

Chapter 365-196 WAC

GROWTH MANAGEMENT ACT—PROCEDURAL CRITERIA FOR ADOPTING COMPREHENSIVE PLANS AND DEVELOPMENT REGULATIONS

WAC

PART ONE

GENERAL CONSIDERATIONS

365-196-010	Background.
365-196-020	Purpose.
365-196-030	Applicability.
365-196-040	Standard of review.
365-196-050	Regional and local variations.
365-196-060	Goals.

PART TWO

DEFINITIONS

365-196-200	Statutory definitions.
365-196-210	Definitions of terms as used in this chapter.

PART THREE

URBAN GROWTH AREAS AND COUNTY-WIDE PLANNING POLICIES

365-196-300	Urban density.
365-196-305	County-wide planning policies.
365-196-310	Urban growth areas.
365-196-315	Buildable lands review and evaluation.
365-196-320	Providing urban services.
365-196-325	Providing sufficient land capacity suitable for development.
365-196-330	Phasing development within the UGA.
365-196-335	Identification of open space corridors.
365-196-340	Identification of lands useful for public purposes.
365-196-345	New fully contained communities.

PART FOUR

FEATURES OF THE COMPREHENSIVE PLAN

365-196-400	Mandatory elements.
365-196-405	Land use element.
365-196-410	Housing element.
365-196-415	Capital facilities element.
365-196-420	Utilities element.
365-196-425	Rural element.
365-196-430	Transportation element.
365-196-435	Economic development element.
365-196-440	Parks and recreation element.
365-196-445	Optional elements.
365-196-450	Historic preservation.
365-196-455	Land use compatibility adjacent to general aviation airports.
365-196-460	Master planned resorts.
365-196-465	Major industrial developments.
365-196-470	Industrial land banks.
365-196-475	Land use compatibility with military installations.
365-196-480	Natural resource lands.
365-196-485	Critical areas.

PART FIVE

CONSISTENCY AND COORDINATION

365-196-500	Internal consistency.
365-196-510	Interjurisdictional consistency.
365-196-520	Coordination with other county and city comprehensive plans.
365-196-530	State agency compliance.
365-196-540	Compliance by regional agencies and special purpose districts.
365-196-550	Essential public facilities.
365-196-560	Special siting statutes.
365-196-570	Secure community transition facilities.

365-196-580	Integration with the Shoreline Management Act.
-------------	--

PART SIX

REVIEWING, AMENDING, AND UPDATING COMPREHENSIVE PLANS AND DEVELOPMENT REGULATIONS

365-196-600	Public participation.
365-196-610	Periodic review and update of comprehensive plans and development regulations.
365-196-620	Integration of State Environmental Policy Act process with creation and adoption of comprehensive plans and development regulations.
365-196-630	Submitting notice of intent to adopt to the state.
365-196-640	Comprehensive plan amendment procedures.
365-196-650	Implementation strategy.
365-196-660	Supplementing, amending, and monitoring.

PART SEVEN

RELATIONSHIP OF GROWTH MANAGEMENT PLANNING TO OTHER LAWS

365-196-700	Background.
365-196-705	Basic assumptions.
365-196-710	Identification of other laws.
365-196-715	Integrating external considerations.
365-196-720	Sources of law.
365-196-725	Constitutional provisions.
365-196-730	Federal authorities.
365-196-735	State and regional authorities.
365-196-740	Regional perspective.
365-196-745	Explicit statutory directions.

PART EIGHT

DEVELOPMENT REGULATIONS

365-196-800	Relationship between development regulations and comprehensive plans.
365-196-805	Timing of initial adoption.
365-196-810	Review for consistency when adopting development regulations.
365-196-815	Conservation of natural resource lands.
365-196-820	Subdivisions.
365-196-825	Potable water.
365-196-830	Protection of critical areas.
365-196-835	Relocation assistance for low-income tenants.
365-196-840	Concurrency.
365-196-845	Local project review and development agreements.
365-196-850	Impact fees.
365-196-855	Protection of private property.
365-196-860	Treatment of residential structures occupied by persons with handicaps.
365-196-865	Family day-care providers.
365-196-870	Affordable housing incentives.

PART ONE

GENERAL CONSIDERATIONS

WAC 365-196-010 Background. Through the Growth Management Act, the legislature provided a new framework for land use planning and the regulation of development in Washington state. The act was enacted in response to problems associated with uncoordinated and unplanned growth and a lack of common goals in the conservation and the wise use of our lands. The problems included increased traffic

congestion, pollution, school overcrowding, urban sprawl, and the loss of rural lands.

(1) Major features of the act's framework include:

(a) A requirement that counties with specified populations and rates of growth and the cities within them adopt comprehensive plans and development regulations under the act. Other counties can choose to be covered by this requirement, thereby including the cities they contain.

(b) A set of common goals to guide the development of comprehensive plans and development regulations.

(c) The concept that the process should be a "bottom up" effort, involving early and continuous public participation, with the central locus of decision-making at the local level, bounded by the goals and requirements of the act.

(d) Requirements for the locally developed plans to be internally consistent, consistent with county-wide planning policies and multicounty planning policies, and consistent with the plans of other counties and cities where there are common borders or related regional issues.

(e) A requirement that development regulations adopted to implement the comprehensive plans be consistent with such plans.

(f) The principle that development and the providing of public facilities and services needed to support development should occur concurrently.

(g) A determination that planning and plan implementation actions should address difficult issues that have resisted resolution in the past, such as:

(i) The timely financing of needed infrastructure;

(ii) Providing adequate and affordable housing for all economic segments of the population;

(iii) Concentrating growth in urban areas, provided with adequate urban services;

(iv) The siting of essential public facilities;

(v) The designation and conservation of agricultural, forest, and mineral resource lands;

(vi) The designation and protection of environmentally critical areas.

(h) A determination that comprehensive planning can simultaneously address these multiple issues by focusing on the land development process as a common underlying factor.

(i) An intention that economic development be encouraged and fostered within the planning and regulatory scheme established for managing growth.

(j) A recognition that the act is a fundamental building block of regulatory reform. The state and local government have invested considerable resources in an act that should serve as the integrating framework for other land use related laws.

(k) A desire to recognize the importance of rural areas and provide for rural economic development.

(l) A requirement that counties and cities must periodically review and update their comprehensive plans and development regulations to ensure continued compliance with the goals and requirements of the act.

(2) The pattern of development established in the act. The act calls for a pattern of development that consists of different types of land uses existing on the landscape. These types generally include urban land, rural land, resource lands, and critical areas. Critical areas exist in rural, urban, and

resource lands. Counties and cities must designate lands in these categories and develop policies governing development consistent with these designations. The act establishes criteria to guide the designation process and to guide the character of development in these lands.

(3) How the act applies to existing developed areas. The act is prospective in nature. It establishes a framework for how counties and cities plan for future growth. In many areas, the pattern called for in the act is a departure from the pattern that existed prior to the act. As a consequence, areas developed prior to the act may not clearly fit into the pattern of development established in the act. In rural areas, comprehensive plans developed under the act should find locally appropriate ways to recognize these areas without allowing these patterns to spread into new undeveloped areas. In urban areas, comprehensive plans should find locally appropriate ways to encourage redevelopment of these areas in a manner consistent with the pattern of development envisioned by the act.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-010, filed 1/19/10, effective 2/19/10.]

WAC 365-196-020 Purpose. (1) Within the framework established by the act, counties and cities may accommodate a wide diversity of local visions. There is no exclusive method for accomplishing the requirements of the act.

(2) In light of the complexity and difficulty of the task, the legislature required the department to establish a technical assistance program. As part of that program, the department must adopt by rule procedural criteria to assist counties and cities in adopting comprehensive plans and development regulations that meet the goals and requirements of the act.

(3) Definitions and interpretations made in this chapter by the department, but not expressly set forth in the act, are identified as such. The department's purpose is to provide assistance in interpreting the act, not to add provisions and meanings beyond those intended by the legislature. For definitions of specific terms used in this chapter see WAC 365-196-210.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-020, filed 1/19/10, effective 2/19/10.]

WAC 365-196-030 Applicability. (1) Where these guidelines apply.

(a) This chapter applies to all counties and cities that are required to plan or choose to plan under RCW 36.70A.040.

(b) WAC 365-196-830 addressing protection of critical areas applies to all counties and cities, including those that do not fully plan under RCW 36.70A.040.

(c) As of May 1, 2009, the following counties and cities within them are not required to fully plan under RCW 36.70A.040: Adams, Asotin, Cowlitz, Grays Harbor, Klickitat, Lincoln, Okanogan, Wahkiakum, Skamania, and Whitman.

(2) Compliance with the procedural criteria is not a prerequisite for compliance with the act. This chapter makes recommendations for meeting the requirements of the act, it does not set a minimum list of actions or criteria that a county or city must take. Counties and cities can achieve compliance with the goals and requirements of the act by adopting other approaches.

(3) How the growth management hearings board use these guidelines. The growth management hearings board must determine, in cases brought before them, whether comprehensive plans or development regulations are in compliance with the goals and requirements of the act. When doing so, board must consider the procedural criteria contained in this chapter, but determination of compliance must be based on the act itself.

(4) When a county or city should consider the procedural criteria. Counties and cities should consider these procedural criteria when amending or updating their comprehensive plans, development regulations or county-wide planning policies. Since adoption of the act, counties and cities and others have adopted a variety of agreements and frameworks to collaboratively address issues of local concern and their responsibilities under the act. The procedural criteria do not trigger an independent obligation to revisit those agreements. Any local land use planning agreements should, where possible, be construed as consistent with these procedural criteria. Changes to these procedural criteria do not trigger an obligation to review and update local plans and regulations to be consistent with these criteria.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-030, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-030, filed 1/19/10, effective 2/19/10.]

WAC 365-196-040 Standard of review. (1) Comprehensive plans and development regulations adopted under the act are presumed valid upon adoption. No state approval is required.

(2) An appeal of a local comprehensive plan or development regulation alleging a violation of the act must be filed with the growth management hearings board (the board). The board must find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of the act. To find an action clearly erroneous, the board must be left with a firm and definite conclusion that a mistake was made.

(3) Although a county or city does not have to prove compliance, if challenged, it must provide to the hearings board an index of "the record" - all material used in taking the action which is the subject of the challenge. See WAC 242-02-520. This record should include the documents containing the factual basis for determining that the challenged action complies with the act. This information may be contained in the comprehensive plan or development regulations, in the findings of the adopting ordinance or resolution, or in accompanying background documents, such as staff reports.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-040, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-040, filed 1/19/10, effective 2/19/10.]

WAC 365-196-050 Regional and local variations. (1) Regional and local variations and the diversity that exist among different counties and cities should be reflected in the use and application of these procedural criteria.

(2) Recognition of variations and diversity is implicit in the act's framework, with an emphasis on a "bottom up" planning process and on public participation. Such recognition is also inherent in the listing of goals without assignment of pri-

ority. Accordingly, this chapter seeks to accommodate regional and local differences by focusing on an analytical process, instead of on specific outcomes.

(3) Local plans and development regulations are expected to vary in complexity and in level of detail depending on population size, growth rates, resources available for planning and scale of public facilities, and services provided.

(4) In general, smaller jurisdictions will not be expected to engage in extensive original research, but will be able to rely upon reasonable assumptions derived from available data of a statewide or regional nature or representative of jurisdictions of comparable size and growth rates.

(5) When commenting on plans and regulations proposed for adoption, state agencies, including the department, should be guided by a common sense appreciation of the size of the jurisdiction involved, the magnitude of the problems addressed, and the context of the submitted changes.

(6) The department has developed a variety of technical assistance materials for counties and cities that may be used to help guide local planning.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-050, filed 1/19/10, effective 2/19/10.]

WAC 365-196-060 Goals. The act lists thirteen overall goals in RCW 36.70A.020, plus the shoreline goal added in RCW 36.70A.480(1). Counties and cities should design comprehensive plans and development regulations to meet these goals.

(1) This list of fourteen goals is not exclusive. Counties and cities may adopt additional goals. However, these additional goals must be supplementary. They may not conflict with the fourteen statutory goals.

(2) Balancing the goals in the act.

(a) The act's goals are not listed in order of priority. The ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community. Differences in emphasis are expected from jurisdiction to jurisdiction. Although there may be an inherent tension between the act's goals, counties and cities must give some effect to all the goals. Counties and cities should consider developing a written record demonstrating that it considered the planning goals during the development of the comprehensive plan and development regulations.

(b) When there is a conflict between the general planning goals and more specific requirements of the act, the specific requirements control.

(c) In some cases, counties and cities may support activities outside their jurisdictional boundaries in order to meet goals of the act.

(d) Development regulations must be consistent with the goals and requirements of the act and the comprehensive plan. In most cases, if a comprehensive plan meets the statutory goals, development regulations consistent with the comprehensive plan will meet the goals.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-060, filed 1/19/10, effective 2/19/10.]

PART TWO

DEFINITIONS

WAC 365-196-200 Statutory definitions. The following definitions are contained in chapter 36.70A RCW and provided under this section for convenience. Most statutory definitions included in this section are located in RCW 36.70A.030. Other relevant statutory terms defined elsewhere in chapter 36.70A RCW are also included in this section.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock and that has long-term commercial significance for agricultural production.

(3) "City" means any city or town, including a code city.

(4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(5) "Critical areas" include the following areas and ecosystems:

- (a) Wetlands;
- (b) Areas with a critical recharging effect on aquifers used for potable water;
- (c) Fish and wildlife habitat conservation areas;
- (d) Frequently flooded areas; and
- (e) Geologically hazardous areas.

"Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

(6) "Department" means the department of commerce.

(7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(8) "Essential public facilities" includes those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

(9) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 through 84.33.110, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered:

(a) The proximity of the land to urban, suburban, and rural settlements;

(b) Surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses;

(c) Long-term local economic conditions that affect the ability to manage for timber production; and

(d) The availability of public facilities and services conducive to conversion of forest land to other uses.

(10) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(11) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

(12) "Master planned resort" means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.

(13) "Minerals" include gravel, sand, and valuable metallic substances.

(14) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(15) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(16) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

(17) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(18) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

(19) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

(20) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.170 (1)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(21) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

(22) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

* RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-200, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-196-200, filed 1/19/10, effective 2/19/10.]

WAC 365-196-210 Definitions of terms as used in this chapter. The following are definitions which are not defined in RCW 36.70A.030 but are defined here for purposes of the procedural criteria.

(1) "Act" means the Growth Management Act, as enacted in chapter 17, Laws of 1990 1st ex. sess., and chapter 32, Laws of 1991 sp. sess., state of Washington as amended. The act is codified primarily in chapter 36.70A RCW.

(2) "Achieved density" means the density at which new development occurred in the planning period preceding the analysis required in either RCW 36.70A.130(3) or 36.70A.215.

(3) "Adequate public facilities" means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums.

(4) "Affordable housing" means residential housing that is rented or owned by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household's monthly income.

(5) "Allowed densities" means the density, expressed in dwelling units per acre, allowed under a county's or city's development regulations when considering the combined effects of all applicable development regulations.

(6) "Assumed densities" means the density at which future development is expected to occur as specified in the land capacity analysis or the future land use element. Assumed densities are also referred to in RCW 36.70A.110 as densities sufficient to permit the urban growth that is projected to occur.

(7) "Concurrency" means that adequate public facilities are available when the impacts of development occur, or within a specified time thereafter. This definition includes the concept of "adequate public facilities" as defined above.

(8) "Consistency" means that no feature of a plan or regulation is incompatible with any other feature of a plan or regulation. Consistency is indicative of a capacity for orderly integration or operation with other elements in a system.

(9) "Contiguous development" means development of areas immediately adjacent to one another.

(10) "Coordination" means consultation and cooperation among jurisdictions.

(11) "Cultural resources" is a term used interchangeably with "lands, sites, and structures, which have historical or archaeological and traditional cultural significance."

(12) "Demand management strategies" or "transportation demand management strategies" means strategies designed to change travel behavior to make more efficient use of existing facilities to meet travel demand. Examples of demand management strategies can include strategies that:

- (a) Shift demand outside of the peak travel time;
- (b) Shift demand to other modes of transportation;
- (c) Increase the average number of occupants per vehicle;
- (d) Decrease the length of trips; and

(e) Avoid the need for vehicle trips.

(13) "Domestic water system" means any system providing a supply of potable water which is deemed adequate pursuant to RCW 19.27.097 for the intended use of a development.

(14) "Family day-care provider" is defined in RCW 43.215.010. It is a person who regularly provides child care and early learning services for not more than twelve children. Children include both the provider's children, close relatives and other children irrespective of whether the provider gets paid to care for them. They provide their services in the family living quarters of the day care provider's home.

(15) "Financial commitment" means that sources of public or private funds or combinations thereof have been identified which will be sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.

(16) "Growth Management Act" - see definition of "act."

(17) "Historic preservation" or "preservation" is defined in the National Historic Preservation Act of 1966, as identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities or any combination of the foregoing activities.

(18) "Lands, sites, and structures, that have historical, archaeological, or traditional cultural significance" are the tangible and material evidence of the human past, aged fifty years or older, and include archaeological sites, historic buildings and structures, districts, landscapes, and objects.

(19) "Level of service" means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need. Level of service standards are synonymous with locally established minimum standards.

(20) "May," as used in this chapter, indicates an option counties and cities can take at their discretion.

(21) "Must," as used in this chapter, indicates a requirement for compliance with the act. It has the same meaning within this chapter as "shall."

(22) "New fully contained community" is a development proposed for location outside of the existing designated urban growth areas which is characterized by urban densities, uses, and services, and meets the criteria of RCW 36.70A.350.

(23) "Planning period" means the twenty-year period following the adoption of a comprehensive plan or such longer period as may have been selected as the initial planning horizon.

(24) "Public service obligations" means obligations imposed by law on utilities to furnish facilities and supply service to all who may apply for and be reasonably entitled to service.

(25) "Regional transportation plan" means the transportation plan for the regionally designated transportation system which is produced by the regional transportation planning organization.

(26) "Regional transportation planning organization (RTPO)" means the voluntary organization conforming to RCW 47.80.020, consisting of counties and cities within a

region containing one or more counties which have common transportation interests.

(27) "Rural lands" means all lands which are not within an urban growth area and are not designated as natural resource lands having long-term commercial significance for production of agricultural products, timber, or the extraction of minerals.

(28) "Sanitary sewer systems" means all facilities, including approved on-site disposal facilities, used in the collection, transmission, storage, treatment, or discharge of any waterborne waste, whether domestic in origin or a combination of domestic, commercial, or industrial waste. On-site disposal facilities are only considered sanitary sewer systems if they are designed to serve urban densities.

(29) "Shall," as used in this chapter, indicates a requirement for compliance with the act. It has the same meaning within this chapter as "must."

(30) "Should," as used in this chapter, indicates the advice of the department, but does not indicate a requirement for compliance with the act.

(31) "Solid waste handling facility" means any facility for the transfer or ultimate disposal of solid waste, including land fills and municipal incinerators.

(32) "Sufficient land capacity for development" means that the comprehensive plan and development regulations provide for the capacity necessary to accommodate all the growth in population and employment that is allocated to that jurisdiction through the process outlined in the county-wide planning policies.

(33) "Transportation facilities" includes capital facilities related to air, water, or land transportation.

(34) "Transportation level of service standards" means a measure which describes the operational condition of the travel stream and acceptable adequacy requirements. Such standards may be expressed in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety.

(35) "Transportation system management" means the use of low cost solutions to increase the performance of the transportation system. Transportation system management (TSM) strategies include but are not limited to signalization, channelization, ramp metering, incident response programs, and bus turn-outs.

(36) "Utilities" or "public utilities" means enterprises or facilities serving the public by means of an integrated system of collection, transmission, distribution, and processing facilities through more or less permanent physical connections between the plant of the serving entity and the premises of the customer. Included are systems for the delivery of natural gas, electricity, telecommunications services, and water, and for the disposal of sewage.

(37) "Visioning" means a process of citizen involvement to determine values and ideals for the future of a community and to transform those values and ideals into manageable and feasible community goals.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-210, filed 1/19/10, effective 2/19/10.]

PART THREE

URBAN GROWTH AREAS AND COUNTY-WIDE PLANNING POLICIES

WAC 365-196-300 Urban density. (1) The role of urban areas in the act. The act requires counties and cities to direct new growth to urban areas to allow for more efficient and predictable provision of adequate public facilities, to promote an orderly transition of governance for urban areas, to reduce development pressure on rural and resource lands, and to encourage redevelopment of existing urban areas.

(2) How the urban density requirements in the act are interrelated. The act involves a consideration of density in three contexts:

(a) Allowed densities: The density, expressed in dwelling units per acre, allowed under a county's or city's development regulations when considering the combined effects of all applicable development regulations.

(b) Assumed densities: The density at which future development is expected to occur as specified in the land capacity analysis or the future land use element. Assumed densities are also referred to in RCW 36.70A.110 as densities sufficient to permit the urban growth that is projected to occur.

(c) Achieved density: The density at which new development occurred in the period preceding the analysis required in either RCW 36.70A.130(3) or 36.70A.215.

(3) Determining the appropriate range of urban densities. Within urban growth areas, counties and cities must permit urban densities and provide sufficient land capacity suitable for development. The requirements of RCW 36.70A.110 and 36.70A.115 apply to the densities assumed in the comprehensive plan and the densities allowed in the implementing development regulations.

(a) Comprehensive plans. Under RCW 36.70A.070(1) and in RCW 36.70A.110(2), the act requires that the land use element identify areas and assumed densities sufficient to accommodate the twenty-year population allocation. The land use element should clearly identify the densities, or range of densities, assumed for each land use designation as shown on the future land use map. When reviewing the urban growth area, the assumed densities in the land capacity analysis must be urban densities.

(b) Development regulations. Counties and cities must provide sufficient capacity of land suitable for development.

(i) Development regulations must allow development at the densities assumed in the comprehensive plan.

(ii) Counties and cities need not force redevelopment in urban areas not currently developed at urban densities, but the development regulations must allow, and should not discourage redevelopment at urban densities. If development patterns are not occurring at urban densities, counties and cities should review development regulations for potential barriers or disincentives to development at urban densities. Counties and cities should revise regulations to remove any identified barriers and disincentives to urban densities, and may include incentives.

(4) Factors to consider for establishing urban densities. The act does not establish a uniform standard for minimum urban density. Counties and cities may establish a specified

minimum density in county-wide or multicounty planning policies. Counties and cities should consider the following factors when determining an appropriate range of urban densities:

(a) An urban density is a density for which cost-effective urban services can be provided. Higher densities generally lower the per capita cost to provide urban governmental services.

(b) Densities should be higher in areas with a high local transit level of service. Generally, a minimum of seven to eight dwelling units per acre is necessary to support local urban transit service. Higher densities are preferred around high capacity transit stations.

(c) The areas and densities within an urban growth area must be sufficient to accommodate the portion of the twenty-year population that is allocated to the urban area. Urban densities should allow accommodation of the population allocated within the area that can be provided with adequate public facilities during the planning period.

(d) Counties and cities should establish significantly higher densities within regional growth centers designated in RCW 47.80.030; in growth and transportation efficiency centers designated under RCW 70.94.528; and around high capacity transit stations in accordance with RCW 47.80.026. Cities may also designate new or existing downtown centers, neighborhood centers, or identified transit corridors as focus areas for infill and redevelopment at higher densities.

(e) Densities should allow counties and cities to accommodate new growth predominantly in existing urban areas and reduce reliance on either continued expansion of the urban growth area, or directing significant amounts of new growth to rural areas.

(f) The densities chosen should accommodate a variety of housing types and sizes to meet the needs of all economic segments of the community. The amount and type of housing accommodated at each density and in each land use designation should be consistent with the need for various housing types identified in the housing element of the comprehensive plan.

(g) Counties and cities may designate some urban areas at less than urban densities to protect a network of critical areas, to avoid further development in frequently flooded areas, or to prevent further development in geologically hazardous areas. Counties or cities should show that the critical areas are present in the area so designated and that area designated is limited to the area necessary to achieve these purposes.

(5) Addressing development patterns that occurred prior to the act.

(a) Prior to the passage of the act, many areas within the state developed at densities that are neither urban nor rural. Inside the urban growth area, local comprehensive plans should allow appropriate redevelopment of these areas. Newly developed areas inside the urban growth area should be developed at urban densities.

(b) Local capital facilities plans should include plans to provide existing urban areas with adequate public facilities during the planning period so that available infrastructure does not serve as a limiting factor to redevelopment at urban densities.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-300, filed 1/19/10, effective 2/19/10.]

WAC 365-196-305 County-wide planning policies.

(1) Purpose of county-wide planning policies. The act requires counties and cities to collaboratively develop county-wide planning policies to govern the development of comprehensive plans. The primary purpose of county-wide planning policies is to ensure consistency between the comprehensive plans of counties and cities sharing a common border or related regional issues. Another purpose of county-wide planning policies is to facilitate the transformation of local governance in the urban growth area, typically through annexation to or incorporation of a city, so that urban governmental services are primarily provided by cities and rural and regional services are provided by counties.

(2) Relationship to the act. County-wide planning policies must comply with the requirements of the act. County-wide planning policies may not compel counties and cities to take action that violates the act. County-wide planning policies may not permit actions that the act prohibits nor include exceptions to such prohibitions not contained in the act. If a county-wide planning policy can be implemented in a way that is consistent with the act, then it is consistent with the act, even if its subsequent implementation is found to be out of compliance. RCW 36.70A.210(4) requires state agencies to comply with county-wide planning policies.

(3) Relationship to comprehensive plans. The comprehensive plans of counties and cities must comply with both the county-wide planning policies and the act. Any requirements in a county-wide planning policy do not replace requirements in the act or any other state or federal law or regulation.

(4) Required policies. Consistent with RCW 36.70A.210(3) and 36.70A.215, county-wide planning policies must cover the following subjects:

- (a) Policies to implement RCW 36.70A.110, including:
 - (i) Designation of urban growth areas;
 - (ii) Selection and allocation of population between cities and counties as part of the review of an urban growth area;
 - (iii) Procedures governing amendments to urban growth areas, including the review required by RCW 36.70A.130(3);
 - (iv) Consultation between cities and counties regarding urban growth areas; and
 - (v) If desired, policies governing the establishment of urban service boundaries or potential annexation areas.
- (b) Promoting contiguous and orderly development and provision of urban services to such development;
- (c) Siting public facilities of a county-wide or statewide nature, including transportation facilities of statewide significance;
- (d) County-wide transportation facilities and strategies;
- (e) The need for affordable housing such as housing for all economic segments of the population and parameters for its distribution;
- (f) Joint city/county planning in urban growth areas;
- (g) County-wide economic development and employment;
- (h) An analysis of fiscal impact; and
- (i) Where applicable, policies governing the buildable lands review and evaluation program.

(5) Recommended policies. County-wide planning policies should also include policies addressing the following:

(a) Procedures by which the county-wide planning policies will be reviewed and amended; and

(b) A process for resolving disputes regarding interpretation of county-wide planning policies or disputes regarding implementation of the county-wide planning policies.

(6) Framework for adoption of county-wide planning policies. Prior to adopting county-wide planning policies, counties and cities must develop a framework. This framework should be in written form and agreed to by the county and the cities within those counties. The framework may be in a memorandum of understanding, an intergovernmental agreement, or as a section of the county-wide planning policies. This framework must include the following provisions:

- (a) Desired policies;
- (b) Deadlines;
- (c) Ratification of final agreements and demonstration; and

(d) Financing, if any, of all activities associated with developing and adopting the county-wide planning policies.

(7) Forum for ongoing coordination. Counties and cities should establish a method for ongoing coordination of issues associated with implementation of the county-wide planning policies, which should include both a forum for county and city elected officials and a forum for county and city staff responsible for implementation. These forums may also include special purpose districts, transit districts, port districts, federal agencies, state agencies, and tribes.

(8) Multicounty planning policies.

(a) Multicounty planning policies must be adopted by two or more counties, each with a population of four hundred fifty thousand or more, with contiguous urban areas. They may also be adopted by other counties by a process agreed to among the counties and cities within the affected counties.

(b) Multicounty planning policies are adopted by two or more counties and establish a common region-wide framework that ensures consistency among county and city comprehensive plans adopted pursuant to RCW 36.70A.070, and county-wide planning policies adopted pursuant to RCW 36.70A.210.

(c) Multicounty planning policies provide a framework for regional plans developed within a multicounty region, including regional transportation plans established under RCW 47.80.023, as well as plans of cities, counties, and others that have common borders or related regional issues as required under RCW 36.70A.100.

(d) Multicounty planning policies should address, at a minimum, the same topics identified for county-wide planning as identified in RCW 36.70A.210(3), except for those responsibilities assigned exclusively to counties. Other issues may also be addressed.

(e) Because of the regional nature of multicounty planning policies, counties or cities should use an existing regional agency with the same or similar geographic area, such as a regional transportation planning organization, pursuant to RCW 47.80.020, to develop, adopt, and administer multicounty planning policies.

(f) In order to provide an ongoing multicounty framework, a schedule for reviewing and revising the multicounty planning policies may be established. This schedule should

relate to the review and revision deadlines for county and city comprehensive plans pursuant to RCW 36.70A.130.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-305, filed 1/19/10, effective 2/19/10.]

WAC 365-196-310 Urban growth areas. (1)(a) Except as provided in (b) of this subsection, counties and cities may not expand the urban growth area into the one hundred-year flood plain of any river or river segment that:

(i) Is located west of the crest of the Cascade mountains; and

(ii) Has a mean annual flow of one thousand or more cubic feet per second as determined by the department of ecology.

(b) Subsection (1)(a) of this section does not apply to:

(i) Urban growth areas that are fully contained within a flood plain and lack adjacent buildable areas outside the flood plain;

(ii) Urban growth areas where expansions are precluded outside flood plains because:

(A) Urban governmental services cannot be physically provided to serve areas outside the flood plain; or

(B) Expansions outside the flood plain would require a river or estuary crossing to access the expansion; or

(iii) Urban growth area expansions where:

(A) Public facilities already exist within the flood plain and the expansion of an existing public facility is only possible on the land to be included in the urban growth area and located within the flood plain;

(B) Urban development already exists within a flood plain as of July 26, 2009, and is adjacent to, but outside of, the urban growth area, and the expansion of the urban growth area is necessary to include such urban development within the urban growth area; or

(C) The land is owned by a jurisdiction planning under this chapter or the rights to the development of the land have been permanently extinguished, and the following criteria are met:

(I) The permissible use of the land is limited to one of the following: Outdoor recreation; environmentally beneficial projects including, but not limited to, habitat enhancement or environmental restoration; storm water facilities; flood control facilities; or underground conveyances; and

(II) The development and use of such facilities or projects will not decrease flood storage, increase storm water runoff, discharge pollutants to fresh or salt waters during normal operations or floods, or increase hazards to people and property.

(c) Under (a)(i) of this subsection, "one hundred-year flood plain" means the same as "special flood hazard area" as set forth in WAC 173-158-040 as it exists on July 26, 2009.

(2) Requirements.

(a) Each county planning under the act must designate an urban growth area or areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Each county must designate an urban growth area in its comprehensive plan.

(b) Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city.

(c) An urban growth area may include territory that is located outside a city if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth.

(d) Based upon the growth management planning population projection selected by the county from within the range provided by the office of financial management, and based on a county-wide employment forecast developed by the county at its discretion, the urban growth areas shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period. Counties and cities may provide the office of financial management with information they deem relevant to prepare the population projections, and the office shall consider and comment on such information and review projections with cities and counties before they are adopted. Counties and cities may petition the office to revise projections they believe will not reflect actual population growth.

(e) The urban growth area may not exceed the areas necessary to accommodate the growth management planning projections, plus a reasonable land market supply factor, or market factor. In determining this market factor, counties and cities may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.

(f) Counties and cities should facilitate urban growth as follows:

(i) Urban growth should be located first in areas already characterized by urban growth that have existing public facilities and service capacities adequate to serve urban development.

(ii) Second, urban growth should be located in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.

(iii) Third, urban growth should be located in the remaining portions of the urban growth area.

(g) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development. Recommendations governing the extension of urban services into rural areas are found in WAC 365-196-425.

(h) Each county that designates urban growth areas must review, according to the time schedule specified in RCW 36.70A.130(5), periodically its designated urban growth areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area (see WAC 365-196-610).

(i) The purpose of the urban growth area review is to assess the capacity of the urban land to accommodate population growth projected for the succeeding twenty-year planning period.

(ii) This review should be conducted jointly with the affected cities.

(iii) In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(3) General procedure for designating urban growth areas.

(a) The designation process shall include consultation by the county with each city located within its boundaries. The adoption, review and amendment of the urban growth area should reflect a cooperative effort among jurisdictions to accomplish the requirements of the act on a regional basis, consistent with the county-wide planning policies and, where applicable, multicounty planning policies.

(b) Each city shall propose the location of an urban growth area.

(c) The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located.

(d) If an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated an urban growth area.

(e) As growth occurs, most lands within the urban growth area should ultimately be provided with urban governmental services by cities, either directly or by contract. Other service providers are appropriate within urban growth areas for regional or county-wide services, or for isolated unincorporated pockets characterized by urban growth. Counties and cities should provide for development phasing within each urban growth area to ensure the orderly sequencing of development and that services are provided as growth occurs.

(f) Counties and cities should develop and evaluate urban growth area proposals with the purpose of accommodating projected urban growth through infill and redevelopment within existing municipal boundaries or urban areas. In some cases, expansion will be the logical response to projected urban growth.

(g) Counties, cities, and other municipalities, where appropriate, should negotiate interlocal agreements to coordinate land use management with the provision of adequate public facilities to the urban growth area. Such agreements should facilitate urban growth in a manner consistent with the cities' comprehensive plans and development regulations, and should facilitate a general transformation of governance over time, through annexation or incorporation, and transfer of nonregional public services to cities as the urban area develops.

(4) Recommendations for meeting requirements.

(a) Selecting and allocating county-wide growth forecasts. This process should involve at least the following:

(i) The total county-wide population is the sum of the population allocated to each city; the population allocated to any portion of the urban growth area associated with cities; the population allocated to any portion of the urban growth area not associated with a city; and the population growth that is expected outside of the urban growth area.

(ii) RCW 43.62.035 directs the office of financial management to provide a reasonable range of high, medium and low twenty-year population forecasts for each county in the state, with the medium forecast being most likely. Counties and cities must plan for a total county-wide population that falls within the office of financial management range.

(iii) Consideration of other population forecast data, trends, and implications. In selecting population forecasts, counties and cities may consider the following:

(A) Population forecasts from outside agencies, such as regional or metropolitan planning agencies, and service providers.

(B) Historical growth trends and factors which would cause those trends to change in the future.

(C) General implications, including:

(I) Public facilities and service implications. Counties and cities should carefully consider how to finance the necessary facilities and should establish a phasing plan to ensure that development occurs at urban densities; occurs in a contiguous and orderly manner; and is linked with provision of adequate public facilities. These considerations are particularly important when considering forecasts closer to the high end of the range. Jurisdictions considering a population forecast closer to the low end of the range should closely monitor development and population growth trends to ensure actual growth does not begin to exceed the planned capacity.

(II) Overall land supplies. Counties and cities facing immediate physical or other land supply limitations may consider these limitations in selecting a forecast. Counties and cities that identify potential longer term land supply limitations should consider the extent to which current forecast options would require increased densities or slower growth in the future.

(III) Implications of short term updates. The act requires that twenty-year growth forecasts and designated urban growth areas be updated at a minimum during the periodic review of comprehensive plans and development regulations (WAC 365-196-610). Counties and cities should consider the likely timing of future updates, and the opportunities this provides for adjustments.

(D) Counties and cities are not required to adopt forecasts for annual growth rates within the twenty-year period, but may choose to for planning purposes. If used, annual growth projections may assume a consistent rate throughout the planning period, or may assume faster or slower than average growth in certain periods, as long as they result in total growth consistent with the twenty-year forecasts selected.

(iv) Selection of a county-wide employment forecast. Counties, in consultation with cities, should adopt a twenty-year county-wide employment forecast to be allocated among urban growth areas, cities, and the rural area. The following should be considered in this process:

(A) The county-wide population forecast, and the resulting ratio of forecast jobs to persons. This ratio should be compared to past levels locally and other regions, and to desired policy objectives; and

(B) Economic trends and forecasts produced by outside agencies or private sources.

(v) Projections for commercial and industrial land needs. When establishing an urban growth area, counties should

designate sufficient commercial and industrial land. Although no office of financial management forecasts are available for industrial or commercial land needs, counties and cities should use a county-wide employment forecast, available data on the current and projected local and regional economies, and local demand for services driven by population growth. Counties and cities should consider establishing a county-wide estimate of commercial and industrial land needs to ensure consistency of local plans.

Counties and cities should consider the need for industrial lands in the economic development element of their comprehensive plan. Counties and cities should avoid conversion of areas set aside for industrial uses to other incompatible uses, to ensure the availability of suitable sites for industrial development.

(vi) Selection of community growth goals with respect to population, commercial and industrial development and residential development.

(vii) Selection of the densities the community seeks to achieve in relation to its growth goals. Inside the urban growth areas densities must be urban. Outside the urban growth areas, densities must be rural.

(b) General considerations for determining the need for urban growth areas expansions to accommodate projected population and employment growth.

(i) Estimation of the number of new persons and jobs to be accommodated based on the difference between the twenty-year forecast and current population and employment.

(ii) Estimation of the capacity of current cities and urban growth areas to accommodate additional population and employment over the twenty-year planning period. This should be based on a land capacity analysis, which may include the following:

(A) Identification of the amount of developable residential, commercial and industrial land, based on inventories of currently undeveloped or partially developed urban lands.

(B) Identification of the appropriate amount of greenbelt and open space to be preserved or created in connection with the overall growth pattern and consistent with any adopted levels of service. See WAC 365-196-335 for additional information.

(C) Identification of the amount of developable urban land needed for the public facilities, public services, and utilities necessary to support the likely level of development. See WAC 365-196-320 for additional information.

(D) Based on allowed land use development densities and intensities, a projection of the additional urban population and employment growth that may occur on the available residential, commercial and industrial land base. The projection should consider the portion of population and employment growth which may occur through redevelopment of previously developed urban areas during the twenty-year planning period.

(E) The land capacity analysis must be based on the assumption that growth will occur at urban densities inside the urban growth area. In formulating land capacity analyses, counties and cities should consider data on past development, as well as factors which may cause trends to change in the future. For counties and cities subject to RCW 36.70A.215, information from associated buildable lands reports should

be considered. If past development patterns have not resulted in urban densities, or have not resulted in a pattern of desired development, counties and cities should use assumptions aligned with desired future development patterns. Counties and cities should then implement strategies to better align future development patterns with those desired.

(F) The land capacity analysis may also include a reasonable land market supply factor, also referred to as the "market factor." The purpose of the market factor is to account for the estimated percentage of developable acres contained within an urban growth area that, due to fluctuating market forces, is likely to remain undeveloped over the course of the twenty-year planning period. The market factor recognizes that not all developable land will be put to its maximum use because of owner preference, cost, stability, quality, and location. If establishing a market factor, counties and cities should establish an explicit market factor for the purposes of establishing the amount of needed land capacity. Counties and cities may consider local circumstances in determining an appropriate market factor. Counties and cities may also use a number derived from general information if local study data is not available.

(iii) An estimation of the additional growth capacity of rural and other lands outside of existing urban growth areas compared with future growth forecasted, and current urban and rural capacities.

(iv) If future growth forecasts exceed current capacities, counties and cities should first consider the potential of increasing capacity of existing urban areas through allowances for higher densities, or for additional provisions to encourage redevelopment. If counties and cities find that increasing the capacity of existing urban areas is not feasible or appropriate based on the evidence they examine, counties and cities may consider expansion of the urban growth area to meet the future growth forecast.

(c) Determining the appropriate locations of new or expanded urban growth area boundaries. This process should consider the following:

(i) Selection of appropriate densities. For all jurisdictions planning under the act, the urban growth area should represent the physical area where that jurisdiction's urban development vision can be realized over the next twenty years. The urban growth area should be based on densities which accommodate urban growth, served by adequate public facilities, discourage sprawl, and promote goals of the act. RCW 36.70A.110 requires that densities specified for land inside the urban growth area must be urban densities. See WAC 365-196-300 for recommendations on determining appropriate urban densities.

(ii) The county should attempt to define urban growth areas to accommodate the growth plans of the cities. Urban growth areas should be defined so as to facilitate the transformation of services and governance during the planning period. However, physical location or existing patterns of service make some unincorporated areas which are characterized by urban growth inappropriate for inclusion in any city's potential growth area.

(iii) Identifying the location of any new lands added to the urban growth area. Lands should be included in the urban growth area in the following priority order:

(A) Existing incorporated areas;

(B) Land that is already characterized by urban growth and has adequate public facilities and services;

(C) Land already characterized by urban growth, but requiring additional public facilities and urban services; and

(D) Lands adjacent to the above, but not meeting those criteria.

(iv) Designating industrial lands. Counties and cities should consult with local economic development organizations when identifying industrial lands to identify sites that are particularly well suited for industry, considering factors such as:

(A) Rail access;

(B) Highway access;

(C) Large parcel size;

(D) Location along major electrical transmission lines;

(E) Location along pipelines;

(F) Location near or adjacent to ports and commercial navigation routes;

(G) Availability of needed infrastructure; or

(H) Absence of surrounding incompatible uses.

(v) Consideration of resource lands issues. Urban growth areas should not be expanded into designated agricultural, forest or resource lands unless no other option is available. Prior to expansion of the urban growth area, counties and cities must first review the natural resource lands designation and conclude the lands no longer meet the designation criteria for resource lands of long-term commercial significance. Designated agricultural or forest resource lands may not be located inside the urban growth area unless a city or county has enacted a program authorizing transfer or purchase of development rights.

(vi) Consideration of critical areas issues. Although critical areas exist within urban areas, counties and cities should avoid expanding the urban growth areas into areas with known critical areas extending over a large area. See RCW 36.70A.110(8) for legislative direction on expansion of urban growth areas into the one hundred-year flood plain of river segments that are located west of the crest of the Cascade mountains and have a mean annual flow of one thousand or more cubic feet per second.

(vii) If there is physically no land available into which a city might expand, it may need to revise its proposed urban densities or population levels in order to accommodate growth on its existing land base.

(d) Evaluating the feasibility of the overall growth plan. Counties and cities should perform a check on the feasibility of the overall plan to accommodate growth. If, as a result of this evaluation, the urban growth area appears to have been drawn too small or too large, the proposal should be adjusted accordingly. Counties and cities should evaluate:

(i) The anticipated ability to finance the public facilities, public services, and open space needed in the urban growth area over the planning period. When conducting a review of the urban growth areas, counties and cities should develop an analysis of the fiscal impact of alternative land use patterns that accommodate the growth anticipated over the succeeding twenty-year period. This provides the public and decision makers with an estimate of the fiscal consequences of various development patterns. This analysis could be done in conjunction with the analysis required under the State Environmental Policy Act.

(ii) The effect that confining urban growth within the areas defined is likely to have on the price of property and the impact thereof on the ability of residents of all economic strata to obtain housing they can afford.

(iii) Whether the level of population and economic growth contemplated can be achieved within the capacity of available land and water resources and without environmental degradation.

(iv) The extent to which the comprehensive plan of the county and of adjacent counties and cities will influence the area needed.

(e) County actions in adopting urban growth areas.

(i) A change to the urban growth area is an amendment to the comprehensive plan and requires, at a minimum, an amendment to the land use element. Counties and cities should also review and update the transportation, capital facilities, utilities, and housing elements to maintain consistency and show how any new areas added to the urban growth area will be provided with adequate public facilities. A modification of any portion of the urban growth area affects the overall urban growth area size and has county-wide implications. Because of the significant amount of resources needed to conduct a review of the urban growth area, and because some policy objectives require time to achieve, frequent, piecemeal expansion of the urban growth area should be avoided. Site-specific proposals to expand the urban growth area should be deferred until the next comprehensive review of the urban growth area.

(ii) Counties and cities that are required to participate in the buildable lands program must first have adopted and implemented reasonable measures as required by RCW 36.70A.215 before considering expansion of an urban growth area.

(iii) Consistent with county-wide planning policies, counties and cities consulting on the designation of urban growth areas should consider the following implementation steps:

(A) Establishment of agreements regarding land use regulations and the provision of services in that portion of the urban growth area outside of an existing city into which it is eventually expected to expand.

(B) Negotiation of agreements for appropriate allocation of financial burdens resulting from the transition of land from county to city jurisdiction.

(C) Provision for an ongoing collaborative process to assist in implementing county-wide planning policies, resolving regional issues, and adjusting growth boundaries.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-310, filed 1/27/15, effective 2/27/15; WSR 10-22-103, § 365-196-310, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-310, filed 1/19/10, effective 2/19/10.]

WAC 365-196-315 Buildable lands review and evaluation. (1) Purpose. The review and evaluation program required by RCW 36.70A.215 is referred to as the "buildable lands program." The buildable lands program is intended to determine if urban densities are being achieved within urban growth areas by comparing local planning goals and assumptions with actual development and determining if actual development is consistent with the comprehensive plan. It also determines if there is sufficient commercial, industrial

and housing capacity within the adopted urban growth area to accommodate the county's twenty-year planning targets. If, through this evaluation, it is determined that there is an inconsistency between planned and built-out densities or there is insufficient development capacity, counties and cities must adopt and implement measures, other than expanding urban growth areas, that are reasonably likely to increase consistency. These measures are referred to as "reasonable measures." Products derived through the program should be used as a technical resource to local policy makers for subsequent comprehensive plan updates.

(2) Required jurisdictions.

(a) The following counties, and the cities located within those counties, must establish and maintain a buildable lands program as required by RCW 36.70A.215:

- (i) Clark;
- (ii) King;
- (iii) Kitsap;
- (iv) Pierce;
- (v) Snohomish; and
- (vi) Thurston.

(b) If another county or city establishes a program containing features of the buildable lands program, they are not obligated to meet the requirements of RCW 36.70A.215.

(3) County-wide planning policies.

(a) Buildable lands programs must be established in county-wide planning policies.

(b) The buildable lands program must contain policies that establish a framework for implementation and continued administration.

(c) The buildable lands program's framework for implementation and administration may be adopted administratively. The program's framework must contain policies or procedures to:

(i) Provide guidance for the collection and analysis of data;

(ii) Provide for the evaluation of the data no later than one year prior to the deadline for review of comprehensive plans and development regulations required by RCW 36.70A.130, commonly referred to as the buildable lands report;

(iii) Provide for the establishment of methods to resolve disputes among jurisdictions regarding inconsistencies in collection and analysis of data; and

(iv) Provide for the amendment of the county-wide policies and county and city comprehensive plans as needed to remedy inconsistencies identified through the evaluation required by this section, or to bring these policies and plans into compliance with the requirements of the act.

(d) The program's framework for implementation and administration should, in addition to the above, address the following:

(i) Establishment of the lead agency responsible for the overall coordination of the program;

(ii) Establishment of criteria and timelines for each county or city to:

(A) Make a determination as to consistency or inconsistency between what was envisioned in adopted county-wide planning policies, comprehensive plans and development regulations and actual development that has occurred;

(B) Adopt and implement reasonable measures, if necessary;

(C) Report on the monitoring of the effectiveness of reasonable measures that have been adopted and implemented. Such reporting could be included in the subsequent buildable lands report;

(D) Transmit copies of any actions taken under (d)(ii) (A), (B) and (C) of this subsection to the department.

(iii) Providing opportunities for the public to review and comment on the following:

(A) Refinement of data collection and analysis methods for the review and evaluation elements of the program;

(B) Determinations as to consistency or inconsistency between what was envisioned in adopted county-wide planning policies, comprehensive plans and development regulations and actual development that has occurred; and

(C) Adoption of reasonable measures, and reports on the monitoring of their effectiveness.

(iv) Public involvement may be accommodated during review and evaluation of a county or city comprehensive plan in consideration of the buildable land report information. This would generally include public review and comment opportunities before the planning commission or legislative body during the normal local government planning process.

(4) Buildable lands program reporting.

(a) No later than one year prior to the deadline for review of comprehensive plans and development regulations required by RCW 36.70A.130, the buildable lands program must compile and publish an evaluation, known as the buildable lands report. Each buildable lands report must be submitted to the department upon publication.

(b) The buildable lands reports must compare growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred since the last required buildable lands report. The results of this analysis are intended to aid counties and cities in reviewing and adjusting planning strategies.

(c) The publication, "*Buildable Lands Program Guidelines*," available from the department, may be used as a source for suggested approaches for meeting the requirements of the program.

(5) Criteria for determining consistency or inconsistency.

(a) The determination of consistency or inconsistency for each county or city maintaining a buildable lands program must be made under RCW 36.70A.215(3):

(i) Evaluation under RCW 36.70A.215 (3)(a) should determine whether the comprehensive plan and development regulations sufficiently accommodate the population projection established for the county and allocated within the county and between the county and its cities, consistent with the requirements in RCW 36.70A.110.

(ii) Evaluation under RCW 36.70A.215 (3)(b) should compare the achieved densities, type and density range for commercial, industrial and residential land uses with the assumed densities that were envisioned in the applicable county-wide planning policies, and the comprehensive plan.

(iii) Evaluation under RCW 36.70A.215 (3)(c) should determine, based on actual development densities determined

in the evaluation under RCW 36.70A.215 (3)(b), the amount of land needed for commercial, industrial and residential uses for the remaining portion of the twenty-year planning period. This evaluation should consider the type and densities of each type of land use as envisioned in the county-wide planning policies, comprehensive plan.

(b) The evaluation used to determine whether there is a consistency or inconsistency should include any additional standards identified in the county-wide planning policies or in other policies that are specifically directed for use in the evaluation.

(6) Measures to address inconsistencies.

(a) The legislative bodies of counties and cities are responsible for the adoption of reasonable measures requiring legislative action to amend their individual comprehensive plans and development regulations. Counties, in consultation with cities, are responsible for amending the county-wide planning policies reasonably likely to increase consistency. Annual monitoring and reporting is the responsibility of the adopting jurisdiction, but may be carried out by either the adopting jurisdiction or other designated agency or person.

(b) If a county or city determines an inconsistency exists, the county or city should establish a timeline for adopting and implementing measures that are reasonably likely to increase consistency during the succeeding review and evaluation period. The responsible county or city may utilize its annual review under RCW 36.70A.130(2) to make adjustments to its comprehensive plan and development regulations that are necessary to implement reasonable measures. Information regarding the adoption, implementation, and monitoring of reasonable measures should be made available to the public. Counties and cities may not rely on expansion of the urban growth area as a measure to address the inconsistency.

(i) Each county or city is responsible for implementing reasonable measures within its jurisdiction and must adopt measures that are designed to remedy the inconsistency within the remaining planning horizon of the adopted comprehensive plan;

(ii) Each county or city adopting reasonable measures is responsible for documenting its methodology and expectations for monitoring to provide a basis to evaluate whether the adopted measures have been effective in increasing consistency during the subsequent review and evaluation period;

(iii) If the monitoring of reasonable measures fails to show increased consistency relative to adopted policies, plans and development regulations during the subsequent review and evaluation period, the county or city should evaluate whether the measures in question should be revised, replaced, supplemented or rescinded;

(iv) If monitoring of reasonable measures demonstrates that such measures have remedied the inconsistency, the adopting county or city may discontinue monitoring;

(v) A copy of any action taken to adopt, amend, or rescind reasonable measures should be submitted to the department.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-315, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-196-315, filed 1/19/10, effective 2/19/10.]

WAC 365-196-320 Providing urban services. (1)

Urban governmental services.

(a) Urban services are defined by RCW 36.70A.030(18) as those public services and public facilities at an intensity historically and typically provided in cities. Urban services specifically include:

- (i) Sanitary sewer systems;
- (ii) Storm drainage systems;
- (iii) Domestic water systems;
- (iv) Street cleaning services;
- (v) Fire and police protection services;
- (vi) Public transit services; and
- (vii) Other public utilities associated with urban areas and normally not associated with rural areas.

(b) RCW 36.70A.030 (12) and (13) define public facilities and public services, which in addition to those defined as urban services, also include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, parks and recreational facilities, and schools, public health and environmental protection, and other governmental services.

(c) Although some of these services may be provided in rural areas, urban areas are typically served by higher capacity systems capable of providing adequate services at urban densities. Storm and sanitary sewer systems are the only services that are generally exclusively for urban growth areas. Outside of urban growth areas storm and sanitary sewer systems are appropriate in limited circumstances when necessary to protect basic public health and safety and the environment, and when such services are financially supportable at rural densities and do not permit urban development.

(d) At a minimum, adequate public facilities in urban areas should include sanitary sewer systems, and public water service from a Group A public water system under chapter 70.119 or 70.119A RCW because these services are usually necessary to support urban densities. The services provided must be adequate to allow development at urban densities and serve development at densities consistent with the land use element.

(e) The obligation to provide urban areas with adequate public facilities is not limited to new urban areas. Counties and cities must include in their capital facilities element a plan to provide adequate public facilities to all urban areas, including those existing areas that are developed, but do not currently have a full range of urban governmental services or services necessary to support urban densities.

(f) The use of on-site sewer systems within urban growth areas may be appropriate in limited circumstances where there is no negative effect on basic public health, safety and the environment; and the use of on-site sewer systems does not preclude development at urban densities. Such circumstances may include:

(i) Use of on-site sewer systems as a transitional strategy where there is a development phasing plan in place (see WAC 365-195-330 [WAC 365-196-330]); or

(ii) To serve isolated pockets of urban land difficult to serve due to terrain, critical areas or where the benefit of providing an urban level of service is cost-prohibitive; or

(iii) Where on-site systems are the best available technology for the circumstances and are designed to serve urban densities.

(2) Appropriate providers. RCW 36.70A.110(4) states that, in general, cities are the units of government most appropriate to provide urban governmental services. However, counties, special purpose districts and private providers also provide urban services, particularly services that are regional in nature. Counties and cities should plan for a transformation of governance as urban growth areas develop, whereby annexation or incorporation occurs, and nonregional urban services provided by counties are generally transferred to cities. See WAC 365-196-305.

(3) Coordination of planning in urban growth areas.

(a) The capital facilities element and transportation element of the county or city comprehensive plan must show how adequate public facilities will be provided and by whom. If the county or city with land use authority over an area is not the provider of urban services, a process for maintaining consistency between the land use element and plans for infrastructure provision should be developed consistent with the county-wide planning policies.

(b) If a city is the designated service provider outside of its municipal boundaries, the city capital facilities element must also show how urban services will be provided within their service area. This should include incorporated areas and any portion of the urban growth area that it is assigned as a service area or potential annexation area designated under RCW 36.70A.110(7). See WAC 365-196-415 for information on the capital facilities element.

(4) Level of financial certainty required when establishing urban growth areas.

(a) Any amendment to an urban growth area must be accompanied by an analysis of what capital facilities investments are necessary to ensure the provision of adequate public facilities.

(b) If new or upgraded facilities are necessary, counties and cities must amend the capital facilities and transportation elements to maintain consistency with the land use element.

(c) The amended capital facilities and transportation elements must identify those new or expanded facilities and services necessary to support development in new urban growth areas. The elements must also include cost estimates to determine the amount of funding necessary to construct needed facilities.

(d) The capital facilities and transportation elements should identify what combination of new or existing funding will be necessary to develop the needed facilities. Funding goals should be based on what can be raised by using existing resources. Use of state and federal grants should be realistic based on past trends unless the capital facilities element identifies new programs or an increased amount of available funding from state or federal sources.

(e) If funding available from existing sources is not sufficient, counties and cities should use development phasing strategies to prevent the irreversible commitment of land to urban development before adequate funding is available. Development phasing strategies are described in WAC 365-196-330. Counties and cities should then implement measures needed to close the funding gap.

(f) When considering potential changes to the urban growth area, counties should require that any proposal to expand the urban growth area must include necessary information to demonstrate an ability to provide adequate public

facilities to any potential new portions of the urban growth area.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-320, filed 1/19/10, effective 2/19/10.]

WAC 365-196-325 Providing sufficient land capacity suitable for development. (1) Requirements.

(a) RCW 36.70A.115 requires counties and cities to ensure that, taken collectively, comprehensive plans and development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, including the accommodation of, as appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related to such growth, as adopted in the applicable county-wide planning policies and consistent with the twenty-year population forecast from the office of financial management. To demonstrate this requirement is met, counties and cities must conduct an evaluation of land capacity sufficiency that is commonly referred to as a "land capacity analysis."

(b) Counties and cities must complete a land capacity analysis that demonstrates sufficient land for development or redevelopment to meet their adopted growth allocation targets during the review of urban growth areas required by RCW 36.70A.130 (3)(a). See WAC 365-196-310 for guidance in estimating and providing sufficient land capacity.

(c) Counties and cities subject to RCW 36.70A.215 must determine land capacity sufficiency as part of the buildable lands reporting required no later than one year prior to the deadline for periodic review of comprehensive plans and development regulations required by RCW 36.70A.130, and adopt and implement measures that are reasonably likely to increase the consistency between land capacity and growth allocations. See WAC 365-196-315 for guidance.

(d) A complete land capacity analysis is not required to be undertaken for every amendment to a comprehensive plan or development regulation outside of the act's required periodic reviews. However, when considering amendments to the comprehensive plan or development regulations which increase or decrease allowed densities, counties and cities should estimate the degree of increase or decrease in development capacity on lands subject to the amendments, and estimate if the capacity change may affect its ability to provide sufficient capacity of land suitable for development. If so, the county or city should complete a land capacity analysis.

(2) Recommendations for meeting requirement.

(a) Determining land capacity sufficiency. The land capacity analysis is a comparison between the collective effects of all development regulations operating on development and the assumed densities established in the land use element. In order to achieve sufficiency, the development regulations must allow at least the low end of the range of assumed densities established in the land use element. This assures a city or county can meet its obligation to accommodate the growth allocated through the county-wide population allocation process.

(b) Appropriate area for analysis. The focus of the analysis is on the county or city's ability to meet its obligation to accommodate the growth allocated through the county-wide population or employment allocation process. Providing suf-

ficient land capacity for development does not require a county or city to achieve or evaluate sufficiency for every parcel of a future land use designation provided the area as a whole ensures sufficient land capacity for development.

(c) The land capacity analysis should evaluate what the development regulations allow, rather than what development has actually occurred. Many factors beyond the control of counties and cities will control the amount and pace of actual development, what density it is built at and what types and densities of development are financially viable for any set of economic conditions. Counties and cities need not ensure that particular types of development are financially feasible in the context of short term market conditions. Counties and cities should, however, consider available information on trends in local markets to inform its evaluation of sufficient land capacity for the twenty-year planning period.

(d) Development phasing. RCW 36.70A.115 does not create an obligation to ensure that all land in the urban growth area is available for development at the same time. When counties or cities establish mechanisms for development phasing, zoned densities in the short term may be established that are substantially lower than called for in the future land use designations. In these cases, a county or city ensures a sufficient land capacity suitable for development by implementing its development phasing policies to allow development to occur within the twenty-year planning period. Development phasing is described in greater detail in WAC 365-196-330.

(e) The department recommends the following means of implementing the requirements of RCW 36.70A.115.

(i) Periodic evaluation. Counties and cities ensure sufficient land capacity for development by comparing the achieved density of development that has been permitted in each zoning category to the assumed densities established in the land use element using existing permitting data. If existing permitting data shows that the densities approved are lower than assumed densities established in the land use element, counties and cities should review their development regulations to determine if regulatory barriers are preventing development at the densities as envisioned. This evaluation must occur as part of the urban growth area review required in RCW 36.70A.130 (3)(a) and as part of the buildable lands review and evaluation program conducted under RCW 36.70A.215.

(ii) Flexible development standards. Counties and cities could ensure sufficient land capacity for development by establishing development regulations to allow development proposals that transfer development capacity from unbuildable portions of a development parcel to other portions of the development parcel so the underlying zoned density is still allowed. This may provide for flexibility in some dimensional standards provided development is consistent with state law and all impacts are mitigated.

(iii) Evaluation of development capacity impacts of proposed development regulation amendments. Counties and cities may also consider evaluation of whether proposed amendments to development regulations will have a significant impact on the ability of a county or city to provide sufficient capacity of land for development.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-325, filed 1/27/15, effective 2/27/15; WSR 10-22-103, § 365-196-

325, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-325, filed 1/19/10, effective 2/19/10.]

WAC 365-196-330 Phasing development within the UGA. (1) Purpose of development phasing. Development phasing is the sequencing of development subareas within a city or urban growth area over the course of the twenty-year planning period. Development phasing should be considered a way to achieve one or more of the following:

(a) Orderly development pursuant to RCW 36.70A.110 (3), which states that urban growth should first be located in areas with existing urban development and existing service capacity; second in existing urban development areas where new services can be provided in conjunction with existing services; and third in the remainder of the urban growth area;

(b) Preventing the irreversible commitment of land to urban growth before the provision of adequate public facilities. Within the comprehensive plan, the capital facilities element, transportation element, and parks and recreation element each must contain a plan to provide urban areas with adequate public facilities. The comprehensive plan must identify those facilities needed to achieve and maintain adopted levels of service over the twenty-year planning period, but only requires a six-year financing plan. Development phasing is a tool to address those areas for which capital facility needs have been identified in the twenty-year plan, but financing has not yet been identified. Because no irreversible commitment of land has been made in the zoning ordinance, if provision of urban governmental services ultimately proves infeasible, the area can be removed from the urban growth area when reassessing the land use element if probable funding falls short;

(c) Preventing a pattern of sprawling low density development from occurring or vesting in these areas prior to the ability to support urban densities. Once this pattern has occurred, it is more difficult to serve with urban services and less likely to ultimately achieve urban densities;

(d) Serving as a means of developing more detailed intergovernmental agreements or other plans to facilitate the orderly transition of governance and public services.

(2) Recommended provisions for development phasing. Comprehensive plan and development regulation provisions for development phasing should include the following:

(a) Identification of the areas to be sequenced;

(b) The criteria required to develop these areas at the ultimate urban densities envisioned. Criteria may be based on adequacy of services, existing urban development, and provisions for transition of governance. Timelines may also be used for sequencing;

(c) The densities and uses allowed in identified areas that have not yet met the criteria. Densities and intensities more typical of rural development should be considered to avoid hindering future development at urban densities. Such requirements are not inconsistent with the obligation to permit urban densities if provisions are made for conversion to urban densities over the course of the twenty-year planning period. Regulations should ensure that interim uses do not preclude future development at urban densities; and

(d) The review process for transitioning to ultimate urban densities. This should involve changes to development

regulations, and not require amendments to the comprehensive plan.

(3) Additional considerations.

(a) Comprehensive plans may include other tools selected to facilitate phasing.

(b) Counties and cities should coordinate the phasing of development within portions of urban growth areas assigned to cities, and throughout urban growth areas in which cities are located. Development phasing policies may be addressed in county-wide planning policies.

(c) Counties and cities must still provide sufficient capacity of land suitable for development as required in RCW 36.70A.115, but lands subject to sequencing requirements should be included in this capacity as long as phasing is implemented during the planning period.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-330, filed 1/19/10, effective 2/19/10.]

WAC 365-196-335 Identification of open space corridors. (1) Requirements.

(a) Each county or city planning under the act must identify open space corridors within and between urban growth areas. They must include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030.

(b) The county or city may seek to acquire by purchase the fee simple or lesser interests in open space corridors using funds authorized by RCW 84.34.230 or other sources.

(2) Recommendations for meeting requirements.

(a) Counties and cities should consider identifying open space corridors when reviewing and updating urban growth areas, critical areas designations, and the land use element of comprehensive plans.

(b) Counties and cities should consider the various purposes and uses of identified corridors, and should state the preferred uses anticipated for each identified corridor, if known. In some cases, uses preferred for an identified corridor may preclude other incompatible uses.

(c) Counties and cities should consider how identified corridors exist in relationship to designated critical areas and natural resource lands, the extent and trends of public demands for recreational lands and access to public lands for recreation, and specific existing and planned recreational uses that may make use of identified corridors for specific uses, including nonmotorized transportation.

(d) When identifying open space corridors, counties and cities should plan an integrated system that uses identified corridors to link established large areas of parks and recreational lands, resource lands, greenbelts, streams, and wildlife corridors to help protect fish and wildlife habitat conservation areas.

(e) Counties and cities should also consider the potential to use vegetated green spaces as part of an integrated system to absorb and treat storm water.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-335, filed 1/19/10, effective 2/19/10.]

WAC 365-196-340 Identification of lands useful for public purposes. (1) Requirements. Each county and city planning under the act must identify land useful for public purposes such as utility corridors, transportation corridors,

(1/27/15)

landfills, sewage treatment facilities, storm water management facilities, recreation, schools, and other public uses. The county must work with the state and with the cities within the county's borders to identify areas of shared need for public facilities. The jurisdictions within the county must prepare a prioritized list of lands necessary for the identified public uses including an estimated date by which the acquisition will be needed. The respective capital acquisition budgets for each jurisdiction must reflect the jointly agreed upon priorities and time schedule. See WAC 365-196-405 (2)(g), Land use element.

(2) Recommendations for meeting requirements. Counties and cities should identify lands useful for public purposes when updating the urban growth area designations and the land use, utilities and transportation elements of comprehensive plans. The department recommends that the information derived in meeting this requirement be made generally available only to the extent necessary to meet the requirements of the public disclosure laws.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-340, filed 1/19/10, effective 2/19/10.]

WAC 365-196-345 New fully contained communities.

(1) Any county planning under the act may reserve a portion of its twenty-year population projection for new fully contained communities, located outside of the designated urban growth areas.

(2) Proposals to authorize fully contained communities must be processed according to the locally established policies implementing the criteria set forth in RCW 36.70A.350. Approval of a new fully contained community has the effect of amending the comprehensive plan, therefore it is a legislative action and should follow the procedures associated with comprehensive plan amendments.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-345, filed 1/19/10, effective 2/19/10.]

PART FOUR

FEATURES OF THE COMPREHENSIVE PLAN

WAC 365-196-400 Mandatory elements. (1) Requirements.

(a) The comprehensive plan must include, at a minimum, a future land use map.

(b) The comprehensive plan must contain descriptive text covering objectives, principles, and standards used to develop the comprehensive plan.

(c) The comprehensive plan must be an internally consistent document and all elements shall be consistent with the future land use map.

(d) Each comprehensive plan must include each of the following:

- (i) A land use element;
- (ii) A housing element;
- (iii) A capital facilities plan element;
- (iv) A utilities element;
- (v) A transportation element.

(e) Required elements enacted after January 1, 2002, must be included in each comprehensive plan that is updated under RCW 36.70A.130(1), but only if funds sufficient to

[Ch. 365-196 WAC p. 17]

cover applicable local government costs are appropriated and distributed by the state at least two years before the applicable review and update deadline in RCW 36.70A.130(5). The department will notify counties and cities when funds have been appropriated for this purpose. Elements enacted after January 1, 2002, include:

- (i) An economic development element; and
- (ii) A parks and recreation element.

(f) County comprehensive plans must also include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources.

(g) Additionally, each county and city comprehensive plan must contain:

(i) A process for identifying and siting essential public facilities.

(ii) The goals and policies of the shoreline master program adopted by the county or city, either directly in the comprehensive plan, or through incorporation by reference as described in WAC 173-26-191.

(2) Recommendations for overall design of the comprehensive plan.

(a) The planning horizon for the comprehensive plan must be at least the twenty-year period following the adoption of the comprehensive plan.

(b) The comprehensive plan should include or reference the statutory goals and requirements of the act as guiding the development of the comprehensive plan and should also identify any supplementary goals adopted in the comprehensive plan.

(c) Each county and city comprehensive plan should include, or reference, the county-wide planning policies, along with an explanation of how the county-wide planning policies have been integrated into the comprehensive plan.

(d) Each comprehensive plan must contain a future land use map showing the proposed physical distribution and location of the various land uses during the planning period. This map should provide a graphic display of how and where development is expected to occur.

(e) The comprehensive plan should include a vision for the community at the end of the twenty-year planning period and identify community values derived from the visioning and other citizen participation processes. Goals may be further defined with policies and objectives in each element of the comprehensive plan.

(f) Each county and city should include at the beginning of its comprehensive plan a section which summarizes, with graphics and a minimum amount of text, how the various pieces of the comprehensive plan fit together. A comprehensive plan may include overlay maps and other graphic displays depicting known critical areas, open space corridors, development patterns, phasing of development, neighborhoods or subarea definitions, and other plan features.

(g) Detailed recommendations for preparing each element of the comprehensive plan are provided in WAC 365-196-405 through 365-196-485.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190, WSR 15-04-039, § 365-196-400, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-196-400, filed 1/19/10, effective 2/19/10.]

WAC 365-196-405 Land use element. (1) Requirements. The land use element must contain the following features:

(a) Designation of the proposed general distribution and general location and extent of the uses of land, where appropriate, for agricultural, timber, and mineral production, for housing, commerce, industry, recreation, open spaces, public utilities, public facilities, general aviation airports, military bases, rural uses, and other land uses.

(b) Population densities, building intensities, and estimates of future population growth.

(c) Provisions for protection of the quality and quantity of ground water used for public water supplies.

(d) Wherever possible, consideration of urban planning approaches to promote physical activity.

(e) Where applicable, a review of drainage, flooding, and storm water runoff in the area covered by the plan and nearby jurisdictions, and guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) Recommendations for meeting requirements. The land use assumptions in the land use element form the basis for all growth-related planning functions in the comprehensive plan, including transportation, housing, capital facilities, and, for counties, the rural element. Preparing the land use element is an iterative process. Linking all plan elements to the land use assumptions in the land use element helps meet the act's requirement for internal consistency. The following steps are recommended in preparing the land use element:

(a) Counties and cities should integrate relevant county-wide planning policies and, where applicable, multicounty planning policies, into the local planning process, and ensure local goals and policies are consistent.

(b) Counties and cities should identify the existing general distribution and location of various land uses, the approximate acreage, and general range of density or intensity of existing uses.

(c) Counties and cities should estimate the extent to which existing buildings and housing, together with development or redevelopment of vacant, partially used and underutilized land, can support anticipated growth over the planning period. Redevelopment of fully built properties may also be considered.

(i) Estimation of development or redevelopment capacity may include:

(A) Identification of individual properties or areas likely to convert because of market pressure or because they are built below allowed densities; or

(B) Use of an estimated percentage of area-wide growth during the planning period anticipated to occur through redevelopment, based on likely future trends for the local area or comparable jurisdictions; or

(C) Some combination of (c)(i)(A) and (B) of this subsection.

(ii) Estimates of development or redevelopment capacity should be included in a land capacity analysis as part of a county-wide process described in WAC 365-196-305 and 365-196-310 or, as applicable, WAC 365-196-315.

(d) Counties and cities should identify special characteristics and uses of the land which may influence land use or regulation. These may include:

(i) The location of agriculture, forest and mineral resource lands of long-term commercial significance.

(ii) The general location of any known critical areas that limit suitability of land for development.

(iii) Influences or threats to the quality and quantity of ground water used for public water supplies. These may be identified from information sources such as the following:

(A) Designated critical aquifer recharge areas that identify areas where potentially hazardous material use should be limited, or for direction on where managing development practices that influence the aquifer would be important;

(B) Watershed plans approved under chapter 90.82 RCW; ground water management plans approved under RCW 90.44.400; coordinated water system plans adopted under chapter 70.116 RCW; and watershed plans adopted under chapter 90.54 RCW as outlined in RCW 90.03.386.

(C) Instream flow rules prepared by the department of ecology and limitations and recommendations therein that may inform land use decisions.

(iv) Areas adjacent to general aviation airports where incompatible uses should be discouraged, as required by RCW 36.70A.510 and 36.70.547, with guidance in WAC 365-196-455.

(v) Areas adjacent to military bases where incompatible uses should be discouraged, as required by RCW 36.70A.530 with guidance in WAC 365-196-475.

(vi) Existing or potential open space corridors within and between urban growth areas as required by RCW 36.70A.160 for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Counties and cities may consult WAC 365-196-335 for additional information.

(vii) Where applicable, sites that are particularly well suited for industry. Counties and cities should consult WAC 365-196-310 (3)(c)(iv) for information on industrial land uses. For counties, the process described in WAC 365-196-465 and 365-196-470 may be relevant for industrial areas outside of an urban growth area.

(viii) Other features that may be relevant to this information gathering process may include view corridors, brown-field sites, national scenic areas, historic districts, or other opportunity sites, or other special characteristics which may be useful to inform future land use decisions.

(e) Counties and cities must review drainage, flooding, and storm water runoff in the area or nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound. Water quality information may be integrated from the following sources:

(i) Planning and regulatory requirements of municipal storm water general permits issued by the department of ecology that apply to the county or city.

(ii) Local waters listed under Washington state's water quality assessment and any water quality concerns associated with those waters.

(iii) Interjurisdictional plans, such as total maximum daily loads.

(f) Counties and cities must obtain twenty-year population allocations for their planning area as part of a county-wide process described in WAC 365-196-305(4) and 365-196-310. Using information from the housing needs analysis, identify the amount of land suitable for development at a

variety of densities consistent with the number and type of residential units likely to be needed over the planning period. At a minimum, cities must plan for the population allocated to them, but may plan for additional population within incorporated areas.

(g) Counties and cities should estimate the level of commercial space, and industrial land needed using information from the economic development element, if available, or from other relevant economic development plans.

(h) Counties and cities should identify the general location and estimated quantity of land needed for public purposes such as utility corridors, landfills or solid waste transfer stations, sewage treatment facilities, storm water management facilities, recreation, schools, and other public uses. Counties and cities should consider corridors needed for transportation including automobile, rail, and trail use in and between planning areas, consistent with the transportation element and coordinate with adjacent jurisdictions for connectivity.

(i) Counties and cities should select land use designations and implement zoning. Select appropriate commercial, industrial, and residential densities and their distribution based on the total analysis of land features, population to be supported, implementation of regional planning strategies, and needed capital facilities.

(i) It is strongly recommended that a table be included showing the acreage in each land use designation, the acreage in each implementing zone, the approximate densities that are assumed, and how this meets the twenty-year population projection.

(ii) Counties and cities should prepare a future land use map including land use designations, municipal and urban growth area boundaries, and any other relevant features consistent with other elements of the comprehensive plan.

(j) Wherever possible, counties and cities should consider urban planning approaches that promote physical activity. Urban planning approaches that promote physical activity may include:

(i) Higher intensity residential or mixed-use land use designations to support walkable and diverse urban, town and neighborhood centers.

(ii) Transit-oriented districts around public transportation transfer facilities, rail stations, or higher intensity development along a corridor served by high quality transit service.

(iii) Policies for siting or colocating public facilities such as schools, parks, libraries, community centers and athletic centers to place them within walking or cycling distance of their users.

(iv) Policies supporting linear parks and shared-use paths, interconnected street networks or other urban forms supporting bicycle and pedestrian transportation.

(v) Policies supporting multimodal approaches to concurrency consistent with other elements of the plan.

(vi) Traditional or main street commercial corridors with street front buildings and limited parking and driveway interruption.

(vii) Opportunities for promoting physical activity through these and other policies should be sought in existing as well as newly developing areas. Regulatory or policy bar-

riers to promoting physical activity for new or existing development should also be removed or lessened where feasible.

(k) Counties and cities may prepare an implementation strategy describing the steps needed to accomplish the vision and the densities and distributions identified in the land use element. Where greater intensity of development is proposed, the strategy may include a design scheme to encourage new development that is compatible with existing or desired community character.

(l) Counties and cities may prepare a schedule for the phasing of the planned development contemplated consistent with the availability of capital facilities as provided in the capital facilities element. WAC 365-196-330 provides additional information regarding development phasing.

(m) Counties and cities should reassess the land use element in light of:

(i) The projected capacity for financing the needed capital facilities over the planning period; and

(ii) An assessment of whether the planned densities and distribution of growth can be achieved within the capacity of available land and water resources and without environmental degradation.

[Statutory Authority: RCW 36.70A.050, 36.70A.190, WSR 10-22-103, § 365-196-405, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-405, filed 1/19/10, effective 2/19/10.]

WAC 365-196-410 Housing element. (1) Requirements. Counties and cities must develop a housing element ensuring vitality and character of established residential neighborhoods. The housing element must contain at least the following features:

(a) An inventory and analysis of existing and projected housing needs.

(b) A statement of the goals, policies, and objectives for the preservation, improvement, and development of housing, including single-family residences.

(c) Identification of sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, group homes and foster care facilities.

(d) Adequate provisions for existing and projected housing needs of all economic segments of the community.

(2) Recommendations for meeting requirements. The housing element shows how a county or city will accommodate anticipated growth, provide a variety of housing types at a variety of densities, provide opportunities for affordable housing for all economic segments of the community, and ensure the vitality of established residential neighborhoods. The following components should appear in the housing element:

(a) Housing goals and policies.

(i) The goals and policies serve as a guide to the creation and adoption of development regulations and may also guide the exercise of discretion in the permitting process.

(ii) The housing goals and policies of counties and cities should be consistent with county-wide planning policies and, where applicable, multicounty planning policies.

(iii) Housing goals and policies should address at least the following:

(A) Affordable housing;

(B) Preservation of neighborhood character; and

(C) Provision of a variety of housing types along with a variety of densities.

(iv) Housing goals and policies should be written to allow the evaluation of progress toward achieving the housing element's goals and policies.

(b) Housing inventory.

(i) The purpose of the required inventory is to gauge the availability of existing housing for all economic segments of the community.

(ii) The inventory should identify the amount of various types of housing that exist in a community. The act does not require that a housing inventory be in a specific form. Counties and cities should consider WAC 365-196-050 (3) and (4) when determining how to meet the housing inventory requirement and may rely on existing data.

(iii) The housing inventory may show the affordability of different types of housing. It may provide data about the median sales prices of homes and average rental prices.

(iv) The housing inventory may include information about other types of housing available within the jurisdiction such as:

(A) The number of beds available in group homes, nursing homes and/or assisted living facilities;

(B) The number of dwelling units available specifically for senior citizens;

(C) The number of government-assisted housing units for lower-income households.

(c) Housing needs analysis.

(i) The purpose of the needs analysis is to estimate the type and densities of future housing needed to serve all economic segments of the community. The housing needs analysis should compare the number of housing units identified in the housing inventory to the projected growth or other locally identified housing needs.

(ii) The definition of housing needs should be addressed in a regional context and may use existing data.

(iii) The analysis should be based on the most recent twenty-year population allocation.

(iv) The analysis should analyze consistency with county-wide planning policies, and where applicable, multicounty planning policies, related to housing for all economic segments of the population.

(d) Housing targets or capacity.

(i) The housing needs analysis should identify the number and types of new housing units needed to serve the projected growth and the income ranges within it. This should be used to designate sufficient land capacity suitable for development in the land use element.

(ii) Counties and cities may also use other considerations to identify housing needs, which may include:

(A) Workforce housing which is often defined as housing affordable to households earning between eighty to one hundred twenty percent of the median household income.

(B) Jobs-to-housing balance, which is the number of jobs in a city or county relative to the number of housing units.

(C) Reasonable measures to address inconsistencies found in buildable lands reports prepared under RCW 36.70A.215.

(D) Housing needed to address an observed pattern of a large quantity of second homes in destination communities.

(iii) The targets established in the housing element will serve as benchmarks to evaluate progress and guide decisions regarding development regulations.

(e) Affordable housing. RCW 36.70A.070 requires counties and cities, in their housing element, to make adequate provisions for existing and projected needs for all economic segments of the community.

(i) Determining what housing units are affordable.

(A) In the case of dwelling units for sale, affordable housing has mortgages, amortization, taxes, insurance and condominium or association fees, if any, that consume no more than thirty percent of the owner's gross annual household income.

(B) In the case of dwelling units for rent, affordable housing has rent and utility costs, as defined by the county or city, that cost no more than thirty percent of the tenant's gross annual household income.

(C) Income ranges used when considering affordability. When planning for affordable housing, counties or cities should use income ranges consistent with the applicable county-wide or multicounty planning policies. If no such terms exist, counties or cities should consider using the United States Department of Housing and Urban Development (HUD) definitions found in 24 C.F.R. 91.5, which are used to draft consolidated planning documents required by HUD. The following definitions are from 24 C.F.R. 91.5:

(I) Median income refers to median household income.

(II) Extremely low-income refers to a household whose income is at or below thirty percent of the median income, adjusted for household size, for the county where the housing unit is located.

(III) Low-income refers to a household whose income is between thirty percent and fifty percent of the median income, adjusted for household size, for the county where the housing unit is located.

(IV) Moderate-income refers to a household whose income is between fifty percent and eighty percent of the median income where the housing unit is located.

(V) Middle-income refers to a household whose income is between eighty percent and ninety-five percent of the median income for the area where the housing unit is located.

(ii) Affordable housing requires planning from a regional perspective. County-wide planning policies must address affordable housing and its distribution among counties and cities. A county's or city's obligation to plan for affordable housing within a regional context is determined by the applicable county-wide planning policies. Counties and cities should review county-wide affordable housing policies when developing the housing element to maintain consistency.

(iii) Counties and cities should consider the ability of the market to address housing needs for all economic segments of the population. Counties and cities may help to address affordable housing by identifying and removing any regulatory barriers limiting the availability of affordable housing.

(iv) Counties and cities may help to address affordable housing needs by increasing development capacity. In such an event, a county or city affordable housing section should:

(A) Identify certain land use designations within a geographic area where increased residential development may help achieve affordable housing policies and targets;

(B) As needed, identify policies and subsequent development regulations that may increase residential development capacity;

(C) Determine the number of additional housing units these policies and development regulations may generate; and

(D) Establish a target that represents the minimum amount of affordable housing units that it seeks to generate.

(f) Implementation plan.

(i) The housing element should identify strategies designed to help meet the needs identified for all economic segments of the population within the planning area. It should include, but not be limited to, the following:

(A) Consideration of the range of housing choices to be encouraged including, but not limited to, multifamily housing, mixed uses, manufactured houses, accessory dwelling units, and detached houses;

(B) Consideration of various lot sizes and densities, and of clustering and other design configurations;

(C) Identification of a sufficient amount of appropriately zoned land to accommodate the identified housing needs over the planning period; and

(D) Evaluation of the capacity of local public and private entities and the availability of financing to produce housing to meet the identified need.

(ii) The housing element should also address how the county or city will provide for group homes, foster care facilities, and facilities for other populations with special needs. The housing element should provide for an equitable distribution of these facilities among neighborhoods within the county or city

(iii) The housing element should identify strategies designed to ensure the vitality and character of existing neighborhoods. It should show how growth and change will preserve or improve existing residential qualities. The housing element may not focus on one requirement (e.g., preserving existing housing) to the exclusion of the other requirements (e.g., affordable housing) in RCW 36.70A.070(2). It should explain how various needs are reconciled.

(iv) The housing element should include provisions to monitor the performance of its housing strategy. A monitoring program may include the following:

(A) The collection and analysis of information about the housing market;

(B) Data about the supply of developable residential building lots at various land-use densities and the supply of rental and for-sale housing at various price levels;

(C) A comparison of actual housing development to the targets, policies and goals contained in the housing element;

(D) Identification of thresholds at which steps should be taken to adjust and revise goals and policies; and

(E) A description of the types of adjustments and revisions that the county or city may consider.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-410, filed 1/19/10, effective 2/19/10.]

WAC 365-196-415 Capital facilities element. (1) Requirements. The capital facilities element of a comprehensive plan must contain at least the following features:

(a) An inventory of existing capital facilities owned by public entities, also referred to as "public facilities," showing the locations and capacities of the capital facilities;

(b) A forecast of the future needs for such capital facilities based on the land use element;

(c) The proposed locations and capacities of expanded or new capital facilities;

(d) At least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and

(e) A requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(2) Recommendations for meeting requirements.

(a) Inventory of existing facilities.

(i) Counties and cities should create an inventory of existing capital facilities showing locations and capacities, including the extent to which existing facilities have capacity available for future growth.

(ii) Capital facilities involved should include, at a minimum, water systems, sanitary sewer systems, storm water facilities, reclaimed water facilities, schools, parks and recreational facilities, police and fire protection facilities.

(iii) Capital facilities that are needed to support other comprehensive plan elements, such as transportation, the parks and recreation or the utilities elements, may be addressed in the capital facility element or in the specific element.

(iv) Counties and cities should periodically review and update the inventory. At a minimum this review must occur as part of the periodic update required by RCW 36.70A.130 (1). Counties and cities may also maintain this inventory annually in response to changes in the annual capital budget.

(b) Forecast of future needs.

(i) Counties and cities should forecast needs for capital facilities during the planning period, based on the levels of service or planning assumptions selected and consistent with the growth, densities and distribution of growth anticipated in the land use element. The forecast should include reasonable assumptions about the effect of any identified system management or demand management approaches to preserve capacity or avoid the need for new facilities.

(ii) The capital facilities element should identify all capital facilities that are planned to be provided within the planning period, including general location and capacity.

(A) Counties and cities should identify those improvements that are necessary to address existing deficiencies or to preserve the ability to maintain existing capacity.

(B) Counties and cities should identify those improvements that are necessary for development.

(C) Counties and cities may identify any other improvements desired to raise levels of services above locally adopted minimum standards, to enhance the quality of life in the community or meet other community needs not related to growth such as administrative offices, courts or jail facilities. Counties and cities are not required to set level of service standards for facilities that are not necessary for develop-

ment. Because these facilities are not necessary for development, the failure to fund these facilities as planned would not require a reassessment of the land use element if funding falls short as required by RCW 36.70A.070 (3)(e).

(c) Financing plan.

(i) The capital facilities element should include creation of at least a six-year capital facilities plan for financing capital facilities needed within that time frame. Counties and cities should forecast projected funding capacities based on revenues available under existing laws and ordinances, followed by the identification of sources of public or private funds for which there is reasonable assurance of availability. Where the services and capital facilities are provided by other entities, these other providers should provide financial information as well. If the funding strategy relies on new or previously untapped sources of revenue, the capital facilities element should include an estimate of new funding that will be supplied. Adoption of the development regulations or other actions to secure these funding sources should be included in the implementation strategy.

(ii) The six-year plan should be updated at least biennially so financial planning remains sufficiently ahead of the present for concurrency to be evaluated. Such an update of the capital facilities element may be integrated with the county's or city's annual budget process for capital facilities.

(d) Reassessment.

(i) Counties and cities must reassess the land use element and other elements of the comprehensive plan if the probable funding falls short of meeting the need for facilities that are determined by a county or city to be necessary for development. Counties and cities should identify a mechanism to periodically evaluate the adequacy of public facilities based on adopted levels of service or other objective standards. The evaluation should determine if a combination of existing and funded facilities are adequate to maintain or exceed adopted level of service standards.

(ii) This evaluation must occur, at a minimum, as part of the periodic review and update required in RCW 36.70A.130 (1) and (3) and as major changes are made to the capital facilities element.

(iii) If public facilities are inadequate, local governments must address this inadequacy. If the reassessment identifies a lack of adequate public facilities, counties and cities may use a variety of strategies including, but not limited to, the following:

(A) Reducing demand through demand management strategies;

(B) Reducing levels of service standards;

(C) Increasing revenue;

(D) Reducing the cost of the needed facilities;

(E) Reallocating or redirecting planned population and employment growth within the jurisdiction or among jurisdictions within the urban growth area to make better use of existing facilities;

(F) Phasing growth or adopting other measures to adjust the timing of development, if public facilities or services are lacking in the short term for a portion of the planning period;

(G) Revising county-wide population forecasts within the allowable range, or revising the county-wide employment forecast.

(3) Relationship between the capital facilities element and the land use element.

(a) Providing adequate public facilities is a component of the affirmative duty created by the act for counties and cities to accommodate the growth that is selected and allocated, to provide sufficient capacity of land suitable for development, and to permit urban densities.

(b) The needs for capital facilities should be dictated by the land use element. The future land use map designates sufficient land use densities and intensities to accommodate the population and employment that is selected and allocated. The land uses and assumed densities identified in the land use element determine the location and timing of the need for new or expanded facilities.

(c) A capital facilities element includes the new and expanded facilities necessary for growth over the twenty-year life of the comprehensive plan. Facilities needed for new growth, combined with needs for maintenance and rehabilitation of the existing systems and the need to address existing deficiencies constitutes the capital facilities demand.

(4) Relationship to plans of other service providers or plans adopted by reference. A county or city should not meet their responsibility to prepare a capital facilities element by relying only on assurances of availability from other service providers. When system plans or master plans from other service providers are adopted by reference, counties and cities should do the following:

(a) Summarize this information within the capital facilities element;

(b) Synthesize the information from the various providers to show that the actions, taken together, provide adequate public facilities; and

(c) Conclude that the capital facilities element shows how the area will be provided with adequate public facilities.

(5) Relationship between growth and provision of adequate public facilities.

(a) Counties and cities should identify in the capital facility element which types of facilities it considers to be necessary for development.

(i) Counties and cities should identify facilities as necessary for development if the need for new facilities is reasonably related to the impacts of development.

(ii) Capital facilities must be identified as necessary for development if a county or city imposes an impact fee as a funding strategy for those facilities.

(iii) In urban areas, all facilities necessary to achieve urban densities must be identified as necessary for development.

(b) For those capital facilities deemed necessary for development, adequate public facilities may be maintained as follows:

(i) Transportation facilities are the only facilities required to have a concurrency mechanism, although a local government may adopt a concurrency mechanism for other facilities that are deemed necessary for development. See WAC 365-196-840.

(ii) Counties and cities should determine which capital facilities will be required as a condition of project approval, but not subject to concurrency. These may include, for example: Capital facilities required to ensure adequate water avail-

ability, capital facilities necessary to handle wastewater, and capital facilities necessary to manage storm water.

(ii) For capital facilities that are necessary for development, but not identified in subsection (2)(b)(ii)(A) or (B) of this section, counties and cities should set a minimum level of service standard, or provide some other objective basis for assessing the need for new facilities or capacity. This standard must be indicated as the baseline standard, below which the jurisdiction will not allow service to fall. Policies must require periodic analysis to determine if the adopted level of service is being met consistent with this section.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-415, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-196-415, filed 1/19/10, effective 2/19/10.]

WAC 365-196-420 Utilities element. (1) Requirements. The utilities element shall contain at least the following features: The general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(2) Recommendations for meeting requirements. Counties and cities should consider the following:

(a) The general location and capacity of existing and proposed utility facilities should be integrated with the land use element. Proposed utilities are those awaiting approval when the comprehensive plan is adopted.

(b) In consultation with serving utilities, counties and cities should prepare an analysis of the capacity needs for various utilities over the planning period, to serve the growth anticipated at the locations and densities proposed within the jurisdiction's planning area. The capacity needs analysis should include consideration of comprehensive utility plans, least-cost plans, load forecasts, and other planning efforts.

(c) The utility element should identify the general location of utility lines and facilities required to furnish anticipated capacity needs for the planning period. This should be developed in consultation with serving utilities as a part of the process of identifying lands useful for public purposes.

(d) Counties and cities should evaluate whether any utilities should be identified and classified as essential public facilities, subject in cases of siting difficulty to the separate siting process established under the comprehensive plan for such facilities.

(e) Counties and cities should evaluate whether any utility facilities within their planning area are subject to county-wide planning policies for siting public facilities of a county-wide or statewide nature.

(f) Counties and cities should include local criteria for siting utilities over the planning period, including:

(i) Consideration of whether a siting proposal is consistent with the locations and densities for growth as designated in the land use element.

(ii) Consideration of any public service obligations of the utility involved.

(iii) Evaluation of whether the siting decision will adversely affect the ability of the utility to provide service throughout its service area.

(iv) Balancing of local design considerations against articulated needs for system-wide uniformity.

(g) Counties and cities should adopt policies that call for:
 (i) Joint use of transportation rights of way and utility corridors, where possible.

(ii) Timely and effective notification of interested utilities about road construction, and of maintenance and upgrades of existing roads to facilitate coordination of public and private utility trenching activities.

(iii) Consideration of utility permit applications simultaneously with the project permit application for the project proposal requesting service and, when possible, approval of utility permits when the project permit application for the project to be served is approved.

(iv) Cooperation and collaboration between the county or city and the utility provider to develop vegetation management policies and plans for utility corridors.

(A) Coordination and cooperation between the county or city and the utility provider to educate the public on avoiding preventable utility conflicts through choosing proper vegetation (i.e., "Right Tree, Right Place").

(B) Coordination and cooperation between the county or city and the utility provider to reduce potential critical areas conflicts through the consideration of alternate utility routes, expedited vegetation management permitting, coordinated vegetation management activities, and/or long-term vegetation management plans.

(h) Adjacent counties and cities should coordinate to ensure the consistency of each jurisdiction's utilities element and regional utility plan, and to develop a coordinated process for siting regional utility facilities in a timely manner.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-420, filed 1/19/10, effective 2/19/10.]

WAC 365-196-425 Rural element. Counties must include a rural element in their comprehensive plan. This element shall include lands that are not designated for urban growth, agriculture, forest, or mineral resources. The rural element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of rural densities.

(1) Developing a written record. When developing the rural element, a county may consider local circumstances in establishing patterns of rural densities and uses, but must develop a written record explaining how the rural element harmonizes the planning goals in the act and meets the requirements of the act. This record should document local circumstances the county considered and the historic patterns of development in the rural areas.

(2) Establishing a definition of rural character.

(a) The rural element shall include measures that apply to rural development and protect rural character. Counties must define rural character to guide the development of the rural element and the implementing development regulations.

(b) The act identifies rural character as patterns of land use and development that:

(i) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(ii) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(iii) Provide visual landscapes that are traditionally found in rural areas and communities;

(iv) Are compatible with the use of land by wildlife and for fish and wildlife habitat;

(v) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(vi) Generally do not require the extension of urban governmental services; and

(vii) Are consistent with protection of natural surface water flows and ground water and surface water recharge and discharge areas.

(c) Counties should adopt a locally appropriate definition of rural character. Rural areas are diverse in visual character and in density, across the state and across a particular county. Rural development may consist of a variety of densities and uses. It may, for example, include clustered residential development at levels consistent with the preservation of rural character. Counties should define rural development both in terms of its visual character and in terms of the density and intensity of uses. Defining rural development in this way allows the county to use its definition of rural development both in its future land use designations and in its development regulations governing rural development.

(3) Rural densities.

(a) The rural element should provide for a variety of densities that are consistent with the pattern of development established in its definition of rural character. The rural comprehensive plan designations should be shown on the future land use map. Rural densities are a range of densities that:

(i) Are compatible with the primary use of land for natural resource production;

(ii) Do not make intensive use of the land;

(iii) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(iv) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(v) Provide visual landscapes that are traditionally found in rural areas and communities;

(vi) Are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(vii) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(viii) Generally do not require the extension of urban governmental services;

(ix) Are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas; and

(x) Do not create urban densities in rural areas or abrogate the county's responsibility to encourage new development in urban areas.

(b) Counties should perform a periodic analysis of development occurring in rural areas, to determine if patterns of rural development are protecting rural character and encouraging development in urban areas. This analysis should occur along with the urban growth area review required in RCW 36.70A.130 (3)(a). The analysis may include the following:

(i) Patterns of development occurring in rural areas.

(ii) The percentage of new growth occurring in rural versus urban areas.

(iii) Patterns of rural comprehensive plan or zoning amendments.

(iv) Numbers of permits issued in rural areas.

(v) Numbers of new approved wells and septic systems.

- (vi) Growth in traffic levels on rural roads.
 - (vii) Growth in public facilities and public services costs in rural areas.
 - (viii) Changes in rural land values and rural employment.
 - (ix) Potential build-out at the allowed rural densities.
 - (x) The degree to which the growth that is occurring in the rural areas is consistent with patterns of rural land use and development established in the rural element.
- (4) Rural governmental services.
- (a) Rural governmental services are those public facilities and services historically and typically delivered at intensities usually found in rural areas, and may include the following:
- (i) Domestic water system;
 - (ii) Fire and police protection;
 - (iii) Transportation and public transportation; and
 - (iv) Public utilities, such as electrical, telecommunications and natural gas lines.
- (b) Rural services do not include storm or sanitary sewers. Urban governmental services that pass through rural areas when connecting urban areas do not constitute an extension of urban services into a rural area provided those public services are not provided in the rural area. Sanitary sewer service may be provided only if it:
- (i) Is necessary to protect basic public health and safety and the environment;
 - (ii) Is financially supportable at rural densities; and
 - (iii) Does not permit urban development.
- (c) When establishing levels of service in the capital facilities and transportation element, each county should establish rural levels of service, for those rural services that are necessary for development, to determine if it is providing adequate public facilities. Counties are not required to use a single level of service for the entire rural area and may establish varying levels of service for public services in different rural areas. Where private purveyors or other public entities provide rural services, counties should coordinate with them to establish and document appropriate levels of service.
- (d) Rural areas typically rely on natural systems to adequately manage storm water and typically rely on on-site sewage systems to treat wastewater. Development in rural areas also typically relies on individual wells, exempt wells or small water systems for water. Counties should ensure the densities it establishes in rural areas do not overwhelm the ability of natural systems to provide these services without compromising either public health or the vitality of the surrounding ecosystem.
- (e) Rural road systems are not typically designed to handle large traffic volumes. Local conditions may influence varying levels of service for rural road system, and level of service standards for rural arterials should be set accordingly. Generally, level of service standards should reflect the expectation that high levels of local traffic and the associated road improvements are not usually associated with rural areas.
- (f) Levels of public services decrease, and corresponding costs increase when demand is spread over a large area. This is especially true for public safety services and both school and public transportation services. Counties should provide clear expectations to the public about the availability of rural public services. Counties should ensure the densities it estab-

lishes in rural areas do not overwhelm the capacity of rural public services.

(5) Innovative zoning techniques.

(a) Innovative zoning techniques allow greater flexibility in rural development regulations to create forms of development that are more consistent with rural character than forms of development generated by conventional large-lot zoning. Innovative zoning techniques may allow forms of rural development that:

- (i) Result in rural development that is more visually compatible with the surrounding rural areas;
- (ii) Maximize the availability of rural land for either resource use or wildlife habitat;
- (iii) Increase the operational compatibility of the rural development with use of the land for resource production;
- (iv) Decrease the impact of the rural development on the surrounding ecosystem;
- (v) Does not allow urban growth; and
- (vi) Does not require the extension of urban governmental services.

(b) Rural clusters. One common form of innovative zoning technique is the rural cluster. A rural cluster can create smaller individual lots than would normally be allowed in exchange for open space that preserves a significant portion of the original parcel.

(i) When calculating the density of development for zoning purposes, counties should calculate density based on the number of dwelling units over the entire development parcel, rather than the size of the individual lots created.

(ii) The open space portion of the original parcel should be held by an easement, parcel or tract for open space or resource use. This should be held in perpetuity, without an expiration date.

(iii) If a county allows bonus densities in a rural cluster, the resulting density after applying the bonus must be a rural density.

(iv) Rural clusters may not create a pattern of development that relies on or requires urban governmental services. Counties should establish a limit on the size of the residential cluster so that a cluster does not constitute urban growth in a rural area. A very large project may create multiple smaller clusters that are separated from each other and use a different access point to avoid creating a pattern of development that would constitute urban growth.

(v) Development regulations governing rural clusters should include design criteria that preserve rural visual character.

(6) Limited areas of more intense rural development. The act allows counties to plan for isolated pockets of more intense development in the rural area. These are referred to in the act as limited areas of more intense rural development or LAMIRDS.

(a) LAMIRDS serve the following purposes:

- (i) To recognize existing areas of more intense rural development and to minimize and contain these areas to prevent low density sprawl;
- (ii) To allow for small-scale commercial uses that rely on a rural location;
- (iii) To allow for small-scale economic development and employment consistent with rural character; and

(iv) To allow for redevelopment of existing industrial areas within rural areas.

(b) An existing area or existing use is one that was in existence on the date the county became subject to all of the provisions of the act:

(i) For a county initially required to fully plan under the act, on July 1, 1990.

(ii) For a county that chooses to fully plan under the act, on the date the county adopted the resolution under RCW 36.70A.040(2).

(iii) For a county that becomes subject to all of the requirements of the act under RCW 36.70A.040(5), on the date the office of financial management certifies the county's population.

(c) Counties may allow for more intensive uses in a LAMIRD than would otherwise be allowed in rural areas and may allow public facilities and services that are appropriate and necessary to serve LAMIRDS subject to the following requirements:

(i) Type 1 LAMIRDS - Isolated areas of existing more intense development. Within these areas, rural development consists of infill, development, or redevelopment of existing areas. These areas may include a variety of uses including commercial, industrial, residential, or mixed-use areas. These may be also characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) Development or redevelopment in LAMIRDS may be both allowed and encouraged provided it is consistent with the character of the existing LAMIRD in terms of building size, scale, use, and intensity. Counties may allow new uses of property within a LAMIRD, including development of vacant land.

(B) When establishing a Type I LAMIRD, counties must establish a logical outer boundary. The purpose of the logical outer boundary is to minimize and contain the areas of more intensive rural development to the existing areas. Uses, densities or intensities not normally allowed in a rural area may be allowed inside the logical outer boundary consistent with the existing character of the LAMIRD. Appropriate and necessary levels of public facilities and services not otherwise provided in rural areas may be provided inside the logical outer boundary.

(C) The logical outer boundary must be delineated primarily by the built environment as it existed on the date the county became subject to the planning requirements of the act.

(I) Some vacant land may be included within the logical outer boundary provided it is limited and does not create a significant amount of new development within the LAMIRD.

(II) Construction that defines the built environment may include above or below ground improvements. The built environment does not include patterns of vesting or preexisting zoning, nor does it include roads, clearing, grading, or the inclusion within a sewer or water service area if no physical improvements are in place. Although vested lots and structures built after the county became subject to the act's requirements should not be considered when identifying the built environment, they may be included within the logical outer boundary as infill.

(III) The logical outer boundary is not required to strictly follow parcel boundaries. If a large parcel contains an exist-

ing structure, a county may include part of the parcel in the LAMIRD boundary without including the entire parcel, to avoid a significant increase in the amount of development allowed within the LAMIRD.

(D) The fundamental purpose of the logical outer boundary is to minimize and contain the LAMIRD. Counties should favor the configuration that best minimizes and contains the LAMIRD to the area of existing development as of the date the county became subject to the planning requirements of the act. When evaluating alternative configurations of the logical outer boundary, counties should determine how much new growth will occur at build out and determine if this level of new growth is consistent with rural character and can be accommodated with the appropriate level of public facilities and public services. Counties should use the following criteria to evaluate various configurations when establishing the logical outer boundary:

(I) The need to preserve the character of existing natural neighborhoods and communities;

(II) Physical boundaries such as bodies of water, streets and highways, and land forms and contours;

(III) The prevention of abnormally irregular boundaries; and

(IV) The ability to provide public facilities and public services in a manner that does not permit low-density sprawl.

(E) Once a logical outer boundary has been adopted, counties may consider changes to the boundary in subsequent amendments. When doing so, the county must use the same criteria used when originally designating the boundary. Counties should avoid adding new undeveloped parcels as infill, especially if doing so would add to the capacity of the LAMIRD.

(ii) Type 2 LAMIRDS - Small-scale recreational uses. Counties may allow small-scale tourist or recreational uses in rural areas. Small-scale recreational or tourist uses rely on a rural location and setting and need not be principally designed to serve the existing and projected rural population.

(A) Counties may allow small-scale tourist or recreational uses through redevelopment of an existing site, intensification of an existing site, or new development on a previously undeveloped site, but not new residential development. Counties may allow public services and facilities that are limited to those necessary to serve the recreation or tourist uses and that do not permit low-density sprawl. Small-scale recreational or tourist uses may be added as accessory uses for resource-based industry. For accessory uses on agricultural lands of long-term commercial significance, see WAC 365-196-815.

(B) Counties are not required to designate Type 2 LAMIRDS on the future land use map and may allow them as a conditional use. If using a conditional use process, counties should include in their development regulations conditions that address all the statutory criteria for the location of a Type 2 LAMIRD. Conditions must assure that Type 2 LAMIRDS:

(I) Are isolated, both from urban areas and from each other. Conditions should include spacing criteria to avoid creating a pattern of strip development;

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Rely on a rural location or a natural setting;

(V) Do not include new residential development;

(VI) Do not require services and facilities beyond what is available in the rural area; and

(VII) Are operationally compatible with surrounding resource-based industries.

(iii) Type 3 LAMIRDs - Small-scale businesses and cottage industries. Counties may allow isolated small-scale businesses and cottage industries that are not principally designed to serve the existing and projected rural population and non-residential uses, but do provide job opportunities for rural residents, through the intensification of development on existing lots or on undeveloped sites.

(A) Counties may allow the expansion of small-scale businesses in rural areas as long as those small-scale businesses are consistent with the rural character of the area as defined by the county in the rural element. Counties may also allow new small-scale businesses to use a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area. Any public services and public facilities provided to the cottage industry or small-scale business must be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl.

(B) Counties are not required to designate Type 3 LAMIRDs on the future land use map and may allow them as a conditional use. If using a conditional use process, counties should include in their development regulations conditions that address all the statutory criteria for the location of a Type 3 LAMIRD. Conditions must assure that Type 3 LAMIRDs:

(I) Are isolated, both from urban areas and from each other. Conditions should include spacing criteria to avoid creating a pattern of strip development;

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Do not include new residential development;

(V) Do not require public services and facilities beyond what is available in the rural area; and

(VI) Are operationally compatible with surrounding resource-based industries.

(d) Major industrial developments and master planned resorts governed by other requirements. Counties may not use the provisions of RCW 36.70A.070 (5)(d)(iii) to permit a major industrial development or a master planned resort. These types of development must comply with the requirements of RCW 36.70A.360 through 36.70A.368. For more information about major industrial developments, see WAC 365-196-465. For more information about master planned resorts, see WAC 365-196-460.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-425, filed 1/27/15, effective 2/27/15; WSR 10-22-103, § 365-196-425, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-425, filed 1/19/10, effective 2/19/10.]

WAC 365-196-430 Transportation element. (1) Requirements. Each comprehensive plan shall include a transportation element that implements, and is consistent with, the land use element. The transportation element shall contain at least the following subelements:

(a) Land use assumptions used in estimating travel;

(b) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist

the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(c) Facilities and services needs, including:

(i) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airports facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the county's or city's jurisdictional boundaries;

(ii) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(iii) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's ten-year investment program. The concurrency requirements of RCW 36.70A.070 (6)(b) do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in RCW 36.70A.070 (6)(b);

(iv) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(v) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(vi) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(d) Finance, including:

(i) An analysis of funding capability to judge needs against probable funding resources;

(ii) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the ten-year improvement program developed by the department of transportation as required by RCW 47.05.030;

(iii) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(e) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land

use assumptions on the transportation systems of adjacent jurisdictions;

(f) Demand-management strategies;

(g) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles;

(h) The transportation element, and the six-year plan required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and the ten-year plan required by RCW 47.05.030 for the state, must be consistent.

(2) Recommendations for meeting element requirements.

(a) Consistency with the land use element, regional and state planning.

(i) RCW 36.70A.070(6) requires that the transportation element implement and be consistent with the land use element. Counties and cities should use consistent land use assumptions, population forecasts, and planning periods for both elements.

(ii) Counties and cities should refer to the statewide multimodal transportation plan produced by the department of transportation under chapter 47.06 RCW to ensure consistency between the transportation element and the statewide multimodal transportation plan. Local transportation elements should also reference applicable department of transportation corridor planning studies, including scenic byway corridor management plans.

(iii) Counties and cities should refer to the regional transportation plan developed by their regional transportation planning organization under chapter 47.80 RCW to ensure the transportation element reflects regional guidelines and principles; is consistent with the regional transportation plan; and is consistent with adopted regional growth and transportation strategies. Considering consistency during the development and review of the transportation element will facilitate the certification of transportation elements by the regional transportation planning organization as required by RCW 47.80.023(3).

(iv) Counties and cities should develop their transportation elements using the framework established in county-wide planning policies, and where applicable, multicounty planning policies. Using this framework ensures their transportation elements are coordinated and consistent with the comprehensive plans of other counties and cities sharing common borders or related regional issues as required by RCW 36.70A.100 and 36.70A.210.

(v) Counties and cities should refer to the six-year transit plans developed by municipalities or regional transit authorities pursuant to RCW 35.58.2795 to ensure their transportation element is consistent with transit development plans as required by RCW 36.70A.070 (6)(c).

(vi) Land use elements and transportation elements may incorporate commute trip reduction plans to ensure consistency between the commute trip reduction plans and the comprehensive plan as required by RCW 70.94.527(5). Counties and cities may also include transportation demand management programs for growth and transportation efficiency centers designated in accordance with RCW 70.94.528.

(b) The transportation element should contain goals and policies to guide the development and implementation of the transportation element. The goals and policies should be consistent with statewide and regional goals and policies. Goals and policies should address the following:

(i) Roadways and roadway design that provides safe access and travel for all users, including motorists, transit vehicles and riders, bicyclists, and pedestrians;

(ii) Public transportation, including public transit and passenger rail, intermodal transfers, and multimodal access;

(iii) Bicycle and pedestrian travel;

(iv) Transportation demand management, including education, encouragement and law enforcement strategies;

(v) Freight mobility including port facilities, truck, air, rail, and water-based freight;

(vi) Transportation finance including strategies for addressing impacts of development through concurrency, impact fees, and other mitigation; and

(vii) Policies to preserve the functionality of state highways within the local jurisdiction such as policies to provide an adequate local network of streets, paths, and transit service so that local short-range trips do not require single-occupant vehicle travel on the state highway system; and policies to mitigate traffic and storm water impacts on state-owned transportation facilities as development occurs.

(c) Inventory and analysis of transportation facilities. RCW 36.70A.070 (6)(a)(iii)(A) requires an inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities. The inventory defines existing capital facilities and travel levels as a basis for future planning. The inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries. Counties and cities should identify transportation facilities which are owned or operated by others. For those facilities operated by others, counties and cities should refer to the responsible agencies for information concerning current and projected plans for transportation facilities and services. Counties, cities, and agencies responsible for transportation facilities and services should cooperate in identifying and resolving land use and transportation compatibility issues.

(i) Air transportation facilities.

(A) Where applicable, counties and cities should describe the location of facilities and services provided by any general aviation airport within or adjacent to the county or city, and should reference any relevant airport planning documents including airport master plans, airport layout plans or technical assistance materials made available by the Washington state department of transportation, aviation division.

(B) Counties and cities should identify supporting transportation infrastructure such as roads, rail, and routes for freight, employee, and passenger access, and assess the impact to the local transportation system.

(C) Counties and cities should assess the compatibility of land uses adjacent to the airport and discourage the siting of incompatible uses in the land use element as directed by RCW 36.70A.510 and WAC 365-196-455.

(ii) Water transportation facilities.

(A) Where applicable, counties and cities should describe or map any ferry facilities and services, including

ownership, and should reference any relevant ferry planning documents. The inventory should identify if a ferry route is subject to concurrency under RCW 36.70A.070 (6)(b). A ferry route is subject to concurrency if it serves counties consisting of islands whose only connection to the mainland are state highways or ferry routes.

(B) Counties and cities should identify supporting infrastructure such as parking and transfer facilities, bicycle, pedestrian, and vehicle access to ferry terminals and assess the impact on the local transportation system.

(C) Where applicable, counties and cities should describe marine and inland waterways, and related port facilities and services. Counties and cities should identify supporting transportation infrastructure, and assess the impact to the local transportation system.

(iii) Ground transportation facilities and services.

(A) Roadways. Counties and cities must include a map of roadways owned or operated by city, county, and state governments.

(I) Counties and cities may describe the general travel market (i.e., commuter, tourist, farm to market, etc.) served by the transportation network. The inventory may include information such as: Traffic volumes, truck volumes and classification, functional classification, strategic freight corridor designation, preferred freight routes, scenic and recreational highway designation, and ownership.

(II) For state highways, counties and cities should coordinate with the regional office of the Washington state department of transportation to identify designated high occupancy vehicle or high occupancy toll lanes, access classification, roadside classification, functional classification, and whether the highway is a state-designated highway of statewide significance, or state scenic and recreational highway designated under chapter 47.39 RCW. These designations may impact future development along state highway corridors. If these classifications impact future land use, this information should be included in the comprehensive plan along with reference to any relevant corridor planning documents.

(B) Public transportation and rail facilities and services.

(I) RCW 36.70A.070 (6)(a)(iii)(A) requires an inventory of transit alignments. Where applicable, counties and cities must inventory existing public transportation facilities and services. This section should reference transit development plans that provide local services. The inventory should contain a description of regional and intercity rail, and local, regional, and intercity bus service, paratransit, or other services. Counties and cities should include a map of local transit routes. The inventory should also identify locations of passenger rail stations and major public transit transfer stations for appropriate land use.

(II) Where applicable, such as where a major freight transfer facility is located, counties and cities should include a map of existing freight rail lines, and reference any relevant planning documents. Counties and cities should assess the adequacy of supporting transportation infrastructure such as roads, rail, and navigational routes for freight, employee, and passenger access, and the impact on the local transportation system.

(d) If the planning area is within a National Ambient Air Quality Standards nonattainment area, compliance with the

Clean Air Act Amendments of 1990 is required. Where applicable, the transportation element should include: A map of the area designated as the nonattainment area for ozone, carbon monoxide, and particulate matter (PM10 and PM2.5); a discussion of the severity of the violation(s) contributed by transportation-related sources; and a description of measures that will be implemented consistent with the state implementation plan for air quality. Counties and cities should refer to chapter 173-420 WAC, and to local air quality agencies and metropolitan planning organizations for assistance.

(e) Level of service standards. Level of service standards serve to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between city, county and state transportation investment programs.

(i) RCW 36.70A.070 (6)(a)(iii)(B) requires the transportation element to include level of service standards for all locally owned arterials. Counties and cities may adopt level of service standards for other locally owned roads or travel modes at their discretion.

(ii) RCW 36.70A.070 (6)(a)(iii)(C) requires level of service standards for highways, as reflected in chapters 47.06 and 47.80 RCW, to gauge the performance of the transportation system. The department of transportation, in consultation with counties and cities, establishes level of service standards for state highways and ferry routes of statewide significance. Counties and cities should refer to the state highway and ferry plans developed in accordance with chapter 47.06 RCW for the adopted level of service standards.

(iii) Regional transportation planning organizations and the department of transportation jointly develop level of service standards for all other state highways and ferry routes. Counties and cities should refer to the regional transportation plans developed in accordance with chapter 47.80 RCW for the adopted level of service standards.

(iv) RCW 36.70A.070 (6)(a)(iii)(B) requires the transportation element to include level of service standards for all transit routes. To identify level of service standards for public transit services, counties and cities should include the established level of service or performance standards from the transit provider and should reference any relevant planning documents.

(v) Adopted level of service standards should reflect access, mobility, mode-split, or capacity goals for the transportation facility depending upon the surrounding development density and community goals, and should be developed in consultation with transit agencies serving the planning area.

(vi) The measurement methodology and standards should vary based on the urban or rural character of the surrounding area. The county or city should also balance the desired community character, funding capacity, and traveler expectations when selecting level of service methodologies and standards. A county or city may select different ways to measure travel performance depending on how a county or city balances these factors and the characteristics of travel in their community. For example, counties and cities may measure performance at different times of day, week, or month (peak versus off-peak, weekday versus weekend, summer versus winter). Counties and cities may also measure performance at different geographic scales (intersections, road or

route segments, travel corridors, or travel zones), or in terms of the supply of multimodal capacity available in a corridor.

(vii) In urban areas RCW 36.70A.108 encourages the use of methodologies analyzing the transportation system from a comprehensive, multimodal perspective. Multimodal levels of service methodologies and standards should consider the needs of travelers using the four major travel modes (motor vehicle, public transportation, bicycle, and pedestrian), their impacts on each other as they share the street, and their mode specific requirements for street design and operation. For example, bicycle and pedestrian level of service standards should emphasize the availability of facilities and safety levels for users.

(f) Travel forecasts. RCW 36.70A.070 (6)(a)(iii)(E) requires forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth. Counties and cities must include at least a ten-year travel forecast in the transportation element. The forecast time period and underlying assumptions must be consistent with the land use element. Counties and cities may forecast travel for the twenty-year planning period. Counties and cities may include bicycle, pedestrian, and/or planned transit service in a multimodal forecast. Travel forecasts should be based on adopted regional growth strategies, the regional transportation plan, and comprehensive plans within the region to ensure consistency.

(g) Identify transportation system needs.

(i) RCW 36.70A.070 (6)(a)(iii)(D) requires that the transportation element include specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below established level of service standards.

(ii) System needs are those improvements needed to meet and maintain adopted levels of service over at least the required ten-year forecasting period. If counties and cities use a twenty-year forecasting period, they should also identify needs for the entire twenty-year period.

(iii) RCW 47.80.030(3) requires identified needs on regional facilities or services to be consistent with the regional transportation plan and the adopted regional growth and transportation strategies. RCW 36.70A.070 (6)(a)(iii)(F) requires identified needs on state-owned transportation facilities to be consistent with the statewide multimodal transportation plan.

(iv) Counties and cities should cooperate with public transit providers to analyze projected transit services and needs based on projected land use assumptions, and consistent with regional land use and transportation planning. Coordination may also include identification of mixed use centers, and consider opportunities for intermodal integration and appropriate multimodal access, particularly bicycle and pedestrian access.

(v) Counties and cities must include state transportation investments identified in the statewide multimodal transportation plan required under chapter 47.06 RCW and funded in the Washington state department of transportation's ten-year improvement program. Identified needs must be consistent with regional transportation improvements identified in regional transportation plans required under chapter 47.80 RCW. The transportation element should also include plans

for new or expanded public transit and be coordinated with local transit providers.

(vi) The identified transportation system needs may include: Considerations for repair, replacement, enhancement, or expansion of vehicular, transit, bicycle, and pedestrian facilities; enhanced or expanded transit services; system management; or demand management approaches.

(vii) Transportation system needs may include transportation system management measures increasing the motor vehicle capacity of the existing street and road system. They may include, but are not limited to signal timing, traffic channelization, intersection reconfiguration, exclusive turn lanes or turn prohibitions, bus turn-out bays, grade separations, removal of on-street parking or improving street network connectivity.

(viii) When identifying system needs, counties and cities may identify a timeline for improvements. Identification of a timeline provides clarity as to when and where specific transportation investments are planned and provides the opportunity to coordinate and cooperate in transportation planning and permitting decisions.

(ix) Counties and cities should consider how the improvements relate to adjacent counties or cities.

(h) Local impacts to state transportation facilities. RCW 36.70A.070 (6)(a)(ii) requires counties and cities to estimate traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the Washington state department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities. Traffic impacts should include the number of motor vehicle, and, as information becomes available, bicycle, public transit, and pedestrian trips estimated to use the state highway and ferry systems throughout the planning period.

(i) Transportation demand management.

(i) RCW 36.70A.070 (6)(a)(vi) requires that the transportation element include transportation demand management strategies. These strategies are designed to encourage the use of alternatives to single occupancy travel and to reduce congestion, especially during peak times.

(ii) Where applicable, counties and cities may include the goals and relevant strategies of employer-based commute trip reduction programs developed under RCW 70.94.521 through 70.94.555. All other counties and cities should consider strategies which may include, but are not limited to ridesharing, vanpooling, promotion of bicycling, walking and use of public transportation, transportation-efficient parking and land use policies, and high occupancy vehicle subsidy programs.

(j) Pedestrian and bicycle component. RCW 36.70A.070 (6)(a)(vii) requires the transportation element to include a pedestrian and bicycle component that includes collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(i) Collaborative efforts may include referencing local, regional, and state pedestrian and bicycle planning documents, if any. Designated shared use paths, which are part of

bicycle and pedestrian networks, should be consistent with those in the parks, recreation and open space element.

(ii) To identify and designate planned improvements for bicycle facilities and corridors, the pedestrian and bicycle component should include a map of bicycle facilities, such as bicycle lanes, shared use paths, paved road shoulders. This map should identify state and local designated bicycle routes, and describe how the facilities link to those in adjacent jurisdictions.

(iii) To identify and designate planned improvements for pedestrian facilities and corridors, the pedestrian and bicycle component should include a map of pedestrian facilities such as sidewalks, pedestrian connectors, and other designated facilities, especially in areas of high pedestrian use such as designated centers, major transit routes, and route plans designated by school districts under WAC 392-151-025.

(iv) The pedestrian and bicycle component should plan a network that connects residential and employment areas with community and regional destinations, schools, and public transportation services.

(v) The pedestrian and bicycle component should also review existing pedestrian and bicycle collision data to plan pedestrian facilities that improve pedestrian and bicycle safety.

(k) Multiyear financing plan.

(i) RCW 36.70A.070 (6)(a)(iii)(B) requires that the transportation element include a multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which develop a financing plan that addresses all identified transportation facilities and strategies throughout the twenty-year planning period. The identified needs shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should reflect regional improvements identified in regional transportation plans required under chapter 47.80 RCW and be coordinated with the ten-year investment program developed by the Washington state department of transportation as required by RCW 47.05.030;

(ii) The horizon year for the multiyear plan should be the same as the time period for the travel forecast and identified needs. The financing plan should include cost estimates for new and enhanced locally owned roadway facilities including new or enhanced bicycle and pedestrian facilities to estimate the cost of future facilities and the ability of the local government to fund the improvements.

(iii) Sources of proposed funding may include:

(A) Federal or state funding.

(B) Local funding from taxes, bonds, or other sources.

(C) Developer contributions, which may include:

(I) Impact or mitigation fees assessed according to chapter 82.02 RCW, or the Local Transportation Act (chapter 39.92 RCW).

(II) Contributions or improvements required under SEPA (RCW 43.21C.060).

(III) Concurrency requirements implemented according to RCW 36.70A.070 (6)(b).

(D) Transportation benefit districts established under RCW 35.21.225 and chapter 36.73 RCW.

(iv) RCW 36.70A.070 (6)(a)(iv)(A) requires an analysis of funding capability to judge needs against probable funding resources. When considering the cost of new facilities, counties and cities should consider the cost of maintaining facilities in addition to the cost of their initial construction. Counties and cities should forecast projected funding capacities based on revenues that are reasonably expected to be available, under existing laws and ordinances, to carry out the plan. If the funding strategy relies on new or previously untapped sources of revenue, the financing plan should include a realistic estimate of new funding that will be supplied.

(I) Reassessment if probable funding falls short.

(i) RCW 36.70A.070 (6)(a)(iv)(C) requires reassessment if probable funding falls short of meeting identified needs. Counties and cities must discuss how additional funding will be raised or how land use assumptions will be reassessed to ensure that level of service standards will be met.

(ii) This review must take place, at a minimum, as part of the periodic review and update required in RCW 36.70A.130 (1) and (3), and as major changes are made to the transportation element.

(iii) If probable funding falls short of meeting identified needs, counties and cities have several choices. For example, they may choose to:

(A) Seek additional sources of funding for identified transportation improvements;

(B) Adjust level of service standards to reduce the number and cost of needed facilities;

(C) Revisit identified needs and use of transportation system management or transportation demand management strategies to reduce the need for new facilities; or

(D) Revise the land use element to shift future travel to areas with adequate capacity, to lower average trip length or to avoid the need for new facilities in undeveloped areas;

(E) If needed, adjustments should be made throughout the comprehensive plan to maintain consistency.

(m) Implementation measures. Counties and cities may include an implementation section that broadly defines regulatory and nonregulatory actions and programs designed to proactively implement the transportation element. Implementation measures may include:

(i) Public works guidelines to reflect multimodal transportation standards for pedestrians, bicycles and transit; or adoption of Washington state department of transportation standards or the American Association of State Highway and Transportation Officials standards for bicycle and pedestrian facilities;

(ii) Transportation concurrency ordinances affecting development review;

(iii) Parking standards, especially in urban centers, to reduce vehicle parking requirements and include bicycle parking;

(iv) Commute trip reduction ordinances and transportation demand management programs;

(v) Access management ordinances;

(vi) Nonmotorized transportation funding programs;

(vii) Maintenance procedures and pavement management systems to include bicycle, pedestrians and transit considerations;

(viii) Subdivision standards to reflect multimodal goals; and

(ix) Transit compatibility policies and rules to guide development review procedures to incorporate review of bicycle, pedestrian and transit access to sites.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-430, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-196-430, filed 1/19/10, effective 2/19/10.]

WAC 365-196-435 Economic development element.

(1) Requirements.

(a) The economic development element should establish local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. An economic development element should include:

(i) A summary of the local economy such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate;

(ii) A summary of the strengths and weaknesses of the local economy defined as the commercial and industrial sectors and supporting factors such as land use, transportation, utilities, education, workforce, housing, and natural/cultural resources; and

(iii) An identification of policies, programs, and projects to foster economic growth and development and to address future needs. Identification of these policies, programs, and projects should include a summary of each.

(b) A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(c) The requirement to include an economic development element is null and void until sufficient funds to cover applicable local governments costs are appropriated and distributed at least two years before the due date for the periodic review and update required in RCW 36.70A.130(1).

(2) Recommendations for meeting the requirements. Counties and cities should consider using existing economic development plans developed at the county and regional level and may adopt them by reference as a means of including an economic development element within their comprehensive plan. Counties and cities should consider developing partnerships with organizations within the community and with state and federal agencies and the private sector. Because labor markets typically encompass at least one county and may encompass a multicounty region, counties and cities should coordinate economic development activities on a regional basis. The department recommends counties and cities consider the following in preparing an economic development element:

(a) A summary of the local economy.

(i) Economic development begins with information gathering. The purpose of information gathering is to provide a summary of the local economy. Much of this information is available from regional, state or federal agencies.

(ii) Counties and cities should use population information consistent with the information used in the land use element and the housing element.

(iii) Counties and cities are not required to generate original data, but can rely on available data from the agencies who report the information. Employment, payroll, and other economic information is available from state and federal

agencies, such as the Washington state department of employment security, the Bureau of Labor Statistics and the Census Bureau. Some of this information may not be available at the city level, but may be available only at the county-wide level. Government agencies that report this data may be prohibited from releasing certain data to avoid disclosing proprietary information. Local governments should also consult with their associate development organization, economic development council and economic development districts. Counties and cities may also use data such as permit volume, local inventories of available land and other data generated from their activities that is useful for economic development planning.

(b) Summary of strengths and weaknesses of the local economy.

(i) Counties and cities should consult with their associated development organization, economic development council and/or economic development district to help with identifying appropriate commercial and industrial sectors.

(ii) Shift-share analysis is one method of identifying strengths and weaknesses of the local economy. This method identifies industrial sectors that have a relatively greater proportion of the local area's employment than exists in the national economy. It is one method of identifying sectors with a local competitive advantage. This is a method that can be employed using readily available existing data.

(iii) Identification of industry clusters is another method of identifying strengths and weaknesses of the local economy. State and local economic development organizations, including some associated development organizations and the department, have identified a number of industry clusters in the state. An industry cluster is a group of related firms that provide interdependent specialized goods or services. The presence of existing suppliers of specialized services and a specialized work force makes attracting additional economic activity in the cluster easier.

(iv) Identifying strong industry sectors or clusters can help determine strengths and weaknesses, help a city or county develop a realistic profile of land and infrastructure needs, and identify ways to focus economic development activities. It does not confer preferred status on any particular firm or industry. Counties and cities should still treat all individuals and firms as equal under the law.

(v) Counties and cities may also refer to information and public input collected during public participation to identify strengths and weaknesses based on community perception of their community. Counties and cities may conduct a separate visioning exercise to help identify strengths and weaknesses.

(vi) Counties and cities may employ asset mapping, which builds from the information gathered. Asset mapping is similar to traditional strengths, weaknesses, opportunities, and threats (SWOT) analysis with several significant distinctions. Under the SWOT analysis, strength and opportunity factors may not be linked together.

(c) Identification of policies, programs, and projects to foster economic growth and development and to address future needs.

(i) After identifying strengths and weaknesses, the economic development element may identify policies, programs and projects that foster economic growth and development and address future needs. The programs and policies should

be targeted at addressing weaknesses or capitalizing on strengths identified in the community.

(ii) Counties and cities should consider using specific, quantified, and time-framed performance targets that provide a measurement of the success of an economic development element and serve as a reference point in the economic development process.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-435, filed 1/19/10, effective 2/19/10.]

WAC 365-196-440 Parks and recreation element. (1) Requirements.

(a) The park and recreation element of the comprehensive plan must contain at least the following features:

(i) Consistency with the capital facilities element as it relates to park and recreation facilities;

(ii) Estimates of park and recreation demand for at least a ten-year period;

(iii) An evaluation of facilities and service needs; and

(iv) An evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(b) The requirement to include a parks and recreation element is null and void until sufficient funds to cover applicable local governments costs are appropriated and distributed at least two years before the due date for the periodic review and update required in RCW 36.70A.130(1).

(2) Recommendations for meeting requirements.

(a) Consistency and integration with other plan elements. Counties and cities should pay particular attention to consistency with the land use element, approaches to protecting critical areas and conserving natural resource lands, and identification of open space corridors and lands useful for public purposes. Planning policies and implementing regulations in each of these elements should complement each other to achieve adopted community goals.

(b) Visioning process. Counties and cities should start with a visioning process. This process should engage the public in the process of identifying needs, evaluating their satisfaction with existing recreational opportunities, and developing goals to guide the development of the parks and recreation element.

(c) Establishing level of service standards.

(i) The visioning process should be used when establishing levels of service for the parks and recreation element. Select levels of service or planning assumptions that reflect local priorities.

(ii) Methods used to establish levels of service should reflect community goals, and may be adapted from approaches recommended by the Washington state recreation and conservation office or the National Recreation and Parks Association; facilities and services. Level of service standards should reflect local priorities.

(iii) Level of service standards should focus on those aspects that relate most directly to factors influenced by growth and development, to allow for counties and cities to more clearly identify the impact on the demand for park facilities resulting from new development.

(d) Evaluation of facilities and service needs.

(i) Counties and cities should ensure consistency with the land use element when identifying existing and future public facilities and services.

(ii) Counties and cities should prepare an inventory of all existing park, recreation and open space lands, and related services. The inventory should describe the location, size and type of each facility or service, its current condition and capacity, and its intended service area. It should include a description of the park and recreation facilities and services of other private and public entities, including state park and recreation services.

(iii) Counties and cities should estimate demand for parks, open space and recreational services. Estimates must be for at least a planning period of ten years, and jurisdictions should consider a planning period that matches that used for other comprehensive plan elements (e.g., twenty years). In preparing estimates, factors that should be considered include, but are not limited to:

(A) Population forecasts and other demographic projections;

(B) Levels of service selected for each type of facility or service to be provided;

(C) User information and participation rates from current facilities and programs;

(D) Surveys or other means of assessing community priorities for park and recreational services;

(E) National and local trends in recreational demands and services;

(F) Facilities and services provided by other private or public entities; and

(G) Review of statewide recreation plans, assessments and recreation trends made available through the department, the Washington state department of fish and wildlife, the Washington state department of natural resources, the recreation and conservation office, and the state parks and recreation commission.

(e) The parks and recreation element should identify future facilities and services needed to meet the estimated demand for parks, open space and recreational programs, consistent with levels of service or planning assumptions and the projections for distribution of growth in the land use element. Consistency with the capital facilities and land use elements should be ensured when identifying existing and future public facilities and services to meet the estimated demand. The parks and recreation element should provide for an integrated parks, recreation and open space system. The system should consist of a complementary set of parks and open spaces that, considered together, meet the needs of a full range of community interests.

(f) Opportunities for intergovernmental coordination.

(i) When preparing the parks and recreation element, counties and cities should review other local, statewide, and regional recreation and land use plans to identify any future facilities that may help in meeting the future demand for parks and recreation facilities.

(ii) Counties and cities should evaluate opportunities for intergovernmental or public/private partnership approaches to meeting regional demand for park and recreation services including, but not limited to:

(A) Joint facility use agreements or contracts;

(B) Interlocal agreements for land acquisition or facility construction to serve region-wide needs;

(C) Contracts with private service providers;

(D) Formation of a single, large regional service provider such as a park and recreation district (chapter 36.69 RCW), park and recreation service area (RCW 36.68.400 through 36.68.620), or metropolitan park district (chapter 35.61 RCW); and

(E) Partnerships with nearby state parks and recreation facilities and services.

(g) Strategies for achieving adopted goals.

(i) Counties and cities should prepare strategies for achieving the adopted goals, policies and objectives, and for meeting the future facilities and service needs. Strategies may include:

(A) Developing needed facilities and programs;

(B) Coordinating intergovernmental efforts to provide needed facilities and programs; or

(C) Adopting development regulations that require provision of needed facilities as a condition of development.

(ii) When creating plans for new park facilities, counties and cities should develop site selection criteria to enable strategic prioritization of acquisition and development opportunities.

(iii) Strategies for financing must be consistent with the financing plan in the capital facilities element. If a local government intends to adopt impact fees as a strategy, it must identify those facilities as necessary for development and should identify them in:

(A) The parks and recreation element;

(B) A separate parks plan; or

(C) In the capital facilities element.

(iv) Counties and cities should evaluate if the identified strategies are sufficient to meet the adopted levels of service. If not, counties and cities should use the priorities set in the visioning process to realign the level of service standards with available resources.

(v) A county or city should also develop protocols to monitor and evaluate the parks and recreation element. These protocols should be consistent with the policies adopted in the capital facilities element regarding reassessment. See WAC 365-196-415. The protocol should include plans to monitor the community's changing recreation needs, evaluate progress toward implementation, and adapt to new information, such as changes to plans of other public or private park and recreation service providers.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-440, filed 1/19/10, effective 2/19/10.]

WAC 365-196-445 Optional elements. (1) A comprehensive plan may include additional elements, items, or studies dealing with other subjects relating to the physical development within its jurisdiction, including, but not limited to:

(a) Conservation;

(b) Solar energy.

(2) A comprehensive plan may include, where appropriate, subarea plans. Subarea plans must be consistent with the comprehensive plan.

(3) The department recommends that counties and cities give strong consideration to including elements on the following within comprehensive plans:

(a) Environmental protection (including critical areas);

(b) Natural resource lands (where applicable);

(c) Design;

(d) Historic preservation;

(e) Natural hazard reduction.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-445, filed 1/19/10, effective 2/19/10.]

WAC 365-196-450 Historic preservation. (1) RCW 36.70A.020(13) calls on counties and cities to identify and encourage the preservation of lands, sites, and structures that have historical or archaeological significance, herein referred to as "cultural resources." Although the act does not require a separate historic preservation element, counties and cities must be guided by the historic preservation goal in their comprehensive plan.

(2) Recommendations for meeting requirements. Cities and counties should address historic preservation in coordination with their other associated obligations.

(a) Identifying cultural resources.

(i) Counties and cities may use existing programs to identify cultural resources. Counties and cities may consult with the department of archaeology and historic preservation for information and technical assistance regarding identification and protection of cultural resources.

(ii) Examples of existing programs that identify cultural resources include:

(A) The National Register of Historic Places;

(B) The Washington Heritage Register;

(C) Properties that are identified by the department of archaeology and historic preservation (DAHP) to be eligible for listing in either one of these registers; and

(D) Properties which are listed in a local register of historic places.

(iii) Counties and cities should also identify areas designated as traditional cultural properties. A "traditional cultural property" is a property which has traditional cultural significance. It is associated with the cultural practices or beliefs of a living community that are rooted in that community's history, and are important in maintaining the continuing cultural identity of the community. Because the location of these sites is uncertain and not on a public register, counties and cities should cooperate with the cultural resource officers of any potentially affected tribal governments to establish a protocol to identify cultural resources and procedures to protect any cultural resources that are identified or discovered during development activity. Counties and cities may establish a cultural resource data-sharing agreement with the department of archaeology and historic preservation to help identify sites with potential cultural historic or archaeological significance.

(iv) Counties and cities may, through existing data, attempt to identify sites with a high likelihood of containing cultural resources. If cultural resources are discovered during construction, irreversible damage to the resource may occur and significant and costly project delays are likely to occur. Establishing an early identification process can reduce the likelihood of these problems.

(b) Encouraging preservation of cultural resources.

(i) Counties and cities should include a process for encouraging the preservation of cultural resources. Counties and cities should start with an identification of existing state

and federal requirements that encourage the preservation of cultural resources. These requirements include:

- (A) Executive Order 05-05;
- (B) Archaeological sites and resources (chapter 27.53 RCW);
- (C) Archaeological excavation and removal permit (chapter 25-48 WAC);
- (D) Indian graves and records (chapter 27.44 RCW);
- (E) Human remains legislation (HB 2624);
- (F) Abandoned and historic cemeteries and historic graves (chapter 68.60 RCW);
- (G) Surcharge for preservation of historical documents (RCW 36.22.170);
- (H) Shoreline Management Act (RCW 90.58.100);
- (I) SEPA procedures (WAC 197-11-960).

(ii) Other potential strategies. Counties and cities should then assess if any additional steps are needed to implement the goals and policies established in the comprehensive plan regarding preservation of cultural resources. If a city or county determines any additional steps are needed, the following are other measures that are a means of encouraging the preservation of cultural resources:

(A) Establish a local preservation program and a historic preservation commission through adoption of a local preservation ordinance. The department of archaeology and historic preservation provides guidance on using the National Certified Local Government program as a local program.

(B) Establish zoning, financial, and procedural incentives for cultural and historic resource protection.

(C) Authorize a special valuation for historic properties tax incentive program.

(D) Establish incentives such as preservation covenants/easements and/or current use/open space taxation programs.

(E) Establish design guidelines, and authorize historic overlay/historic district zoning.

(F) Adopt the historic building code.

(G) Establish a program for transfer of development rights to encourage historic preservation.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-450, filed 1/19/10, effective 2/19/10.]

WAC 365-196-455 Land use compatibility adjacent to general aviation airports. (1) Requirements:

(a) Counties and cities in which there is located a general aviation airport operated for the benefit of the general public must, through their comprehensive plans and development regulations, discourage the siting of incompatible uses adjacent to such an airport.

(b) Comprehensive plans or development regulations that affect lands adjacent to a general aviation airport may only be adopted or amended after formal consultation with the following: Airport owners and managers, private airport operators, general aviation pilots, ports, and the aviation division of the Washington state department of transportation.

(c) All proposed and adopted plans and regulations must be filed with the aviation division of the Washington state department of transportation within a reasonable time after release for public consideration and comment, but at least sixty days before adoption. See WAC 365-196-630 regarding notice to state agencies.

(1/27/15)

(d) General aviation airports are essential public facilities. Counties and cities must also ensure that proposed changes to comprehensive plans and development regulations are consistent with policies governing siting essential public facilities adopted under RCW 36.70A.200. See WAC 365-196-550 regarding essential public facilities.

(2) Recommendations for requirements:

(a) Counties and cities should invite formal consultation for any proposed change to the comprehensive plan or development regulations that may affect airport operations. This should include: Any comprehensive plan or development regulation proposal that may affect land uses within the airport traffic pattern and approach in ways that may be incompatible with airport operations; and any proposal that may create an airspace hazard or obstruction.

(b) Counties and cities should coordinate closely with the aviation division of the Washington state department of transportation, and consider technical assistance materials, including airport master plans, airport layout plans, and other resources made available by the aviation division. Counties and cities are encouraged to contact the aviation division of the Washington state department of transportation early in the process of drafting development regulations and comprehensive plan policies that implement RCW 36.70.547.

(c) Counties and cities may, in coordination with the airport owner, conduct an evaluation of compatible and incompatible land uses adjacent to the airport. In most instances an evaluation would include a radius of at least one mile around the airport and the approach. This evaluation and related planning processes may address the following:

(i) Incompatibly issues of residential encroachment;

(ii) High intensity uses such as K-12 schools, hospitals and major sporting events;

(iii) Airspace and height hazard obstructions;

(iv) Noise and safety issues; and

(v) Other issues unique to each airport, such as topography and geographic features.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-455, filed 1/19/10, effective 2/19/10.]

WAC 365-196-460 Master planned resorts. (1) The act allows for master planned resorts to provide counties with a means of capitalizing on areas of significant natural amenities to provide sustainable economic development for its rural areas. The requirements allow for master planned resorts without degrading the rural character of the county or imposing a public service burden on the county.

(2) A master planned resort is a self-contained, fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities, consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities. Residential uses are permitted only if they are integrated into and support the on-site recreational nature of the resort.

(3) Master planned resorts may include public facilities and services beyond those normally provided in rural areas. However, those provided on-site must be limited to those that meet the needs of the master planned resort. Services may be developed on-site or may be provided by other service providers, including special purpose districts or municipalities.

[Ch. 365-196 WAC p. 35]

All costs associated with service extensions and capacity increases directly attributable to the master planned resort must be borne by the resort, rather than the county. A master planned resort may enter into development agreements with service providers to share facilities, provided the services serve either an existing urban growth area or the master planned resort. Such agreements may not allow or facilitate extension of urban services outside of the urban growth area or the master planned resort. When approving the master planned resort, the county must conclude that on-site and off-site infrastructure and service impacts are fully considered and mitigated.

(4) A county must include policies in its rural element to guide the development of master planned resorts before it can approve a master planned resort. These policies must preclude new urban or suburban land uses in the vicinity of the master planned resort unless those uses are otherwise within a designated urban growth area.

(5) When approving a master planned resort, a county must conclude, supported by the record before it, that the master planned resort is consistent with the development regulations protecting critical areas.

(6) If the area designated as a master planned resort includes resource lands of long-term commercial significance, a county must conclude, supported by the record before it, that the land is better suited, and has more long-term importance for the master planned resort than for the commercial harvesting of timber, minerals, or agricultural production. Because this conclusion effects a dedesignation of resource lands, it must be based on the criteria and the process contained in chapter 365-190 WAC. Even if lands are dedesignated, the master planned resort may not operationally interfere with the continued use of any adjacent resource lands of long-term commercial significance for natural resource production.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-460, filed 1/19/10, effective 2/19/10.]

WAC 365-196-465 Major industrial developments.

(1) General authority for major industrial developments. A county required or choosing to plan under the act may establish, in consultation with cities under the county-wide planning policies outlined in RCW 36.70A.210, a process for reviewing and approving proposals to authorize siting of specific major industrial developments outside urban growth areas.

(2)(a) "Major industrial development" means a master planned location for specific manufacturing, industrial, or commercial businesses that:

- (i) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; or
- (ii) Is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent.

(b) The major industrial development shall not be for the purpose of retail commercial development or multitenant office parks.

(3) Establishment of a review process required. Before reviewing an application for a major industrial development, counties, in consultation with cities, must establish a process for reviewing and approving applications.

(4) Criteria for approving a major industrial development. A major industrial development may be approved outside an urban growth area if criteria including, but not limited to the following, are met:

(a) New infrastructure is provided for and/or applicable impact fees are paid;

(b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the major industrial development and adjacent nonurban areas;

(d) Environmental protection including air and water quality has been addressed and provided for;

(e) Development regulations are established to ensure that urban growth will not occur in adjacent nonurban areas;

(f) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands;

(g) The major industrial development plan is consistent with the county's development regulations for critical areas;

(h) An inventory of developable land has been conducted and the county has determined and entered findings that land suitable to site the major industrial development is unavailable within the urban growth area. Priority shall be given to applications for sites that are adjacent to or in close proximity to the urban growth area.

(5) Amendment to the comprehensive plan.

(a) Final approval of an application for a major industrial development is an amendment to the comprehensive plan adopted pursuant to RCW 36.70A.070, designating the major industrial development site on the land use map as an urban growth area. The major industrial development is considered urban growth. Urban services may be provided at any scale and intensity. Major industrial developments are not required to be consistent with rural character or limited to the scale and intensity of an existing rural location.

(b) An application for a major industrial development may be considered at any time and is an exception to the general rule that amendments should be considered no more frequently than once per year.

(6) Public participation.

(a) Counties should address public participation procedures for major industrial developments when establishing the process for approval of major industrial developments. Counties should use existing public participation procedures for amending the comprehensive plan and amending the urban growth area as a starting point and modify these procedures, if necessary, to address considerations and requirements particular to major industrial developments.

(b) The public participation process should identify how a project proposal meets the statutory criteria for siting a major industrial development. However, the act does not require these proposals to undergo a greater degree of public participation than any other action.

(7) RCW 36.70A.070 (5)(e) does not prohibit the location of a major industrial development within or adjacent to an existing limited area of more intense rural development (LAMIRD) provided it is approved consistent with RCW 36.70A.365.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-465, filed 1/19/10, effective 2/19/10.]

WAC 365-196-470 Industrial land banks. (1) In addition to the major industrial development allowed under RCW 36.70A.365, a county planning under RCW 36.70A.040 that meets the criteria in subsection (2) of this section may establish a process for designating an industrial land bank consisting of no more than two master planned locations for major industrial activity outside urban growth areas.

(a) "Industrial land bank" means up to two master planned locations, each consisting of a parcel or parcels of contiguous land, sufficiently large so as not to be readily available within the urban growth area of a city, or otherwise meeting the criteria contained in RCW 36.70A.367 (4)(a), suitable for manufacturing, industrial, or commercial businesses and designated by the county through the comprehensive planning process specifically for major industrial use.

(b) The process of designating industrial land banks must occur in consultation with cities consistent with the county-wide planning policies and, where applicable multicounty planning policies.

(c) A master planned location for major industrial developments may be approved through a two-step process: Designation of an industrial land bank area in the comprehensive plan; and subsequent approval of specific major industrial developments through a local master plan process described under subsection (3)(f) of this section.

(2) Counties eligible to create an industrial land bank. Only counties that meet one of the following criteria may designate an industrial land bank:

(a) Has a population greater than two hundred fifty thousand and is part of a metropolitan area that includes a city in another state with a population greater than two hundred fifty thousand;

(b) Has a population greater than one hundred forty thousand and is adjacent to another country;

(c) Has a population greater than forty thousand but less than seventy-five thousand and has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent and is:

(i) Bordered by the Pacific Ocean;

(ii) Located in the Interstate 5 or Interstate 90 corridor;

or

(iii) Bordered by Hood Canal.

(d) Is east of the Cascade divide; and

(i) Borders another state to the south; or

(ii) Is located wholly south of Interstate 90 and borders the Columbia River to the east;

(e) Has an average population density of less than one hundred persons per square mile as determined by the office of financial management, and is bordered by the Pacific Ocean and by Hood Canal; or

(f) Meets all of the following criteria:

(i) Has a population greater than forty thousand but fewer than eighty thousand;

(ii) Has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent; and

(iii) Is located in the Interstate 5 or Interstate 90 corridor.

(g) A county's authority to create an industrial land bank expires on the due date for the next periodic update found in RCW 36.70A.130(4) occurring prior to December 31, 2014.

Once a land bank area has been identified in the county's comprehensive plan, the authority of the county to process a master plan or site projects within an approved master plan does not expire.

(3) How to create an industrial land bank.

(a) Creation of an industrial land bank requires an amendment to a county's comprehensive plan and the adoption of development regulations.

(b) The comprehensive plan amendment that designates an industrial land bank must be accompanied by or contain an analysis that:

(i) Identifies locations suited to major industrial development due to proximity to transportation or resource assets. This should be based on an inventory of developable land as provided in RCW 36.70A.365. See WAC 365-196-465 for recommendations on major industrial developments.

(ii) Identifies the maximum size of the industrial land bank area and any limitations on major industrial developments based on local limiting factors, but does not need to specify a particular parcel or parcels of property or identify any specific use or user except as limited by this section.

(iii) Gives priority to locations that are adjacent to, or in close proximity to, an urban growth area. This should include an analysis of the availability of alternative sites within urban growth areas and the long-term annexation feasibility of sites outside of urban growth areas.

(c) The environmental review for amendment of the comprehensive plan should be at the programmatic level.

(d) A comprehensive plan amendment creating an industrial land bank may be considered at any time and is an exception to the requirement in RCW 36.70A.130(1) that the comprehensive plan may be amended no more often than once per year.

(e) Once the industrial land bank is created through the comprehensive plan amendment, approval of a specific major industrial development within the industrial land bank area requires no further amendment of the comprehensive plan.

(f) Development regulations. A county must also adopt development regulations for review and approval of specific major industrial developments through a master plan process. The development regulations governing the master plan process shall ensure, at a minimum, that:

(i) Urban growth will not occur in adjacent nonurban areas;

(ii) Development is consistent with the county's development regulations adopted for protection of critical areas;

(iii) Required infrastructure is identified and provided concurrent with development. Such infrastructure, however, may be phased in with development;

(iv) Transit-oriented site planning and demand management programs are specifically addressed as part of the master plan approval;

(v) Provision is made for addressing environmental protection, including air and water quality, as part of the master plan approval;

(vi) The master plan approval includes a requirement that interlocal agreements between the county and service providers, including cities and special purpose districts providing facilities or services to the approved master plan, be in place at the time of master plan approval;

(vii) A major industrial development is used primarily by industrial and manufacturing businesses, and that the gross floor area of all commercial and service buildings or facilities locating within the major industrial development do not exceed ten percent of the total gross floor area of buildings or facilities in the development. The intent of this provision for commercial or service use is to meet the needs of employees, clients, customers, vendors, and others having business at the industrial site, to attract and retain a quality workforce, and to further other public objectives, such as trip reduction. These uses may not be promoted to attract additional clientele from the surrounding area. Commercial and service businesses must be established concurrently with or subsequent to the industrial or manufacturing businesses;

(viii) New infrastructure is provided for and/or applicable impact fees are paid to assure that adequate facilities are provided concurrently with the development. Infrastructure may be achieved in phases as development proceeds;

(ix) Buffers are provided between the major industrial development and adjacent rural areas;

(x) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands; and

(xi) An open record public hearing is held before either the planning commission or hearing examiner with notice published at least thirty days before the hearing date and mailed to all property owners within one mile of the site.

(g) Required procedures. In addition to other procedural requirements that may apply, a county seeking to designate an industrial land bank under this section must:

(i) Provide county-wide notice, in conformance with RCW 36.70A.035, of the intent to designate an industrial land bank. Notice must be published in a newspaper or newspapers of general circulation reasonably likely to reach subscribers in all geographic areas of the county. Notice must be provided not less than thirty days prior to commencement of consideration by the county legislative body; and

(ii) Make a written determination of the criteria and rationale used by the legislative body as the basis for siting an industrial land bank under this chapter.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-470, filed 1/19/10, effective 2/19/10.]

WAC 365-196-475 Land use compatibility with military installations. (1) Military installations are of particular importance to the economic health of the state of Washington. It is a priority of the state to protect the land surrounding military installations from incompatible development.

(2) A comprehensive plan, amendment to a comprehensive plan, a development regulation, or amendment to a development regulation, should not allow development in the vicinity of a military installation that is incompatible with the installation's ability to carry out its mission requirements. A county or city may find that an existing comprehensive plan or development regulations are compatible with the installation's ability to carry out its mission requirements.

(3) As part of the requirements of RCW 36.70A.070(1), each county or city planning under the act that has a federal military installation, other than a reserve center, that employs one hundred or more personnel and is operated by the United States Department of Defense within or adjacent to its border,

must notify the commander of the military installation of the county's or city's intent to amend its comprehensive plan or development regulations to address lands adjacent to the military installation to ensure those lands are protected from incompatible development.

(4) The notice must request from the commander of the military installation a written recommendation and supporting facts relating to the use of land being considered in the adoption of a comprehensive plan or an amendment to a plan. The notice must provide sixty days for a response from the commander. If the commander does not submit a response to such request within sixty days, the county or city may presume that implementation of the proposed plan or amendment will not have any adverse effect on the operation of the military installation.

(5) When a county or city intends to amend its development regulations to be consistent with the comprehensive plan elements addressed in subsection (4) of this section, notice shall be provided to the commander of the military installation consistent with subsection (3) of this section. The notice shall request from the commander of the military installation a written recommendation and supporting facts relating to the use of land being considered in the amendment to the development regulations. The notice shall provide sixty days for a response from the commander to the requesting government. If the commander does not submit a response to such request within sixty days, the local government may presume that implementation of the proposed development regulation or amendment will not have any adverse effect on the operation of the installation.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-475, filed 1/19/10, effective 2/19/10.]

WAC 365-196-480 Natural resource lands. (1) Requirements.

(a) In the initial period following adoption of the act, and prior to the development of comprehensive plans, counties and cities planning under the act were required to designate natural resource lands of long-term commercial significance and adopt development regulations to assure their conservation. Natural resource lands include agricultural, forest, and mineral resource lands. The previous designations and development regulations shall be reviewed in connection with the comprehensive plan adoption process and, where necessary, altered to ensure consistency.

(b) Counties and cities planning under the act must review their natural resource lands designations, comprehensive plans, policies, and development regulations as part of the required periodic update under RCW 36.70A.130(1) and 36.70A.131.

(c) Counties and cities not planning under RCW 36.70A.040 must review their natural resource lands designations, and if necessary revise those designations as part of the required periodic update under RCW 36.70A.130(1) and 36.70A.131.

(d) Forest land and agricultural land located within urban growth areas shall not be designated as forest resource land or agricultural resource land unless the county or city has enacted a program authorizing transfer or purchase of development rights.

(e) Mineral lands may be designated as mineral resource lands within urban growth areas. There may be subsequent reuse of mineral resource lands when the minerals have been mined out. In cases where designated mineral resource lands are likely to be mined out and closed to further mining within the planning period, the surface mine reclamation plan and permit from the department of natural resources division of geology should be reviewed to ensure it is consistent with the adopted comprehensive land use plan.

(f) In adopting development regulations to conserve natural resource lands, counties and cities shall address the need to buffer land uses adjacent to the natural resource lands. Where buffering is used it should be on land within the adjacent development unless an alternative is mutually agreed on by adjacent landowners.

(2) Recommendations for meeting requirements.

(a) In the initial period following adoption of the act, much of the analysis which was the basis for the comprehensive plan came later than the initial identification and regulation of natural resource lands. In all cases, counties and cities must address inconsistencies between plan policies, development regulations and previously adopted natural resource land provisions.

(b) The department issued guidelines for the classification and designation of natural resource lands which are contained in chapter 365-190 WAC. In general, natural resource lands should be located beyond the boundaries of urban growth areas; and urban growth areas should avoid including designated natural resource lands. In most cases, the designated purposes of natural resource lands are incompatible with urban densities. For inclusion in the urban growth area, counties and cities must first review the natural resource lands designation and conclude the lands no longer meet the designation criteria for resource lands of long-term commercial significance.

(c) As noted in subsection (1)(f) of this section, mineral resource lands are a possible exception to the requirement that natural resource lands be designated outside the urban growth area. This guidance is based on the significant cost savings from using minerals close to their source, and the potential for reusing the mined out lands for other purposes after mining is complete. Counties and cities should consider the potential loss of access to mineral resource lands if they are not designated and conserved, and should also consider the consumptive use of mineral resources when designating specific mineral resource lands.

(d) Counties and cities may also consider retaining local agricultural lands in or near urban growth areas as part of a local strategy promoting food security, agricultural education, or in support of local food banks, schools, or other large institutions.

(e) The review of existing designations should be done on an area-wide basis, and in most cases, be limited to the question of consistency with the comprehensive plan, rather than revisiting the entire prior designation and regulation process. However, to the extent that new information is available or errors have been discovered, the review process should take this information into account. Review for consistency in this context should include whether the planned use of lands adjacent to agricultural, forest, or mineral resource lands will interfere with the continued use, in an accustomed manner

and in accordance with the best management practices, of the designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(f) Development regulations must assure that the planned use of lands adjacent to natural resource lands will not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands. Guidance on development regulations ensuring the conservation of designated resource lands is found in WAC 365-196-815.

(g) Counties and cities are encouraged to use a coordinated program that includes nonregulatory programs and incentives to supplement development regulations to conserve natural resource lands. Guidance for addressing the designation of natural resource lands is located under WAC 365-190-040 through 365-190-070.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-480, filed 1/19/10, effective 2/19/10.]

WAC 365-196-485 Critical areas. (1) Relationship to the comprehensive plan.

(a) The act requires that the planning goals in RCW 36.70A.020 guide the development and adoption of comprehensive plans and development regulations. These goals include retaining open space; enhancing recreation opportunities; conserving fish and wildlife habitat; protecting the environment and enhancing the state's high quality of life, including air and water quality, and the availability of water.

(b) Jurisdictions are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas.

(c) Counties and cities are required to identify open space corridors within and between urban growth areas for multiple purposes, including those areas needed as critical habitat by wildlife.

(d) RCW 36.70A.070(1) requires counties and cities to provide for protection of the quality and quantity of ground water used for public water supplies in the land use element. Where applicable, the land use element must review drainage, flooding, and storm water runoff in the area and in nearby jurisdictions, and provide guidance to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(e) Because the critical areas regulations must be consistent with the comprehensive plan, each comprehensive plan should set forth the underlying policies for the jurisdiction's critical areas program.

(f) In pursuing the environmental protection and open space goals of the act, such policies should identify nonregulatory measures for protecting critical areas as well as regulatory approaches. Nonregulatory measures include but are not limited to: Incentives, public education, and public recognition, and could include innovative programs such as the purchase or transfer of development rights. When such policies are incorporated into the plan (either in a separate element or as a part of the land use element), the consistency of the regulations can be readily assessed.

(2) Requirements. Prior to the original development of comprehensive plans under the act, counties and cities were required to designate critical areas and adopt development regulations protecting them. Any previous designations and

regulations must be reviewed in the comprehensive plan process to ensure consistency between previous designations and the comprehensive plan. Critical areas include the following areas and ecosystems:

- (a) Wetlands;
- (b) Areas of critical recharging effect on aquifers used for potable water;
- (c) Fish and wildlife habitat conservation areas;
- (d) Frequently flooded areas; and
- (e) Geologically hazardous areas.

(3) Recommendations for meeting requirements.

(a) In the initial period following adoption of the act, much of the analysis which was the basis for the comprehensive plan came later than the initial identification and regulation of critical areas. Upon the adoption of the initial comprehensive plans, such designations and regulations were to be reviewed and, where necessary, altered to achieve consistency with the comprehensive plan. Subsequently, jurisdictions updating local critical areas ordinances are required to include the best available science.

(b) The department has issued guidelines for the classification and designation of critical areas which are contained in chapter 365-190 WAC.

(c) Critical areas should be designated and protected wherever the applicable environmental conditions exist, whether within or outside of urban growth areas. Critical areas may overlap each other, and requirements to protect critical areas apply in addition to the requirements of the underlying zoning.

(d) The review of existing designations during the comprehensive plan adoption process should, in most cases, be limited to the question of consistency with the comprehensive plan, rather than a revisiting of the entire prior designation and regulation process. However, counties and cities must address the requirements to include the best available science in developing policies and development regulations to protect the functions and values of critical areas, and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. To the extent that new information is available or errors have been discovered, the review process should take this information into account.

(e) The department recommends that planning jurisdictions identify the policies by which decisions are made on when and how regulations will be used and when and how other means will be employed (purchases, development rights, etc.). See WAC 365-196-855.

(4) Avoiding impacts through appropriate land use designations.

(a) Many existing data sources can identify, in advance of the development review process, the likely presence of critical areas. When developing and reviewing the comprehensive plan and future land use designations, counties and cities should use available information to avoid directing new growth to areas with a high probability of conflicts between new development and protecting critical areas. Identifying areas with a high probability of critical areas conflicts can help identify lands that are likely to be unsuitable for development and help a county or city better provide sufficient capacity of land that is suitable for development as required by RCW 36.70A.115. Impacts to these areas could be mini-

mized through measures such as green infrastructure planning, open space acquisition, open space zoning, and the purchase or transfer of development rights.

(b) When considering expanding the urban growth area, counties and cities should avoid including lands that contain large amounts of mapped critical areas. Counties and cities should not designate new urban areas within the one hundred-year flood plain unless no other alternatives exist, and if included, impacts on the flood plain must be mitigated. RCW 36.70.110(8) prohibits expansion of the urban growth area into the one hundred-year flood plain in some cases. See WAC 365-196-310.

(c) If critical areas are included in urban growth areas, they still must be designated and protected. See WAC 365-196-310.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-485, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-485, filed 1/19/10, effective 2/19/10.]

PART FIVE

CONSISTENCY AND COORDINATION

WAC 365-196-500 Internal consistency. (1) Comprehensive plans must be internally consistent. This requirement means that differing parts of the comprehensive plan must fit together so that no one feature precludes the achievement of any other.

(2) Use of compatible assumptions. A county or city must use compatible assumptions in different aspects of the plan.

(a) A county or city should use common numeric assumptions to the fullest extent possible, particularly in the long-term growth assumptions used in developing the land use, capital facilities and other elements of the comprehensive plan.

(b) If a county or city relies on forecasts, inventories, or functional plans developed by other entities, these plans might have been developed using different time horizons or different boundaries. If these differences create inconsistent assumptions, a county or city should include an analysis in its comprehensive plan of the differences and reconcile them to create a plan that uses compatible assumptions.

(3) The development regulations must be internally consistent and be consistent with and implement the comprehensive plan.

(4) Consistency review. Each comprehensive plan should provide mechanisms for ongoing review of its implementation and adjustment of its terms whenever internal conflicts become apparent. At a minimum, any amendment to the comprehensive plan or development regulations must be reviewed for consistency. The review and update processes required in RCW 36.70A.130 (1) and (3) should include a review of the comprehensive plan and development regulations for consistency.

(5) See WAC 365-196-800 for more information on the relationship between development regulations and the comprehensive plan. See WAC 365-196-305 for more information on the relationship between county-wide planning policies and the comprehensive plan. See WAC 365-196-315 (5)(a) for information on consistencies between assumptions

and observed development for cities or counties subject to monitoring requirements in RCW 36.70A.215.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-500, filed 1/19/10, effective 2/19/10.]

WAC 365-196-510 Interjurisdictional consistency.

(1) Each county or city comprehensive plan must be coordinated with, and consistent with, the comprehensive plans of other counties and cities that share common borders or related regional issues with that county or city. Determining consistency in this interjurisdictional context is complicated by the differences in timing of comprehensive plan adoption and subsequent amendments.

(2) Initially, interjurisdictional consistency should be met by the adoption of comprehensive plans, and subsequent amendments, which are consistent with and carry out the relevant county-wide planning policies and, where applicable, the relevant multicounty planning policies. Adopted county-wide planning policies are designed to ensure that county and city comprehensive plans are consistent. More detailed recommendations about county-wide planning policies are contained in WAC 365-196-305.

(3) To better ensure consistency of comprehensive plans, counties and cities should consider using similar policies and assumptions that apply to common areas or issues.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-510, filed 1/19/10, effective 2/19/10.]

WAC 365-196-520 Coordination with other county and city comprehensive plans.

(1) Each county and city planning under the act should circulate its proposed comprehensive plan to other counties and cities with which it shares a common border or has related regional issues. The proposed comprehensive plan should be accompanied by the relevant environmental documents.

(2) Reviewing counties and cities are presumed to have concurred with the provisions of the comprehensive plan, unless within a reasonable period of time, they provide written comment identifying comprehensive plan features that will preclude or interfere with the achievement of their own comprehensive plans.

(3) All counties and cities should attempt to resolve conflicts over interjurisdictional consistency through consultation and negotiation. Additional guidance for interjurisdictional consistency is located in WAC 365-196-510.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-520, filed 1/19/10, effective 2/19/10.]

WAC 365-196-530 State agency compliance.

(1) RCW 36.70A.103 requires that state agencies comply with the local comprehensive plans and development regulations, and subsequent amendments, adopted pursuant to the act. An exception to this requirement exists for the state's authority to site and operate a special commitment center and a secure community transition facility to house persons conditionally released to a less restrictive alternative on McNeil Island under RCW 36.70A.200.

(2) The department construes RCW 36.70A.103 to require each state agency to meet local siting and building requirements when it occupies the position of an applicant

(1/27/15)

proposing development, except where specific legislation explicitly dictates otherwise. This means that development of state facilities is subject to local approval procedures and substantive provisions, including zoning, density, setbacks, bulk and height restrictions.

(3) Under RCW 36.70A.210(4), state agencies must follow adopted county-wide planning policies. Consistent with other statutory mandates, state programs should be administered in a manner which does not interfere with implementation of the county framework for interjurisdictional consistency, or the exercise by any local government of its responsibilities and authorities under the act.

(4) Overall, the broad sweep of policy contained in the act implies a requirement that all programs at the state level accommodate the outcomes of the growth management process wherever possible. The exercise of statutory powers, whether in permit functions, grant funding, property acquisition or otherwise, routinely involves such agencies in discretionary decision making. The discretion they exercise should take into account legislatively mandated local growth management programs. State agencies that approve plans of special purpose districts that are required to be consistent with local comprehensive plans should provide guidance or technical assistance to those entities to explain the need to coordinate their planning with the local government comprehensive plans within which they provide service.

(5) After local adoption of comprehensive plans and development regulations under the act, state agencies should review their existing programs in light of the local plans and regulations. Within relevant legal constraints, this review should lead to redirecting the state's actions in the interests of consistency with the growth management effort.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-530, filed 1/19/10, effective 2/19/10.]

WAC 365-196-540 Compliance by regional agencies and special purpose districts.

(1) Regional agencies and special purpose districts possess statutorily defined powers which include:

- (a) Planning;
- (b) Development;
- (c) Regulatory;
- (d) Facility management; and
- (e) Taxing functions.

(2) Such entities include:

- (a) Regional air pollution control authorities;
- (b) Metropolitan municipal corporations;
- (c) Fire protection districts;
- (d) Port districts;
- (e) Public utility districts;
- (f) School districts;
- (g) Sewer districts;
- (h) Water districts;
- (i) Irrigation districts;
- (j) Flood control districts;
- (k) Diking and drainage districts; and
- (l) Park and recreation districts.

(3) Except as otherwise provided by the legislature, the act requires that regional agencies and special purpose districts comply with the comprehensive plans and development regulations adopted under the act. WAC 365-196-745 lists

[Ch. 365-196 WAC p. 41]

statutes that provide direction to maintain consistency between special district plans and comprehensive plans.

(4) The plans of regional agencies and special purpose districts should be developed using local comprehensive plans as a basis for determining future development patterns. Regional agencies and special purpose districts should consult the land use, housing, and other relevant elements of the plans for information on future growth and development patterns, and should contact the local governments to ensure that special purpose districts can provide adequate public facilities to the area over the twenty-year life of the plan.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-540, filed 1/19/10, effective 2/19/10.]

WAC 365-196-550 Essential public facilities. (1) Determining what facilities are essential public facilities.

(a) The term "essential public facilities" refers to public facilities that are typically difficult to site. Consistent with county-wide planning policies, counties and cities should create their own lists of "essential public facilities," to include at a minimum those set forth in RCW 36.70A.200.

(b) For the purposes of identifying facilities subject to the "essential public facilities" siting process, it is not necessary that the facilities be publicly owned.

(c) Essential public facilities include both new and existing facilities. It may include the expansion of existing essential public facilities or support activities and facilities necessary for an essential public facility.

(d) The following facilities and types of facilities are identified in RCW 36.70A.200 as essential public facilities:

- (i) Airports;
- (ii) State education facilities;
- (iii) State or regional transportation facilities;
- (iv) Transportation facilities of statewide significance as defined in RCW 47.06.140. These include:
 - (A) The interstate highway system;
 - (B) Interregional state principal arterials including ferry connections that serve statewide travel;
 - (C) Intercity passenger rail services;
 - (D) Intercity high-speed ground transportation;
 - (E) Major passenger intermodal terminals excluding all airport facilities and services;
 - (F) The freight railroad system;
 - (G) The Columbia/Snake navigable river system;
 - (H) Marine port facilities and services that are related solely to marine activities affecting international and interstate trade;
 - (I) High capacity transportation systems.
- (v) Regional transit authority facilities as defined under RCW 81.112.020;
- (vi) State and local correctional facilities;
- (vii) Solid waste handling facilities;
- (viii) In-patient facilities, including substance abuse facilities;
- (ix) Mental health facilities;
- (x) Group homes;
- (xi) Secure community transition facilities;
- (xii) Any facility on the state ten-year capital plan maintained by the office of financial management.

(e) Essential public facility criteria apply to the facilities and not the operator. Cities and counties may not require

applicants who operate essential public facilities to use an essential public facility siting process for projects that would otherwise be allowed by the development regulations. Applicants who operate essential public facilities may not use an essential public facility siting process to obtain approval for projects that are not essential public facilities.

(f) Regardless of whether it is a new, existing or an expansion or modification of an existing public facility, the major component in the identification of an essential public facility is whether it provides or is necessary to provide a public service and whether it is difficult to site.

(2) Criteria to determine if the facility is difficult to site. Any one or more of the following conditions is sufficient to make a facility difficult to site.

(a) The public facility needs a specific type of site of such as size, location, available public services, which there are few choices.

(b) The public facility needs to be located near another public facility or is an expansion of an essential public facility at an existing location.

(c) The public facility has, or is generally perceived by the public to have, significant adverse impacts that make it difficult to site.

(d) Use of the normal development review process would effectively preclude the siting of an essential public facility.

(e) Development regulations require the proposed facility to use an essential public facility siting process.

(3) Preclusion of essential public facilities.

(a) Cities and counties may not use their comprehensive plan or development regulations to preclude the siting of essential public facilities. Comprehensive plan provisions or development regulations preclude the siting of an essential public facility if their combined effects would make the siting of an essential public facility impossible or impracticable.

(i) Siting of an essential public facility is "impracticable" if it is incapable of being performed or accomplished by the means employed or at command.

(ii) Impracticability may also include restrictive zoning; comprehensive plan policies directing opposition to a regional decision; or the imposition of unreasonable conditions or requirements.

(iii) Limitations on essential public facilities such as capacity limits; internal staffing requirements; resident eligibility restrictions; internal security plan requirements; and provisions to demonstrate need may be considered preclusive in some circumstances.

(b) A local jurisdiction may not include criteria in its land use approval process which would allow the essential public facility to be denied, but may impose reasonable permitting requirements and require mitigation of the essential public facility's adverse effects.

(c) An essential public facility is not precluded simply because the comprehensive plan provisions would be too costly or time consuming to comply with.

(d) If the essential public facility and its location have been evaluated through a state or regional siting process, the county or city may not require the facility to go through the local siting process.

(e) Essential public facilities that are sited through a regional or state agency are distinct from those that are "sited

by" a city or county or a private organization or individual. When a city or county is siting its own essential public facility, public or private, it is free to establish a nonpreclusive siting process with reasonable criteria.

(4) Comprehensive plan.

(a) Requirements:

(i) Each comprehensive plan shall include a process for identifying and siting essential public facilities. This process must be consistent with and implement applicable county-wide planning policies.

(ii) No local comprehensive plan may preclude the siting of essential public facilities.

(b) Recommendations for meeting requirements:

(i) Identification of essential public facilities. When identifying essential public facilities, counties and cities should take a broad view of what constitutes a public facility, involving the full range of services to the public provided by the government, substantially funded by the government, contracted for by the government, or provided by private entities subject to public service obligations.

(ii) Agreements among jurisdictions should be sought to mitigate any disproportionate financial burden which may fall on the county or city which becomes the site of a facility of a statewide, regional, or county-wide nature.

(iii) Where essential public facilities may be provided by special districts, the plans under which those districts operate must be consistent with the comprehensive plan of the city or county. Counties and cities should adopt provisions for consultation to ensure that such districts exercise their powers in a way that does not conflict with the relevant comprehensive plan.

(c) The siting process should take into consideration the need for county-wide, regional, or statewide uniformity in connection with the kind of facility under review.

(5) Development regulations governing essential public facilities.

(a) Development regulations governing the siting of essential public facilities must be consistent with and implement the process set forth in the comprehensive plan.

(b) Except where county-wide planning policies have otherwise dictated siting choices, provision should be made for the possibility of siting each of the listed essential public facilities somewhere within each county's or city's planning area.

(c) Counties and cities should consider the criteria established in their comprehensive plan, in consultation with this section to determine if a project is an essential public facility. Counties and cities may also adopt criteria for identifying an essential public facility.

(d) If an essential public facility does not present siting difficulties and can be permitted through the normal development review process, project review should be through the normal development review process otherwise applicable to facilities of its type.

(e) If an essential public facility presents siting difficulties, the application should be reviewed using the essential public facility siting process.

(6) The essential public facility siting process.

(a) The siting process may not be used to deny the approval of the essential public facility. The purpose of the essential public facility siting process is to allow a county or

city to impose reasonable conditions on an essential public facility necessary to mitigate the impacts of the project while ensuring that its development regulations do not preclude the siting of an essential public facility.

(b) The review process for siting essential public facilities should include a requirement for notice and an opportunity to comment to other interested counties and cities and the public.

(c) The permit process may include reasonable requirements such as a conditional use permit, but the process used must ensure a decision on the essential public facility is completed without unreasonable delay.

(d) The essential public facility siting process should identify what conditions are necessary to mitigate the impacts associated with the essential public facility. The combination of any existing development regulations and any new conditions may not render impossible or impracticable, the siting, development or operation of the essential public facility.

(e) Counties and cities should consider the extent to which design conditions can be used to make a facility compatible with its surroundings. Counties and cities may also consider provisions for amenities or incentives for neighborhoods in which facilities are sited. Any conditions imposed must be necessary to mitigate an identified impact of the essential public facility.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-550, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-550, filed 1/19/10, effective 2/19/10.]

WAC 365-196-560 Special siting statutes. (1) Comprehensive plans and development regulations adopted under the act should accommodate situations where the state has explicitly preempted all local land use regulations, as for example, in the siting of major energy facilities under RCW 80.50.110.

(2) Where special statutes relate specifically to the setting aside of designated areas for particular purposes and under particular management programs, local land use regulations adopted under the act should be consistent with those purposes and programs. Examples in this category are the statutes relating to:

- (a) Natural resource conservation areas;
- (b) Natural area preserves;
- (c) Seashore conservation area;
- (d) Scenic rivers.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-560, filed 1/19/10, effective 2/19/10.]

WAC 365-196-570 Secure community transition facilities. Requirements.

(1) Secure community transition facilities are essential public facilities.

(2) Counties and cities must either establish an essential public facility siting process, or amend their existing process to allow for the siting of secure community transition facilities, or be subject to preemption by the Washington state department of social and health services consistent with RCW 71.09.342.

(3) A failure to act before the September 1, 2002, deadline does not constitute noncompliance for the purposes of grants and loans, and does not subject a county or city to a

failure to act challenge to the growth management hearings board.

(4) If a county or city does not adopt an essential public facility siting process or does not amend its existing process to allow for the siting of a secure community transition facility, then the Washington state department of social and health services may preempt local development regulations as necessary to site and operate a secure community transition facility under RCW 71.09.285 through 71.09.342. If the Washington state department of social and health services preempts local development regulations, the county or city may still participate in the siting process as provided in RCW 71.09.342.

(5) A local secure community transition facility siting process established by a city or county must be consistent with, and no more restrictive than, the siting process established in RCW 71.09.285 through 71.09.342. The Washington state department of social and health services has final authority to determine if a locally adopted siting process allows for the siting of secure community transition facilities in compliance with RCW 71.09.285.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-570, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-570, filed 1/19/10, effective 2/19/10.]

WAC 365-196-580 Integration with the Shoreline Management Act. (1) For shorelines of the state, the goals and policies of the Shoreline Management Act as set forth under RCW 90.58.020 are added as one of the goals of this chapter as set forth under RCW 36.70A.020 without creating an order of priority among the fourteen goals. The goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations.

(2) The shoreline master program shall be adopted pursuant to the procedures under chapter 90.58 RCW rather than the goals, policies, and procedures set forth in chapter 36.70A RCW for the adoption of a comprehensive plan or development regulations.

(3)(a) The policies, goals, and provisions of chapter 90.58 RCW and applicable guidelines shall be the sole basis for determining compliance of a shoreline master program with chapter 36.70A RCW except as the shoreline master program is required to comply with the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105.

(b) Except as otherwise provided in (c) of this subsection, development regulations adopted under chapter 36.70A RCW to protect critical areas within shorelines of the state apply within shorelines of the state until the department of ecology approves one of the following: A comprehensive master program update, as defined under RCW 90.58.030; a segment of a master program relating to critical areas, as provided under RCW 90.58.090; or a new or amended master program approved by the department of ecology on or after March 1, 2002, as provided under RCW 90.58.080. The adoption or update of development regulations to protect crit-

ical areas under chapter 36.70A RCW prior to department of ecology approval of a master program update as provided in this subsection is not a comprehensive or segment update to the master program.

(c)(i) Until the department of ecology approves a master program or segment of a master program as provided in (b) of this subsection, a use or structure legally located within shorelines of the state that was established or vested on or before the effective date of the local government's development regulations to protect critical areas may continue as a conforming use and may be redeveloped or modified if:

(A) The redevelopment or modification is consistent with the local government's master program; and

(B) The local government determines that the proposed redevelopment or modification will result in no net loss of shoreline ecological functions. The local government may waive this requirement if the redevelopment or modification is consistent with the master program and the local government's development regulations to protect critical areas.

(ii) For purposes of (c) of this subsection, an agricultural activity that does not expand the area being used for the agricultural activity is not a redevelopment or modification. "Agricultural activity," as used in (c) of this subsection, has the same meaning as defined under RCW 90.58.065.

(d) Upon department of ecology approval of a shoreline master program or critical area segment of a shoreline master program, critical areas within shorelines of the state are protected under chapter 90.58 RCW and are not subject to the procedural and substantive requirements of chapter 36.70A RCW, except as provided in subsection (6) of this section. Nothing in chapter 321, Laws of 2003 or the act is intended to affect whether or to what extent agricultural activities, as defined under RCW 90.58.065, are subject to chapter 36.70A RCW.

(e) The provisions under RCW 36.70A.172 shall not apply to the adoption or subsequent amendment of a local government's shoreline master program and shall not be used to determine compliance of a local government's shoreline master program with chapter 90.58 RCW and applicable guidelines. Nothing in this section; however, is intended to limit or change the quality of information to be applied in protecting critical areas within shorelines of the state, as required under chapter 90.58 RCW and applicable guidelines.

(4) Shoreline master programs shall provide a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by department of ecology guidelines adopted pursuant to RCW 90.58.060.

(5) Shorelines of the state shall not be considered critical areas under chapter 36.70A RCW except to the extent that specific areas located within shorelines of the state qualify for critical area designation based on the definition of critical areas provided under RCW 36.70A.030(5) and have been designated as such by a local government pursuant to RCW 36.70A.060(2).

(6) If a local jurisdiction's master program does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized under RCW 90.58.030 (2)(f), then the local jurisdiction shall continue to

regulate those critical areas and their required buffers pursuant to RCW 36.70A.060(2).

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-580, filed 11/2/10, effective 12/3/10.]

PART SIX

REVIEWING, AMENDING, AND UPDATING COMPREHENSIVE PLANS AND DEVELOPMENT REGULATIONS

WAC 365-196-600 Public participation. (1) Requirements.

(a) Each county and city planning under the act must establish procedures for early and continuous public participation in the development and amendment of comprehensive plans and development regulations. The procedures are not required to be reestablished for each set of amendments.

(b) The procedures must provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.

(c) Errors in exact compliance with the established procedures do not render the comprehensive plan or development regulations invalid if the spirit of the procedures is observed.

(2) Record of process.

(a) Whenever a provision of the comprehensive plan or development regulation is based on factual data, a clear reference to its source should be made part of the adoption record.

(b) The record should show how the public participation requirement was met.

(c) All public hearings should be recorded.

(3) Recommendations for meeting public participation requirements. These recommendations are a list of suggestions for meeting the public participation requirement.

(a) Designing the public participation program.

(i) Implementation of the act requires a series of interrelated steps, including: Development of the initial comprehensive plan, evaluating amendments as part of the docket cycle, conducting the periodic update and reviewing the urban growth boundaries, amending development regulations, and conducting subarea planning. Each of these has different levels of significance and different procedural requirements.

(ii) Counties and cities are not required to establish individual public participation programs for each individual amendment. Counties and cities may wish to consider establishing a public program for annual amendments, and establishing separate or updated programs for major periodic updates. When developing a public participation plan for a project not covered by the existing public participation plan, a county or city should develop a public participation plan tailored to the type of action under consideration. This public participation plan should be focused on the type of public involvement appropriate for that type of action.

(iii) The public participation plan should identify which procedural requirements apply for the type of action under consideration and how the county or city intends to meet those requirements.

(iv) To avoid duplication of effort, counties and cities should integrate public involvement required by the State Environmental Policy Act, chapter 43.21C RCW, and rules adopted thereunder, into the overall public participation plan.

(v) Where a proposed amendment involves shorelines of the state, a county or city should integrate the public participation requirements of the Shoreline Management Act, chapter 90.58 RCW, into its public participation plan, as appropriate.

(vi) Once established, the public participation plan must be broadly disseminated.

(b) Visioning. When developing a new comprehensive plan or a significant update to an existing comprehensive plan, counties and cities should consider using a visioning process. The public should be involved, because the purpose of a visioning process is to gain public input on the desired features of the community. The comprehensive plan can then be designed to achieve these features.

(c) Planning commission. The public participation program should clearly describe the role of the planning commission, ensuring consistency with requirements of chapter 36.70, 35.63, or 35A.63 RCW.

(4) Each county or city should try to involve a broad cross-section of the community, so groups not previously involved in planning become involved.

(5) Counties and cities should take a broad view of public participation. The act contains no requirements or qualifications that an individual must meet in order to participate in the public process. If an individual or organization chooses to participate, it is an interested party for purposes of public participation.

(6) Providing adequate notice.

(a) Counties and cities are encouraged to consider a variety of opportunities to adequately communicate with the public. These methods of notification may include, but are not limited to, traditional forms of mailed notices, published announcements, electronic mail, and internet web sites to distribute informational brochures, meeting times, project timelines, and design and map proposals to provide an opportunity for the public to participate.

(b) Counties and cities must provide effective notice. In order to be effective, notice must be designed to accomplish the following:

(i) Notice must be timely, reasonably available and reasonably likely to reach interested persons. Notice of all events where public input is sought should be broadly disseminated at least one week in advance of any public hearing. Newspaper or online articles do not substitute for the requirement that jurisdictions publish the action taken. When appropriate, notices should announce the availability of relevant draft documents and how they may be obtained.

(ii) Broad dissemination means that a county or city has made the documents widely available and provided information on how to access the available documents and how to provide comments. Examples of methods of broad dissemination may include:

(A) Posting electronic copies of draft documents on the county and city official web site;

(B) Providing copies to local libraries;

(C) Providing copies as appropriate to other affected counties and cities, state and federal agencies;

(D) Providing notice to local newspapers; and

(E) Maintaining a list of individuals who have expressed an interest and providing them with notice when new materials are available.

(iii) Certain proposals may also require particularized notice to specific individuals if required by statute or adopted local policy.

(iv) The public notice must clearly specify the nature of the proposal under consideration and how the public may participate. Whenever public input is sought on proposals and alternatives, the relevant drafts should be available. The county or city must make available copies of the proposal that will be available prior to the public hearing so participants can comment appropriately. The notice should specify the range of alternatives considered or scope of alternatives available for public comment in accordance with RCW 36.70A.035 (2)(b)(i) and (ii).

(7) Receiving public comment.

(a) Public meetings on draft comprehensive plans. Once a comprehensive plan amendment or other proposal is completed in draft form, or as parts of it are drafted, the county or city may consider holding a series of public meetings or workshops at various locations throughout the jurisdiction to obtain public comments and suggestions.

(b) Public hearings. When the final draft of the comprehensive plan is completed, at least one public hearing should be held prior to the presentation of the final draft to the county or city legislative authority adopting it.

(c) Written comment. At each stage of the process when public input is sought, opportunity should be provided to make written comment.

(d) Attendance for all meetings and hearings to which the public is invited should be free and open. At hearings all persons desiring to speak should be allowed to do so. A county or city may establish a reasonable time limitation on spoken presentations during meetings or public hearings, particularly if written comments are allowed.

(8) Continuous public involvement.

(a) Consideration of and response to public comments. All public comments should be reviewed. Adequate time should be provided between the public hearing and the date of adoption for all or any part of the comprehensive plan to evaluate and respond to public comments. The county or city should provide a written summary of all public comments with a specific response and explanation for any subsequent action taken based on the public comments. This written summary should be included in the record of adoption for the plan.

(b) Ending the opportunity for comment prior to deliberation. After the end of public comment, the local government legislative body may hold additional meetings to deliberate on the information obtained in the public hearing.

(c) Additional meetings may be necessary if the public hearings provided the county or city with new evidence or information they wish to consider. If during deliberation, the county or city legislative body identifies new information for consideration after the record of adoption has been closed, then it must provide further opportunity for public comment so this information can be included in the record.

(9) Considering changes to an amendment after the opportunity for public review has closed.

(a) If the county or city legislative body considers a change to an amendment, and the opportunity for public review and comment has already closed, then the county or city must provide an opportunity for the public to review and comment on the proposed change before the legislative body takes action.

(b) The county or city may limit the opportunity for public comment to only the proposed change to the amendment.

(c) Although counties and cities are required to provide an opportunity for public comment, alternatives to a scheduled public hearing may suffice. Adequate notice must be provided indicating how the public may obtain information and offer comments.

(d) A county or city is not required to provide an additional opportunity for public comment under (a) of this subsection if one of the following exceptions applies (see RCW 36.70A.035 (2)(a)):

(i) An environmental impact statement has been prepared under chapter 43.21C RCW, and the proposal falls within the range of alternatives considered in the environmental impact statement;

(ii) The proposed change is within the range of alternatives available for public comment. When initiating the public participation process, a county or city should consider defining the range of alternatives under consideration;

(iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;

(iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or

(v) The proposed change is to an ordinance or resolution enacting a moratorium or interim control adopted in compliance with RCW 36.70A.390.

(e) If a county or city adopts an amendment without providing an additional opportunity for public comment as described under (a) of this subsection, the findings of the adopted ordinance or resolution should identify which exception under RCW 36.70A.035 (2)(b) applies.

(10) Any amendment to the comprehensive plan or development regulation must follow the applicable procedural requirements and the county or city public participation plan. A county or city should not enter into an agreement that is a de facto amendment to the comprehensive plan accomplished without complying with the statutory public participation requirements. Examples of a de facto amendment include agreements that:

(a) Obligate the county or city, or authorizes another party, to act in a manner that is inconsistent with the comprehensive plan;

(b) Authorize an action the comprehensive plan prohibits; or

(c) Obligate the county or city to adopt a subsequent amendment to the comprehensive plan.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-600, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-196-600, filed 1/19/10, effective 2/19/10.]

WAC 365-196-610 Periodic review and update of comprehensive plans and development regulations. (1) Requirements.

(a) Counties and cities must periodically take legislative action to review and, if necessary, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of the act. This review and revision, required under RCW 36.70A.130(1), is referred to in this section as the periodic update.

(b) Deadlines for periodic update. Comprehensive plans and development regulations are subject to periodic update on a schedule established in RCW 36.70A.130(5).

(i) Deadlines for completion of periodic review are as follows:

Table WAC 365-196-610.1

Deadlines for Completion of Periodic Review 2015 - 2018

Update must be complete by June 30 of:	Affected counties and the cities within:
2015/2023	King, Pierce, Snohomish
2016/2024	Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, Whatcom
2017/2025	Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, Yakima
2018/2026	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, Whitman

(ii) Certain smaller, slower-growing counties and cities may take up to an additional two years to complete the update.

(A) The eligibility of a county for the two-year extension does not affect the eligibility of the cities within the county.

(B) A county is eligible if it has a population of less than fifty thousand and a growth rate of less than seventeen percent.

(C) A city is eligible if it has a population of less than five thousand, and either a growth rate of less than seventeen percent or a total population growth of less than one hundred persons.

(D) Growth rates are measured using the ten-year period preceding the due date listed in RCW 36.70A.130(5).

(E) If a city or county qualifies for the extension on the statutory due date, they remain eligible for the entire extension period, even if they no longer meet the criteria due to population growth.

(c) Taking legislative action.

(i) The periodic update must be accomplished through legislative action. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing including, at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore.

(ii) Legislative action includes two components. It includes a review of the comprehensive plan and development regulations and it includes the adoption of any amendments necessary to bring the comprehensive plan and development regulations into compliance with the requirements of the act.

(d) What must be reviewed.

(i) Counties and cities that plan under RCW 36.70A.040 must review and, if needed, revise their comprehensive plans and development regulations for compliance with the act. This includes the critical areas ordinance.

(ii) Counties and cities that do not plan under RCW 36.70A.040 must review and, if needed, revise their resource lands designations and their development regulations designating and protecting critical areas.

(e) The required scope of review. The purpose of the review is to determine if revisions are needed to bring the comprehensive plan and development regulation into compliance with the requirements of the act. The update process provides the method for bringing plans into compliance with the requirements of the act that have been added or changed since the last update and for responding to changes in land use and in population growth. This review is necessary so that comprehensive plans are not allowed to fall out of compliance with the act over time through inaction. This review must include at least the following:

(i) Consideration of the critical areas ordinance;

(ii) Analysis of urban growth area review required by RCW 36.70A.130(3) (see WAC 365-196-310);

(iii) Review of mineral resource lands designations and mineral resource lands development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060; and

(iv) Changes to the act or other applicable laws since the last review that have not been addressed in the comprehensive plan and development regulations.

(2) Recommendations for meeting requirements.

(a) Public participation program.

(i) Counties and cities should establish a public participation program that includes a schedule for the periodic update and identifies when legislative action on the review and update component are proposed to occur. The public participation program should also inform the public of when to comment on proposed changes to the comprehensive plan and clearly identify the scope of the review. Notice of the update process should be broadly disseminated as required by RCW 36.70A.035.

(ii) Counties and cities may adjust the public participation program to best meet the intent of the requirement. RCW 36.70A.140 notes that errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed. For example, if an established public participation program included one public hearing on all actions having to do with the periodic update process, the public participation program could be adjusted later to provide additional public hearings to accommodate strong public interest.

(b) Review of relevant statutes and local information and analysis of whether there is a need for revisions.

(i) Amendments to the act. Counties and cities should first review amendments to the act that have occurred since

the initial adoption or previous periodic update, and determine if local amendments are needed to maintain compliance with the act. The department will maintain a comprehensive list of legislative amendments and a checklist to assist counties and cities with this review.

(ii) Review and analysis of relevant plans, regulations and information. Although existing comprehensive plans and development regulations are considered compliant, counties and cities should consider reviewing development and other activities that have occurred since adoption to determine if the comprehensive plans and development regulations remain consistent with, and implement, the act. This should include at least the following:

(A) Analysis of the population allocated to a city or county during the most recent urban growth area review (see WAC 365-196-310);

(B) Consideration of critical areas and resource lands ordinances;

(C) Review of mineral resource lands designations and development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060;

(D) Capital facilities plans. Changes in anticipated circumstances and needs should be addressed by updating the ten-year transportation plan and six-year capital facilities elements. This includes a reassessment of the land use element if funding falls short;

(E) Land use element;

(F) Changes to comprehensive plans and development regulations in adjacent jurisdictions, special purpose districts, or state plans that create an inconsistency with the county or city's comprehensive plan or development regulations;

(G) Basic assumptions underlying key calculations and conclusions in the existing comprehensive plan. If recent data demonstrates that key existing assumptions are no longer appropriate for the remainder of the twenty-year plan, counties and cities should consider updating them as part of the periodic update (see WAC 365-196-310). Counties and cities required to establish a review and evaluation program under RCW 36.70A.215, should use that information in this review (see WAC 365-196-315); and

(H) Inventories. Counties and cities should review required inventories and to determine if new data or analysis is needed. Table 2 contains summary of the inventories required in the act.

Table WAC 365-196-610.2
Inventories Required by the Act

Requirement	RCW Location	WAC Location
Housing Inventory	36.70A.070(2)	365-196-430
Inventory and analyze existing and projected housing needs, identifying the number of housing units necessary to manage project growth.		
Capital Facilities	36.70A.070(3)	365-196-445
Inventory existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities, and forecast future needs and proposed locations and capacities of expanded or new facilities.		
Transportation	36.70A.070(6)	365-196-455

Requirement	RCW Location	WAC Location
An inventory of air, water and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels and a basis for future planning. This inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries.		

(c) Take legislative action.

(i) Any legislative action that completes a portion of the review and update process, either in whole or in part, must state in its findings that it is part of the update process.

(ii) Any public hearings on legislative actions that are, either in whole or in part, legislative actions completing the update must state in the notice of hearing that the actions considered are part of the update process.

(iii) At the end of the review and update process, counties and cities should take legislative action declaring the update process complete, either as a separate legislative action, or as a part of the final legislative action that occurs as part of the update process. This action should reference all prior legislative actions occurring as part of the update process.

(d) Submit notice of completion to the department. When adopted, counties and cities should transmit the notice of adoption to the department, consistent with RCW 36.70A.106. RCW 36.70A.130 requires compliance with the review and update requirement as a condition of eligibility for state grant and loan programs. The department tracks compliance with this requirement for agencies managing these grant and loan programs. Providing notice of completion to the department will help maintain access to these grant and loan programs.

(3) Relationship to other review and amendment requirements in the act.

(a) Relationship to the comprehensive plan amendment process. Cities and counties may amend the comprehensive plan no more often than once per year, as required in RCW 36.70A.130(2), and referred to as the docket. If a city or county conducts a comprehensive plan docket cycle in the year in which the review of the comprehensive plan is completed, it must be combined with the periodic review process. Cities and counties may not conduct the periodic review and a docket of amendments as separate processes in the same year.

(b) Urban growth area (UGA) review. As part of the periodic review, cities and counties must review the areas and densities contained in the urban growth area and, if necessary, revise their comprehensive plan to accommodate the growth projected to occur in the county for the succeeding twenty-year period, as required in RCW 36.70A.130(3) (see WAC 365-196-310).

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-610, filed 1/27/15, effective 2/27/15; WSR 10-22-103, § 365-196-610, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-610, filed 1/19/10, effective 2/19/10.]

WAC 365-196-620 Integration of State Environmental Policy Act process with creation and adoption of comprehensive plans and development regulations. (1) Adoption of comprehensive plans and development regulations are

"actions" as defined under State Environmental Policy Act (SEPA). Counties and cities must comply with SEPA when adopting new or amended comprehensive plans and development regulations.

(2) Integration of SEPA review with other analysis required by the act.

(a) The SEPA process is supplementary to other governmental decision-making processes, including the processes involved in creating and adopting comprehensive plans and development regulations under the act. The thoughtful integration of SEPA compliance with the overall effort to implement the act will provide understanding and insight of significant value to the choices growth management requires.

(b) SEPA analysis and documentation can serve, in significant part, to fulfill the need to compile a record showing the considerations which went into the plan and why one alternative was chosen over another.

(c) When conducting a SEPA analysis, counties and cities should coordinate the development and evaluation of SEPA alternatives with other evaluations required by the act such as:

(i) Evaluation of fiscal impact required by RCW 36.70A.210;

(ii) Review of drainage, flooding and storm water runoff required by RCW 36.70A.070;

(iii) The forecast of future capital facilities needs required by RCW 36.70A.070(3); and

(iv) The traffic forecast, identification of system needs and analysis of funding capability required in RCW 36.70A.070 (6)(a)(iii)(D), (E) and (F).

(d) Coordination should assure that these evaluations occur against a uniform set of alternatives and provide a complete picture of both the environmental and financial impacts of various alternatives.

(3) Phased environmental review.

(a) The growth management process is designed to proceed in phases, moving, by and large, from general policy-making to more specific implementation measures. Phased review available under SEPA can be integrated with the growth management process through a strategy that identifies the points in that process where the requirements of the two statutes are connected and seeks to accomplish the requirements of both at those points.

(b) In an integrated approach major emphasis should be placed on the quality of SEPA analysis at the front end of the growth management process - the local legislative phases of plan adoption and regulation adoption. The objective should be to create nonproject impact statements, and progressively more narrowly focused supplementary documents, that are sufficiently informative. These impact statements should reduce the need for extensive and time consuming analysis during subsequent environmental analysis at the individual project stage.

(c) The SEPA rules authorize joint documents that incorporate requirements of the act and SEPA (WAC 197-11-210 through 197-11-235). In general, using joint documents can provide time and cost savings related to review and adoption of comprehensive plan amendments.

(d) When evaluating comprehensive plan amendments, these amendments should generally be considered together as one action under SEPA so that the cumulative effect of vari-

ous proposals can be evaluated together, consistent with RCW 36.70A.130 (2)(b).

(e) In conducting SEPA review and making a threshold determination, the county or city should review existing environmental documents. These documents may already address some or all of the potential adverse environmental impacts posed by the items on the docket. As an example, if an environmental impact statement (EIS) was done on the comprehensive plan, the county or city may only need to update or supplement the information in this existing EIS. The county or city may be able to accomplish this by incorporating a document by reference, adopting a document, or preparing a supplemental EIS or an addendum, as authorized by the SEPA rules (chapter 197-11 WAC).

(f) When creating SEPA documents, counties and cities should consider identifying and incorporating previous environmental analysis statements prepared by other lead agencies in connection with other related plans or projects.

(g) When conducting the SEPA analysis of a comprehensive plan amendment, counties and cities should analyze the impacts of fundamental land use planning choices. Because these choices cannot be revisited during project review, the impacts of these decisions must be evaluated when adopting comprehensive plan amendments. This analysis can serve as the foundation for project review. RCW 36.70B.030 identifies the following as fundamental land use planning choices:

(i) The types of land use;

(ii) The level of development, such as units per acre or other measures of density;

(iii) Infrastructure, including public facilities and services needed to serve the development; and

(iv) The characteristics of the development, such as development standards.

(h) SEPA compliance for development regulations should concentrate on the difference among alternative means of successfully implementing the goals and policies of the comprehensive plan. This approach can serve the goal that project applications be processed in a timely manner, while not compromising SEPA's basic aim of ensuring consideration of environmental impacts in advance of development.

(4) Interjurisdictional impacts. It is recognized that the growth of each county and city will have ripple effects which will reach across jurisdictional boundaries. Each county or city planning under the act should analyze what effects are likely to occur from the anticipated development. This analysis should be made as a part of the process of complying with SEPA in connection with comprehensive plan adoption. Affected jurisdictions should be given an opportunity to comment on this analysis.

(5) Other guidance found in SEPA rules. The SEPA rules (WAC 197-11-230) contain other guidance for preparing and issuing SEPA documents related to comprehensive plan amendments.

(6) Planned actions. One of the opportunities presented by the application of the act, SEPA, and the Regulatory Reform Act of 1995 (chapter 36.70B RCW and WAC 365-197-030) is the creation of a "planned action." A planned action is a nonproject action whose impacts are analyzed in an EIS associated with a comprehensive plan or subarea plan. The impacts and necessary mitigation are identified in a

planned action ordinance. Development projects which are consistent with a planned action ordinance may not require additional environmental review. Planned actions are also addressed in WAC 197-11-168 and 197-11-172.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-620, filed 1/19/10, effective 2/19/10.]

WAC 365-196-630 Submitting notice of intent to adopt to the state. (1) State notification and comment.

(a) The act requires each county or city proposing adoption of an original comprehensive plan or development regulation, or amendment, under the act, must notify the department of its intent at least sixty days prior to final adoption. Counties and cities may request expedited review for changes to the development regulations pursuant to RCW 36.70A.106 (3)(b).

(b) State agencies, including the department, may provide comments on comprehensive plans, development regulations, and related amendments during the public review process.

(2) Notice to the department must include:

(a) A cover letter or cover page that includes an explanation of the proposed amendment, notification that the submittal is intended to begin the sixty-day review process, the planned date of adoption, and the sender's contact information; and

(b) A copy of the proposed amendment language. The drafted amendment text should be in a complete form, and it should clearly identify how the existing language will be modified. An example of acceptable form includes struck through and underlined text that indicates proposed deleted text and new text, respectively.

(c) If the proposed amendment changes during the legislative process, counties and cities may submit supplemental materials to the department without initiating a new sixty-day notice period. Counties and cities must identify any materials submitted to the department if they are supplemental to an earlier proposed amendment under a sixty-day review.

(3) The department prefers that notices be submitted electronically. Expedited review requests should be submitted by e-mail as outlined in subsection (6) of this section. Counties and cities may contact the department by telephone at 360-725-3000 or by e-mail at reviewteam@commerce.wa.gov to obtain electronic contact information and procedures for electronic submittals.

Copies submitted by U.S. mail should be sent to:

Department of Commerce,
Growth Management Services
Attn: Review Team
P.O. Box 42525
Olympia, WA 98504-2525

(4) Submitting adopted amendments.

(a) Each county or city planning under the act must transmit to the department, within ten days after adoption, one complete and accurate copy of its adopted comprehensive plan or development regulation, or adopted amendment to a comprehensive plan or development regulation. Additional copies should be sent to those state agencies that provided comment on the proposed amendment.

(b) The submittal must include a copy of the final signed and dated ordinance or resolution identifying the legislative action.

(c) Submittal of adopted amendments should follow the method outlined for submission of the sixty-day notice for review.

(5) The sixty-day period for determining when a comprehensive plan, development regulation, or amendment can be adopted begins as follows:

(a) When the notice is automatically date-stamped upon receipt by e-mail attachment if the submittal is transmitted electronically; or

(b) When the material is stamped upon the date of receipt at the department's planning unit reception desk during regular business hours if the submittal is transmitted by U.S. mail.

(6) Expedited review.

(a) Counties and cities may request expedited review when they are providing to the department notice of intent to adopt development regulations under RCW 36.70A.106 (3)(b).

(b) Expedited review is intended for amendments to development regulations for which, without expedited review, the sixty-day state agency review process would needlessly delay the jurisdictions adoption schedule.

(c) Counties and cities may not request expedited review of comprehensive plan amendments.

(d) Certain types of development regulations are very likely to require review by state agencies, and are therefore generally not appropriate for expedited review. Proposed changes to critical areas ordinances, concurrency ordinances, or ordinances regulating essential public facilities are examples of development regulation amendments that should not be submitted for expedited review.

(e) Department responsibilities:

(i) Requests should be forwarded to other state agencies within two working days of receipt of request for expedited review.

(ii) State agencies have ten working days to determine if the proposal is of interest and requires more time for review.

(iii) If the department is notified by any state agency within ten working days that it has an interest in more time for review, the department will not grant expedited review until all agencies have had an opportunity to comment.

(iv) If after ten working days, a state agency does not respond to the department, then the department may grant the request for expedited review.

(v) The department may determine that it has an interest in a proposal that requires more time for review, and it may deny a request for expedited review on that basis.

(vi) The estimated time frame for processing an expedited review request is fourteen days, to coincide with the State Environmental Policy Act comment period.

(vii) The expedited review request must include the information required to determine if an item is of state interest, similar to the methods outlined for submission of amendments for sixty-day review.

(f) State agency responsibilities:

(i) If a state agency intends to comment, the agency must respond to requests for expedited review within ten working days.

(ii) State agencies should determine how to coordinate an agency response internally to maintain proper notification and information management between its headquarters office and regional offices. The department will work with state agencies if it can be of assistance in this process.

(iii) If a state agency has an interest in a proposed amendment for expedited review, and it has requested the department not grant expedited review, the state agency requesting denial of the expedited review should contact and provide comment directly to the requesting jurisdiction within the sixty-day period specified in RCW 36.70A.106. The state agency should notify the department when it has completed review and provided comments.

(g) County and city responsibilities:

(i) Requests for expedited review should be the exception and not the rule. Expedited review is designed for use with development regulations amendments that are unlikely to require state agency comment.

(ii) Expedited review should not be used as a substitute for timely notification. Counties and cities should plan for the full sixty-day review period when practicable.

(iii) Counties and cities must request expedited review on a case-by-case basis.

(iv) Requests should be in the form of an electronic submittal, following the department's requirements for e-mail submittal for sixty-day review in subsection (3) of this section.

(v) The request must be accompanied with enough information, as defined by the department, in consultation with other state agencies and counties and cities, to determine whether it is of state interest.

(vi) Expedited review should not be requested if the normal sixty-day period will not delay adoption.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-630, filed 1/19/10, effective 2/19/10.]

WAC 365-196-640 Comprehensive plan amendment procedures. (1) Each county or city should provide for an ongoing process to ensure:

(a) The comprehensive plan is internally consistent and consistent with the comprehensive plans of adjacent counties and cities. See WAC 365-196-500 and 365-196-510; and

(b) The development regulations are consistent with and implement the comprehensive plan.

(2) Counties and cities should establish procedures governing the amendment of the comprehensive plan. The location of these procedures may be either in the comprehensive plan, or clearly referenced in the plan.

(3) Amendments.

(a) All proposed amendments to the comprehensive plan must be considered by the governing body concurrently and may not be considered more frequently than once every year, so that the cumulative effect of various proposals can be ascertained. If a county or city's final legislative action is taken in a subsequent calendar year, it may still be considered part of the prior year's docket so long as the consideration of the amendments occurred within the prior year's comprehensive plan amendment process.

(b) Amendments may be considered more often under the following circumstances:

(i) The initial adoption of a subarea plan. Subarea plans adopted under this subsection (3)(b)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter 43.21C RCW;

(ii) The development of an initial subarea plan for economic development located outside of the one hundred-year flood plain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;

(iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;

(iv) The amendment of the capital facilities element of a comprehensive plan that is part of the adoption or amendment of a county or city budget;

(v) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW 43.21C.-031(2), provided that amendments are considered in agreement with the public participation program established by the county or city under RCW 36.70A.140, and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment;

(vi) To resolve an appeal of the comprehensive plan filed with the growth management hearings board; or

(vii) In the case of an emergency.

(4) Emergency amendments. Public notice and an opportunity for public comment must precede the adoption of emergency amendments to the comprehensive plan. Provisions in RCW 36.70A.390 apply only to moratoria or interim development regulations. They do not apply to comprehensive plans amendments. If a comprehensive plan amendment is necessary, counties and cities should adopt a moratoria or interim zoning control. The county or city should then consider the comprehensive plan amendment concurrently with the consideration of permanent amendments and only after public notice and an opportunity for public comment.

(5) Evaluating cumulative effects. RCW 36.70A.130 (2)(b) requires that all proposed amendments in any year be considered concurrently so the cumulative effect of the proposals can be ascertained. The amendment process should include an analysis of all proposed amendments evaluating their cumulative effect. This analysis should be prepared in conjunction with analyses required to comply with the State Environmental Policy Act under chapter 43.21C RCW.

(6) Docketing of proposed amendments.

(a) RCW 36.70A.470(2) requires that comprehensive plan amendment procedures allow interested persons, including applicants, citizens, hearing examiners, and staff of other agencies, to suggest amendments of comprehensive plans or development regulations. This process should include a means of docketing deficiencies in the comprehensive plan that arise during local project review. These suggestions must be docketed and considered at least annually.

(b) A consideration of proposed amendments does not require a full analysis of every proposal within twelve months if resources are unavailable.

(c) As part of this process, counties and cities should specify what information must be submitted and the submittal deadlines so that proposals can be evaluated concurrently.

(d) Once a proposed amendment is received, the county or city may determine if a proposal should receive further consideration as part of the comprehensive plan amendment process.

(e) Some types of proposed amendments require a significant investment of time and expense on the part of both applicants and the county or city. A county or city may specify in its policies certain types of amendments that will not be carried forward into the amendment process on an annual basis. This provides potential applicants with advance notice of whether a proposed amendment will be carried forward and can help applicants avoid the expense of preparing an application.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-640, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-640, filed 1/19/10, effective 2/19/10.]

WAC 365-196-650 Implementation strategy. Each county or city planning under the act should develop a strategy for implementing its comprehensive plan. The strategy should describe the regulatory and nonregulatory measures (including actions for acquiring and spending money) to be used to implement the comprehensive plan. The strategy should identify each of the development regulations needed.

(1) Selection. In determining the specific regulations to be adopted, counties and cities may select from a wide variety of types of controls. The strategy should include consideration of:

(a) The choice of substantive requirements, such as the delineation of use zones; general development limitations concerning lot size, setbacks, bulk, height, density; provisions for environmental protection; urban design guidelines and design review criteria; specific requirements for affordable housing, landscaping, parking; levels of service, concurrency regulations and other measures relating to public facilities.

(b) The means of applying the substantive requirements, such as methods of prior approval through permits, licenses, franchises, or contracts.

(c) The processes to be used in applying the substantive requirements, such as permit application procedures, hearing procedures, approval deadlines, and appeals.

(d) The methods of enforcement, such as inspections, reporting requirements, bonds, permit revocation, civil penalties, and abatement.

(2) Identification. The strategy should include a list of all regulations identified as development regulations for implementing the comprehensive plan. Some of these regulations may already be in existence and consistent with the plan. Others may be in existence, but require amendment. Others will need to be written.

(3) Adoption schedule. The strategy should include a schedule for the adoption or amendment of the development regulations identified. Individual regulations or amendments may be adopted at different times. However, all of the regulations identified should be adopted by the applicable final deadline for adoption of development regulations.

[Ch. 365-196 WAC p. 52]

(4) The implementation strategy for each jurisdiction should be in writing and available to the public. A copy should be provided to the department. Completion of adoption of all regulations identified in the strategy will be construed by the department as completion of the task of adopting development regulations for the purposes of deadlines under the statute.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-650, filed 1/19/10, effective 2/19/10.]

WAC 365-196-660 Supplementing, amending, and monitoring. (1) New development regulations may be adopted as the need for supplementing the initial implementation strategy becomes apparent.

(2) Counties and cities should institute an annual review of growth management implementation on a systematic basis. To aid in this process, counties and cities planning under the act should consider establishing a growth management monitoring program designed to measure and evaluate the progress being made toward accomplishing the act's goals and the provisions of the comprehensive plan.

(a) This process should also include a review of comprehensive plan or regulatory deficiencies encountered during project review.

(b) This process should be integrated with provisions for continuous public involvement. See WAC 365-196-600.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-660, filed 1/19/10, effective 2/19/10.]

PART SEVEN

RELATIONSHIP OF GROWTH MANAGEMENT PLANNING TO OTHER LAWS

WAC 365-196-700 Background. (1) For counties and cities subject to its terms, the act mandates the development of comprehensive plans and development regulations that meet statutory goals and requirements. These comprehensive plans and development regulations will take their place among existing laws relating to resource management, environmental protection, regulation of land use, utilities and public facilities. Many of these existing laws were neither repealed nor amended by the act.

(2) The circumstances outlined in subsection (1) of this section place responsibility both on local growth management planners and on administrators of preexisting programs to work toward producing a single harmonious body of law.

(3) The need to consider and recognize other laws should profoundly influence, limit, and shape planning and decision making under the act. At the same time, in recognition of the broad and fundamental changes intended by creation of the growth management scheme, prior programs should be interpreted and directed, to the maximum extent possible, in a manner consistent with the products of the comprehensive growth management system, as described in WAC 365-196-305, 365-196-500, and 365-196-510.

(4) The far-reaching nature of the act and the wide variety of possible outcomes under its authority dictate that identification of all the points of contact between its products and other laws will have to be elaborated over time. The entire

(1/27/15)

process of determining how the act fits into the overall legal framework will, of necessity, be an incremental one.

(5) A conscious effort to address the requirements of other existing law is an essential step in adopting and amending local plans and regulations. This need poses an unprecedented challenge to all governmental entities - municipalities, counties, regional authorities, special purpose districts and state agencies - to communicate and collaborate. The act is a mandate to government at all levels to engage in coordinated planning and cooperative implementation.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-700, filed 1/19/10, effective 2/19/10.]

WAC 365-196-705 Basic assumptions. (1) Where the legislature has spoken expressly on the relationship of the act to other statutory provisions, the explicit legislative directions shall be carried out. Examples of such express provisions are set forth in WAC 365-196-745.

(2) Absent a clear statement of legislative intent or judicial interpretation to the contrary, it should be presumed that neither the act nor other statutes are intended to be preemptive. Rather they should be read together and, wherever possible, construed as mutually consistent. However, the legislature has identified the act as a fundamental building block of regulatory reform, and it should serve as the integrating framework for all other local land-use regulations.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-705, filed 1/19/10, effective 2/19/10.]

WAC 365-196-710 Identification of other laws. (1) In developing and amending comprehensive plans and implementing regulations, counties and cities planning under the act should identify other statutes and legal authorities affecting subjects addressed in their comprehensive plans and development regulations.

(2) To aid in this identification, state agencies, regional authorities, special districts and utilities should implement programs to inform counties and cities of programs and provisions within their jurisdiction or expertise that are relevant to growth management planning actions.

(3) Agencies that review and comment on draft comprehensive plans, or on related State Environmental Policy Act documents, should take advantage of these opportunities to advise planning jurisdictions of preexisting programs and related legal authorities.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-710, filed 1/19/10, effective 2/19/10.]

WAC 365-196-715 Integrating external considerations. (1) County and city planners should take advantage of data and analyses prepared by other governmental agencies and use it to shape the form and content of comprehensive plans and development regulations under the act where relevant.

(2) Other governmental agencies should also use the data and analyses prepared by counties and cities in the formation of their comprehensive plans, especially when making assumptions about future land use patterns in areas covered by a local comprehensive plan.

(1/27/15)

(3) Governmental entities with expertise in subjects affecting or affected by the act and private companies that provide public services should, as practicable, offer technical assistance to counties and cities planning under the act.

(4) When drafting or amending comprehensive plans and development regulations, counties and cities should identify other related laws, evaluate any potential areas of conflict and make efforts to avoid such conflicts. Where the text of outside sources can appropriately serve local needs, consideration should be given to adoption of that text in local comprehensive plans or development regulations.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-715, filed 1/19/10, effective 2/19/10.]

WAC 365-196-720 Sources of law. (1) In seeking to identify other relevant legal authorities, planners should refer to sources at all levels of government, including federal and state constitutions, federal and state statutes, federal and state administrative regulations, and judicial interpretations thereof.

(2) The sources of law set forth in WAC 365-196-725 through 365-196-745 are intended to assist planners by highlighting various kinds of external legal provisions that should be considered during the planning process. Some of the sources of law overlap in WAC 365-196-725 through 365-196-745. The listing is not exhaustive. It is intended to supplement, not substitute for, the informational efforts of state agencies, regional authorities, special districts and utilities.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-720, filed 1/19/10, effective 2/19/10.]

WAC 365-196-725 Constitutional provisions. (1) Comprehensive plans and development regulations adopted under the act are subject to the supremacy principle of Article VI, United States Constitution and of Article XI, Section 11, Washington state Constitution.

(2) Counties and cities planning under the act are required to use a process established by the state attorney general to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights. As set forth in RCW 36.70A.370, the state attorney general has developed a publication entitled "*Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property*," which is updated frequently to maintain consistency with changes in case law. Counties and cities should contact the department or state attorney general for the latest edition of this advisory memorandum.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-725, filed 1/19/10, effective 2/19/10.]

WAC 365-196-730 Federal authorities. (1) Counties and cities drafting or amending comprehensive plans and development regulations under the act should consider the effects of federal authority over land or resource use within the planning area, including:

- (a) Treaties with Native Americans;
- (b) Jurisdiction on land owned or held in trust by the federal government;
- (c) Federal statutes or regulations imposing national standards;

[Ch. 365-196 WAC p. 53]

(d) Federal permit programs and plans;
 (e) Metropolitan planning organizations, which are also designated as regional transportation planning organizations established in chapter 47.80 RCW; and
 (f) The Central Puget Sound economic development district.

(2) Examples of such federal standards, permit programs and plans are:

(a) National ambient air quality standards, adopted under the Federal Clean Air Act;

(b) Drinking water standards, adopted under the Federal Safe Drinking Water Act;

(c) Effluent limitations, adopted under the Federal Clean Water Act;

(d) Dredge and fill permits issued by the Army Corps of Engineers under the Federal Clean Water Act;

(e) Licenses for hydroelectric projects issued by the Federal Energy Regulatory Commission;

(f) Plans created under the Pacific Northwest Electric Power Planning and Conservation Act;

(g) Recovery plans and the prohibition on taking listed species under the Endangered Species Act;

(h) State and local consolidated plans required by the Department of Housing and Urban Development under the Code of Federal Regulations (24 C.F.R. 91 and 24 C.F.R. 570);

(i) Historic preservation requirements and standards of the National Historic Preservation Act;

(j) Regulatory requirements of section 4(f) of the Department of Transportation Act; and

(k) Plans adopted by metropolitan planning organizations to meet federal transportation planning responsibilities established by the U.S. Federal Highway Administration (FHWA) and the U.S. Federal Transit Administration (FTA).

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-730, filed 1/19/10, effective 2/19/10.]

WAC 365-196-735 State and regional authorities. (1)

When developing and amending comprehensive plans and development regulations under the act, counties and cities should consider existing state and regional regulatory and planning provisions affecting land use, resource management, environmental protection, utilities, or public facilities including:

(a) State statutes and regulations imposing statewide standards;

(b) Programs involving state-issued permits or certifications;

(c) State statutes and regulations regarding rates, services, facilities and practices of utilities, and tariffs of utilities in effect pursuant to such statutes and regulations;

(d) State and regional plans;

(e) Regulations and permits issued by regional entities;

(f) Locally developed plans subject to review or approval by state or regional entities.

(2) Examples of statutes and regulations imposing statewide standards are:

(a) Water quality standards and sediment standards, adopted by the department of ecology under the state Water Pollution Control Act;

(b) Drinking water standards adopted by the department of health pursuant to the Federal Safe Drinking Water Act;

(c) Minimum functional standards for solid waste handling, adopted by the department of ecology under the state Solid Waste Management Act;

(d) Minimum cleanup standards under the Model Toxics Control Act adopted by the department of ecology;

(e) Statutory requirements under the Shoreline Management Act and implementing guidelines and regulations adopted by the department of ecology;

(f) Standards for forest practices, adopted by the forest practices board under the state Forest Practices Act;

(g) Minimum requirements for flood plain management, adopted by the department of ecology under the Flood Plain Management Act;

(h) Minimum performance standards for construction pursuant to the state or International Building Code;

(i) Safety codes, such as the electrical construction code, adopted by the department of labor and industries;

(j) Archaeological investigation and reporting standards adopted by the department of archaeology and historic preservation under the Archaeological Sites and Resources Act and the Indian Graves and Records Act;

(k) Statutory requirements and procedures under the Planning Enabling Act.

(3) Examples of programs involving state issued permits or certifications are:

(a) Permits relating to forest practices, issued by the department of natural resources;

(b) Permits relating to surface mining reclamation, issued by the department of natural resources;

(c) National pollutant discharge elimination permits and waste discharge permits, issued by the department of ecology;

(d) Water rights permits, issued by department of ecology under state surface and groundwater codes;

(e) Hydraulic project approvals, issued by departments of fisheries and wildlife under the state fisheries code;

(f) Water quality certifications, issued by the department of ecology;

(g) Operating permits for public water supply systems, issued by the state health department;

(h) Site certifications developed by the energy facility site evaluation council;

(i) Permits relating to the generation, transportation, storage or disposal of dangerous wastes, issued by the department of ecology;

(j) Permits for disturbing or impacting archaeological sites and for the discovery of human remains, issued by the department of archaeology and historic preservation.

(4) Examples of state and regional plans are:

(a) State implementation plan for ambient air quality standards under the Federal Clean Air Act;

(b) Statewide multimodal transportation plan and the Washington transportation plan adopted under chapter 47.01 RCW;

(c) Instream resource protection regulations for water resource inventory areas adopted under the Water Resources Act of 1971;

(d) Groundwater management area programs, adopted pursuant to the groundwater code;

(e) Plan or action agendas adopted by the Puget Sound partnership;

(f) State outdoor recreation and open space plan;

(g) State trails plan;

(h) Regional transportation planning organization plans and plans that meet the requirements for multicounty planning policies under RCW 36.70A.210(7).

(5) Examples of regulations and permits issued by regional entities are:

(a) Solid waste disposal facility permits issued by health departments under the Solid Waste Management Act;

(b) Regulations adopted by regional air pollution control authorities;

(c) Operating permits for air contaminant sources issued by regional air pollution control authorities.

(6) Examples of locally developed plans subject to review or approval by state or regional agencies are:

(a) Shoreline master programs, approved by the department of ecology;

(b) The consistency requirement for lands adjacent to shorelines of the state set forth in RCW 90.58.340;

(c) Coordinated water system plans for critical water supply service areas, approved by the department of health;

(d) Plans for individual public water systems, approved by the department of health;

(e) Comprehensive sewage drainage basin plans, approved by the department of ecology;

(f) Local moderate risk waste plans, approved by the department of ecology;

(g) Integrated resource plans required to be filed with the utilities and transportation commission in accordance with WAC 480-100-238;

(h) Reclaimed water plans, approved by the department of ecology and/or department of health.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-735, filed 1/19/10, effective 2/19/10.]

WAC 365-196-740 Regional perspective. Some of the authorities in WAC 365-196-730 and 365-196-735 require planning for particular purposes for areas related by physical features, such as watersheds, rather than by political boundaries. Moreover, the environmental and ecological systems addressed in resource management, service by utilities, fish and wildlife management and pollution control are generally not circumscribed by county and city lines. Planning entities should attempt to identify these geographic areas which require a regional planning approach and, if needed, work toward creating collaborative processes involving all agencies with jurisdiction in the relevant geographical area. This approach should assist in achieving interjurisdictional consistency, consistency with the county-wide planning policies and, where applicable, multicounty planning policies. See WAC 365-196-305 regarding county-wide planning policies.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-740, filed 1/19/10, effective 2/19/10.]

WAC 365-196-745 Explicit statutory directions. (1)

The legislature expressly amended numerous statutes outside of chapter 36.70A RCW that relate to the act. These amendments define the relationship of such existing statutes to com-

prehensive plans and development regulations under the act. Examples include:

(a) RCW 19.27.097 (state building code - evidence of adequate supply of potable water);

(b) RCW 35.13.005 (annexation of unincorporated areas - prohibited beyond urban growth areas);

(c) RCW 35.58.2795 (municipal corporations - six-year transit plan consistent with comprehensive plans);

(d) RCW 35.77.010 (city streets - six-year comprehensive street program consistent with comprehensive plans);

(e) RCW 35A.14.005 (annexation by code cities - prohibited beyond urban growth areas);

(f) Section 201, chapter 7, Laws of 2010 (community facilities districts may only include land within urban growth areas);

(g) RCW 36.81.121 (county roads - six-year comprehensive road program consistent with act comprehensive plans);

(h) RCW 36.94.040 (sewerage, water, drainage systems - incorporation of relevant comprehensive plan provisions into sewer or water general plan);

(i) RCW 43.20.260 (water system plans consistent with comprehensive plans and development regulations);

(j) RCW 43.21C.240 (project review under the act);

(k) RCW 57.16.010 (water districts - district comprehensive water plan consistent with urban growth area restrictions);

(l) RCW 58.17.060 (short plats - written findings about appropriate provisions for infrastructure);

(m) RCW 58.17.110 (subdivisions - written findings about appropriate provisions for infrastructure);

(n) RCW 59.18.440 (land development - authority of entities planning under the act to require relocation assistance);

(o) RCW 70.118B.040(3) (requirements for large on-site sewage systems to be consistent with the requirements of any comprehensive plans or development regulations adopted under the act);

(p) RCW 86.12.200 (comprehensive flood control management plans - may be incorporated into comprehensive plans under the act); and

(q) RCW 90.46.120 (use of water from wastewater treatment facility - consideration in regional water supply plan or potable water supply service planning).

(2) As enacted, the act included the creation of a new chapter (chapter 47.80 RCW) authorizing and assigning duties to regional transportation planning organizations. These organizations were expressly given responsibilities for ensuring the consistency of transportation planning throughout a region containing multiple local governmental jurisdictions.

(3) As enacted, the act included the addition of new sections (RCW 82.02.050 through 82.02.090) concerning impact fees on development in counties or cities that plan under the act. These sections explicitly authorize and condition the use of such fees as part of the financing of public facility system improvements needed to serve new development.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-745, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-745, filed 1/19/10, effective 2/19/10.]

PART EIGHT

DEVELOPMENT REGULATIONS

WAC 365-196-800 Relationship between development regulations and comprehensive plans. (1) Development regulations under the act are specific controls placed on development or land use activities by a county or city. Development regulations must be consistent with and implement comprehensive plans adopted pursuant to the act.

"Implement" in this context has a more affirmative meaning than merely "consistent." See WAC 365-196-210. "Implement" connotes not only a lack of conflict but also a sufficient scope to fully carry out the goals, policies, standards and directions contained in the comprehensive plan.

(2) When a county first becomes subject to the full planning requirements of RCW 36.70A.040, it must adopt development regulations designating interim urban growth areas as outlined under RCW 36.70A.110(5). The legislature specifically provided that the designation of interim urban growth areas shall be in the form of development regulations. Such interim designations shall generally precede the adoption of comprehensive plans.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-800, filed 1/19/10, effective 2/19/10.]

WAC 365-196-805 Timing of initial adoption. (1) Except for interim regulations, required development regulations must be enacted either by the deadline for adoption of the comprehensive plan or within six months thereafter, if an extension is obtained. The possibility of a time gap between the adoption of a comprehensive plan and the adoption of development regulations pertains to the time frame after the initial adoption of the comprehensive plan. Subsequent amendments to the plan should not face any delay before being implemented by regulations. After adoption of the initial plan and development regulations, such regulations should at all times be consistent with the comprehensive plan. Whenever amendments to comprehensive plans are adopted, consistent implementing regulations or amendments to existing regulations should be enacted and put into effect concurrently. See WAC 365-196-660.

(2) To obtain an extension of the deadline for the initial adoption of development regulations, a county or city must notify the department of its need by letter prior to the initial deadline. Six-month extensions will be obtained whenever such letters are timely received, but no extensions will result from requests received after the initial deadline.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-805, filed 1/19/10, effective 2/19/10.]

WAC 365-196-810 Review for consistency when adopting development regulations. (1) When adopting any development regulation intended to carry out a comprehensive plan, the proposing county or city should review its terms to ensure it is consistent with and implements the comprehensive plan and make a finding in the adopting ordinance to that effect.

(2) If a county or city develops an implementation strategy, it should ensure the strategies are consistent with the

[Ch. 365-196 WAC p. 56]

comprehensive plans of adjacent counties or cities. See WAC 365-196-650 for implementation strategy recommendations.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-810, filed 1/19/10, effective 2/19/10.]

WAC 365-196-815 Conservation of natural resource lands. (1) Requirements.

(a) Counties and cities planning under RCW 36.70A.040 must adopt development regulations that assure the conservation of designated agricultural, forest, and mineral lands of long-term commercial significance. If counties and cities designate agricultural or forest resource lands within any urban growth area, they must also establish a program for the purchase or transfer of development rights.

(b) "Conservation" means measures designed to assure that the natural resource lands will remain available to be used for commercial production of the natural resources designated. Counties and cities should address two components to conservation:

(i) Development regulations must prevent conversion to a use that removes land from resource production. Development regulations must not allow a primary use of agricultural resource lands that would convert those lands to nonresource purposes. Accessory uses may be allowed, consistent with subsection (3)(b) of this section.

(ii) Development regulations must assure that the use of lands adjacent to designated natural resource lands does not interfere with the continued use, in the accustomed manner and in accordance with the best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(c) Classification, designation and designation amendment. The department adopted minimum guidelines in chapter 365-190 WAC, detailing the process involved in establishing a natural resource lands conservation program. Included are criteria to be considered before any designation change should be approved.

(d) Prior uses. Regulations for the conservation of natural resource lands may not prohibit uses legally existing on any parcel prior to their adoption.

(e) Plats and permits. Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet, of designated natural resource lands contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration.

(2) Relationship to other programs. In designing development regulations and nonregulatory programs to conserve designated natural resource lands, counties and cities should endeavor to make development regulations and programs fit together with regional, state and federal resource management programs applicable to the same lands. Comprehensive plans and policies may in some respects be adequately implemented by adopting the provisions of such other programs as part of the local regulations.

(3) Innovative zoning techniques.

(a) When adopting development regulations to assure the conservation of agricultural lands, counties should consider

use of innovative zoning techniques. These techniques should be designed to conserve agricultural lands and encourage the agricultural economy. Any nonagricultural uses allowed should be limited to lands with poor soils or lands otherwise not suitable for agricultural purposes.

(b) Examples of innovative zoning techniques include:

(i) Agricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land and may allow accessory uses, including nonagricultural accessory uses and activities, that support, promote, or sustain agricultural operations and production, as provided in this subsection;

(ii) Cluster zoning, which allows new development on one portion of the land, leaving the remainder in agricultural or open space uses;

(iii) Large lot zoning, which establishes as a minimum lot size the amount of land necessary to achieve a successful farming practice;

(iv) Quarter/quarter zoning, which permits one residential dwelling on a one-acre minimum lot for each one-sixteenth of a section of land;

(v) Sliding scale zoning, which allows the number of lots for single-family residential purposes, with a minimum lot size of one acre, to increase inversely as the size of the total acreage increases; and

(vi) The transfer or purchase of development rights from agricultural lands, which can be used through cooperative agreements with cities, or counties with nonmunicipal urban growth areas, as receiving areas for the use of these development rights.

(c) Accessory uses on agricultural lands of long-term commercial significance:

(i) Counties may allow certain accessory uses on agricultural lands of long-term commercial significance. Accessory uses can promote the continued use of agricultural lands by allowing accessory uses that add value to agricultural products. Accessory uses can also promote the continued use of agricultural lands by allowing farming operations to generate supplemental income through unrelated uses, provided they are compatible with the continued use of agricultural land of resource production;

(ii) Development regulations must require accessory uses to be located, designed, and operated so as to not interfere with, and to support the continuation of, the overall agricultural use of the property and neighboring properties, and must comply with the requirements of the act;

(iii) Accessory uses may include:

(A) Agricultural accessory uses and activities, including but not limited to the storage, distribution, and marketing of regional agricultural products from one or more producers, agriculturally related experiences, or the production, marketing, and distribution of value-added agricultural products, including support services that facilitate these activities; and

(B) Nonagricultural accessory uses and activities as long as they are consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site. Nonagricultural accessory uses and activities, including new buildings, parking, or supportive uses, shall not be located outside the general area already developed for buildings and residential uses and shall not

otherwise convert more than one acre of agricultural land to nonagricultural uses; and

(C) Counties and cities have the authority to limit or exclude accessory uses otherwise authorized in this subsection in areas designated as agricultural lands of long-term commercial significance.

(iv) Any innovative zoning techniques must not limit agricultural production on designated agricultural resource lands.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-815, filed 1/19/10, effective 2/19/10.]

WAC 365-196-820 Subdivisions. (1) Regulations for subdivision approvals and dedications, must require that the county or city make written findings that "appropriate provisions" have been made for the public health, safety, and general welfare, including open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and all other relevant factors, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school; and that the public use and interest will be served by the platting of such subdivision and dedication.

(2) Regulations for short plat and short subdivision approvals may require written findings for "appropriate provisions" that are different requirements than those governing the approval of preliminary and final plats of subdivisions. However, counties and cities must include in their short plat regulations and procedures provisions for considering sidewalks and other planning features that assure safe walking conditions for students who walk to and from school.

(3) Regulations for subdivision approvals may require that the county or city make additional findings related to the public health, safety and general welfare to the specific listing above, such as protection of critical areas, conservation of natural resource lands, and affordable housing for all economic segments of the population.

(4) In drafting development regulations, "appropriate provisions" should be defined in a manner consistent with the requirements of other applicable laws and with any level of service standards or planning objectives established by the city or county for the facilities involved. The definition of "appropriate provisions" could also cover the timing within which the facilities involved should be available for use, requiring, for example, that such timing be consistent with the definition of "concurrency" in this chapter. See WAC 365-196-210.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-820, filed 1/19/10, effective 2/19/10.]

WAC 365-196-825 Potable water. (1) Each applicant for a building permit of a building needing potable water shall provide evidence of an adequate water supply for the intended use of the building. Local regulations should be designed to produce enough data to make such a determination, addressing both water quality and water quantity issues. RCW 19.27.097 provides that such evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to

provide water, or another form sufficient to verify the existence of an adequate water supply.

(2) Counties and cities should give consideration to guidelines promulgated by the departments of ecology and health on what constitutes an adequate water supply. In addition, Attorney General's Opinion, AGO 1992 No. 17, should be consulted for assistance in determining what substantive standards should be applied.

(3) If the department of ecology has adopted rules on this subject, or any part of it, local regulations should be consistent with those rules. Such rules may include instream flow rules, which may limit the availability of additional ground or surface water within a specific geographic area.

(4) Counties and cities may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-825, filed 1/19/10, effective 2/19/10.]

WAC 365-196-830 Protection of critical areas. (1)

The act requires the designation of critical areas and the adoption of regulations for the protection of such areas by all counties and cities, including those that do not plan under RCW 36.70A.040. The department has adopted minimum guidelines in chapter 365-190 WAC detailing the process involved in establishing a program to protect critical areas.

(2) Critical areas that must be protected include the following areas and ecosystems:

- (a) Wetlands;
- (b) Areas of critical recharging effect on aquifers used for potable water;
- (c) Fish and wildlife habitat conservation areas;
- (d) Frequently flooded areas; and
- (e) Geologically hazardous areas.

(3) "Protection" in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety.

(4) Although counties and cities may protect critical areas in different ways or may allow some localized impacts to critical areas, or even the potential loss of some critical areas, development regulations must preserve the existing functions and values of critical areas. If development regulations allow harm to critical areas, they must require compensatory mitigation of the harm. Development regulations may not allow a net loss of the functions and values of the ecosystem that includes the impacted or lost critical areas.

(5) Counties and cities must include the best available science in developing policies and development regulations to protect functions and values of critical areas. See chapter 365-195 WAC.

(6) Functions and values must be evaluated at a scale appropriate to the function being evaluated. Functions are the conditions and processes that support the ecosystem. Conditions and processes operate on varying geographic scales ranging from site-specific to watershed and even regional scales. Some critical areas, such as wetlands and fish and wildlife habitat conservation areas, may constitute ecosystems or parts of ecosystems that transcend the boundaries of

individual parcels and jurisdictions, so that protection of their function, and values should be considered on a larger scale.

(7) Protecting some critical areas may require using both regulatory and nonregulatory measures. When impacts to critical areas are from development beyond jurisdictional control, counties and cities are encouraged to use regional approaches to protect functions and values. It is especially important to use a regional approach when giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Conservation and protection measures may address land uses on any lands within a jurisdiction, and not only lands with designated critical areas.

(8) Local government may develop and implement alternative means of protecting critical areas from some activities using best management practices or a combination of regulatory and nonregulatory programs. When developing alternative means of protection, counties and cities must assure no net loss of functions and values and must include the best available science.

(9) In designing development regulations and nonregulatory programs to protect designated critical areas, counties and cities should endeavor to make such regulations and programs fit together with regional, state and federal programs directed to the same environmental, health, safety and welfare ends. Local plans and policies may in some respects be adequately implemented by adopting the provisions of such other programs as part of the local regulations.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-830, filed 1/19/10, effective 2/19/10.]

WAC 365-196-835 Relocation assistance for low-income tenants. (1)

Any county or city required to plan under the act is authorized to require, after reasonable notice to the public and a public hearing, property owners to provide their portion of reasonable relocation assistance to low-income tenants displaced by certain changes to residential property. The changes include demolition, substantial rehabilitation (whether due to code enforcement or any other reason), change of use and removal of use restrictions in an assisted-housing development.

(2) As used in this section, "assisted housing development" means a multifamily rental housing development that either receives government assistance and is defined as federally assisted housing in RCW 59.28.020, or that receives other federal, state, or local government assistance and is subject to use restrictions.

(3) The regulations implementing the relocation assistance program shall be governed by the provisions of RCW 59.18.440.

(4) "Low-income tenants" means tenants whose combined total income per dwelling unit is at or below fifty percent of the median income, adjusted for family size, in the county where the tenants reside.

(5) For purposes of determining eligibility, the department must annually inform counties and cities of the appropriate dollar limits to use for median income, adjusted for family size, in different areas within the state. In deciding on these limits, the department will refer to the county-by-county family income figures published annually by the federal department of Housing and Urban Development. As

soon as the federal figures become available each year, the department will review them and advise counties and cities promptly of the appropriate dollar limits and their effective dates.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-835, filed 1/19/10, effective 2/19/10.]

WAC 365-196-840 Concurrency. (1) Purpose.

(a) The purpose of concurrency is to assure that those public facilities and services necessary to support development are adequate to serve that development at the time it is available for occupancy and use, without decreasing service levels below locally established minimum standards.

(b) Concurrency describes the situation in which adequate facilities are available when the impacts of development occur, or within a specified time thereafter. Concurrency ensures consistency in land use approval and the development of adequate public facilities as plans are implemented, and it prevents development that is inconsistent with the public facilities necessary to support the development.

(c) With respect to facilities other than transportation facilities counties and cities may fashion their own regulatory responses and are not limited to imposing moratoria on development during periods when concurrency is not maintained.

(2) Determining the public facilities subject to concurrency. Concurrency is required for locally owned transportation facilities and for transportation facilities of statewide significance that serve counties consisting of islands whose only connection to the mainland are state highways or ferry routes. Counties and cities may adopt a concurrency mechanism for other facilities that are deemed necessary for development. See WAC 365-196-415(5).

(3) Establishing an appropriate level of service.

(a) The concept of concurrency is based on the maintenance of specified levels of service with respect to each of the public facilities to which concurrency applies. For all such facilities, counties and cities should designate appropriate levels of service.

(b) Level of service is typically set in the capital facilities element or the transportation element of the comprehensive plan. The level of service is used as a basis for developing the transportation and capital facilities plans.

(c) Counties and cities should set level of service to reflect realistic expectations consistent with the achievement of growth aims. Setting levels of service too high could, under some regulatory strategies, result in no growth. As a deliberate policy, this would be contrary to the act.

(d) Counties and cities should coordinate with and reach agreements with other affected purveyors or service providers when establishing level of service standards for facilities or services provided by others.

(e) The level of service standards adopted by the county or city should vary based on the urban or rural character of the surrounding area and should be consistent with the land use plan and policies. The county or city should also balance the desired community character, funding capacity, and traveler expectations when adopting levels of service for transportation facilities. For example a plan that calls for a safe pedestrian environment that promotes walking or one that

promotes development of a bike system so that biking trips can be substituted for auto trips may suggest using a level of service that includes measures of the pedestrian environment.

(f) For transportation facilities, level of service standards for locally owned arterials and transit routes should be regionally coordinated. In some cases, this may mean less emphasis on peak-hour automobile capacity, for example, and more emphasis on other transportation priorities. Levels of service for highways of statewide significance are set by the Washington state department of transportation. For other state highways, levels of service are set in the regional transportation plan developed under RCW 47.80.030. Local levels of service for state highways should conform to the state and regionally adopted standards found in the statewide multimodal transportation plan and regional transportation plans. Other transportation facilities, however, may reflect local priorities.

(4) Measurement methodologies.

(a) Depending on how a county or city balances these factors and the characteristics of travel in their community, a county or city may select different ways to measure travel performance. For example, counties and cities may measure performance at different times of day, week, or month (peak versus off-peak, weekday versus weekend, summer versus winter). A city or county may choose to focus on the total multimodal supply of infrastructure available for use during a peak or off-peak period. Counties and cities may also measure performance at different geographic scales (intersections, road or route segments, travel corridors, or travel zones or measure multimodal mobility within a district).

(b) In urban areas, the department recommends counties and cities adopt methodologies that analyze the transportation system from a comprehensive, multimodal perspective, as authorized by RCW 36.70A.108. Multimodal level of service methodologies and standards should consider the needs of travelers using the four major modes of travel (auto, public transportation, bicycle, and pedestrian), their impacts on each other as they share the street or intersection, and their mode specific requirements for street and intersection design and operation.

(c) Although level of service standards and measurement methodologies are interrelated, changes in methodology, even if they have an incidental effect on the resulting level of service for a particular facility, are not necessarily a change in the level of service standard.

(5) Concurrency regulations.

(a) Each planning jurisdiction should produce a regulation or series of regulations which govern the operation of that jurisdiction's concurrency management system. This regulatory scheme will set forth the procedures and processes to be used to determine whether relevant public facilities have adequate capacity to accommodate a proposed development. In addition, the scheme should identify the responses to be taken when it is determined that capacity is not adequate to accommodate a proposal. Relevant public facilities for these purposes are those to which concurrency applies under the comprehensive plan. Adequate capacity refers to the maintenance of concurrency.

(b) Compliance with applicable environmental requirements, such as ambient air quality standards or water quality standards, should have been built into the determination of

the facility capacities needed to accommodate anticipated growth.

(c) The variations possible in designing a concurrency management system are many. However, such a system could include the following features:

(i) Capacity monitoring - a process for collecting and maintaining real world data on use for comparison with evolving public facility capacities in order to show at any moment how much of the capacity of public facilities is being used;

(ii) Capacity allocation procedures - a process for determining whether proposed new development can be accommodated within the existing or programmed capacity of public facilities. This can include preassigning amounts of capacity to specific zones, corridors or areas on the basis of planned growth. For any individual development this may involve:

(A) A determination of anticipated total capacity at the time the impacts of development occur.

(B) Calculation of how much of the total capacity will be used by existing developments and other planned developments at the time the impacts of development occur. If a local government does not require a concurrency certification or exempts small projects from the normal concurrency process, it should still calculate the capacity used and subtract that from the capacity available.

(C) Calculation of the amount of capacity available for the proposed development.

(D) Calculation of the impact on capacity of the proposed development, minus the effects of any mitigation provided by the applicant. (Standardized smaller developments can be analyzed based on predetermined capacity impact values.)

(E) Comparison of available capacity with project impact. For any project that places demands on public facilities, cities and counties must determine if levels of service will fall below locally established minimum standards.

(iii) Provisions for reserving capacity - A process of prioritizing the allocation of capacity to proposed developments. This process might include one of the following alternatives:

(A) Setting aside a block or blocks of available or anticipated capacity for specified types of development fulfilling an identified public interest;

(B) Adopting a first-come, first-served system of allocation, dedicating capacity to applications in the order received; or

(C) Adopting a preference system giving certain categories or specified types of development preference over others in the allocation of available capacity.

(6) Regulatory response to the absence of concurrency. The comprehensive plan should provide a strategy for responding when approval of any particular development would cause levels of service for concurrency to fall below the locally adopted standards. To the extent that any jurisdiction uses denial of development as its regulatory response to the absence of concurrency, consideration should be given to defining this as an emergency for the purposes of the ability to amend or revise the comprehensive plan.

(a) In the case of transportation, an ordinance must prohibit development approval if the development causes the

level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan unless improvements or strategies to accommodate the impacts of development are made concurrent with the development.

(i) These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies.

(ii) "Concurrent with development" means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

(b) If the proposed development is consistent with the land use element, relevant levels of service should be reevaluated.

(c) Other responses could include:

(i) Development of a system of deferrals, approving proposed developments in advance but deferring authority to construct until adequate public facilities become available at the location in question. Such a system should conform to and help to implement the growth phasing schedule contemplated in the land use and capital facilities elements of the plan.

(ii) Conditional approval through which the developer agrees to mitigate the impacts.

(iii) Denial of the development, subject to resubmission when adequate public facilities are made available.

(iv) Redesign of the project or implementation of demand management strategies to reduce trip generation to a level that is within the available capacity of the system.

(v) Transportation system management measures to increase the capacity of the transportation system.

(7) Form, timing and duration of concurrency approvals. The system should include provisions for how to show that a project has met the concurrency requirement, whether as part of another approval document (e.g., permit, platting decisions, planned unit development) or as a separate certificate of concurrency, possibly a transferable document. This choice, of necessity, involves determining when in the approval process the concurrency issue is evaluated and decided. Approvals, however made, should specify the length of time that a concurrency determination will remain effective, including requirements for development progress necessary to maintain approval.

(8) Provisions for interjurisdictional coordination - SEPA consistency. Counties and cities should consider integrating SEPA compliance on the project-specific level with the case-by-case process for concurrency management.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-840, filed 1/19/10, effective 2/19/10.]

WAC 365-196-845 Local project review and development agreements. (1) The local Project Review Act (chapter 36.70B RCW) requires counties and cities planning under the act to adopt procedures for fair and timely review of project permits under RCW 36.70B.020(4), such as building permits, subdivisions, binding site plans, planned unit developments, conditional uses, and other permits or other land use actions. The project permitting procedures ensure that when counties and cities implement goal 7 of the act, under RCW 36.70A.-

020(7), applications for both state and local government permits should be processed in a timely and fair manner.

(2) Consolidated permit review process.

(a) Counties and cities must adopt a permit review process that provides for consolidated review of all permits necessary for a proposed project action. The permit review process must provide for the following:

(i) A consolidated project coordinator for a consolidated project permit application;

(ii) A consolidated determination of completeness;

(iii) A consolidated notice of application;

(iv) A consolidated set of hearings; and

(v) A consolidated notice of final decision that includes all project permits being reviewed through the consolidated permit review process.

(b) Counties and cities administer many different types of permits, which can generally be grouped into categories. The following are examples of project permit categories:

(i) Permits that do not require environmental review or public notice, and may be administratively approved;

(ii) Permits that require environmental review, but do not require a public hearing; and

(iii) Permits that require environmental review and/or a public hearing, and may provide for a closed record appeal.

(c) Local project review procedures should address, at a minimum, the following for each category of permit:

(i) What is required for a complete application;

(ii) How the county or city will provide notice of application;

(iii) Who makes the final decision;

(iv) How long local project review is likely to take;

(v) What fees and charges will apply, and when an applicant must pay fees and charges;

(vi) How to appeal the decision;

(vii) Whether a preapplication conference is required;

(viii) A determination of consistency; and

(ix) Requirements for provision of notice of decision.

(d) A project permit applicant may apply for individual permits separately.

(3) Project permits that may be excluded from consolidated permit review procedures. A local government may, by ordinance or resolution, exclude some permit types from these procedures. Excluded permit types may include:

(a) Actions relating to the use of public areas or facilities such as landmark designations or street vacations;

(b) Actions categorically exempt from environmental review, or for which environmental review has already been completed such as lot line or boundary adjustments, and building and other construction permits, or similar administrative approvals; or

(c) Other project permits that the local government has determined present special circumstances.

(4) RCW 36.70A.470 prohibits using project review conducted under chapter 36.70B RCW from being used as a comprehensive planning process. Except when considering an application for a major industrial development under RCW 36.70A.365, counties and cities may not consolidate project permit review with review of proposals, to amend the comprehensive plan, even if the comprehensive plan amendment is site-specific. Counties and cities may not combine a project permit application with an area-wide rezone or a text

amendment to the development regulations, even if proposed along with a project permit application.

(5) Consolidated project coordinator.

(a) Counties and cities should appoint a single project coordinator for each consolidated project permit application.

(b) Counties and cities should require the applicant for a project permit to designate a single person or entity to receive determinations and notices about a project permit application as authorized by RCW 36.70A.100.

(6) Determination of complete application.

(a) A project permit application is complete for the purposes of this section when it meets the county's or city's procedural submission requirements and is sufficient for continued processing, even if additional information is required, or the project is subsequently modified.

(b) The development regulations must specify, for each type of permit application, what information a permit application must contain to be considered complete. This may vary based on the type of permit.

(c) For more complex projects, counties and cities are encouraged to use preapplication meetings to clarify the project action and local government permitting requirements and review procedures. Counties and cities may require a preapplication conference.

(d) Within twenty-eight days of receiving a project permit application, counties and cities must provide to the applicant a written determination of completeness or request for more information stating either:

(i) The application is complete; or

(ii) The application is incomplete and what is necessary to make the application complete.

(e) A determination of completeness or request for more information is required within fourteen days of the applicant providing additional requested information.

(f) The application is deemed complete if the county and city does not provide the applicant with a determination of completeness or request for more information within the twenty-eight days of receiving the application.

(g) The determination of completeness may include a preliminary determination of consistency and a preliminary determination of development regulations that will be used for project mitigation.

(h) Counties and cities may require project applicants to provide additional information or studies, either at the time of the notice of completeness or if the county or city requires new information during the course of continued review, at the request of reviewing agencies, or if the proposed action substantially changes.

(7) Identification of permits from other agencies. To the extent known, the county or city must identify other agencies of local, state, or federal governments that may have jurisdiction over some aspect of the application. However, the applicant is solely responsible for knowing of, and obtaining any permits necessary for, a project action.

(8) Notice of project permit application. Notice of a project permit application must be provided to the public and the departments and agencies with jurisdiction over the project permit application. It may be combined with the notice of complete application.

(a) What the notice of application must include:

(i) The date of application, the date of the notice of completion, and the date of the notice of application;

(ii) A description of the proposed project action and a list of the project permits included in the application and a list of any required studies;

(iii) The identification of other permits not included in the application that the proposed project may require, to the extent known by the county or city;

(iv) The identification of existing environmental documents that evaluate the proposed project;

(v) The location where the application and any studies can be reviewed;

(vi) A preliminary determination, if one has been made at the time of notice, of which development regulations will be used for project mitigation and of project consistency as provided in RCW 36.70B.040 and chapter 365-197 WAC;

(vii) Any other information determined appropriate by the local government;

(viii) A statement of the public comment period. The statement must explain the following:

(A) How to comment on the application;

(B) How to receive notice of and participate in any hearings on the application;

(C) How to obtain a copy of the decision once made; and

(D) Any rights to appeal the decision.

(ix) If the project requires a hearing or hearings, and they have been scheduled by the date of notice of application, the notice must specify the date, time, place, and type of any hearings required for the project.

(b) When the notice of application must be provided. Notice of application must be provided within fourteen days of determining an application is complete. If the project permit requires an open record predecision hearing, the county or city must provide the notice of application at least fifteen days before the open record hearing.

(c) How to provide notice of application. A county or city may provide notice in different ways for different types of project permits depending on the size and scope of the project and the types of permit approval included in the project permit. Project review procedures should specify as minimum requirements, how to provide notice for each type of permit. Counties and cities may use a variety of methods for providing notice. However, if the local government does not specify how it will provide public notice, it shall use the methods specified in RCW 36.70B.110 (4)(a) and (b). Examples of reasonable methods of providing notice are:

(i) Posting the property for site-specific proposals;

(ii) Publishing notice in written media such as in the newspaper of general circulation in the general area where the proposal is located, in appropriate regional or neighborhood newspapers, trade journals, agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; or in a local land use newsletter published by the local government;

(iii) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(iv) Notifying the news media;

(v) Mailing to neighboring property owners; or

(vi) Providing notice by posting the application and other documentation using electronic media such as an e-mail and a web site.

(9) The application comment period. The comment period must be at least fourteen days and no more than thirty days from the date of notice of application. A county or city may accept public comments any time before the record closes for an open record predecision hearing. If no open record predecision hearing is provided, a county or city may accept public comments any time before the decision on the project permit.

(10) Project review timelines. Counties and cities must establish and implement a permit process time frame for review of each type of project permit application, and for consolidated permit applications, and must provide timely and predictable procedures for review. The time periods for county or city review of each type of complete application should not exceed one hundred twenty days unless written findings specify the additional time needed for processing. Project permit review time periods established elsewhere, such as in RCW 58.17.140 should be followed for those actions. Counties and cities are encouraged to consider expedited review for project permit applications for projects that are consistent with adopted development regulations and within the capacity of system wide infrastructure improvements.

(11) Hearings. Where multiple permits are required for a single project, counties and cities must allow for consolidated permit review as provided in RCW 36.70B.120(1). Counties and cities must determine which project permits require hearings. If hearings are required for certain permit categories, the review process must provide for no more than one consolidated open record hearing and one closed record appeal. An open record appeal hearing is only allowed for permits in which no open record hearing is provided prior to the decision. Counties and cities may combine an open record hearing on one or more permits with an open record appeal hearing on other permits. Hearings may be combined with hearings required for state, federal or other permits hearings provided that the hearing is held within the geographic boundary of the local government and the state or federal agency is not expressly prohibited by statute from doing so.

(12) Project permit decisions. A county or city may provide for the same or a different decision maker, hearing body or officer for different categories of project permits. The consolidated permit review process must specify which decision maker must make the decision or recommendation, conduct any required hearings or decide an appeal to ensure that consolidated permit review occurs as provided in this section.

(13) Notice of decision.

(a) The notice of decision must include the following:

(i) A statement of any SEPA threshold determination;

(ii) An explanation of how to file an administrative appeal (if provided) of the decision; and

(iii) A statement that the affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

(b) Notice of decision should also include:

(i) Any findings on which the final decision was based;

(ii) Any conditions of permit approval conditions or required mitigation; and

(iii) The permit expiration date, where applicable.

(c) Notice of decision may be in the form of a copy of the report or decision on the project permit application, provided it meets the minimum requirements for a notice of decision.

(d) How to provide notice of decision. A local government may provide notice in different ways for different types of project permits depending on the size and scope of the project and the types of permit approval included in the project permit. Project review procedures should specify as minimum requirements, how to provide notice for each type of permit. Examples of reasonable methods of providing notice of decision are:

(i) Posting the property for site-specific proposals;

(ii) Publishing notice in written media such as in the newspaper of general circulation in the general area where the proposal is located, in appropriate regional or neighborhood newspapers, trade journals, agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; or in a local land use newsletter published by the county or city;

(iii) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(iv) Notifying the news media;

(v) Mailing to neighboring property owners; or

(vi) Providing notice and posting the application and other documentation using electronic media such as e-mail and a web site.

(e) Cities and counties must provide a notice of decision to the following:

(i) The project applicant;

(ii) Any person who requested notice of decision;

(iii) Any person who submitted substantive comments on the application; and

(iv) The county assessor's office of the county or counties in which the property is situated.

(14) Appeals. A county or city is not required to provide for administrative appeals for project permit decisions. However, where appeals are provided, procedures should allow for no more than one consolidated open record hearing, if not already held, and one closed-record appeal. Provisions should ensure that appeals are to be filed within fourteen days after the notice of final decision and may be extended to twenty-one days to allow for appeals filed under chapter 43.21C RCW.

(15) Monitoring permit decisions. Each county and city shall adopt procedures to monitor and enforce permit decisions and conditions such as periodic review of permit provisions, inspections, and bonding provisions.

(16) Code interpretation. Project permitting procedures must include adopted procedures for administrative interpretation of development regulations. For example, procedures should specify who provides an interpretation related to a specific project, and where a record of such code interpretations are kept so that subsequent interpretations are consistent. Code interpretation procedures help ensure a consistent and predictable interpretation of development regulations.

(17) Development agreements. Counties and cities are authorized by RCW 36.70B.170(1) to enter into voluntary contractual agreements to govern the development of land

and the issuance of project permits. These are referred to as development agreements.

(a) Purpose. The purpose of development agreements is to allow a county or city and a property owner/developer to enter into an agreement regarding the applicable regulations, standards, and mitigation that apply to a specific development project after the development agreement is executed.

(i) If the development regulations allow some discretion in how those regulations apply or what mitigation is necessary, the development agreement specifies how the county or city will use that discretion. Development agreements allow counties and cities to combine an agreement on the exercise of its police power with the exercise of its power to enter contracts.

(ii) Development agreements must be consistent with applicable development regulations adopted by a county or city. Development agreements do not provide means of waiving or amending development regulations that would otherwise apply to a project.

(iii) Counties and cities may not use development agreements to impose impact fees, inspection fees, or dedications, or require any other financial contribution or mitigation measures except as otherwise expressly authorized, and consistent with the applicable development regulations.

(b) Parties to the development agreement. The development agreement must include as a party to the agreement, the person who owns or controls the land subject to the agreement. Development agreements may also include others, including other agencies with permitting authority or service providers. Cities and counties may enter into development agreements outside of their boundaries if the agreement is part of a proposed annexation or service agreement.

(c) Content of a development agreement. The development agreement must set forth the development standards and other provisions that apply to, govern, and vest the development, use, and mitigation of the development of the real property for the duration of the agreement. These may include, but are not limited to:

(i) Project elements such as permitted uses, residential densities, and intensity of commercial or industrial land uses and building sizes;

(ii) The amount and payment of fees imposed or agreed to in accordance with any applicable laws or rules in effect at the time, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

(iii) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

(iv) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

(v) Affordable housing;

(vi) Parks and open space preservation;

(vii) Phasing;

(viii) Review procedures and standards of implementing decisions;

(ix) A build-out or vesting period for applicable standards; and

(x) Any other appropriate development requirement or procedure.

(d) The effect of development agreements. Development agreements may exercise a county's or city's authority to issue permits or its contracting authority. Once executed, development agreements are binding between the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area covering the property covered by the development agreement. The agreement grants vesting rights to the proposed development consistent with the development regulations in existence at the time of execution of the agreement. A permit approval issued by the county or city after the execution of the development agreement must be consistent with the development agreement. A development agreement may obligate a party to fund or provide services, infrastructure or other facilities. A development agreement may not obligate a county or city to adopt subsequent amendments to the comprehensive plan, development regulations or otherwise delegate legislative powers. Any such amendments must still be adopted by the legislative body following all applicable procedural requirements.

(e) A development agreement must reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

(f) Procedures.

(i) These procedural requirements are in addition to and supplemental to the procedural requirements necessary for any actions, such as rezones, street vacations or annexations, called for in a development agreement. Development agreements may not be used to bypass any procedural requirements that would otherwise apply. Counties and cities may combine hearings, analyses, or reports provided the process meets all applicable procedural requirements;

(ii) Only the county or city legislative authority may approve a development agreement;

(iii) A county or city must hold a public hearing prior to executing a development agreement. The public hearing may be conducted by the county or city legislative body, planning commission or hearing examiner, or other body designated by the legislative body to conduct the public hearing; and

(iv) A development agreement must be recorded in the county where the property is located.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-845, filed 1/19/10, effective 2/19/10.]

WAC 365-196-850 Impact fees. (1) Counties and cities planning under the act are authorized to impose impact fees on development activities as part of public facilities financing. However, the financing for system improvements to serve new development must provide a balance between impact fees and other sources of public funds and cannot rely solely on impact fees.

(2) The decision to use impact fees should be specifically implemented through development regulations. The regulations should call for a specific finding on all three of the following limitations whenever an impact fee is imposed. The impact fees:

(a) Must only be imposed for system improvements that are reasonably related to the new development. "System improvements" (in contrast to "project improvements") are public facilities included in the capital facilities plan that are designed to provide service to service areas within the community at large;

[Ch. 365-196 WAC p. 64]

(b) Must not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and

(c) Must be used for system improvements that will reasonably benefit the new development.

(3) Impact fees may be collected and spent only for the following capital facilities owned or operated by government entities:

(a) Public streets and roads;

(b) Publicly owned parks;

(c) Open space and recreation facilities;

(d) School facilities; and

(e) Fire protection facilities in jurisdictions that are not part of a fire district.

(4) Capital facilities for which impact fees will be imposed must have been addressed in a capital facilities plan element which identifies:

(a) Deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated within a reasonable period of time;

(b) Additional demands placed on existing public facilities by new development; and

(c) Additional public facility improvements required to serve new development.

(5) The local ordinance by which impact fees are imposed must conform to the provisions of RCW 82.02.060. The department recommends that jurisdictions include the authorized exemption for low-income housing.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-850, filed 1/19/10, effective 2/19/10.]

WAC 365-196-855 Protection of private property. In the drafting of development regulations, counties and cities must use the attorney general's process of evaluation issued pursuant to RCW 36.70A.370, to assure that governmental actions do not result in an unconstitutional taking of private property. Procedures for avoiding takings, such as variances or exemptions, should be built into the overall regulatory process.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-855, filed 1/19/10, effective 2/19/10.]

WAC 365-196-860 Treatment of residential structures occupied by persons with handicaps. (1) Counties and cities planning under the act may not enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals.

(2) The term "handicap" is defined by the federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3602). It pertains to a person who:

(a) Has a physical or mental impairment that substantially limits one or more of their major life activities;

(b) Has a record of having such impairment; or

(c) Is regarded as having such impairment.

It does not include current, illegal use of or addiction to a controlled substance (as defined in 21 U.S.C. Sec. 802).

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-860, filed 1/19/10, effective 2/19/10.]

WAC 365-196-865 Family day-care providers. (1)

Counties and cities may not prohibit the use of a residential dwelling as a family day-care provider's home facility that is located in an area zoned for residential or commercial land uses. However, counties and cities may regulate such use as a conditional use. Counties and cities may prohibit such use if it would create an incompatible use adjacent to resource lands of long-term commercial significance. Counties and cities may prohibit such use in the primary crash zone of an airport or aviation facility.

(2) See WAC 365-196-210 for the definition of "family day-care providers" used in this section.

(3) A county or city may require the family day-care provider to comply with building and land use regulations. They can require the provider to be certified by the department of early learning and to comply with the sign code; as well as any building, fire, safety, health code, and business licensing requirements. They can also limit the hours of operation to keep the day-care from disrupting other neighborhood uses, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

(4) The county or city might also require the family day-care provider to show that they notified adjoining property owners of their intent to locate and maintain a family day-care near them.

(5) If disputes arise between neighbors and the family day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute. A forum, in this case, refers to a meeting of the affected parties to discuss and resolve the dispute.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-865, filed 1/19/10, effective 2/19/10.]

WAC 365-196-870 Affordable housing incentives. (1)**Background.**

(a) The act calls on counties and cities to encourage the availability of affordable housing. Addressing the need for affordable housing will require a broad variety of tools to address local needs. This section describes certain affordable housing incentive programs (incentive programs) that counties and cities may implement.

(b) The powers granted in RCW 36.70A.540 are supplemental and additional to the powers otherwise held by local governments, and nothing in RCW 36.70A.540 shall be construed as a limit on such powers.

(c) Counties and cities may use incentive programs to implement other policies in their comprehensive plan in addition to affordable housing; for instance, encouraging higher densities that reduce the need for land and increase the efficiency of providing public services.

(d) Incentive programs may apply to residential, commercial, industrial and/or mixed-use developments.

(e) Incentive programs may be implemented through development regulations, conditions on rezoning or permit decisions, or any combination of these.

(f) Incentive programs may apply to part or all of a city or county. A county or city may apply different standards to different areas within their jurisdiction, or to different development types.

(g) Incentive programs may be modified to meet local needs.

(h) Incentive programs may include provisions not expressly provided in RCW 36.70A.540 or 82.02.020.

(2) Counties and cities may establish an incentive program that is either required or optional.

(a) Counties and cities may establish an optional incentive program. If a developer chooses not to participate in an optional incentive program, a county or city may not condition, deny or delay the issuance of a permit or development approval that is consistent with zoning and development standards on the subject property absent the optional incentive provisions of this program.

(b) Counties and cities may establish an incentive program that requires a minimum amount of affordable housing that must be provided by all residential developments built under the revised regulations. The minimum amount of affordable housing may be a percentage of the units or floor area in a development or of the development capacity of the site under the revised regulations. These programs may be established as follows:

(i) The county or city identifies certain land use designations within a geographic area where increased residential development will help achieve local growth management and housing policies.

(ii) The city or county adopts revised regulations to increase development capacity through zoning changes, bonus densities, height and bulk increases, parking reductions, or other regulatory changes or other incentives.

(iii) The county or city determines that the increased residential development capacity resulting from the revised regulations can be achieved in the designated area, taking into consideration other applicable development regulations.

(3) Steps in establishing an incentive program.

(a) When developing incentive programs, counties and cities should start with the gaps identified in the housing element and develop incentive programs as a strategy to implement the housing element and close some of the identified gaps.

(b) Counties and cities should identify incentives that can be provided to residential, commercial, industrial or mixed-use developments providing affordable housing. Incentives could include density bonuses within the urban growth area, height and bulk bonuses, fee waivers or exemptions, parking reductions, expedited permitting, or other benefits to a development. Counties and cities may provide a variety of incentives and may tailor the type of incentive to the circumstances of a particular development project.

(c) Counties and cities may choose to offer incentives through development regulations, or through conditions on rezones or permit decisions.

(4) Criteria for determining income eligibility of prospective tenants or buyers. When developing an affordable housing incentive program, counties and cities must establish standards for low-income renter or owner occupancy housing consistent with RCW 36.70A.540 (2)(b). The housing must be affordable to and occupied by low-income households.

(a) Low-income renter households are defined as households with incomes of fifty percent or less of the county median family income, adjusted for family size.

(b) Low-income owner households are defined as households with incomes of eighty percent or less of the county median family income, adjusted for family size.

(c) Adjustments to income levels: Counties and cities may, after holding a public hearing, establish lower or higher income levels based on findings that such higher income and corresponding affordability limits are needed to address local housing market. The higher income level may not exceed eighty percent of county median family income for rental housing or one hundred percent of median county family income for owner-occupied housing.

(5) Maximum rent or sales prices: Counties and cities must establish the maximum rent level or sales prices for each low-income housing unit developed under the terms of their affordable housing programs. Counties and cities may adjust these levels based on the average size of the household expected to occupy the unit. These levels may be adjusted over time with changes in median income and factors affecting the affordability of sales prices to low-income households.

(a) For renter-occupied housing units, the total housing costs, including basic utilities as determined by the jurisdiction, may not exceed thirty percent of the income limit for the low-income housing unit.

(b) For owner-occupied housing units, affordable home prices should be based on conventional or FHA lending standards applicable to low-income first-time homebuyers.

(6) Types of units provided when a developer is using incentives to develop both market rate housing and affordable housing.

(a) Market-rate housing projects participating in the affordable housing incentive program should provide low-income units in a range of sizes comparable to those units that are available for other residents. To the extent practicable, the number of bedrooms in low-income units should be in the same proportion as the number of bedrooms in units within the entire development.

(b) The provision of units within the developments for which a bonus or incentive is provided is encouraged. However, programs may allow units to be provided in a building located in the general area of the development for which a bonus or incentive is provided.

(c) The low-income units should have substantially the same functionality as the other units in the development.

(7) Enforcement of conditions: Conditions may be enforced using covenants, options or other agreements executed and recorded by owners and developers of the affordable housing units. Affordable units developed under an incentive program should be committed to affordability for fifty years; however, a local government may accept payments in lieu of continuing affordability.

(8) Payment in lieu of providing units allowed. Counties and cities may also allow a payment of money or property in lieu of low-income housing units if the jurisdiction determines that the payment achieves a result equal to or better than providing the affordable housing on-site. The payment must not exceed the approximate costs of developing the same number and quality of housing units that would otherwise be developed. The funds or property must be used to support the development of low-income housing, including support provided through loans or grants to public or private owners or developers of housing.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-870, filed 11/2/10, effective 12/3/10.]