shall be used in paved streets. Minimum monument in cases shall be 2" diameter concrete filled iron pipe.

[Order 131, § 332-120-040, filed 3/1/72, effective 4/7/72.]

WAC 332-120-050 Report. Upon completion of the temporary removal and replacement or the destruction of a mark or monument and the proper establishment of reference monuments, the applicant shall within 10 days complete the report form which is attached to his permit (see permit form under WAC 332-120-030) showing all pertinent information as to work accomplished, marks, reference marks, reference points, and any accessories or features by which the point can be located if inaccessible or otherwise difficult to ascertain. When completed, this form shall be detached from the permit and be returned to the issuing officer for his permanent file. The issuing officer shall furnish copies of this form upon request and within 5 working days to the county and local governing agencies as applicable.

[Order 131, § 332-120-050, filed 3/1/72, effective 4/7/72.]

Chapter 332-130 WAC SURVEY STANDARDS

WAC	
332-130-010	Authority.
332-130-020	Definitions.
332-130-030	Land subdivision standards—Recording.
332-130-040	Land description requirements—General.

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332-130-050	Land description requirements—Specific items.
332-130-060	Survey map requirements.
332-130-070	Field traverse standards for land surveys.
332-130-080	Geodetic control survey standards.

WAC 332-130-010 Authority. The department of natural resources, in accordance with the authority defined in paragraph 1, RCW 58.24.040, does herewith prescribe the following regulations setting minimum standards for land boundary surveys and geodetic control surveys.

[Order 275, § 332-130-010, filed 5/2/77.]

WAC 332-130-020 Definitions. As used for these rules, the following definitions shall apply:

(1) **Land boundary surveys:** All surveys whether made by private persons or entities or public bodies of whatsoever nature for the specific purpose of establishing or reestablishing the boundary of any lot, tract or parcel of real property in the state of Washington;

(2) **Geodetic control surveys:** Surveys for the specific purpose of establishing control points for extending the Lambert grid net and establishing plane coordinate values on primary cadastral monuments within the requirements of the Washington coordinate system, as defined in chapter 58.20 RCW;

(3) **Land surveyor:** Shall mean every person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW, as now or hereafter amended;

(4) **Land survey:** Shall mean the locating and monumenting, in accordance with sound principles of land surveying by or under the supervision of a licensed land surveyor, of points or lines which define the exterior boundary or boundaries common to two or more parcels or which reestablish or restore general land office or bureau of land management survey corners;

(5) **Washington coordinate system:** Shall mean that system of plane coordinates as established and designated by chapter 58.20 RCW;

(6) **Public record:** Shall be the system of records maintained by the bureau of surveys and maps, the county auditors and such other agencies as may be officially designated and by law assigned the responsibility of maintaining a record of such information available to the general public during normal working hours;

(7) **The Survey Recording Act:** Shall mean chapter 50, Laws of 1973, (chapter 58.09 RCW) as now or hereafter amended;

(8) **GLO and BLM:** Means the general land office and its successor, the bureau of land management.

[Order 275, § 332-130-020, filed 5/2/77.]

WAC 332-130-030 Land subdivision standards—Recording. The following minimum standards shall apply to land subdivision:

(1) The subdivision of a section shall conform to the rules prescribed for official U.S. government surveys of the public lands and instructions relating thereto, and/or applicable federal or state court decisions relating thereto;

(2) Section subdivision and line data shall be shown on the record of survey to the extent necessary to support the position of any subdivisional corner used to reference a surveyed parcel and to justify the location of the parcel boundary therein; except where a section subdivision is a matter of public record, then reference may be made to that record and only so much of the section subdivision as is necessary to properly orient the surveyed parcel need be shown;

(3) Every general land office or bureau of land management survey mark or corner controlling a surveyed parcel shall be documented and recorded as required by the Survey Recording Act, unless the corner and its accessories are substantially as described in an existing record conforming to the provisions of this section on file with the county auditor and the bureau of surveys and maps. The documentation of any GLO or BLM corner shall include at least three substantial references to the corner mark placed in such a manner that they are not likely to be destroyed along with the corner. A valid set of coordinates on the Washington coordinate system may serve as one of the three required references.

[Order 275, § 332-130-030, filed 5/2/77.]

WAC 332-130-040 Land description requirements--General. Any legal land description written defining land boundaries shall be complete and accurate from the title standpoint, providing definite and unequivocal identification of the lines or boundaries from which a physical survey can be accomplished.

[Order 275, § 332-130-040, filed 5/2/77.]

WAC 332-130-050 Land description requirements--Specific items. The following items must be considered and included in a land description when applicable:

- (1) Lot, tract or portion thereof in a recorded plat:
 - (a) Lot and block number or designation,
 - (b) Addition or subdivision name and number and its location by section, township, range and meridian,
 - (c) Plat book and page number of recorded plat,
 - (d) Recording office, city or county and state.
- (2) Lot or tract described by metes and bounds:
 - (a) City and/or county and state,
 - (b) Subdivision(s) of section, township, range, meridian or other official GLO or BLM survey subdivision, or portion of recorded plat,
 - (c) Measurement to official GLO or BLM survey subdivision corner or properly determined subdivision corner thereof with physical description of such corners,
 - (d) A traverse of the boundary giving:
 - (i) Place of beginning and/or initial point including description of the physical monument,
 - (ii) Bearings or azimuths in degrees, minutes and seconds,
 - (iii) Distances in feet to the nearest one-hundredth,
 - (iv) Identification of adjoining giving official recording office and recovery index when other deed calls are uncertain,
 - (v) Indicate if course is a dividing line of a section subdivision, a line of record or parallel thereof,

(vi) indicate area to the nearest one-hundredth acre.

[Order 275, § 332-130-050, filed 5/2/77.]

WAC 332-130-060 Survey map requirements. The record of survey shall be a map properly drawn to a convenient scale such as to satisfy the requirements of the Survey Recording Act and/or chapter 58.17 RCW relating to platting, subdivision and dedication of land.

(1) Boundary survey maps shall include the following where applicable:

- (a) Title of survey;
- (b) Land surveyor certification by showing name, license number, signature and seal;
- (c) Date;
- (d) North arrow and bearing reference;
- (e) Deed calls and reference to control monuments;
- (f) Indicate monuments found and set;
- (g) Gearings, azimuths or angles in degrees and minutes and seconds and distances to the nearest one-hundredth of a foot;
- (h) Legal description of property;
- (i) Indicate hiatuses (gaps) and/or overlapping boundaries;
- (j) Physical appurtenances (fences, structures, etc.) which may indicate encroachment, lines of possession or conflict of title;
- (k) Indexing data block, showing:
 - (i) Section, township and range and, additionally, the quarter(s) of a section in which the surveyed parcel lies,
 - (ii) Other official subdivisional tract of the GLO or BLM survey,

(iii) In a recorded subdivision, show lot, block, name and number of subdivision with volume and page of recorded plat;

(2) A copy of the survey map shall be furnished the client.

[Order 275, § 332-130-060, filed 5/2/77.]

WAC 332-130-070 Field traverse standards for land surveys. The following standards shall apply to field traverses used in land boundary surveys. Such standards should be considered minimum standards only. Higher levels of precision are expected to be utilized in areas with higher property values or in other situations necessitating higher accuracy.

- (1) Linear closures after Azimuth adjustment.
 - (a) City - central and local business and industrial areas 1:10,000
 - (b) City - residential and subdivision lots 1:5,000
 - (c) Section subdivision, new subdivision boundaries for residential lots and interior monument control 1:5,000
 - (d) Suburban - residential and subdivision lots 1:5,000
 - (e) Rural - forest land and cultivated areas 1:5,000
 - (f) Lambert grid traverses 1:10,000

(2) Angular closure.
(a) Where 1:10,000 minimum linear closure is required, the maximum angular error in seconds shall be determined by the formula of 10 √n, where "n" equals

the number of angles in the closed traverse or three seconds per angle whichever is the least.

(b) Where 1:5,000 minimum linear closure is required, the maximum angular error in seconds shall be determined by the formula of $30 \sqrt{n}$ where "n" equals the number of angles in the closed traverse or eight seconds per angle whichever is the least.

[Order 275, § 332-130-070, filed 5/2/77.]

WAC 332-130-080 Geodetic control survey standards. The following standards shall apply to geodetic control surveys:

(1) Horizontal control.

(a) At least second-order Class II accuracy and specifications as published by the Department of Commerce, February, 1974 in Bulletin titled, "Classification, Standards of Accuracy, and General Specifications of Geodetic Control Surveys";

(b) Cadastral monuments, as defined in chapter 58.20 RCW.

(2) Vertical control.

At least second-order Class II accuracy and specifications as published by the Department of Commerce, February, 1974 in Bulletin titled, "Classification, Standards of Accuracy, and General Specifications of Geodetic Control Surveys."

[Order 275, § 332-130-080, filed 5/2/77.]

Chapter 332-140 WAC

FOREST PRODUCTS INDUSTRY RECOVERY ACT OF 1982

WAC

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WAC 332-140-010 Introduction and general definitions. (1) The regulations in this chapter are promulgated by the commissioner of public lands of the state of Washington to implement the Forest Products Industry Recovery Act of 1982. Unless provided otherwise herein or unless the context clearly requires otherwise, the following definitions apply to this chapter and to the act:

(a) "The act" means the Forest Products Industry Recovery Act of 1982, which is sections 3 through 9, chapter 222, Laws of 1982.

(b) "ARRF" means the access road revolving fund referred to in the contract and in RCW 79.38.050.

(c) "Assignment" means the assignment of rights or delegation of duties by a purchaser of a sale or contract to another.

(d) A purchaser "commences operations" on a sale by engaging in removals on that sale or by commencing road construction, falling, bucking, or other contract requirements.

(e) A timber sale contract or timber sale which was "purchased," "entered into," or "purchased at auction" in reference to certain dates specified in sections 4, 5 and 6 of the act refers to the date on which the public auction was held at which such contract or sale was offered.

(f) "Default" means, in reference to a sale, that the purchaser's operating authority on such sale has expired and on which there are forest products yet to be removed. Under section 6 of the act, a purchaser may default a sale by giving notification which specifies that the purchaser is waiving all its rights to the sale. Upon receipt of the notification by the department, the purchaser's operating authority on the sale expires.

(g) "Department" means the department of natural resources of state of Washington.

(h) "Existing," in reference to a sale, means a sale on which the operating authority has not expired and on which there are forest products yet to be removed.

(i) "Expiration date," in reference to a sale, means the date on which the operating authority expires on that sale under the terms of the contract.

(j) To "identify" a sale means to state the name of the sale and its application number.

(k) "Merchantable" forest products means those forest products included in a sale which are "merchantable" as that term is used in the contract and does not include "cull" or "utility" forest products as those terms are defined in the contract.

(l) "MBF" means thousand board feet Scribner Scale of forest products.

(m) "MMBF" means million board feet Scribner Scale of forest products.

(n) The "operating authority" on a sale refers to the dates stated in the contract during which the purchaser is to remove the forest products which are the subject of the sale.

(o) A "partial cut" sale is one other than a clearcut and on which only part of existing forest products are designated to be removed.

(p) "Performance security" means the surety bond, cash bond, savings account assignment, irrevocable bank letter of credit, or other form of security which insures the faithful performance by the purchaser of the terms of the contract.

(q) "Purchaser" means the purchaser of a sale and any affiliate, subsidiary or parent company thereof. "Affiliate" means a person, corporation or other business entity which is allied with or closely connected to another in a practical business sense, or is controlled or has the power to control the other or where both are controlled directly or indirectly by a third person, corporation or other business entity. "Affiliate" includes a joint venture. "Parent company" shall mean a corporation

which owns at least a majority of shares of another corporation. The corporation whose shares are so owned is a "subsidiary" of the parent company.

Purchasers shall be required, upon request of the department, to produce satisfactory written documentation of the relationship between any two or more persons, corporations or other business entities which they or the department claim should be treated as one purchaser under the provisions of the act.

(r) "Timber sale contract," "sale contract," "contract," "timber sale," "sale of timber," and "sale" all mean the sale of and the contract to remove and pay for forest products which were sold by the department at auction by voice or sealed bid and which had, at time of auction, a minimum appraised value of over twenty thousand dollars. The terms "sale" or "contract" shall be used in these regulations. All of the foregoing terms are considered to be synonymous as referred to in the act and these regulations.

(s) "Person" as used in section 5(2) of the act means the business entity which paid extension fees prior to the effective date of the act.

(t) "Window sale" means a sale which is referred to in subsection (2) below.

(2) Window sales.

(a) As referred to in these regulations and in sections 4, 5 and 6 of the act, sales or contracts "entered into," "purchased," or "purchased at auction" between January 1, 1978, and July 1, 1980, means those sales for which the auction was held after January 1, 1978, and before July 1, 1980.

(b) "Lincoln day blowdown" sales are those sales identified by the department which were prepared and sold as a result of damage to the timber caused primarily by the Lincoln day windstorm which occurred on or about February 13, 1979. Such term does not include sales sold because of other reasons or sales sold because timber which was damaged by the Lincoln day storm was further substantially damaged by later storms or other causes. The following sales are the only Lincoln day blowdown sales which were auctioned from July 1, 1980, through December 31, 1980, on which there are forest products remaining to be removed:

- (i) Lower Wasankari, Application No. 40694
- (ii) Piedmont Blowdown, Application No. 42799
- (iii) Miller Road Blowdown, Application No. 42817
- (iv) 4 Corners Blowdown, Application No. 43196
- (v) Key Boundary, Application No. 42078
- (vi) Peaks Pickens, Application No. 42933
- (vii) Three Sisters Blowdown, Application No. 42493
- (viii) Little Boy Blew, Application No. 42163
- (ix) Miller Pickup Blowdown, Application No. 43474
- (x) Shay, Application No. 42133

(3) **Full reservation of rights.** These regulations are being adopted because of the presumption that enacted laws are valid. However, all existing, past and future purchasers should be aware that claims have been made that the act is invalid and that there is a possibility that the act or portions thereof may be challenged in court, even by the department or other governmental agency or entity.

Any purchaser who requests relief under the act does so at its own risk as to the validity of the act and the possibility of judicial orders or decrees affecting it. The department makes no warranty of the validity of the act and reserves the right to immediately terminate, rescind, or otherwise refuse to grant relief under the act if all or a portion of the act is declared invalid, whether such court order or decision is obtained by others or itself. The department further reserves the right to secure all rights, monies, charges, damages or claims that it would otherwise have been entitled to if the act or portions thereof are declared invalid, and to take such action as may be necessary to secure the same.

[Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-010, filed 7/1/82.]

WAC 332-140-020 Extension procedure. Requests for extensions under the act shall be in writing. Extensions will be granted only by a written extension document. Extensions granted under the act shall only be on a quarterly (3 month) basis and shall be for 3, 6, 9 or 12 months, except as provided in WAC 332-140-050 (2)(c). An extension will not be granted for less time than is reasonably required, as determined by the department, to remove all of the forest products remaining on the sale being extended.

[Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-020, filed 7/1/82.]

WAC 332-140-030 New plan of operations required. A new plan of operations must be filed and approved for all window sales on which the purchaser commences operations prior to July 15, 1982, before the purchaser commences operations.

[Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-030, filed 7/1/82.]

WAC 332-140-040 Extension time credits. This section implements section 4 of the act.

(1) **Introduction.** "Extension time credit" means the number of calendar days a purchaser receives by engaging in or agreeing to engage in the removal of forest products on a sale which qualifies under subsection (2) below. Extension time credit can be received only for removals engaged in after April 3, 1982. This credit can only be used to extend window sales which exist at the time of the application for an extension of such sale. There are two ways to receive extension time credit. First, a purchaser can "earn" the credit. The extension time credit is "earned" only after the purchaser has satisfactorily engaged in the removals. Second, a purchaser can receive "conditional" credit by agreeing to engage in removals in the future.

(2) **Sales upon which purchaser may earn credit.** The following sales are sales on which the purchaser may earn extension time credit:

(a) All sales auctioned prior to April 3, 1982, but only if and to the extent that the purchaser agrees to and engages in removals and receives a logging release on that sale prior to December 31, 1983.

(b) Sales auctioned on or after April 3, 1982, which, in the prospectus and contract, are identified by the department as sales on which extension time credit may be earned, but only if and to the extent that the purchaser agrees to and engages in removals on that sale prior to the sale's expiration date or December 31, 1983, whichever is sooner. Up to 60% of the number of sales auctioned in 1982 and 1983 may be so designated by the department.

(3) **Amount of extension time credit.** One calendar day of extension time credit is earned for each acre of forest products which the purchaser satisfactorily removes and for which a logging or operating release has been issued, except that on partial cut sales or units on which less than 10 MBF/acre is satisfactorily removed, the following schedule shall be used to compute the number of days of extension time credit which may be earned:

Department's presale cruise volume of forest products (average board feet per acre)	Acres of forest products to be removed to earn one day of Extension Time Credit
9,000 to 9,999	1.1
8,000 to 8,999	1.2
7,000 to 7,999	1.4
6,000 to 6,999	1.7
5,000 to 5,999	2.0
4,000 to 4,999	2.5
3,000 to 3,999	3.3
2,000 to 2,999	5.0
Less than 2,000	10.0

Extension time credit will be computed on the foregoing basis, whether the removal of the forest products actually takes a longer or shorter time. The volume of forest products and acreage of a sale shall be the volume and acreage stated in the contract. Extension time credit is earned for time spent on yarding, loading and hauling activities only and not for road construction, falling and bucking, or for other contract requirements.

(4) **Request to earn extension time credit.** To earn extension time credit on a sale qualifying under subsection (2) above, a purchaser must submit a written request to the department. Extension time credit will be granted only for forest products removed on or after the day the request is received by the department. This request must identify the sale(s) on which the purchaser wishes to operate to earn extension time credit. The department shall determine the amount of extension time credit available to be earned on a sale in accordance with subsection (3) above. The department and the purchaser shall enter into a written agreement on a form provided by the department which sets forth the limitations of subsection (2) above as well as the amount of extension time credit which can be earned by engaging in such removals. The department shall establish an extension time credit account for the purchaser. After extension time credit is earned on a sale, the department will credit the purchaser's extension time credit account with the proper number of days of extension time credit. The account shall be debited from time to time as extension time credit is used under subsection (9) below. The purchaser

which earns the extension time credit may not assign that credit to another purchaser.

(5) **Request to receive extension time credit for engaging in removals from April 3, 1982, through May 14, 1982.** If a purchaser wishes to receive extension time credit for engaging in removals from April 3, 1982, through May 14, 1982, it must submit a written request to the department on or before May 14, 1982. This request must identify the sale on which the purchaser wishes to receive the credit. The department shall determine the proper number of days of extension time credit in accordance with subsection (3) above and shall credit the purchaser's extension time credit account accordingly. If a purchaser fails to meet the foregoing deadline, it shall not receive credit for engaging in removals from April 3, 1982, up through the time it submits a request on that sale under subsection (4) above.

(6) **Conditional extension time credit.** If a purchaser needs to extend a window sale and does not have a sufficient amount of extension time credit in its extension time credit account to do so, the purchaser may submit a written request to the department to receive conditional extension time credit. The request must identify the window sale to be extended and the sale on which the purchaser will agree to engage in removals to receive the conditional credit.

The department and the purchaser shall enter into an agreement, on a form provided by the department, which identifies the sale being extended, the sale on which the purchaser agrees to engage in removals, the amount of extension time credit being conditionally granted, and the date by which the purchaser must complete the removals agreed upon. Failure of the purchaser to complete the removals by the foregoing date subjects the purchaser to subsection (8) below. A purchaser which receives conditional extension time credit may not assign that credit to another purchaser.

(7) **Performance security required for agreements involving conditional credit.** An agreement extending a sale using conditionally granted extension time credit shall be secured by the initial deposit and the performance security on the sale being extended and by the initial deposit of the sale on which the purchaser agrees to engage in removals. An adequate amount of the deposits and such security, as determined by the department, must be maintained until the purchaser completes the removals as agreed to, or can substitute the conditionally granted credit with credit actually earned after the date of the agreement referred to above.

(8) **Purchaser's failure to engage in removals.** If the purchaser fails to meet the completion date for removals as stated in the agreement referred to in subsection (6) above, all of the conditional extension time credit granted on that sale will be disallowed, and the sale(s) which was extended using the conditional extension time credit shall not receive such credit. The purchaser shall receive no extension time credit for the removals engaged in. The department shall notify the purchaser in writing of a failure to meet the completion date. Within 30 days of the date of mailing or personal service of this notice, the purchaser must pay for any extension

granted, to the extent that it was granted using conditional credits, as that extension fee would have been computed under the contract as limited only by section 9 of the act. In addition, the purchaser shall pay an additional interest charge on the value of that portion of the extension granted using conditional credit at 12 percent per annum from the date the extension was granted through the date of actual payment by the purchaser. If the purchaser fails to make this payment within 30 days following the above notice, the purchaser's operating authority on the sale shall terminate, and the department may recover damages against the purchaser and its surety as allowed by law.

(9) Use of extension time credit to extend a window sale.

(a) Credit earned and credited to the purchaser's extension time credit account may be used by the department to extend a window sale upon written application by the purchaser. Extensions under section 4 of the act will be granted only by written extension agreement. The purchaser must deliver to the department a properly executed extension agreement on or before the expiration date of the sale which the purchaser wishes to extend under section 4 of the act. Failure to meet the above deadline will disqualify the sale for an extension under section 4 of the act.

(b) The purchaser may use the extension time credit earned or conditionally granted to extend as many window sales as it selects. Sales may be extended for 3, 6, 9 or 12 months only, but the purchaser may apply as much credit as it has earned toward the extension. Extension time credit earned may be applied together with cash or road credit in any combination toward the extension fee. Conditionally granted extension time credit may also be used, but only if needed.

(c) Days of extension time credit earned shall be applied to a sale without regard to whether the extension is during the operating season, closed or winter season, or shutdowns, except that contract termination date adjustments under contract clause 14-4 may still be made.

(d) The department will grant no extension under section 4 of the act after December 31, 1983, except that the department may exercise its rights under subsection (8) above after December 31, 1983. The term of extensions granted under section 4 of the act shall not extend beyond December 31, 1984.

[Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-040, filed 7/1/82.]

WAC 332-140-050 Paid extension credit. This section implements section 5 of the act.

(1) Section 5(1).

(a) **Qualifying sales.** Only window sales which exists as of the date of the application under this subsection qualify for a paid extension credit under section 5(1) of the act.

(b) **Written application.** To qualify for the paid extension credit, an extension agreement, properly executed by the purchaser and surety (if applicable), must be received by the department at least one working day prior to the then current expiration date of the sale on which

the purchaser seeks a paid extension credit. No credits will be granted under section 5(1) of the act if the purchaser does not meet the foregoing deadline.

(c) **Amount of paid extension credit.** The amount of the paid extension credit on a sale shall be equal to the total amount of the extension fees paid by the purchaser on that sale after April 3, 1982 by cash or road credits.

(d) **Same sale.** The paid extension credit shall be applied, dollar for dollar, to payments for forest products only on the same sale as the extension fee is paid by the purchaser. The paid extension credit may not be used to pay ARRF charges.

(e) **Length of extensions.** The extensions granted on a sale under section 5(1) of the act shall only be 3, 6, 9 or 12 months in length. The department's authority to grant extensions under section 5(1) of the act expires on December 31, 1984.

(2) Section 5(2).

(a) **Qualifying sales.** Section 5(2) of the act applies only to extensions which were requested, paid for, and for which the extension agreements were executed on or before April 2, 1982. Section 5(2) of the act applies to all sales existing as of the date of the purchaser's application hereunder. Extensions of sales for which extensions were paid after April 2, 1982, do not qualify for an equivalent extension under section 5(2) of the act. A person may not receive a credit under section 5(2) of the act for minimum fee (\$100) extensions granted before April 3, 1982, but only for extensions paid in cash by the purchaser.

(b) **Written application.** A person wishing to receive an extension on a sale under section 5(2) of the act must make a written application to the department which identifies the sale, the amount of extension time claimed under section 5(2) of the act, and the dates and periods of past extensions purchased on that sale.

(c) If a person satisfies the provisions of (2)(a) and (b) above, the department shall, without any charge, grant the person applying for an extension under section 5(2) of the act an extension equal in time to the total time of the extensions on that sale which were paid by the person extending the sale, up to a total of twelve months.

[Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-050, filed 7/1/82.]

WAC 332-140-060 Defaults. This section is to implement section 6 of the act.

(1)(a) **Qualifying sales.** Section 6 of the act applies only to window sales which were in existence as of April 3, 1982, or for which a payment is made after April 3, 1982, under section 7 of the act to reinstate the sale.

(b) **Written notification.** The purchaser must provide the department with written notification on or before July 14, 1982, stating that the purchaser elects to terminate or default a sale under section 6 of the act. Such notification must state that the purchaser is giving up all of its rights under that contract as of the date of the notification. The notification must be accompanied by a sworn written statement by an authorized representative

of the purchaser which identifies the names of all affiliates, subsidiaries, and parent companies of the purchaser which purchased a window sale. The department shall provide the form for this statement. The notification must also be accompanied by a \$2,500 administrative fee. The notification will be considered received by the department only when the fee and sworn statement are received by the department.

(c) **Limitation on sales to be defaulted.** The following limitations apply to the sales which a purchaser may terminate or default under section 6 of the act.

(i) The purchaser may default on the sale(s) of its choice of which it was the purchaser as of April 3, 1982, if the sale qualifies under subsection (1)(a) above and if the cumulative volume remaining on those sales for which notification is given does not exceed 15 MMBF of forest products as of the date of the notification. The volume remaining on a sale shall be computed by the department by subtracting the volume of merchantable forest products removed from the department's presale cruise volume of merchantable forest products stated in the contract.

(ii) No sales which have been assigned after April 3, 1982, may be terminated or defaulted.

(iii) Only entire sales may be defaulted. A purchaser may not default on part of a sale under section 6 and choose to retain any right to remove forest products from any part of the same sale.

(iv) A sale may be terminated or defaulted even though the purchaser has operated on it and removed forest products from the sale, subject to the further limitations of subsection (1)(d) below.

(v) A sale on which all of the forest products have been removed may not be terminated or defaulted under section 6 of the act.

(d) **Limitations on defaults of sales on which operations have occurred.** A sale which otherwise qualifies for termination or default under section 6 of the act and this section may be defaulted subject to the following obligations and reservations:

(i) All forest products must be paid for which were removed from the sale and all due ARRF payments and other payments due must be paid, including all payments for forest products and ARRF deferred under a deferred payment agreement. The department reserves the full right to take appropriate action against the purchaser and its surety to recover all applicable damages for a failure of the purchaser to make the foregoing payments on or before the receipt of the notification of default.

(ii) All outstanding contract requirements (other than removal of forest products) which arose as a result of the purchaser's activities on the sale must be performed. These requirements include, but are not limited to, slash disposal preparation work, stream cleanout, falling non-merchantable forest products, road maintenance, ditching, waterbarring and fire trail construction. If the purchaser fails to perform the foregoing outstanding requirements, the department shall determine the current cost of performing that work and charge the purchaser therefor. If the purchaser fails to promptly pay such

charges, the department may take appropriate action to recover the same from the purchaser and its surety.

(iii) The purchaser and its surety are not released from any liability or duty to indemnify the department which arose as a result of the acts or omissions of the purchaser or its delegate relating to the sale being defaulted.

(2) **No refunds or credits.** Upon notification under subsection (1)(b) above, the department shall make no refunds nor give any credits of any cash payments made to the department in connection with the contract which is being defaulted. Such cash payments include, but are not limited to, the initial deposit, extension fees, cash advance payments, and cash performance bonds, whether the foregoing deposits or payments are used or unused. All such sums shall be retained by the department.

(3)(a) **Road credits.** Upon receipt of notification under subsection (1)(b) above, the department shall compute the road credit which is provided by section 6(3) of the act. The credit shall only be allowed for construction of roads that are listed under the ROAD DEVELOPMENT section of the timber sale prospectus, as shown on the timber sale map.

(b) **Amount of road credit.** The amount of the road credit shall be determined based upon the percentage of road work satisfactorily completed in each road construction phase. The phases of road construction are those separate phases expressly identified in the road appraisal work forms used by the department in the presale appraisal. The percentages of satisfactory completion shall be applied to the road construction cost estimates as stated in the department's road construction presale appraisal.

(c) **Reduction of credit.** The total amount of the road credit as computed in subsection (3)(b) above shall be reduced by the difference between the current costs, as determined by the department, of correcting road work which was unsatisfactorily performed and the cost of completing such road work as computed in the department's original presale road construction appraisal.

(d) **Amortization.** The amount of the road credits shall be further reduced by the same percentage as the percentage of forest products removed on that sale. The percentage of forest products removed shall be computed by dividing the volume of merchantable forest products removed by the volume stated in the contract.

(4) **Application of road credit.**

(a) Road credit will be applied only upon written application of the purchaser and after the department has determined the amount of the road credit. Such credit may be applied to one-half of any required payment for stumpage, cash deposits for performance security, or extension fee on a sale. Road credits cannot be applied to the initial deposit on a sale nor to a payment made under section 7 of the act.

(b) Road credit will only be applied to sales of that purchaser which are situated on land of the same trust and beneficiary as the sale on which the road credit is given. If the sale on which the road credit is given is situated on land of more than one trust and beneficiary the

total road credit for the sale shall be divided in proportion to the acreage of each trust and beneficiary and applied separately and only to sales situated on the same trust and beneficiary.

(5) A purchaser whose sale expires or expired without removing all of the forest products from the sale and which sale does not qualify to be terminated or defaulted by the purchaser under section 6(1) of the act remains fully liable to the department for whatever damages that may be recovered under law notwithstanding the provisions of the act. This includes a sale which had expired as of April 3, 1982, and which the purchaser does not reinstate under section 7 of the act on or before July 14, 1982.

[Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-060, filed 7/1/82.]

WAC 332-140-070 Reinstatement of sales. This section implements section 7 of the act.

(1) **Qualifying sales.** Section 7 of the act applies to sales on which the operating authority had expired as of April 3, 1982 which otherwise would qualify for extension under sections 4 or 5 of the act or to be defaulted under section 6 of the act. The purpose of section 7 of the act is to allow the purchaser to make a payment to reinstate such a sale and thereby make that sale eligible for relief under sections 4, 5, 6 and 9 of the act. A reinstatement payment made under section 7 of the act is not considered an extension payment for purposes of section 5 of the act.

(2) **Application for reinstatement.** To reinstate a sale under section 7 of the act, the purchaser must make written application to the department for reinstatement on or before July 14, 1982.

(3) **Reinstatement payment.** To be effective, an application for reinstatement under section 7 of the act must be accompanied by a payment equal to the extension payment for that sale computed from the date the sale or a previous extension thereof expired through the date the application is received. The amount of this payment shall be computed as provided in the contract for extensions. The interest limitation of section 9 of the act does not apply to the extension computation under the provisions of section 7 of the act and this section. Road credits under section 6 of the act may not be used to make the reinstatement payments required by section 7 of the act.

[Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-070, filed 7/1/82.]

WAC 332-140-090 Extension interest rate limitation. This section implements section 9 of the act.

(1) Section 9 of the act applies to extensions on sales which were auctioned on or before December 30, 1980, for which extensions are granted after April 3, 1982, but before December 31, 1984. In computing the fees for such extensions, the department shall use the interest rate stated in the contract or 13 percent, whichever is less, in computing the interest charge on the unpaid portion of the contract which forms part of the extension fee.

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(2) Reinstatement payments made under section 7 of the act are not subject to the interest rate limitation of section 9 of the act.

[Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-090, filed 7/1/82.]

WAC 332-140-100 Mt. St. Helens sales excluded. Sections 2 through 9 of the act do not apply to any sales sold before or after any eruption of Mt. St. Helens and which include or included timber damaged by any such eruption.

[Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-100, filed 7/1/82.]

WAC 332-140-200 Introduction and definitions. (1) Implementation of RCW 79.01.126. These regulations, WAC 332-140-200 through 332-140-230, are promulgated by the department of natural resources for the purpose of implementing RCW 79.01.126, which provides for the adjustment of contract bid prices on timber sales sold on a scale basis having a minimum appraisal value over twenty thousand dollars and which are auctioned on or after October 1, 1983. Stumpage rate adjustment shall apply only to major species of timber removed.

(2) **Definitions.** As used in these regulation and in RCW 79.01.126, where applicable:

(a) "Coast publication" means the market indexes published by the Western Woods Products Association in its publication known as the PNW Coast Lumber Price Index.

(b) "Inland publication" means the market indexes published by the Western Wood Products Association in its publication known as the Inland Lumber Price Index.

(c) "Contract bid price" for a given species of timber means the price for that species bid by the purchaser or set in the contract where bidding is not allowed on that species.

(d) "Department" means the department of natural resources.

(e) "Market index change amount" means the same in these regulations as it is defined in RCW 79.01.126(2).

(f) Timber "removed" means and includes only timber that is taken from the sale area.

(g) "Timber removed during a calendar quarter" shall be determined using the date the timber removed is scaled as provided for in the contract.

[Statutory Authority: RCW 79.01.126. 83-18-009 (Order 401), § 332-140-200, filed 8/26/83.]

WAC 332-140-210 Market indexes established. (1) Following the conclusion of each calendar quarter, the department shall establish the amount of each market index for that quarter for the species of timber listed below. These species are determined to be major species, for which reasonably available and reliable market price information is available. Each index amount shall be established by extracting from the appropriate Western Wood Products Association index the quarterly average

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prices per thousand board feet. The major species will be indexed to the following indexes:

(a) Douglas fir and larch. For Douglas fir situated west of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "Douglas fir" index of the Coast publication. For Douglas fir and larch situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "dry Douglas fir-larch" index of the Inland publication. Larch situated west of the cascade crest is not a major species and shall not be subject to adjustment of the contract bid price.

(b) Hemlock/true fir. For the hemlocks and true firs situated west of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "hem-fir" index of the Coast publication. For the hemlocks and true firs situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "white fir (hem-fir)" index of the Inland publication.

(c) Ponderosa pine. For ponderosa pine situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "coast-inland north ponderosa pine" index of the Inland publication. Ponderosa pine situated west of the cascade crest is not a major species and is not subject to adjustment of the contract bid price.

(d) White pine. For white pine situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "Idaho white pine" index of the Inland publication. White pine situated west of the Cascade Crest is not a major species and is not subject to adjustment of the contract bid price.

(e) Englemann spruce and lodgepole pine. For Englemann spruce and lodgepole pine situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "white woods" index of the Inland publication. Englemann spruce and lodgepole pine situated west of cascade crest are not major species and are not subject to adjustment of the contract bid prices.

(2) Other species not indexed. Species other than those listed above are not major species. There is no readily available and reliable market information for such species and they are not subject to adjustment of the contract bid price.

(3) Cull volume not indexed. Cull logs, including utility logs as defined in the contract, of all species are not major species. There is no readily available and reliable market information for such logs and they are not subject to adjustment of the contract bid price.

[Statutory Authority: RCW 79.01.126. 83-18-009 (Order 401), § 332-140-210, filed 8/26/83.]

WAC 332-140-220 Price to be paid for timber removed. The rate to be paid by the purchaser for each species of timber subject to adjustment of the contract bid price shall be the contract bid price plus or minus the market index change amount, as appropriate, but not less than sixty-five percent of the contract bid price.

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[Statutory Authority: RCW 79.01.126. 83-18-009 (Order 401), § 332-140-220, filed 8/26/83.]

WAC 332-140-230 Payment and adjustments. The periodic payments made by the purchaser for timber removed during a given quarter shall be based upon the adjusted price for the previous quarter, except that for removals during a quarter in which the sale is sold, the price used shall be the contract bid price. Following the establishment of the market index for the quarter, the appropriate adjustments will be made to the payments for the timber removed during that quarter.

[Statutory Authority: RCW 79.01.126. 83-18-009 (Order 401), § 332-140-230, filed 8/26/83.]

WAC 332-140-300 Initial deposit rate. (1) The rate for the initial deposit specified in RCW 79.01.132 and 79.01.204 shall be ten percent of the actual purchase price for lump sum sales and ten percent of the projected purchase price for scale sales, except as follows:

(a) In the case of lump sum sales over five thousand dollars, the initial deposit shall not be less than five thousand dollars.

(b) When the purchaser is a defaulter, the initial deposit shall be twenty-five percent of the purchase price for lump sum sales and twenty-five percent of the projected purchase price for scale sales, subject to subsection (1)(a).

(c) When a sale is assigned to a defaulter, the initial deposit shall be increased to twenty-five percent of the purchase price for lump sum sales and twenty-five percent of the projected purchase price for scale sales, subject to subsection (1)(a).

(2)(a) The purchaser shall certify to the department on the day of the sale in the form prescribed by the department whether the purchaser is a defaulter.

(b) When a sale is assigned, the assignee shall certify to the department in the form prescribed by the department whether the assignee is a defaulter. If the assignee is a defaulter, the assignee shall deposit the additional amount before the assignment is approved by the department.

(3)(a) The increased initial deposit for a defaulter shall remain in effect throughout the term of the sale, except as provided in subsections (3)(b) and (c).

(b) The initial deposit for a defaulter may be reduced to ten percent only if the defaulter has resolved all sales which were offered for bid after January 1, 1982, and were defaulted after September 19, 1984.

(c) The initial deposit may be reduced to ten percent if the defaulter assigns the sale to an assignee who is not a defaulter, but only if the condition in (3)(b) is met by the original purchaser.

(d) If the initial deposit is reduced pursuant to subsection (3)(b) or (c), the excess deposit shall be credited to stumpage or installment payments under the timber sales contract on which the increased deposit was required.

(4) The following definitions apply to this section.

(a) "Assign" means to transfer the rights and duties of a purchaser of a sale to another pursuant to the provisions of the timber sale contract.

(b) "Default" means, in reference to a sale, that the purchaser's operating authority on such sale has expired without completion of performance or full payment of amounts due, or the department has terminated the sale prior to expiration of the operating period for a breach of contract.

(c) "Defaulter" means a purchaser who (i) defaults on a sale after September 19, 1984, which sale was offered for bid after January 1, 1982, and (ii) has not resolved the defaulted sale.

(d) "Department" means the department of natural resources of state of Washington.

(e) The "operating authority" on a sale refers to the dates stated in the contract during which the purchaser is required to remove the forest products which are the subject of the sale.

(f) "Purchaser" means the purchaser of a sale and any affiliate, subsidiary or parent company thereof. "Affiliate" means a person, corporation or other business entity which is allied with or closely connected to another in a practical business sense, or is controlled or has the power to control the other or where both are controlled directly or indirectly by a third person, corporation or other business entity. "Affiliate" includes a joint venture. "Parent company" shall mean a corporation which owns a controlling interest in another corporation. The corporation whose shares are so owned is a "subsidiary" of the parent company.

Purchasers shall be required, upon request of the department, to produce satisfactory written documentation of the relationship between any two or more persons, corporations or other business entities which they or the department claim should be treated as one purchaser.

(g) "Resolved" in reference to a sale in default means full compliance with the terms of (i) an agreement by the department and the defaulter of all disputed matters arising from the sale or (ii) final disposition by a court including termination of judicial review.

(h) "Timber sale contract," "sale contract," "contract," "timber sale," "sale of timber," and "sale" all mean the sale of and the contract to remove and pay for forest products which have been or are being sold by the department at auction by voice or sealed bid and which had, at time of auction, a minimum appraised value of over twenty thousand dollars. All of the foregoing terms are considered to be synonymous as referred to in these regulations.

(5) The provisions of WAC 332-140-300 shall be deemed to be incorporated into the terms of all timber sales purchased after the effective date of these rules. A violation of these rules shall be deemed a breach of the provisions of the applicable timber sale.

[Statutory Authority: RCW 43.30.150 (2) and (6) and 43.30.070. 85-01-066 (Order 438), § 332-140-300, filed 12/18/84.]

(1986 Ed.)

Chapter 332-150 WAC SURVEY, PLAT AND MAP FILING AND RECORDING FEES

WAC

332-150-010	Authority and scope.
332-150-020	Definitions.
332-150-030	Filing and recording fees.
332-150-040	Filing and recording fees—Designation of fees.
332-150-050	Biennial review.

WAC 332-150-010 Authority and scope. This chapter is promulgated pursuant to the authority granted in chapter 165, Laws of 1982. WAC 332-150-010 through 332-150-040 are intended to implement section 7, chapter 165, Laws of 1982.

[Statutory Authority: Chapter 58.24 RCW and 1982 c 165 § 7. 82-14-042 (Order 378), § 332-150-010, filed 6/30/82.]

WAC 332-150-020 Definitions. As used in WAC 332-150-010 through 332-150-040, the following definitions shall apply:

(1) "Surveys." All records of surveys required to be filed by law pursuant to chapter 58.09 RCW and all other land division plats or maps required by local ordinance to be filed and recorded.

(2) "Subdivision plats." All plats required to be filed by law pursuant to chapter 58.17 RCW.

(3) "Short plats." All short plats required to be filed by law pursuant to chapter 58.17 RCW.

(4) "Condominium surveys, plats or maps." All surveys, plats, or maps required to be filed by law pursuant to chapter 64.32 RCW.

(5) "Instrument." The total document filed and recorded of each of the above regardless of the number of pages. This term also includes corrections to such instruments, including but not limited to boundary line adjustments, correction affidavits, and correction plats and surveys.

[Statutory Authority: Chapter 58.24 RCW and 1982 c 165 § 7. 82-14-042 (Order 378), § 332-150-020, filed 6/30/82.]

WAC 332-150-030 Filing and recording fees. After the effective date of this regulation, each county auditor shall collect the fee of fifteen dollars per instrument in addition to any other fees required by law, as a condition precedent to the filing and recording of any surveys, subdivision plats, short plats or condominium surveys, plats or maps.

[Statutory Authority: Chapter 58.24 RCW and 1982 c 165 § 7. 82-14-042 (Order 378), § 332-150-030, filed 6/30/82.]

WAC 332-150-040 Filing and recording fees—Designation of fees. The fees imposed by the foregoing rules are designated for and related solely to the purposes and provisions of chapter 58.24 RCW and not for the maintenance, sale and distribution of publications authorized by RCW 43.99.142.

[Statutory Authority: Chapter 58.24 RCW and 1982 c 165 § 7. 82-14-042 (Order 378), § 332-150-040, filed 6/30/82.]

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WAC 332-150-050 Biennial review. The fee established by these rules shall be reviewed subsequent to the adoption of each biennial budget for surveys and maps to determine the sufficiency of such fee. If revenue is determined to be inappropriate for the program need the department shall adjust the fee accordingly.

[Statutory Authority: Chapter 58.24 RCW and 1982 c 165 § 7. 82-14-042 (Order 378), § 332-150-050, filed 6/30/82.]