

**WSR 11-04-074**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Financial Services Administration)

[Filed January 31, 2011, 11:08 a.m., effective March 3, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: A. Rules to promote timeliness.

1. Prehearing conferences: The proposed rule revision makes a prehearing conference mandatory if a prehearing conference is requested by either party and clarifies the administrative law judge's (ALJ) responsibility to record the prehearing. Prehearing conferences can help expedite or settle cases.

2. Notice of hearings: The proposed rule revision requires the office of administrative hearings (OAH) to mail hearing notices not less than fourteen days before the hearing in most situations and requires rescheduling if requested by a party when adequate notice is not given. The proposed rule revision also requires OAH to send copies of requests for hearing to the department unless the request was received from the department. These changes support prehearing planning and opportunities for communication and settlement.

3. Late requests for review: The proposed rule revision changes the standard for granting review when a request is late from "good reason" to "good cause" to comport with the standard used elsewhere in the rules regarding the issues of lateness or failure to act.

4. Hearing record content: The proposed rule revision sets forth the required contents for administrative hearing files. Missing items can delay board of appeals (BOA) review.

B. Rules to make other process improvements.

5. Review standards: The proposed rule revision deletes review standards from the hearing rules to comport with applicable published case law and the Administrative Procedure Act.

6. What laws apply: The proposed rule revision clarifies that the ALJ should apply the substantive rules that were in effect when the department made its original decision, notwithstanding subsequent amendments, and the procedural rules that were in effect on the date the procedure was followed.

7. The proposed rule revision clarifies when notice is required regarding assignment of ALJs and the grounds and procedures for a motion of prejudice.

8. The proposed rule revision deletes the ALJ's authority to dismiss or reverse department actions when the department does not attend a prehearing conference.

9. The proposed rule revision addresses the effect of the department's indexed final orders. The RCW permits an agency to cite a final order (such as a BOA review decision) as precedent if it is included in the agency's published index of significant decisions. The proposed rule revision informs parties of this authority.

10. Equitable estoppel: The proposed rule revision clarifies the circumstances under the law in which department statements or actions which were relied upon by the appellant may be used by the appellant to defend against a department

action (such as collection of an overpayment). The proposed rule amendments are made so that the rule comports with applicable appellate case law.

11. Limited authority of ALJs: The proposed rule revision clarifies that under existing law, ALJs do not have the same equitable powers as a superior court judge.

12. The proposed rule revision clarifies when and how a hearing can be converted from one format to another (*i.e.* in-person versus telephonic).

13. The proposed rule revision makes corrections for grammar and other minor changes for clarification including correction of the BOA's address.

Citation of Existing Rules Affected by this Order:  
 Amending WAC 388-02-0030, 388-02-0010, 388-02-0025, 388-02-0110, 388-02-0195, 388-02-0205, 388-02-0210, 388-02-0220, 388-02-0230, 388-02-0240, 388-02-0250, 388-02-0260, 388-02-0265, 388-02-0280, 388-02-0340, 388-02-0350, 388-02-0360, 388-02-0480, 388-02-0495, 388-02-0515, 388-02-0575, 388-02-0580, 388-02-0590, and 388-02-0600.

Statutory Authority for Adoption: RCW 34.05.020, 34.05.220.

Adopted under notice filed as WSR 10-19-141 on September 22, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 7, Amended 24, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 24, Repealed 0.

Date Adopted: January 27, 2011.

Katherine I. Vasquez  
 Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 08-21-144, filed 10/21/08, effective 11/21/08)

**WAC 388-02-0010 What definitions apply to this chapter?** The following definitions apply to this chapter:

**"Administrative law judge (ALJ)"** means an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ALJs are not ((~~DSHS~~)) department employees or ((~~DSHS~~)) department representatives.

**"BOA"** means the ((~~DSHS~~)) board of appeals.

**"Business days"** means all days except Saturdays, Sundays and legal holidays.

**"Calendar days"** means all days including Saturdays, Sundays and legal holidays.

"**Deliver**" means giving a document to someone in person.

"**Department**" means the department of social and health services.

"**Documents**" means papers, letters, writings, or other printed or written items.

"**DSHS**" means the department of social and health services.

"**DSHS or department representative**" means an employee of ((~~DSHS~~) the department), a ((~~DSHS~~) department) contractor, or an assistant attorney general authorized to represent ((~~DSHS~~) the department) in an administrative hearing. ((~~DSHS~~) Department) representatives include, but are not limited to, claims officers and ((~~fair~~) administrative) hearing coordinators.

"**Final order**" means an order that is the final ((~~DSHS~~) department) decision.

"**Hearing**" means a proceeding before an ALJ or review judge that gives a party an opportunity to be heard in disputes about ((~~DSHS~~) department) programs. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 388 of the Washington Administrative Code (WAC), chapter 10-08 WAC, or other law.

"**Initial order**" is a hearing decision made by an ALJ that may be reviewed by a BOA review judge at either party's request.

"**Judicial review**" means a superior court's review of a final order.

"**Mail**" means placing ((~~the~~) a) document in the mail with the proper postage.

"**OAH**" means the office of administrative hearings, a separate state agency from ((~~DSHS~~) the department).

"**Party**" means:

- (1) The department or DSHS; or
- (2) A person or entity:
  - (a) Named in a ((~~DSHS~~) department) action;
  - (b) To whom a ((~~DSHS~~) department) action is directed;

or

(c) Allowed to participate in a hearing to protect an interest as authorized by law or rule.

"**Prehearing conference**" means a proceeding scheduled and conducted by an ALJ or review judge in preparation for a hearing.

"**Prehearing meeting**" means an informal voluntary meeting that may be held before any prehearing conference or hearing.

"**Program**" means a ((~~DSHS~~) department) organizational unit and the services that it provides, including services provided by ((~~DSHS~~) department) staff and through contracts with providers. Organizational units include, but are not limited to, administrations and divisions.

"**Record**" means the official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"**Review**" means a review judge evaluating initial orders entered by an ALJ and making the final agency decision as provided by RCW 34.05.464, or issuing final orders.

"**Review judge**" means a decision-maker with expertise in ((~~DSHS~~) department) rules who is an attorney and serves as the reviewing officer under RCW 34.05.464. In ((~~some~~) some) cases, review judges conduct hearings and enter final orders. In other cases, they review initial orders and may make changes to correct any errors in an ALJ's initial order. ((~~When~~) After) reviewing initial orders or conducting hearings, review judges enter final orders. Review judges are employed by ((~~DSHS~~) the department), are located in the ((~~DSHS~~) board of appeals (BOA)), and are not part of the ((~~DSHS~~) department) program involved in the review. See WAC 388-02-0600 for information on the authority of a review judge.

"**Rule**" means a state regulation. Rules are found in the Washington Administrative Code (WAC).

"**Should**" means that an action is recommended but not required.

"**Stay**" means an order temporarily halting the ((~~DSHS~~) department) decision or action.

"**You**" means any individual or entity that has a right to be involved with the ((~~DSHS~~) department) hearing process, which includes a party or a party's representative. "You" does not include ((~~DSHS~~) the department) or its representative.

AMENDATORY SECTION (Amending WSR 09-05-032, filed 2/11/09, effective 3/14/09)

**WAC 388-02-0025 Where is the office of administrative hearings located?** (1)(a) The office of administrative hearings (OAH) headquarters location is:

Office of Administrative Hearings  
2420 Bristol Court SW((~~-1st Floor~~))  
P.O. Box 42488  
Olympia WA 98504-2488  
(360) 664-8717  
(360) 664-8721 (fax)

(b) The headquarters office is open from 8:00 am to 5:00 p.m. Mondays through Friday, except legal holidays.

(2) OAH field offices are at the following locations:

**Olympia**

Office of Administrative Hearings  
2420 Bristol Court SW((~~-3rd Floor~~))  
P.O. Box 42489  
Olympia, WA 98504-2489  
(360) 753-2531  
1-800-583-8271  
fax: (360) 586-6563

**Seattle**

Office of Administrative Hearings  
One Union Square  
600 University Street, Suite 1500  
Mailstop: TS-07  
Seattle, WA 98101-1129  
(206) 389-3400  
1-800-845-8830  
fax: (206) 587-5135

**Vancouver**

Office of Administrative Hearings  
5300 MacArthur Blvd., Suite 100  
Vancouver, WA 98661  
(360) 690-7189  
1-800-243-3451  
fax: (360) 696-6255

**Spokane**

Office of Administrative Hearings  
Old City Hall Building, 5th Floor  
221 N. Wall Street, Suite 540  
Spokane, WA 99201  
(509) 456-3975  
1-800-366-0955  
fax: (509) 456-3997

**Yakima**

Office of Administrative Hearings  
32 N 3rd Street, Suite 320  
Yakima, WA 98901-2730  
(509) 575-2147  
1-800-843-3491  
fax (509) 454-7281

(3) You should contact the Olympia field office, under subsection (2), if you do not know the correct field office.

(4) You can obtain further hearing information at the OAH web site: [www.oah.wa.gov](http://www.oah.wa.gov).

NEW SECTION

**WAC 388-02-0037 When must the OAH reschedule a proceeding based on the amount of notice required?** Any party may request that the proceeding be rescheduled and OAH must reschedule if:

(1) A rule requires the OAH to provide notice of a proceeding; and

(2) The OAH does not provide the amount of notice required.

NEW SECTION

**WAC 388-02-0038 When may the OAH shorten the amount of notice required to the parties of a proceeding?** The ALJ and the parties may agree to shorten the amount of notice required by any rule.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0110 What happens after you request a hearing?** (1) After you request a hearing, the OAH sends the parties a notice containing the hearing date, time, and place. This document is called the notice of hearing. ~~((For certain types of hearings,))~~ The parties may also receive a written notice of a prehearing conference. You may receive a notice of a prehearing conference either before or after receiving the notice of the hearing.

(2) Before your hearing is held:

(a) ~~((DSHS))~~ The department may contact you and try to resolve your dispute; and

(b) You are encouraged to contact ~~((DSHS))~~ the department and try to resolve your dispute.

(3) If you do not appear for your hearing, an ALJ may enter an order of default or an order dismissing your hearing according to WAC 388-02-0285.

NEW SECTION

**WAC 388-02-0157 How does a party appear?** (1) If you are going to represent yourself, you should provide the ALJ and other parties with your name, address, and telephone number.

(2) If you are represented, your representative should provide the ALJ and other parties with the representative's name, address, and telephone number.

(3) The presiding officer may require your representative to file a written notice of appearance or to provide documentation that you have authorized the representative to appear on your behalf. In cases involving confidential information, your representative must file a signed written release of information on department form 17-063.

(4) If your representative is an attorney admitted to practice in this state, your attorney must file a written notice of appearance, and must file a notice of withdrawal upon withdrawal of representation.

(5) If you or your representative have put in a written notice of appearance, the ALJ should call the telephone number on the notice of appearance if you or your representative do not appear by calling in with a telephone number before a hearing (including a prehearing).

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0195 What is a prehearing conference?** (1) A prehearing conference is a formal ~~((meeting))~~ proceeding conducted on the record by an ALJ to prepare for a hearing. The ALJ must record the prehearing conference using audio recording equipment (such as a digital recorder or tape recorder).

~~(2) ((Either the ALJ or a party may request a prehearing conference, but the ALJ decides whether to hold a prehearing conference. OAH sends notice of the conference to all parties.~~

~~(3))~~ An ALJ may conduct the prehearing conference in person, by telephone conference call, ~~((by electronic means,))~~ or in any other manner acceptable to the parties. Your attendance is mandatory.

~~((4) A party))~~ (3) You may lose the right to participate during the hearing if ~~((that party does))~~ you do not attend the prehearing conference.

NEW SECTION

**WAC 388-02-0197 When is a prehearing conference scheduled?** (1) The ALJ may require a prehearing conference. Any party may request a prehearing conference.

(2) The ALJ must grant the first request for a prehearing conference if it is received by the OAH at least seven business days before the scheduled hearing date.

(3) The ALJ may grant untimely or additional requests for prehearing conferences.

(4) If the parties do not agree to a continuance, the OAH and/or the ALJ must set a prehearing conference to decide whether there is good cause to grant or deny the continuance.

(5) The OAH must schedule prehearing conferences for all cases which concern actions of the following department programs:

- (a) Adult protective services; and
- (b) The division of residential care services.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0205 What happens after a prehearing conference?** (1) After the prehearing conference ends, the ALJ must ~~((send))~~ enter a written prehearing order describing:

- (a) The actions taken;
- (b) Any changes to the documents; ~~((and))~~
- (c) Any agreements reached; and
- (d) Any ruling of the ALJ.

(2) The ALJ must send the prehearing order to the parties at least fourteen calendar days before the scheduled hearing, except a hearing may still occur as allowed under WAC 388-02-0280(5). The parties and the ALJ may agree to a shorter time period.

(3) A party may object to the prehearing order by notifying the ALJ in writing within ten days after the mailing date of the order. The ALJ must issue a ruling on the objection.

~~((3))~~ (4) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

~~((4))~~ (5) The ALJ may take further appropriate actions to address other concerns.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0210 What happens if a party does not attend a prehearing conference?** (1) All parties are required to attend a prehearing conference.

(2) If you do not attend, you may not be allowed to participate in the hearing. The ALJ may dismiss your hearing request or enter an order of default against you.

~~((3) If DSHS does not attend, the ALJ may dismiss or reverse the action DSHS took against you.))~~

#### NEW SECTION

**WAC 388-02-0216 Is the authority of the administrative law judge and the review judge limited?** The authority of the ALJ and the review judge is limited to those powers conferred (granted) by statute or rule. The ALJ and the review judge do not have any inherent or common law powers.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0220 What rules and laws must an ALJ and review judge apply when conducting a hearing or making a decision?** (1) ALJs and review judges must first apply the ~~((DSHS))~~ department rules adopted in the Washington Administrative Code.

(2) If no ~~((DSHS))~~ department rule applies, the ALJ or review judge must decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, and court decisions.

(3) When applying program rules regarding the substantive rights and responsibilities of the parties (such as eligibility for services, benefits, or a license), the ALJ and review judge must apply the program rules that were in effect on the date the department notice was sent, unless otherwise required by other rule or law. If the department amends the notice, the ALJ and review judge must apply the rules that were in effect on the date the initial notice was sent, unless otherwise required by other rule or law.

(4) When applying program rules regarding the procedural rights and responsibilities of the parties, the ALJ and review judge must apply the rules that are in effect on the date the procedure is followed.

(5) Program rules determine the amount of time the department has to process your application for services, benefits or a license.

(6) The ALJ and review judge must apply the rules in this chapter beginning on the date each rule is effective.

(7) If you have a dispute with the department concerning the working connections child care (WCCC) program, the ALJ and review judge must apply the hearing rules in this chapter and not the hearing rules in chapter 170-03 WAC. The rules in this chapter apply to disputes between you and the department of social and health services.

#### NEW SECTION

**WAC 388-02-0221 How is the index of significant decisions used?** (1) A final order may be relied on, used, or cited as precedent by a party if the final order has been indexed in the department index of significant decisions.

(2) The department index of significant decisions is available to the public at [www.dshs.wa.gov/boa](http://www.dshs.wa.gov/boa). For information on how to obtain a copy of the index, see WAC 388-01-190.

(3) If a precedential published decision entered by the Court of Appeals or the Supreme Court reverses an indexed board of appeals final order, that order will be removed from the index of significant decisions.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0230 When is the ALJ assigned to the hearing?** The OAH assigns an ALJ at least five business days before the hearing. A party may ask which ALJ is assigned to the hearing by calling or writing the OAH field office listed on the notice of hearing. If requested by a party,

the OAH must send the name of the assigned ALJ to the party by e-mail or in writing at least five business days before the party's scheduled hearing date. For division of child support cases, the OAH will only be required to assign an ALJ at least five days before the hearing if such a request is specifically made by one of the parties.

**AMENDATORY SECTION** (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0240 How does a party file a motion of prejudice?** (1) A party may request a different ALJ by sending a written motion of prejudice (~~(at least three business days before the hearing, or)~~) to the OAH before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony. A motion of prejudice must include an affidavit or statement that a party does not believe that the ALJ can hear the case fairly.

(2) Rulings that are not considered discretionary rulings for purposes of this section include but are not limited to those:

(a) Granting or denying a request for a continuance; and

(b) Granting or denying a request for a prehearing conference.

(3) ~~((The))~~ A party must send the ~~((request))~~ written motion of prejudice to the chief ALJ at the OAH headquarters identified in WAC 388-02-0025(1) and must send a copy to the OAH field office where the ALJ ~~((works))~~ is assigned.

~~((3))~~ (4) A party may make an oral motion of prejudice at the beginning of the hearing before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony if:

(a) The OAH did not assign an ALJ at least five business days before the date of the hearing; or

(b) The OAH changed the assigned ALJ within five business days of the date of the hearing.

(5) The first ~~((timely))~~ request for a different ALJ is automatically granted. ~~((Any later request may be granted or denied by))~~ The chief ALJ or a designee grants or denies any later requests.

**AMENDATORY SECTION** (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0250 What happens after you request a hearing, and when must the OAH provide notice of the hearing and prehearing conference?** (1) ~~((After you request a hearing,))~~ The OAH must send a copy of your hearing request to the department, unless the OAH received your hearing request from the department. The OAH should send it to the department within four business days of the OAH receiving your request.

(2) The OAH ~~((sends))~~ must send a notice of hearing to all parties and their representatives ~~((the OAH sends the notice of hearing at least seven business days))~~ at least fourteen calendar days before the hearing date. The OAH must provide notice of seven or more business days if the case is about child support under chapter 388-14A WAC.

~~((2))~~ (3) If the OAH ~~((may))~~ schedules a prehearing conference~~((s))~~, the OAH ~~((sends))~~ must send a notice of prehearing conference to the parties and their representatives at

least seven business days before the date of the prehearing conference ~~((date))~~ except:

(a) The OAH and/or an ALJ may convert a scheduled hearing into a prehearing conference and provide less than seven business days notice of the prehearing conference; and

(b) The OAH may give less than seven business days notice if the only purpose of the prehearing conference is to consider whether there is good cause to grant a continuance under WAC 388-02-0280 (3)(b).

(4) The OAH and/or the ALJ must reschedule the hearing if necessary to comply with the notice requirements in this section.

(5) If the ALJ denies a continuance after a prehearing conference, the hearing may proceed on the scheduled hearing date, but the ALJ must still issue a written order regarding the denial of the continuance.

~~((3))~~ (6) You may ask for a prehearing meeting even after you have requested a hearing.

**AMENDATORY SECTION** (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0260 May ~~((DSHS))~~ the department amend a notice?** (1) The ALJ must allow ~~((DSHS))~~ the department to amend (change) the notice of a ~~((DSHS))~~ department action before or during the hearing to match the evidence and facts.

(2) ~~((DSHS))~~ The department must put the change in writing and give a copy to the ALJ and ~~((the other))~~ all parties.

(3) The ALJ must offer to continue ~~((or))~~ (postpone) the hearing to give the parties more time to prepare or present evidence or argument if there is a significant change from the earlier ~~((DSHS))~~ department notice.

(4) If the ALJ grants a continuance, the OAH must send, a new hearing notice at least ~~((seven business))~~ fourteen calendar days before the hearing date. The OAH must provide notice of seven or more business days if the case is about child support under chapter 388-14A WAC.

**AMENDATORY SECTION** (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0265 May you amend your hearing request?** (1) The ALJ may allow you to amend your hearing request before or during the hearing.

(2) The ALJ ~~((may))~~ must offer to continue (postpone) the hearing to give the other parties more time to prepare or present evidence or argument ~~((because of))~~ if there is a significant change in the hearing request.

(3) If the ALJ grants a continuance, the OAH must send a new hearing notice at least ~~((seven business))~~ fourteen calendar days before the hearing date. The OAH must provide notice of seven or more business days if the case is about child support under chapter 388-14A WAC.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0280 Who may request a continuance?**

(1) Any party may request a continuance either orally or in writing.

(2) Before contacting the ALJ to request a continuance, a party should contact the other parties, if possible, to find out if they will agree to a continuance. If you are unable to contact the parties, the OAH or ((DSHS)) the department must assist you in contacting them.

(3) The party making the request for a continuance must let the ALJ know whether the other parties agreed to the continuance.

(a) If the parties agree to a continuance, the ALJ ((grants)) must grant it unless the ALJ finds that good cause for a continuance does not exist.

(b) If the parties do not agree to a continuance, the ALJ ((sets)) must set a prehearing conference to decide whether there is good cause to grant or deny the continuance. The prehearing conference will be scheduled as required by WAC 388-02-0197 and 388-02-0250.

(4) If ((a continuance is granted, OAH sends notice of the changed time and date of the hearing)) the ALJ grants a continuance, the OAH must send a new hearing notice at least fourteen calendar days before the new hearing date. The OAH must provide notice of seven or more business days if the case is about child support under chapter 388-14A WAC.

(5) If the ALJ denies the continuance, the ALJ will proceed with the hearing on the date the hearing is scheduled, but must still issue a written order regarding the denial of the continuance.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0340 How is your hearing held? (1)**

Hearings may be held in person or by telephone conference.

(2) A telephone conference hearing is where all parties appear by telephone.

(3) An in-person hearing is where(=

(a) The parties appear face-to-face with the ALJ; or

(b) The parties appear by video conference)) you appear face-to-face with the ALJ and the other parties appear either in person or by telephone.

((=)) (4) Whether a hearing is held in person or by telephone conference, the parties have the right to see all documents, hear all testimony and question all witnesses.

((=)) (5) Parties ((=)) and their witnesses may appear in person or by telephone conference ((at the discretion of the ALJ)). The ALJ may require parties and/or their witnesses to appear in person if the ALJ determines there is a compelling reason, and the compelling reason is stated in a hearing notice or prehearing order.

(6) After a telephone conference hearing begins, the ALJ may stop, reschedule, and convert the hearing to an in-person hearing if the ALJ determines there is a compelling reason to do so.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0350 Is your hearing recorded? ((An))**  
The ALJ must ((tape)) record ((or provide a record or transcript of the hearing)) the entire hearing using audio recording equipment (such as a digital recorder or a tape recorder).

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0360 May a party convert how a hearing is held? (1)** The parties have the right to request that:

(a) A hearing format be converted (changed) to an in-person hearing or a telephone conference; or

(b) A witness appear in person or by telephone conference. The OAH must advise you of the right to request a change in how a witness appears.

(2) ((In all DSHS cases, except public assistance cases.)) Except as provided in subsection (4) of this section, a party requesting a change in how a hearing is held must show ((good cause)) a compelling reason. A party must also show ((good cause)) a compelling reason to change the way a witness appears (in-person or by telephone conference). Some examples of ((good cause)) compelling reasons are:

(a) A party does not speak or understand English well.

(b) A party wants to present a significant number of documents during the hearing.

(c) A party does not believe that one of the witnesses or another party is credible, and wants the ALJ to have the opportunity to see the testimony.

(d) A party has a disability or communication barrier that affects their ability to present their case.

(e) A party believes that the personal safety of someone involved in the hearing process is at risk.

(3) A compelling reason to convert how a hearing is held can be overcome by a compelling reason not to convert how a hearing is held.

(4) In public assistance cases, a party has the right to request that a hearing be changed without showing ((good cause)) a compelling reason to the ALJ. Public assistance programs include:

(a) Temporary assistance for needy families (TANF);

(b) ((General or medical assistance)) Working connections child care;

(c) Disability lifeline;

(d) Medical assistance;

(e) Food ((stamps)) assistance; and

((=)) (f) Refugee assistance.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0480 What does burden of proof mean? ((The party who has the burden of proof is the party who has the responsibility to provide evidence to persuade the ALJ that a position is correct)) (1) Burden of proof is a party's responsibility to:**

(a) Provide evidence regarding disputed facts; and

(b) Persuade the ALJ that a position is correct.

(2) To persuade the ALJ, the party who has the burden of proof must provide the amount of evidence required by WAC 388-02-0485.

**AMENDATORY SECTION** (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0495 What is equitable estoppel?** (1) Equitable estoppel is a legal doctrine defined in case law that may only be used as a defense to prevent ((DSHS)) the department from taking some action against you, such as collecting an overpayment. Equitable estoppel may not be used to require the department to continue to provide something, such as benefits, services, or a license, or to require the department to take action contrary to a statute.

(2) There are five elements of equitable estoppel. The standard of proof is clear and convincing evidence. You must prove all of the following:

(a) ((DSHS)) The department made a statement or took an action or failed to take an action, which is inconsistent with a later claim or position by ((DSHS)) the department. For example, ((DSHS)) the department gave you money based on your application, then later tells you that you received an overpayment and wants you to pay the money back based on the same information.

(b) You reasonably relied on ((DSHS)) the department's original statement, action or failure to act. For example, you believed ((DSHS)) the department acted correctly when you received money.

(c) You will be injured to your detriment if ((DSHS)) the department is allowed to contradict the original statement, action or failure to act. For example, you did not seek help from health clinics or food banks because you were receiving benefits from ((DSHS)) the department, and you would have been eligible for these other benefits.

(d) Equitable estoppel is needed to prevent a manifest injustice. ((For example,)) Factors to be considered in determining whether a manifest injustice would occur include, but are not limited to, whether:

(i) You cannot afford to repay the money to ((DSHS, and)) the department;

(ii) You gave ((DSHS)) the department timely and accurate information when required ((but));

(iii) You did not know that ((DSHS)) the department made a mistake;

(iv) You are free from fault; and

(v) The overpayment was caused solely by a department mistake.

(e) The exercise of government functions is not impaired. For example, the ((overpayment was not your fault and it was caused solely by a DSHS mistake)) use of equitable estoppel in your case will not result in circumstances that will impair department functions.

(3) If the ALJ concludes that you have proven all of the elements of equitable estoppel in subsection (2) of this section with clear and convincing evidence, ((DSHS)) the department is stopped or prevented from taking action or enforcing a claim against you.

## NEW SECTION

**WAC 388-02-0512 What is included in the hearing record?** (1) The ALJ must produce a complete official record of the proceedings.

(2) The official record must include, if applicable:

(a) Notice of all proceedings;

(b) Any prehearing order;

(c) Any motions, pleadings, briefs, petitions requests, and intermediate rulings;

(d) Evidence received or considered;

(e) A statement of matters officially noticed;

(f) Offers of proof, objections, and any resulting rulings;

(g) Proposed findings, requested orders and exceptions;

(h) A complete audio recording of the entire hearing, together with any transcript of the hearing;

(i) Any final order, initial order, or order on reconsideration; and

(j) Matters placed on the record after an ex parte communication.

**AMENDATORY SECTION** (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0515 What happens after the record is closed?** (1) After the record is closed, the ALJ must ((write a hearing decision)) enter an initial or final order and send copies to the parties.

(2) The maximum time an ALJ has to send a decision is ninety calendar days after the record is closed, but many ((DSHS)) department programs have earlier deadlines. Specific program rules may set the deadlines.

(3) OAH must send the official record of the proceedings to the BOA. The record must be complete when it is sent, and include all parts required by WAC 388-02-0512.

**AMENDATORY SECTION** (Amending WSR 08-21-144, filed 10/21/08, effective 11/21/08)

**WAC 388-02-0575 ((How does)) What must a party ((request)) include in the review request?** A party must make the review request in writing ((;)) and send it to BOA ((; and clearly)). The party should identify the:

(1) Parts of the initial order with which the party disagrees; and

(2) Evidence supporting the party's position.

**AMENDATORY SECTION** (Amending WSR 08-21-144, filed 10/21/08, effective 11/21/08)

**WAC 388-02-0580 What is the deadline for requesting review by a review judge?** (1) BOA must receive the written review request on or before 5:00 p.m. on the twenty-first calendar day after the initial order was mailed.

(2) A review judge may extend the deadline if a party:

(a) Asks for more time before the deadline expires; and

(b) Gives a good reason for more time.

(3) A review judge may accept a review request after the twenty-one calendar day deadline only if:

(a) The BOA receives the review request on or before the thirtieth calendar day after the deadline; and

(b) A party shows good ~~((reason))~~ cause for missing the deadline.

(4) If you ask a review judge to review an ALJ decision, the time period provided by this section for requesting review of an initial order, including any extensions, does not count against any deadline, if any, for a review judge to enter the final order.

AMENDATORY SECTION (Amending WSR 08-21-144, filed 10/21/08, effective 11/21/08)

**WAC 388-02-0590 How does the party that is not requesting review respond to the review request?** (1) A party does not have to respond to the review request. A response is optional.

(2) If a party decides to respond, that party must send the response so that BOA receives it on or before the seventh business day after the date the other party's review request was mailed to the party by BOA.

(3) The party ~~((must))~~ should send a copy of the response to all other parties or their representatives.

(4) A review judge may extend the deadline in subsection (2) of this section if a party asks for more time before the deadline to respond expires and gives a good reason.

(5) If you ask for more time to respond, the time period provided by this section for responding to the review request, including any extensions, does not count against any deadline, if any, for a review judge to enter the final order. A review judge may accept and consider a party's response even if it is received after the deadline.

AMENDATORY SECTION (Amending WSR 08-21-144, filed 10/21/08, effective 11/21/08)

**WAC 388-02-0600 What is the authority of the review judge?** (1) Review judges review initial orders and enter final orders. The review judge has the same decision-making authority as the ALJ. The review judge considers the entire record and decides the case de novo (anew). In reviewing findings of fact, the review judge must give due regard to the ALJ's opportunity to observe witnesses.

(2) Review judges may return (remand) cases to the OAH for further action.

~~((2))~~ The review judge has the same decision-making authority as the ALJ when reviewing initial orders in the following cases, but must consider the ALJ's opportunity to observe the witnesses:

- ~~(a) Licensing, certification and related civil fines;~~
- ~~(b) Rate-making proceedings;~~
- ~~(c) Parent address disclosure;~~
- ~~(d) Temporary assistance to needy families (TANF);~~
- ~~(e) Working connections child care (WCCC);~~
- ~~(f) Medical assistance eligibility;~~
- ~~(g) Medical or dental services funded by Title XIX of the Social Security Act;~~
- ~~(h) Adoption support services; and~~
- ~~(i) Eligibility for client services funded by Title XIX of the Social Security Act and provided by the aging and disability services administration.~~

(3) In all other cases, the review judge may only change the initial order if:

~~(a) There are irregularities, including misconduct of a party or misconduct of the ALJ or abuse of discretion by the ALJ, that affected the fairness of the hearing;~~

~~(b) The findings of fact are not supported by substantial evidence based on the entire record;~~

~~(c) The decision includes errors of law;~~

~~(d) The decision needs to be clarified before the parties can implement it; or~~

~~(e) Findings of fact must be added because the ALJ failed to make an essential factual finding. The additional findings must be supported by substantial evidence in view of the entire record and must be consistent with the ALJ's findings that are supported by substantial evidence based on the entire record.~~

~~(4))~~ (3) Review judges may not review ALJ final orders ~~((See))~~ for the types of cases listed in WAC 388-02-0217(2) ((for cases in which the ALJ enters a final order)).

~~((5))~~ (4) A review judge conducts the hearing and enters the final order in cases covered by WAC 388-02-0218.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0030 ((Where is the board of appeals located)) How do I contact the board of appeals?** (1) ~~((The mailing address of the DSHS board of appeals (BOA) is:~~

~~DSHS Board of Appeals~~

~~P.O. Box 45803~~

~~Olympia, WA 98504-5803;~~

~~(2) The general telephone numbers of the BOA are:~~

~~(360) 664-6100~~

~~1-877-351-0002 (toll free)~~

~~(360) 664-6178 (TTD)~~

~~(360) 664-6187 (fax);~~

~~(3) The physical location of the DSHS Board of Appeals (BOA) is:~~

~~Blake Office Bldg. East, 2nd Floor~~

~~4500 10th Ave. SE~~

~~Lacey, WA 98503))~~ The information included in this

section is current at this time of rule adoption, but may change. Current information and additional contact information are available on the department's internet site, in person at the board of appeals office, or by a telephone call to the board of appeal's main public number.

Department of Social and Health Services Board of Appeals	
Location	Office Building 2 (OB-2) First Floor Information 1115 Washington Street Olympia, Washington
Mailing address	P.O. Box 45803 Olympia, WA 98504-5803
Telephone	(360) 664-6100
Fax	(360) 664-6187
Toll free	1-877-351-0002
Internet web site	www.dshs.wa.gov/boa



**WSR 11-05-005**  
**PERMANENT RULES**  
**COUNTY ROAD**  
**ADMINISTRATION BOARD**

[Filed February 3, 2011, 9:40 a.m., effective March 6, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Review the rural arterial program (RAP) in light of legislative budget discussions pertaining to desired improvements to the RAP funding program. The proposed changes improve the effectiveness of the RAP funding program by promoting the expansion of project types and providing clearer guidance for project development and completion.

Citation of Existing Rules Affected by this Order: Amending chapters 136-100, 136-130, 136-161, 136-165, 136-167, and 136-170 WAC.

Statutory Authority for Adoption: Chapter 36.78 RCW.

Adopted under notice filed as WSR 10-24-112 on December 1, 2010.

Changes Other than Editing from Proposed to Adopted Version: Chapter 136-163 WAC, proposed changes were not adopted.

Chapter 136-167 WAC, one sentence removed at the end of first paragraph - "This provision will only apply to those projects for which RATA funds have been allocated after July 1, 1995."

WAC 136-170-030 - two sentences added in subsection (3) immediately before (a) - "Review the Rural Arterial Program in light of legislative budget discussions pertaining to desired improvements to the RAP funding program. The proposed changes improve the effectiveness of the RAP funding program by promoting the expansion of project types and providing clearer guidance for project development and completion."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 27, 2011.

Jay P. Weber  
Executive Director

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-100-050 Apportionment of RATA funds to regions.** RCW 36.79.040 sets forth the apportionment formula to be used in distributing RATA funds to the five

regions. Following are the computations used in the apportionment formula:

(1) Computation of land area ratio. The ratio that the total county rural land area of each region bears to the total rural land area of all counties of the state shall be computed from information provided by the office of financial management as of July 1, 1993, and each two years thereafter.

(2) Computation of road (~~(mileage)~~) mileage ratio. The ratio that the mileage of county arterials and collectors in rural areas of each region bears to the total mileage of county arterials and collectors in all rural areas of the state shall be computed from information shown in the county road log maintained by the county road administration board as of July 1st of each odd-numbered year.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-130-010 Purpose and authority.** RCW 36.79.080 sets forth the criteria that will be used in determining the priority of specific improvement projects. This chapter describes how each RAP (~~(region)~~) project type will rate and (~~(prioritize proposed projects)~~) be prioritized within RAP regions.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-130-020 Priorities by (~~(region)~~) project type.** There shall be five project types eligible for RATA funding, with each having separate rating systems for project ranking and selection. The five project types include:

(1) Reconstruction - emphasis on alignment and grade changes on fifty percent or more of the project length, and may include additional travel lanes and right of way costs.

(2) 3R - resurfacing, restoration, and rehabilitation - primary focus on extending the service life of existing facility involving less than fifty percent vertical or horizontal changes, and on safety improvements. Right of way costs are eligible for RATA reimbursement as a part of this project type.

(3) 2R - resurfacing and restoration - primary focus on restoration of the pavement structure on the existing vertical and horizontal alignment and spot safety improvements. Minor widening costs are allowed as a part of this project type. Right of way costs are not eligible for RATA reimbursement in this project type.

(4) Intersection - 3R or reconstruction work limited to the vicinity of an existing intersection, and may include additional travel lanes and right of way costs.

(5) Bridge and drainage structures - replacement or major rehabilitation of an existing bridge or other drainage structure, and may include additional travel lanes and right of way costs. The county road administration board has determined that the interests of the counties in the several regions will be best served by encouraging development of a distinct project priority rating systems for each region. (~~(These rating systems, described in WAC 136-130-030, 136-130-040, 136-130-050, 136-130-060, and 136-130-070, shall be used in the prioritization of proposed projects requesting RATA funds submitted by counties in the respective regions.)~~)

In consultation with the individual regions, the executive director shall approve the various forms and procedures necessary to allocate available RATA funding, consistent with RCW 36.79.080.

AMENDATORY SECTION (Amending WSR 06-11-067, filed 5/12/06, effective 6/12/06)

**WAC 136-130-030 ((Project prioritization)) Supplemental rules in Puget Sound region (PSR).** Each county in the PSR may submit projects requesting RATA funds not to exceed ((80%)) eighty percent of the forecasted regional apportionment. ((Each project shall be rated in accordance with the PSR RAP rating procedures. The PSR funding period shall allot a minimum of 25% of the forecasted regional apportionment to projects on roads classified as major collectors (07) or minor collectors (08).

~~PSR RAP maximum rating points for the four project types shall be assigned based on the following:~~

Rating Criteria:	Project Type:			
	Road	3R-Safety	Intersection	Bridge
Traffic Volume	20	15	20	20
Accident History	25	15	25	25
Structure	15	10	5	25
Geometry	30	20	40	20
Special Road Usage	10	10	10	10
3R Safety		30		
TOTAL POINTS	100	100	100	100

~~Bridge category projects that will not replace the structure must have federal funds committed to them prior to submittal for RATA funding.~~

~~Prioritization of PSR projects shall be on the basis of total PSR RAP rating points shown on the project worksheet and the prospectus form of the project application.))~~

AMENDATORY SECTION (Amending WSR 08-16-043, filed 7/29/08, effective 8/29/08)

**WAC 136-130-040 ((Project prioritization)) Supplemental rules in northwest region (NWR).** Each county in the NWR may submit projects requesting RATA funds not to exceed forty percent of the forecasted regional apportionment. ((No bridge replacement projects will be funded. Each project shall be rated in accordance with the NWR RAP reconstruction or 3R rating procedures. NWR RAP reconstruction rating points shall be assigned on the basis of forty points for structural condition, forty points for geometries, ten points for traffic volume, ten points for traffic accidents, five points for any project on a major collector (07), and ten points for any project on a rural principal arterial (02) or a rural minor arterial (06). Prioritization of NWR projects shall be on the basis of total NWR RAP rating points shown on the project worksheet and the prospectus form of the project application.

~~NWR RAP 3R rating points shall be assigned on the basis of thirty points for structural condition, twenty points for geometries, ten points for traffic volume, ten points for traffic accidents, ten points for any project on a minor collector (08), and thirty points for 3R safety. Prioritization of NWR 3R projects shall be on the basis of total NWR 3R RAP rating points shown on the project worksheet and the prospectus form of the project application.~~

~~A total of twenty points representing local significance may be added to one project in each county's biennial submittal.))~~

AMENDATORY SECTION (Amending WSR 10-05-019, filed 2/4/10, effective 3/7/10)

**WAC 136-130-050 ((Project prioritization)) Supplemental rules in northeast region (NER).** Each county in the NER may submit projects requesting RATA funds not to exceed twenty-five percent of the forecasted NER biennial apportionment. ((Each project shall be rated in accordance with the NER RAP rating procedures. The NER biennial apportionment shall be divided into the following categories at the percentages shown, provided sufficient projects are submitted for prioritization in each category:

- ~~Category 1 - Ten percent for bridge projects where RATA funds are used as a match for federal bridge funds;~~
- ~~Category 2 - Thirty percent for reconstruction of rural collectors and arterials;~~
- ~~Category 3 - Thirty percent for resurfacing, restoration, rehabilitation (3R) type projects on rural collectors and arterials; and~~
- ~~Category 4 - Thirty percent for resurfacing and restoration (2R) type projects on rural collectors and arterials.~~

~~In the event that no projects or an insufficient number of projects are submitted in any of the above categories to utilize the RATA funds set aside for the category, all remaining funds in that category or categories shall be divided among the remaining categories as the county road administration board deems appropriate. The intent is to divide all available funds into categories having a sufficient number of submitted projects to fully utilize the funds available at each allocation during the biennium.))~~

~~Bridge projects may be submitted requesting RATA funds under one of the following conditions:~~

- ~~(1) Bridges must be approved for federal bridge funding and RATA funds shall be used only as a match for such federal funding. Bridges will be ranked for RATA funding using the WSDOT priority list and may be added to the NER Category 1 priority array at any time during the biennium upon approval of the bridge for federal bridge funding.~~
- ~~(2) A stand-alone bridge project may be submitted as an ordinary reconstruction or 3R RAP project provided that its priority rating has been computed by the bridge rating method in the NER RAP rating procedures. Such projects shall not be considered for funding from the bridge reserve described above.~~

(3) A RAP project may include a bridge when the cost of the bridge does not exceed twenty percent of the total project cost.

~~((NER RAP rating points for reconstruction projects, 3R projects or nonfederal bridge projects shall be assigned on the basis of one hundred points for a condition rating and fifty points for a service rating. The priority rating equals the sum of two and one half times the product of the service rating to the 1.25 power and the common logarithm of the number obtained by dividing one hundred by the condition rating. A total of ten points representing local significance may be added to one project included in each county's biennial combined bridge, 3R and reconstruction submittal. A total of up to ten points representing missing links definition may also be added to one project included in each county's biennial combined bridge, 3R and reconstruction submittal.~~

~~NER RAP rating points for 2R projects shall be assigned on the basis of five points for traffic volume, five points for traffic accidents, fifty points for structure, ten points for geometry, and fifteen points for roadside safety. A total of fifteen points representing local significance may be added to one 2R project included in each county's biennial submittal.~~

~~Prioritization of NER projects shall be on the basis of total NER RAP rating points shown on the appropriate project worksheet and the prospectus form of the project application.))~~

AMENDATORY SECTION (Amending WSR 04-05-001, filed 2/4/04, effective 3/6/04)

**WAC 136-130-060 ((Project prioritization)) Supplemental rules in southeast region (SER).** Each county in the SER may submit projects requesting RATA funds not to exceed twice the per county limit of the forecasted SER biennial apportionment ((which is listed)) as follows:

Asotin County	ten percent
Benton County	fourteen percent
Columbia County	eleven percent
Franklin County	thirteen percent
Garfield County	ten percent
Kittitas County	thirteen percent
Klickitat County	fourteen percent
Walla Walla County	fourteen percent
Yakima County	twenty percent

~~((Each project shall be rated in accordance with the SER RAP bridge, reconstruction or 3R rating procedures. Ten percent of the forecasted SER biennial apportionment shall be reserved for bridge projects.)) Federally funded bridges for which counties are seeking matching funds shall receive first consideration for ((these)) bridge funds((, ranked against each other according to the WSDOT priority array)). Bridges receiving federal funding may be added to this list at any time during the biennium. Stand-alone bridges may compete for funds in this reserve that remain after all bridges seeking match for federal funds have been funded. ((These bridges will be rated against each other according to their total points assigned from the RAP Rating Worksheets for the SER.))~~

Whatever part of the bridge reserve that is not allocated to bridge projects shall be available for allocation to other RAP projects.

~~((SER RAP reconstruction rating points shall be assigned on the basis of forty five points for structural condition, thirty points for geometries, twenty two points for traffic volume, five points for traffic accidents.~~

~~SER RAP 3R rating points shall be assigned on the basis of twenty points for structural condition, twenty five points for geometries, twelve points for traffic volume, ten points for traffic accidents, twenty five points for roadside safety, and ten points for intersection operation.~~

~~A total of twenty points representing local significance may be added to one project in each county's biennial submittal. Prioritization of SER projects shall be on the basis of total SER RAP bridge, reconstruction or 3R rating points shown on the project worksheet and the prospectus form of the project application.))~~

AMENDATORY SECTION (Amending WSR 04-05-001, filed 2/4/04, effective 3/6/04)

**WAC 136-130-070 ((Project prioritization)) Supplemental rules in southwest region (SWR).** Each county in the SWR may submit projects requesting RATA funds not to exceed thirty percent of the forecasted SWR biennial apportionment. ~~((No bridge replacement projects will be funded. Each project shall be rated in accordance with the SWR RAP reconstruction or 3R rating procedures. SWR RAP reconstruction rating points shall be assigned on the basis of fifty road condition points, consisting of twenty five points for structural condition and twenty five points for surface condition, fifty points for geometries, ten points for traffic volume and ten points for traffic accidents, except that portland cement concrete surfaces and asphalt surfaces with cement concrete bases shall have fifty points for road surface condition and no points for structural condition and except that gravel roads shall have fifty points maximum for surface condition, and fifteen points maximum for roadbed width in geometries and no other geometric points. SWR RAP 3R rating points shall be assigned on the basis of thirty road condition points, consisting of fifteen points for structural condition and fifteen points for surface condition, twenty points for geometries, ten points for traffic volume, ten points for traffic accidents and thirty points for 3R safety, except that portland cement concrete surfaces and asphalt surfaces with cement concrete bases shall have thirty points for road surface condition and no points for structural condition and except that gravel roads shall have thirty points maximum for surface condition, and fifteen points maximum for roadbed width in geometries and no other geometric points. Prioritization of SWR projects shall be on the basis of total SWR RAP rating points shown on the project worksheets and the prospectus form of the project application.))~~

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-130-080 Limitation on rating points.** In each of the project prioritization ~~((methods described in WAC 136-130-030, 136-130-040, 136-130-050, 136-130-~~

060, and 136-130-070 rating points are assigned to a variety of structural and geometric conditions.) procedures and associated approved forms, for purposes of the RAP project prospectus submitted to the county road administration board, geometric condition points shall be assigned only for those conditions which will be corrected by construction of the project.

#### NEW SECTION

**WAC 136-130-090 Reallocation of RATA funds between project types.** In the event that no projects or an insufficient number of projects are submitted in any project type to utilize the RATA funds set aside for the project type, all remaining funds shall be divided among the remaining project types as the county road administration board deems appropriate. The intent is to divide all available funds into project types having a sufficient number of submitted projects to fully utilize the funds available during the biennium.

AMENDATORY SECTION (Amending WSR 01-05-009, filed 2/8/01, effective 3/11/01)

**WAC 136-161-020 RAP program cycle—General.** The RAP biennial program cycle consists of the following basic steps:

(1) The CRABoard establishes a funding period if it determines that sufficient future RATA funds are available to provide for new RAP projects. This determination takes place during the CRABoard's regularly scheduled fall meeting in odd-numbered years.

Consistent with WAC 136-130-020, should the board determine there are adequate RATA funds available to be allocated to each region and, under advisement from each region, the board's action shall include the determination of the amount to be allocated to each project type within each region. The board's RATA funding allocation may include all or any subset of the project types described under WAC 136-130-020, and this decision may be unique to each region and may vary between funding periods.

(2) Each eligible county prepares and submits a preliminary prospectus to the county road administration board;

(3) County road administration board staff conducts a field review of each preliminary prospectus and provides to each submitting county an evaluation and scoring of all priority elements which are based on a visual examination, using that region's priority rating process;

(4) Each eligible county prepares and submits a final prospectus to the county road administration board;

(5) For each final prospectus submitted, county road administration board staff computes the total priority rating score and assembles all projects into rank-ordered arrays by region; and

(6) The county road administration board reviews the rank-ordered arrays in each region and, based upon the RATA funds projected to be allocable for the next project program period (see WAC 136-161-070), selects and approves specific projects for RATA funding.

AMENDATORY SECTION (Amending WSR 01-05-009, filed 2/8/01, effective 3/11/01)

**WAC 136-161-030 RAP program cycle—Preliminary prospectus.** By March 1st of each even-numbered year prior to a funding period, each eligible county shall, for each project for which it seeks RATA funds estimated to be available in the next project program period, submit a preliminary prospectus to the county road administration board. The format and content of the preliminary prospectus shall be prescribed by the county road administration board. Each preliminary prospectus shall be signed by the county engineer. The number of preliminary prospectuses submitted and the total amount of RATA funds requested by each eligible county (~~shall~~) should be sufficient to assure that, based upon such prospectuses, each county will be able to compete up to its county limit within its region, subject to the supplemental limitations under WAC 136-130-030 through 136-130-070.

AMENDATORY SECTION (Amending WSR 01-05-009, filed 2/8/01, effective 3/11/01)

**WAC 136-161-050 RAP program cycle—Final prospectus.** By September 1st of each even-numbered year prior to a funding period, each eligible county shall submit a final prospectus for each project for which it seeks RATA funds. Each final prospectus shall be submitted on forms provided by the county road administration board and shall include a vicinity map, a typical cross-section (existing and proposed), and, if a design deviation is required, an evaluation and determination by the county engineer. If a project is for the improvement of a road which continues into an adjacent county and the project terminus is within one thousand feet of the county line, the prospectus shall include a statement signed by the county engineer of the adjacent county certifying that the adjacent county will cooperate with the applicant county to the extent necessary to achieve a mutually acceptable design. All final prospectuses shall indicate that the design of the project shall begin not later than one year from the date of project approval by the county road administration board, and that construction of the project shall begin not later than six years from the date of project approval by the county road administration board. All final prospectuses shall come from the pool of preliminary prospectuses submitted and field reviewed as specified in WAC 136-161-030 and 136-161-040.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-161-060 RAP program cycle—Total project rating and priority array.** County road administration board staff will review all final prospectuses and ensure that:

- (1) All necessary information is included;
- (2) The project is from the pool of preliminary prospectuses;
- (3) The project is eligible for RATA funding;
- (4) The project is on the current, adopted six-year transportation program;

(5) The project schedule indicates that preliminary engineering will begin not later than one year from the date of project approval by the county road administration board, and that the construction of the project will begin not later than six years from the date of project approval by the county road administration board; and

(6) The total project priority rating is mathematically correct and the visual rating scores determined during the field review are included.

(7) Existing and proposed roadway cross sections, project narrative, and preconstruction photos are attached.

After county road administration board staff review, all accepted final prospectuses within each region will be placed in a declining total project rating array (~~in accordance with procedures specified in chapter 136-130 WAC~~). After review by the county road administration board at its next regular meeting, the priority array for each region will be provided to each county in the region. These arrays will be preliminary only and will be provided to the counties to assist them in their internal budgeting and programming. No notations as to whether a particular project will or will not be funded will be included.

AMENDATORY SECTION (Amending WSR 01-05-009, filed 2/8/01, effective 3/11/01)

**WAC 136-161-070 RAP program cycle—Selection and approval of projects for RATA funding.** (1) At its last regular meeting before the beginning of each biennium, the county road administration board will select projects and allocate anticipated RATA funds to projects in each region. The preliminary priority arrays as developed in WAC 136-161-060 will be updated to exclude any county which is ineligible under chapter 136-150 WAC, and projects will be selected from these arrays. Selections will be made in each region in declining priority rank order, provided that:

(a) No county shall be allocated RATA funds in excess of its regional county limit as specified in WAC 136-161-080; and

(b) Any projects which were partially funded in the prior biennium shall, unless otherwise requested by the county, be fully funded before new projects are selected. Ties in total rating points will be broken by the county road administration board in favor of the county having the lesser total amount of previously allocated RATA funds.

(2) The statewide net amount of RATA funds available for allocation to projects in the funding period will be based on the most recent state fuel tax revenue forecast prepared quarterly by the department of transportation, less estimated administrative costs, and less any amounts set aside for emergent projects as described in WAC 136-163-020. The total amount of RATA funds available for allocation to projects in a region (i.e., "forecasted regional apportionment amount") will be based on the regional apportionment percentages of the statewide net amount as determined in chapter 136-100 WAC.

(3) ~~((For the funding period beginning July 1, 1995, the project program period will be the next four state fiscal years (1996, 1997, 1998 and 1999, beginning July 1, 1995, and ending June 30, 1999). For the funding period beginning July~~

~~1, 1997, the project program period will begin July 1, 1999 and end June 30, 2001.))~~ Project program periods and the corresponding funding periods shall both begin on July 1st of odd numbered years and end on June 30th of odd numbered years, unless modified by resolution of the board.

(4) The RATA amounts allocated to projects in the first year of the biennium are limited to no more than ninety percent of the net amount estimated to be allocable to each region for the project program period, with the remaining percentage allocated at such time as deemed appropriate by the county road administration board.

(5) Acceptance of the RATA allocation for a project by the full execution of a CRAB/county contract as described in chapter 136-170 WAC constitutes agreement to complete the project in compliance with the scope, design and project limits in the final prospectus. All material changes to the scope, design or project limits must be approved by the county road administration board prior to commencement of construction.

AMENDATORY SECTION (Amending WSR 10-05-018, filed 2/4/10, effective 3/7/10)

**WAC 136-161-080 Limitations on allocations of RATA funds to counties.** For any project program period, no county shall receive a RATA fund allocation greater than the following maximum project RATA contribution, or percentage of the forecasted regional apportionment amount:

(1) PSR: No maximum project RATA contribution; 40% limit on percentage of the forecasted regional apportionment amount;

(2) NWR: No maximum project RATA contribution; twenty percent limit on percentage of the forecasted regional apportionment amount;

(3) NER: No maximum project RATA contribution; maximum RATA contribution to each county for 2R projects is seven hundred fifty thousand dollars; twelve and one-half percent limit on percentage of the forecasted regional apportionment amount;

(4) SWR: No maximum project RATA contribution; fifteen percent limit on percentage of the forecasted regional apportionment amount;

(5) SER: No maximum project RATA contribution; percentage varies by county as follows:

(a) Asotin County	ten percent
(b) Benton County	fourteen percent
(c) Columbia County	eleven percent
(d) Franklin County	thirteen percent
(e) Garfield County	ten percent
(f) Kittitas County	thirteen percent
(g) Klickitat County	fourteen percent
(h) Walla Walla County	fourteen percent
(i) Yakima County	twenty percent

(6) The county limits for all eligible and applying counties in each region will be adjusted to include by equal share the funding limit of any ineligible or nonapplying county.

AMENDATORY SECTION (Amending WSR 09-23-044, filed 11/9/09, effective 12/10/09)

**WAC 136-165-020 Requirements for consideration of RATA fund increases.** (1) When a county submits its final prospectus as described in WAC 136-161-050, the county road administration board presumes that the amount of RATA funds requested, plus any non-RATA funds that may be designated for the project, are sufficient to fully, and in a timely manner, complete the project as described.

(2) All cost increases during the course of construction shall be the responsibility of the county. In extraordinary circumstances, a county may request an increase in the amount of RATA funds allocated to a project. A county may request an increase in a project's RATA allocation (~~(only twice in)~~) once during the course of a project's development (~~(-At the)~~), and such request may occur only after completion of preliminary engineering, ~~(and)~~ but prior to commencing construction. A project shall be considered to have commenced construction if:

(a) The construction contract for the work has been awarded; ~~(and)~~ or

(b) If done by county forces, the work has commenced, except for ~~(labor)~~ construction engineering.

~~(All cost increases during the course of construction shall be the responsibility of the county.)~~ Requests for increases in excess of ~~(fifty)~~ twenty-five percent of the original RATA allocation will not be considered or granted; the county must secure other funds, withdraw or request the termination of the project, or request a change in scope and/or project limits. If current funding sources are not sufficient to cover the costs beyond a twenty-five percent increase, the county may resubmit the same project for funding in the next funding period. Upon funding of the new project by the county road administration board, the previous contract shall become void. All RATA funds expended on the previous contract shall be repaid to the county road administration board unless waived by the county road administration board in keeping with provisions of WAC 136-167-030.

(3) A request by a county for an increase in RATA funds allocated to a project shall demonstrate that:

(a) The county at the time of preparing its final project prospectus considered the factors listed in subsection (4) of this section;

(b) The request for an increased allocation is based on extraordinary and unforeseeable circumstances of the type listed in subsection (5) of this section;

(c) It is not feasible to reduce the scope and/or project limits so the project can be substantially constructed within the initial RATA allocation;

(d) The request is not to pay for an expansion of the originally approved project;

(e) If the work is to be done by contract, the county has supplied to the CRABoard, an updated engineer's cost estimate prior to, and within three months of, advertisement of the project for construction bids; and

(f) If the work is to be done by county forces, the county has supplied to the CRABoard, an updated engineer's cost estimate prior to, and within three months of, commencement of the work.

(4) At the time of preparation and submittal of the final project prospectus, a county is expected to consider all information which may affect the cost of the project. In cases where the information is incomplete or poorly defined, the county is to exercise good professional judgment and/or seek outside professional assistance and advice in order to prepare a reasonable RATA fund request. The information which a county is expected to consider includes, but is not limited to, the following:

(a) The availability at the needed time of matching funds and other supplementary funds;

(b) All technical data reasonably available such as topographic maps, reconnaissance reports, surface and subsurface geotechnical data, hydraulic and hydrological data, sources of materials, applicable design standards, and any earlier preliminary engineering;

(c) Required permits, including preproject scoping consultations with the permitting agencies and an estimate of the costs of complying with permit requirements;

(d) Required right of way or other easements, and the time and cost of acquisition;

(e) Availability of qualified contractors to perform the work;

(f) Ownership, type, amount, and time requirements of any required utility relocation;

(g) Historical and projected labor, equipment and material costs; and

(h) The project development timetable leading to completed construction and the interrelation of this project to all other work activities under the control of the county engineer.

(5) The county road administration board will increase RATA funds allocated to a project only if it finds that the request for an increased allocation is based on extraordinary and unforeseeable circumstances, including but not limited to the following:

(a) The county relied on existing technical data which were later found to be in error, and which will necessitate a significant design change prior to proceeding with construction;

(b) Project permit requirements were substantially changed, or new permits were required;

(c) Supplementary funds, such as impact fees, developer contributions, grants, etc., which were forecasted to be available for the project, were withdrawn or otherwise became unavailable;

(d) Design or other standards applicable to the project were changed; and/or

(e) The start of construction will be significantly delayed or additional construction requirements will be added as a direct result of legal action; provided however, that the failure of a county to exercise its statutory powers, such as condemnation, will not be grounds for increasing RATA funds.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-165-030 County road administration board evaluation, consideration and action.** (1) In deciding whether to grant a request for a RATA allocation increase submitted under the provisions of WAC 136-165-020, the

county road administration board will consider the following factors:

(a) Whether the county, at the time of preparing its final project prospectus, considered the factors listed in WAC 136-165-020(4);

(b) Whether the county's request for an increased allocation is based on extraordinary and unforeseeable circumstances of the type listed in WAC 136-165-020(5);

(c) Whether it is feasible to reduce the scope and/or project limits so the project can be substantially constructed within the initial RATA allocation;

(d) Whether the request is to pay for an expansion of the project; and

(e) Whether the increased allocation will have an adverse effect on other approved or requested RATA funded projects.

~~(2) (Where the requested increase is less than or equal to twenty-five percent of the original RATA allocation, and one hundred thousand dollars, the request may be acted upon by the executive director; all approvals or denials will be appropriately documented and described to the county road administration board at its next quarterly meeting. Where the requested increase is more than twenty-five percent of the original RATA allocation, or one hundred thousand dollars, the request will be acted upon by the county road administration board.~~

~~(3))~~ If the county road administration board finds that an increase in RATA funds for a previously approved project is justified, some or all of the requested increase may be allocated.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-165-040 Effect of receiving RATA increase.** A county's increased RATA funds for a project program period shall correspondingly reduce the ~~((amount of any))~~ limit of RATA funds ~~((for which it is eligible to compete))~~ that may be allocated to the county in the next project program period; provided that the county road administration board may grant a county's request to decrease such a reduction by the total amount of increased but unexpended RATA funds.

All reductions and reduction adjustments as described shall be effective in the project program period following the period in which the increase in the RATA funds is approved.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-165-050 Amendment of CRAB/county contract.** All changes in approved RATA allocations and other county road administration board actions taken under the provisions of this chapter shall be reflected by amending the CRAB/county contract. Failure of a county to ~~((execute))~~ sign and return an amended CRAB/county contract within forty-five calendar days of ~~((receipt))~~ its mailing by the county road administration board shall nullify all allocation increases and other county road administration board actions.

AMENDATORY SECTION (Amending WSR 00-05-043, filed 2/11/00, effective 3/13/00)

**WAC 136-167-030 Termination of approved project after RATA reimbursement.** (1) If a county terminates an uncompleted RATA funded project for which RATA reimbursement has been made, for other than an unanticipated scope change, and is prepared to repay the RATA for all RATA funds received, the county shall, by means of a letter signed by the chair of the board of county commissioners or the county executive as appropriate, inform the county road administration board of its termination of the project. The letter shall state the reasons for termination and commit to repaying all RATA funds received for the project. Upon ~~((acknowledgement))~~ acknowledgment of such termination by the county road administration board, the county shall repay the county road administration board for all RATA funds paid to the county on that project within sixty days of such ~~((acknowledgement))~~ acknowledgment. After receipt of the RATA repayment, the county road administration board will void the CRAB/county contract and allocate the RATA funds to other projects within the region.

(2) If a county terminates an uncompleted RATA funded project for which RATA reimbursement has been made, for other than an unanticipated scope change, and does not want to be required to repay the county road administration board for all RATA funds received, a letter of request signed by the chair of the board of county commissioners or the county executive as appropriate must be sent to the county road administration board. The request must include:

(a) An explanation of the reasons that the project will not proceed to completion;

(b) A statement of the amount of RATA funds which the county does not want to repay; and

(c) An explanation of why the county believes full repayment should not be made.

If the county road administration board grants the request, the county shall repay all RATA funds not exempted from repayment, the CRAB/county contract will be amended, and the remaining RATA funds will be allocated to other projects within the region. If the county road administration board denies the request, full repayment shall be made as provided in subsection (1) of this section.

(3) If after an engineering design study for the RATA funded project has been completed, and as a result of that study it is found that the project scope submitted the final project prospectus must be significantly altered due to factors not anticipated at the time of final prospectus submittal, a county may voluntarily withdraw the project and resubmit a revised project during a later RAP cycle.

A county wishing to voluntarily withdraw a project for an unanticipated scope change shall submit a request signed by the chair of the board of county commissioners or the county executive as appropriate, to the county road administration board notifying the board of the county's intention to withdraw the project and the nature of the unanticipated project scope change. The county may retain up to five percent of the RATA request amount, not to exceed seventy-five thousand dollars for the RATA share of the cost to perform the engineering design study. In order to be eligible to retain the RATA share of the cost to perform the engineering design

study, the project must have begun the engineering design within one year of project approval by the county road administration board and it must be documented in the request that the changed conditions could not have been reasonably anticipated at the time of final prospectus submittal. The director shall make the determination of eligibility for the following conditions:

(a) Unanticipated subsurface conditions identified in a geotechnical report resulting from subsurface explorations (i.e., drilling) that would not normally be completed prior to the final prospectus;

(b) Unanticipated environmental and/or cultural resource issues identified in an environmental or cultural resource discipline report that would not normally be completed prior to the final prospectus submittal;

(c) Changes in project eligibility resulting from annexation or functional classification changes not anticipated prior to final prospectus submittal;

(d) Inability to obtain necessary rights of way from agencies/entities that are not subject to eminent domain (i.e., federal or tribal agencies); or

(e) Major geometric changes required to mitigate impacts identified by the public and/or adjacent property owners as the result of a formal environmental determination, formal public involvement process, or unanticipated costs for utility relocations that were not reasonably anticipated prior to final prospectus submittal.

Upon a determination of eligibility by the director, the county shall repay the county road administration board for all costs in excess of the eligible amount within sixty days of such acknowledgment, the CRAB/county contract will be amended, and the remaining RATA funds will be allocated to other projects within the region. Any determination made by the director under this subsection may be appealed to the full board for a final determination of eligibility. Nothing in this subsection is intended to limit or restrict a county from making a request to the county road administration board as allowed under subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 09-23-044, filed 11/9/09, effective 12/10/09)

**WAC 136-167-040 Lapsing of RATA allocation for approved projects.** To encourage timely development and construction of approved projects, all projects for which RATA funds have been allocated must meet certain project development milestones. Failure to meet the milestones will result in action by the county road administration board to withdraw RATA funds from the project. ~~((This provision will only apply to those projects for which RATA funds have been allocated after July 1, 1995.))~~

(1) For the purposes of this section, a project will be subject to lapsing and withdrawal of its RATA allocation if:

(a) The project has not begun the preliminary engineering ~~((phase))~~ within ~~((four))~~ one year~~((s))~~ of project approval by the county road administration board; or

(b) The project has not begun construction within six years of the date of project approval by the county road administration board.

(2) A project shall be considered in preliminary engineering if ~~((authorization to expend funds))~~ RATA funds have been expended or evidence that non-RATA funds have been expended for preliminary engineering ~~((has been granted by the county legislative authority))~~ as provided for in RCW 36.75.050. A project shall be considered in construction if:

(a) The construction contract for the work has been advertised for bids as provided for in RCW 36.77.020;

(b) A contract has been awarded under the provisions of the small works roster contract award process; or

(c) If done by county forces, the work has commenced.

(3) If an approved project does not meet a required project development milestone, the county road administration board will, at its next regular meeting, withdraw RATA funds from the project.

(4) At any time up to ten days before such meeting, the county may, in writing, request an extension of the lapse date. The county road administration board ~~((executive director))~~ may grant such an extension if ~~((the director))~~ it finds that the delay in project development was for reasons that were both unanticipated and beyond the control of the county, and subject to the following:

(a) A project extension will be granted one time only and will be no more than two years in length; and

(b) The county can demonstrate that the project was actively pursued for completion within the original CRAB/county contract terms and can be completed within a two year extension; and

(c) The request for an extension is based on unforeseeable circumstances that the county could not have anticipated at the time the project was submitted for RATA funding; and

~~((e))~~ (d) An approved time extension will not be grounds for the county to request an increase in the RATA funding of the project; and

~~((d))~~ (e) The executive director will determine a new lapse date, and all of the requirements listed above under subsections (1) and (2) of this section will apply except that further extensions will not be granted.

(5) The CRABoard may at any time place a moratorium on lapsing of projects that are delayed due to CRAB initiated rescheduling and establish a new lapsing date to fit the CRABoard's programming needs. For those projects given a lapsing moratorium, section four shall be held in abeyance until the new lapsing date.

AMENDATORY SECTION (Amending WSR 01-05-008, filed 2/8/01, effective 3/11/01)

**WAC 136-170-030 Terms of CRAB/county contract.**

(1) For projects for which RATA funds are allocated before July 1, 1995, the CRAB/county contract shall include, but not be limited to, the following provisions:

(a) The contract shall be valid and binding (and the county shall be entitled to receive RATA funds) only if such contract is signed and returned to the county road administration board within forty-five calendar days of its mailing by the county road administration board.

(b) The county certifies that it is in compliance with the provisions of chapter 136-150 WAC.



(c) The project will be constructed in accordance with the scope, design and project limits as described in the final prospectus and in accordance with the plans and specifications approved by the county engineer.

(d) The county will notify the county road administration board when a construction contract has been awarded and/or when construction has commenced, and when the project has been completed.

(e) The county road administration board will reimburse counties on the basis of monthly progress payment vouchers received and approved on individual projects in the order in which they are received in the county road administration board office, subject to the availability of RATA funds apportioned to the region or subject to a minimum regional balance determined by the CRABoard for the purposes of cash flow; provided however, that if insufficient RATA funds are available or the legislature fails to appropriate sufficient RATA funds, payment of vouchers may be delayed or denied.

(f) The county will reimburse the RATA in the event a project postaudit reveals ineligible expenditure of RATA funds.

(2) For projects for which RATA funds are allocated on or after July 1, 1995, the CRAB/county contract shall include, but not be limited to, the following provisions:

(a) The contract shall be valid and binding, and the county shall be entitled to receive RATA funding in accordance with the vouchering/payment process as described in chapter 136-180 WAC, only if the contract is properly signed and returned to the county road administration board within forty-five calendar days of its mailing by the county road administration board.

(b) The county certifies that it is in compliance with the provisions of chapter 136-150 WAC.

(c) The project will be constructed in accordance with the scope, design and project limits as described in the final prospectus and in accordance with the plans and specifications approved by the county engineer, and, if applicable, the phased construction plan submitted by the county engineer to the county road administration board.

(d) The county will notify the county road administration board ~~((when a))~~:

(i) If a single construction contract is intended to fully complete the project, at the time of project advertisement, construction contract ((has been awarded and/or when construction has commenced)), and when the project has been completed. Should the small works roster process be utilized, then the initial notice must occur prior to initiating the contractor selection process.

(ii) If county forces are utilized to fully complete the project, at the time of project notice, as required in RCW 36.77.070, commencement of construction activities, and when the project has been completed.

(iii) If the project applies a phased construction methodology, at those times described in a phased construction plan, consistent with subsection (3) of this section.

(e) The county road administration board will reimburse counties on the basis of monthly progress payment vouchers received and approved on individual projects in the order in which they are received in the county road administration

board office, subject to the availability of RATA funds apportioned to the region; or subject to a minimum regional balance determined by the CRABoard for the purposes of cash flow; provided however, that if insufficient RATA funds are available or the legislature fails to appropriate sufficient RATA funds, payment of vouchers may be delayed or denied. Counties are ineligible to receive RATA funded construction cost reimbursements prior to satisfaction of the initial project notice requirement described in subsection (2)(d) of this section.

(f) The county will reimburse the RATA in the event a project postaudit reveals ineligible expenditures of RATA funds.

(g) The county may be required to reimburse the RATA in the event of early termination in accordance with the provisions of chapter 136-167 WAC.

(h) The county agrees to amend the contract in cases where:

(i) Additional RATA funds have been requested and approved under chapter 136-165 WAC;

(ii) Other relief from the original scope, design or project limits has been approved by the county road administration board under chapter 136-165 WAC; or

(iii) A project has been terminated without full RATA reimbursement under WAC 136-167-030(2).

(i) The county agrees to provide periodic project development progress reports as requested by the county road administration board.

(3) Counties may implement a phased construction methodology in the completion of RATA funded projects. A phased construction methodology is described as the process to implement multiple construction contracts through competitive bid and award, contracts awarded through exercise of the small works roster process, or construction by county forces, or a combination of two or more of these three methods, in order to complete a single RATA funded project. If a county elects to use phased construction methodology, construction of at least one of the project phases must commence by the lapsing date and all remaining phases must commence within two years of commencement of the first phase. In the event the county fails to meet either of these timelines, repayment of expended RATA funds for all phases of the project will be required unless waived by the county road administration board in keeping with the provisions of this section.

(a) In order to be considered phased construction, each phase must:

(i) Be distinct, independent, and nonoverlapping construction activities as to location and type of work;

(ii) Result in separate function and utility;

(iii) Be part of related and sequential construction activities that lead to overall project completion;

(iv) Separately and collectively comply with state laws as to procurement of contract work and use of county forces; and

(v) Not be implemented in a way that would otherwise be considered a split project, as described in WAC 136-170-060, without first obtaining approval as a split project.

(b) In order to satisfy notification requirement of subsection (2)(d) of this section, a phased construction plan must be developed and submitted to the county road administration

board at least fifteen calendar days prior to contract bid advertisement, beginning the selection process for a contractor through a small works roster process, or commencement of construction by county forces, whichever occurs first. The phased construction plan must:

(i) Include a description of each construction phase, the contracting method to be employed or that county forces will be used;

(ii) Include an estimated cost and begin and end dates for each construction phase; and

(iii) Describe the relationship between construction phases and ultimate completion of the overall project.

AMENDATORY SECTION (Amending WSR 09-23-044, filed 11/9/09, effective 12/10/09)

**WAC 136-170-060 Splitting ~~((or phasing))~~ of CRAB/county contracts.** (1) A county may split a single rural arterial trust account funded project into multiple adjacent ~~((phased construction))~~ project~~(s)~~ segments only upon written request and approval by the director of the county road administration board.

(2) The county must submit the request prior to advertising for ~~((the))~~ any construction contract, or prior to commencing any construction ~~((should any of the projects be scheduled for completion by day labor))~~ by county forces. The request shall contain detailed information prepared by the county engineer demonstrating fulfillment of the original CRAB/county contract selected through the region's project array, including:

(a) The relationship between the original and segmented project termini;

(b) Each segment's distinct and separate utility; and

(c) The planned timing and funding for each segment.

(3) Upon receipt of the county's written request to split a RAP project, the CRAB director will consider and may approve the split.

(4) Upon such approval, a revised CRAB/county contract will be prepared, and sent to the county for its execution and returned in the same manner as for the original contract. The final contract must be fully executed prior to advertisement for contract construction, or if done by county forces, prior to commencing construction.

~~((5))~~ ~~((Funding for split projects will be assigned based upon the breakdown of costs specified in the county's request letter.~~

~~((6))~~ Failure of a county to ~~((execute))~~ sign and return an amended CRAB/county contract within forty-five calendar days of receipt shall nullify any split requests and any other county road administration board actions associated with the split request.

~~((7))~~ (6) Construction on at least one of the split project~~(s)~~ segments must commence by the lapsing date of the original project and all remaining portions must proceed to construction within two years of commencement of the first project. In the event the county fails to meet either of these timelines, repayment of expended RATA funds for all portions ~~((or phases))~~ of the projects will be required unless waived by the county road administration board in keeping with provisions of WAC 136-167-030.

~~((8))~~ ~~Split projects will be considered ineligible for any increases in RATA funding or revisions in scope.~~

## WSR 11-05-008

### PERMANENT RULES SECRETARY OF STATE

(Elections Division)

[Filed February 3, 2011, 11:17 a.m., effective March 6, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The proposed rules:

- Implement the federal Military and Overseas Voter Empowerment Act of 2009;
- Repeal outdated rules regarding municipal elections;
- Clarify procedures for filing fees, filing fee petitions, and withdrawal of candidacies;
- Provide standards for ballot design and layout;
- Clarify when a nonpartisan county office appears in the primary;
- Require ballot measure text printed on the petitions to be submitted when signature petitions are submitted; and
- Adjust requirements for submitting material for the state voters' pamphlet.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 434-208-070, 434-208-010, 434-208-020 and 434-208-030; and amending WAC 434-208-060, 434-215-025, 434-215-065, 434-235-010, 434-235-020, 434-235-030, 434-235-040, 434-250-030, 434-379-008, 434-381-110, 434-381-120, 434-381-130, 434-381-170, 434-381-180, and 434-381-190.

Statutory Authority for Adoption: RCW 29A.04.611, 29A.04.255.

Adopted under notice filed as WSR 10-24-040 on November 23, 2010.

Changes Other than Editing from Proposed to Adopted Version: It was clarified in WAC 434-235-040(2) that, only for service and overseas voters, the date of the signature, not the date of the postmark, validates the ballot.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 2, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 11, Repealed 4.

Number of Sections Adopted Using Negotiated Rule Making: New 4, Amended 15, Repealed 4; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 3, 2011.

Steve Excell  
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

**WAC 434-208-060 Electronic filings.** (1) In addition to those documents specified by RCW 29A.04.255, the secretary of state or the county auditor shall accept and file in his or her office electronic transmissions of the following documents:

~~((+))~~ (a) The text of any proposed initiative, referendum, or recall measure and any accompanying documents required by law;

~~((2))~~ (b) Any minor party or independent candidate filing material for president and vice-president, except nominating petitions;

~~((3))~~ (c) Lists of presidential electors selected by political parties or independent candidates;

~~((4))~~ (d) Voted ballots (~~provided the voter agrees to waive the secrecy of his or her ballot~~) and signed affidavits received no later than 8:00 p.m. on election day, as long as hard copies are received prior to certification of the election. Consistent with WAC 434-250-080, it is the first ballot and affidavit received that may be processed and counted. Voted ballots received electronically no later than 8:00 p.m. on election day are timely even if the postmark on the return envelope is after election day;

~~((5))~~ (e) Resolutions from cities, towns, and other districts calling for a special election; and

~~((6))~~ (f) Voter registration forms.

(2) If payment of a fee is required, acceptance of an electronic filing is conditional until the fee is received.

(3) If the original document must be signed, acceptance of an electronic filing is conditional until receipt of the original document. Except for mail ballots, the original document must be received no later than seven calendar days after receipt of the electronic filing.

(4) No initiative, referendum, or recall petition signatures may be filed electronically.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-208-070      Electronic filings not accepted.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-208-010      Advisory election upon contemplation of classification advancement.

WAC 434-208-020

Remedial steps—Third class city under mayor-council government.

WAC 434-208-030

Determination of original terms of councilmen—Second, third, or fourth class city or town.

#### NEW SECTION

**WAC 434-215-024 Insufficient payment of a filing fee.** If, after the last day to withdraw, a county auditor learns that a candidate provided insufficient funds for a filing fee, the county auditor must recoup that cost through other allowable means.

AMENDATORY SECTION (Amending WSR 10-03-072, filed 1/18/10, effective 2/18/10)

**WAC 434-215-025 Filing fee petitions.** (1) When a candidate submits a filing fee petition in lieu of his or her filing fee, as authorized by RCW 29A.24.091, voters eligible to vote on the office in the general election are eligible to sign the candidate's filing fee petition.

(2) The filing fee petition described in RCW 29A.24.-101(3) does not apply. The filing fee petition must be in substantially the following form:

The warning prescribed by RCW 29A.72.140; followed by:

"We, the undersigned registered voters of [the jurisdiction of the office], hereby petition that [candidate's] name be printed on the ballot for the office of [office for which candidate is filing a declaration of candidacy]."

(3) A candidate submitting a filing fee petition in the place of a filing fee may not file the declaration of candidacy electronically.

(4) A candidate submitting a filing fee petition must submit all signatures when filing the declaration of candidacy. The candidate cannot supplement the signatures at a later date.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 10-14-091, filed 7/6/10, effective 8/6/10)

**WAC 434-215-065 Withdrawal of candidacy.** Consistent with RCW 29A.24.131, a candidate may withdraw his or her declaration of candidacy at any time before the close of business on the Thursday following the last day for candidates to file (~~under RCW 29A.24.050 by filing~~). The candidate must file a signed request that his or her name not be printed on the ballot. This request to withdraw must be filed with the officer (~~with whom~~) who accepted the declaration of candidacy (~~was filed, a signed request that his or her name not be printed on the ballot~~) and, once filed, cannot be revoked. There shall be no withdrawal period for declarations of candidacy filed during special filing periods. The filing officer has discretion to permit the withdrawal of a filing for any elected office of a city, town, or special district at the

request of the candidate at any time before a primary if the primary election ballots have not been formatted. If no primary election is held for that office, the filing officer has discretion to permit the withdrawal at any time before the general election ballots are formatted. If the jurisdiction is located in more than one county, withdrawal of a filing may only be accepted if ballots have not been formatted in all affected counties.

#### NEW SECTION

**WAC 434-230-012 Ballot design.** (1) The ballot must have a clear delineation between the ballot instructions and the first ballot measure or office through the use of white space, illustration, shading, color, symbol, font size, or bold type.

(2) The following standards for ballot design and layout are provided pursuant to RCW 29A.36.161:

(a) If space allows, allow the instructions to occupy their own column;

(b) Avoid the use of ALL CAPITAL LETTERS. Mixed-case letters are more legible than ALL CAPITAL LETTERS;

(c) Avoid centered type. Left-aligned type is more legible than centered type;

(d) Avoid using more than one font. Using multiple fonts requires the eye to stop reading and adjust. Use one font, preferably a sans-serif font such as Arial, Univers, or Verdana;

(e) Use color and shading consistently, such as to differentiate instructions from ballot section dividers and contest information;

(f) If space allows, use a 12-point type size. Do not use a type size lower than 8-point; and

(g) Maintain consistent font and type size throughout the ballot. For example, do not adjust type size for one race. Type size should be adjusted throughout all comparable areas of the ballot or, at a minimum, by page.

(3) The secretary of state shall publish and distribute an illustrated version of best practices for ballot design and layout.

#### NEW SECTION

**WAC 434-230-047 Nonpartisan county office.** No primary may be held for any nonpartisan county office if, after the last day allowed for candidates to withdraw, there are no more than two candidates filed for the position. The county auditor shall, as soon as possible, notify all candidates so affected that the office for which they filed will not appear on the primary ballot. This section does not apply if a county charter specifically requires a primary.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

**WAC 434-235-010 Scope.** (1) This chapter implements the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Sec. 1973ff, and the provisions for service and overseas voters in Title 29A RCW.

(2) Uniformed service voter is defined in 42 U.S.C. Sec. 1973ff-6(1) as:

(a) A member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(b) A member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(c) A spouse or dependent who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

(3) Service voter is defined in RCW 29A.04.163 as any elector of the state of Washington who:

(a) Is a member of the armed forces under 42 U.S.C. Sec. 1973ff-6 while in active service;

(b) Is a member of a reserve component of the armed forces;

(c) Is a student or member of the faculty at a United States military academy;

~~((e))~~ (d) Is a member of the merchant marine of the United States(;

~~(d) Is a program participant as defined in RCW 40.24.020);~~ or

(e) Is a member of a religious group or welfare agency officially attached to and serving with the armed forces of the United States.

(4) Overseas voter is defined in 42 U.S.C. Sec. 1973ff-6(5) as:

(a) An absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(b) A person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(c) A person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(5) Overseas voter is defined in RCW 29A.04.109 as any elector of the state of Washington outside the territorial limits of the United States ~~((or the District of Columbia)).~~

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

**WAC 434-235-020 Voter registration.** (1) A uniformed, service, or overseas voter may register to vote by providing:

(a) A voter registration application issued by the state of Washington;

(b) A federal post card application issued by the federal voting assistance program;

(c) A federal write-in absentee ballot issued by the federal voting assistance program;

(d) A national mail voter registration form issued by the election assistance commission; or

(e) An absentee ballot with a valid signature on the return envelope oath.

(2) Pursuant to RCW 29A.40.010, a uniformed, service, or overseas voter does not have to be registered in order to request an absentee ballot. Consequently, a uniformed, ser-

vice, or overseas voter may request a ballot and be registered after the registration deadlines of RCW 29A.08.140 have passed.

(a) If the voter is not currently registered, the county auditor must register the voter immediately. The voter must be flagged in the voter registration system ~~((accordingly))~~ as a service or overseas voter.

(b) A uniformed, service, or overseas voter must use his or her most recent residential address in Washington, or the most recent residential address in Washington of a family member.

(c) If the county auditor is unable to precinct the voter due to a missing or incomplete residential address on the application, the county auditor must attempt to contact the voter to clarify the application. If, in the judgment of the county auditor, there is insufficient time to correct the application before the next election or primary, the county auditor must issue the absentee ballot as if the voter had listed the county auditor's office as his or her residence. A special precinct for this purpose may be created. Upon its return, the ballot must be referred to the county canvassing board. The only offices and issues that may be tabulated are those common to the entire county and congressional races based on the precinct encompassing the auditor's office. ~~((Such registrations are only valid for the primary or election for which the ballot was issued. If the actual precinct is not determined before the next primary or election, the registration must be canceled.))~~

(d) A voter who registers to vote by signing the return envelope of the absentee ballot is not required to provide a driver's license number, Social Security number or other form of identification as required in RCW 29A.08.107.

(3) The county auditor must offer a uniformed, service, or overseas voter the option of receiving blank ballots by e-mail or postal mail. This requirement is satisfied if the uniformed, service, or overseas voter registers on an application that offers electronic ballot delivery as an option, or if the voter expresses a preference when registering, updating a registration, or requesting a ballot. The county auditor must attempt to contact the voter by phone, e-mail, postal mail, or other means. If the voter does not indicate a preference or does not respond, the county auditor must send ballots by postal mail.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

**WAC 434-235-030 Absentee voting.** (1) A uniformed, service, or overseas voter may request or return an absentee ballot by:

- (a) Any manner authorized by WAC 434-250-030;
- (b) A federal post card application issued by the federal voting assistance program; or
- (c) A federal write-in absentee ballot issued by the federal voting assistance program.

(2) Pursuant to RCW 29A.40.070, absentee ballots issued to registered uniformed, service, or overseas voters must be mailed at least thirty days prior to the election or primary. Requests for absentee ballots received after that day must be processed immediately.

(3) The county auditor ~~((may))~~ must issue an absentee ballot by mail, e-mail, or fax ~~((or other means as))~~ if specifically requested by the voter. A ballot does not have to be mailed if it is e-mailed or faxed to the voter. If an e-mail is returned as undeliverable and the voter has not provided an alternate e-mail address, then the ballot must be sent by postal mail.

(4) ~~((Pursuant to RCW 29A.40.061, the county auditor shall provide the appropriate web site information with the absentee ballot.))~~ Ballot materials must include the mailing address, phone number, fax number, e-mail address, and web site of the county auditor's office to enable a voter to contact the elections office for additional information about the election. Ballot materials must include instructions on how to confirm that the voted ballot has been received by the elections office. This information must be provided in a format that the voter can keep after the voted ballot has been returned.

(5) If the county auditor is unable to issue an absentee ballot due to insufficient information, the county auditor must attempt to contact the voter to clarify the request. If the county auditor is unable to obtain sufficient information to issue the absentee ballot, the county auditor must attempt to notify the voter of the reason that the ballot was not issued.

(6) Pursuant to RCW 29A.40.150, return envelopes must be printed to indicate that they may be returned postage-free.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

**WAC 434-235-040 Processing absentee ballots.** (1) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of a federal write-in absentee ballot or a special absentee ballot if the intention of the voter can be ascertained.

(2) ~~((The absentee ballots referred to in this section must be received prior to certification of the election or primary.))~~ For service and overseas voters, the date on the envelope associated with the voter's signature, rather than the postmark on the envelope, determines the validity of the ballot. The signature on the oath must be dated no later than election day. ((An absentee ballot returned electronically is invalid until the original is received.))

(3) Voted ballots returned by fax or e-mail must meet the requirements of RCW 29A.40.150 and WAC 434-208-060.

(4) The county auditor must provide statistics on voting by uniformed, service and overseas voters in the certification report required by RCW 29A.60.235 and in response to requests by the federal election assistance commission.

#### NEW SECTION

**WAC 434-235-050 On-line information.** The secretary of state and each county auditor must provide information on-line that includes, at a minimum, how to:

- (1) Register to vote using a paper or on-line application;
- (2) Confirm a registration;
- (3) Request a ballot or replacement ballot;
- (4) Update a residential address or mailing address;

- (5) Contact the elections office by phone, fax, e-mail, mailing address, and physical address;
- (6) Find information about the next election;
- (7) Confirm via phone, e-mail or web site that a voted ballot has been received; and
- (8) Find election results.

AMENDATORY SECTION (Amending WSR 10-14-091, filed 7/6/10, effective 8/6/10)

**WAC 434-250-030 Applications.** (1) Each county auditor who does not conduct all elections by mail must provide a form to allow a poll voter to become an ongoing absentee voter. The form must include, but not be limited to, the following:

- (a) A space for the voter to print his or her name and the address at which he or she is registered to vote;
  - (b) The address to which the ballot is to be mailed; and
  - (c) A space for the voter to sign and date the application.
- (2) As authorized by RCW 29A.40.020 and 29A.40.030, requests for a single absentee ballot may be made in person, by telephone, electronically, ((or)) in writing, ((and may be made)) or by a family member or registered domestic partner. With the exception of county auditors who conduct primaries and elections entirely by mail, each county auditor must provide applications for requests made in writing. The form must include, but not be limited to, the following:

- (a) A space for the voter to print his or her name and the address at which he or she is registered to vote;
  - (b) The address to which the ballot is to be mailed;
  - (c) A space for the voter to indicate for which election or elections the application is made; and
  - (d) A space for the voter to sign and date the application.
- (3) As authorized by RCW 29A.40.050, requests for a special absentee ballot must be made in writing and each county auditor must provide the applications. In addition to the requirements for a single absentee ballot, as provided in subsection (2) of this section, the form must include:

- (a) A space for an overseas or service voter not registered to vote in Washington to indicate his or her last residential address in Washington; and
- (b) A checkbox requesting that a single absentee ballot be forwarded as soon as possible.

The county auditor shall honor any application for a special absentee ballot that is in substantial compliance with the provisions of this section. Any application for a special absentee ballot received more than ninety days prior to a primary or general election may be either returned to the applicant with the explanation that the request is premature or held by the auditor until the appropriate time and then processed.

(4) As authorized by RCW 29A.40.080, requests for an absentee ballot may be made by a resident of a health care facility, as defined by RCW 70.37.020(3). Each county shall provide an application form for such a registered voter to apply for a single absentee ballot by messenger on election day. The messenger may pick up the voter's absentee ballot and deliver it to the voter and return it to the county auditor's office.

AMENDATORY SECTION (Amending WSR 06-23-094, filed 11/15/06, effective 12/16/06)

**WAC 434-379-008 Signed petitions.** (1) To allow for sufficient personnel to accept and process signed petitions, the sponsor of an initiative or referendum must make an appointment with the elections division for submission of the signed petitions to the secretary. Petitions submitted prior to or at the appointment that clearly bear insufficient signatures must be rejected pursuant to RCW 29A.72.160. If the petitions are accepted and filed, additional petitions may be submitted until the applicable deadline established by RCW 29A.72.160. When submitting the petitions, the sponsor must also provide the text of the measure, exactly as it was printed on the circulated petitions, in an electronic Microsoft Word format.

(2) Signatures on initiative and referendum petitions submitted to the secretary may not be removed from the petition or eliminated from the signature count. Letters submitted to the secretary requesting the removal of one's own signature from a petition must be retained by the secretary as part of the public record for the petition.

AMENDATORY SECTION (Amending WSR 02-02-067, filed 12/28/01, effective 1/28/02)

**WAC 434-381-110 Candidate and committee contacts.** Every candidate or committee appearing in the state voters' pamphlet shall designate a contact person with whom the secretary shall communicate all matters related to the pamphlet. Within five business days of the appointment of the initial members, the committee shall provide a name, mailing address, telephone number, ((and)) fax number and e-mail address as applicable. In the case of candidates the secretary shall use the information on the declaration of candidacy unless the candidate provides different information pursuant to this section.

AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

**WAC 434-381-120 Deadlines.** (1) Candidate statements and photographs shall be submitted to the secretary of state no later than the Friday following the last day of the filing period.

(2) For ballot measures, including initiatives, referenda, alternatives to initiatives to the legislature, and constitutional amendments, the following documents shall be filed with the secretary of state on or before the following deadlines:

(a) Appointments of the initial two members of committees to prepare arguments for and against measures:

(i) For an initiative to the people or referendum measure: Within ten business days after the submission of signed petitions to the secretary of state;

(ii) For an initiative to the legislature, with or without an alternative, constitutional amendment or referendum bill, within ten business days after the adjournment of the regular or special session at which the legislature approved or referred the measure to the ballot:

(b) Appointment of additional members of committees to prepare arguments for and against ballot measures, not

later than the date the committee submits its initial argument to the secretary of state;

(c) Arguments for or against a ballot measure, no later than ~~((twenty calendar))~~ fifteen business days following appointment of the initial committee members;

(d) Rebuttals of arguments for or against a ballot measure, by no later than ~~((fourteen calendar))~~ ten business days following the transmittal of the final statement to the committees by the secretary. The secretary shall not transmit arguments to opposing committees for the purpose of rebuttals until both arguments are complete.

(3) If a ballot measure is the product of a special session of the legislature and the secretary of state determines that the deadlines set forth in subsection (2) of this section are impractical due to the timing of that special session, then the secretary of state may establish a schedule of deadlines unique to that measure.

(4) The deadlines stated in this rule are intended to promote the timely publication of the voters' pamphlet. Nothing in this rule shall preclude the secretary of state from accepting a late filing when, in the secretary's judgment, it is reasonable to do so. Once statements or arguments are submitted to the secretary, changes by the candidate or committee will not be accepted unless requested by the secretary.

AMENDATORY SECTION (Amending WSR 02-02-067, filed 12/28/01, effective 1/28/02)

**WAC 434-381-130 Size and quality of photographs.**

Candidate photographs submitted for inclusion in the voters' pamphlet must have been taken within the past five years ~~((and should be sized between two and one-half inches by three inches and eight by ten inches))~~. Photos must be limited to the head and shoulders, with a light-colored background, but not a white background. Color photos are preferred, though black and white photos are acceptable. The photo size must be no smaller than two and one-half inches by three inches, and no larger than eight inches by ten inches. Photos submitted digitally must be a resolution no less than 300 dpi and not digitally altered. Lab processed no gloss prints meeting the size and quality specifications may also be submitted. The secretary may adjust or crop photos as necessary to fit the publication format. Photos not meeting the specifications may be rejected.

AMENDATORY SECTION (Amending WSR 10-03-072, filed 1/18/10, effective 2/18/10)

**WAC 434-381-170 Statement and argument format.**

(1) Statements or arguments submitted for inclusion in the voters pamphlet shall not exceed the word limit set by statute.

(a) Arguments for or against measures may contain up to four headings used to highlight major points in the argument and will count toward the maximum word count set for arguments. Rebuttals may not contain headings;

(b) The four headings may not exceed fifteen words for each heading;

(c) Photographs or charts may be used in ~~((candidate))~~ statements or arguments substituting fifty words from the statement or argument for each square inch used by the photograph or chart. This subsection does not apply to the photo-

graphs submitted pursuant to WAC 434-381-130 (size and quality of photographs).

(2) Statements and arguments submitted to the secretary of state shall be printed in a format that in the opinion of the secretary will provide the best reproduction.

(a) Statements and arguments will be ~~((typeset))~~ laid out in a standard font without the use of boldface ~~((or))~~, underlining, or all caps;

(b) Italics may be used to add emphasis to statements or arguments;

(c) Argument headings will be ~~((typeset))~~ laid out in boldface letters; and

(d) Statements are limited to one paragraph per fifty words. Arguments are limited to four paragraphs. Rebuttals are limited to one paragraph.

AMENDATORY SECTION (Amending WSR 02-02-067, filed 12/28/01, effective 1/28/02)

**WAC 434-381-180 Editing statements and arguments.** The secretary of state is not responsible for the content of arguments or statements and shall not edit the content of statements or arguments:

(1) The secretary may correct obvious errors in grammar, spelling or punctuation;

(2) The secretary shall promptly attempt to notify any candidate or committee, by any means the secretary deems reasonable under the circumstances, if a statement or argument exceeds the maximum number of words. If the candidate or committee does not provide the secretary with a revised statement or argument that ~~((does not exceed))~~ meets the word limit within three business days after the deadline for submission of the statement or argument, then the secretary shall modify the statement to fit the limit by removing ~~((words or))~~ full sentences, starting at the end, until the maximum word limit is reached ~~((More words than necessary to achieve the maximum word limit may be removed by the secretary so that the statement or argument ends in a complete sentence))~~;

(3) The secretary shall notify any committee that submits a title or identification for their members that does not conform to WAC 434-381-160(2). If the committee does not provide the secretary with a revised title or identification that meets the requirements established in WAC 434-381-160(2) within three business days after the deadline for submission, the secretary shall publish the name without any title or identification;

(4) Prior to publishing the pamphlet the secretary shall make a reasonable effort to provide a proof copy to the candidate or committee as it will appear showing any changes to the statement or argument; and

(5) ~~((After submission of the statement or argument to the secretary,))~~ Candidates or committees may only correct obvious errors or inaccuracies ~~((discovered))~~ made by the secretary that they discover in their own proof copy. Changes in content are not allowed. Changes must be received by the secretary within three business days after proofs are sent by the secretary.

AMENDATORY SECTION (Amending WSR 02-02-067, filed 12/28/01, effective 1/28/02)

**WAC 434-381-190 Prevention of art work, photographs or other material by candidate.** (1) The secretary shall be prohibited from using the art work, photography, or other materials provided by candidates for public office in the voters' pamphlet in which the candidate's name appears, except that required by law or rule for the candidate's statements or, information provided by the office that publishes the pamphlet;

(2) Prior to final printing of the voters' pamphlet (~~of a responsible employee of the office of~~), the secretary (~~of state~~) will review complete "camera ready" copies of each edition of the voters' pamphlet;

(3) Language shall be placed into contracts, with the office of the secretary of state to produce the voters' pamphlet, to certify that those providing content materials for the voters' pamphlet are not candidates for public office and those individuals will not run for public office while their materials are being used in a state or local pamphlet produced in conjunction with the state voters' pamphlet.

**WSR 11-05-016**  
**PERMANENT RULES**  
**YAKIMA VALLEY**  
**COMMUNITY COLLEGE**

[Filed February 4, 2011, 9:30 a.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: The purpose of the Yakima Valley Community College parking and traffic regulations is to protect pedestrians, control vehicular traffic, assure emergency access and minimize traffic disturbance. Changes to the existing rules will clarify some areas and bring the rule current with the variety of parking options now available at the college.

Citation of Existing Rules Affected by this Order: Amending 16.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 10-23-031 on November 9, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 16, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 16, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 3, 2011.

Suzanne M. West  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 97-19-026, filed 9/8/97, effective 10/9/97)

**WAC 132P-116-020 Definitions.** As used in this chapter, the following words shall mean:

(1) "College." Yakima Valley Community College, or any additional community college hereafter established with Community College District 16, state of Washington, and collectively, those responsible for its control and operations.

(2) "College community." Trustees, students, employees, and guests on college owned or controlled facilities.

(3) "College year." Unless otherwise designated, the time period commencing with the fall quarter of a community college academic year and extending through the immediately subsequent winter, spring, and summer quarters. The fall quarter shall be considered the first quarter of the college year for parking and traffic control purposes.

(4) "College facilities." ~~((Includes))~~ Any or all property owned or operated by the college.

~~((4))~~ (5) "Student." ~~((Includes))~~ All individuals enrolled at the college, or in any educational program operating on the college facilities, both full and part time.

~~((5))~~ (6) "Director of ~~((facilities))~~ facility operations." An employee of Yakima Valley Community College, District 16, state of Washington, who is responsible to the vice-president for administrative services for campus security, safety, parking and traffic control.

~~((6))~~ (7) "Vehicle." All modes of transportation including, but not limited to automobiles, trucks, motor-driven cycles, scooters, or any vehicle powered by a battery or engine, and also including bicycles and other nonengine vehicles.

~~((7))~~ (8) "Visitor." Any individual who comes to campus who is neither an employee nor a registered student of the college.

~~((8))~~ (9) "Permanent permits." Permits that are valid for a college year or quarter.

~~((9))~~ "Temporary permits." Permits valid for less than a quarter and/or a specific period designated on the permit.

(10) "College year." Unless otherwise designated, the time period commencing with the fall quarter of a community college calendar year and extending through the immediately subsequent winter, spring, and summer quarters. The fall quarter shall be considered the first quarter of the college year for parking and traffic control purposes.

~~((11))~~ (10) "Special permits." Permits issued for specific purposes by campus security to enhance the business or operation of the college.

~~((12))~~ "Car pool permits." Permits issued to individuals by campus security to individuals driving a car pool consisting of a minimum of two adults.

(13) "Resident student permits." Permits issued by campus security to students living in the student residence center.

~~((14))~~ (11) "Pay-by-the-day permits." Permits dispensed by machine located in parking lots.



(12) "Temporary permits." Permits issued by campus security for a designated period of time.

(13) "Paid reserved parking permits." Permits issued by campus security for a specified parking space reserved for that permit holder only.

~~((15))~~ (14) "Disabled ~~((person))~~ parking permit." A permit issued to a person with a physical, mental, or sensory impairment.

~~((16))~~ (15) "Designated permit areas." Designated areas of parking on college facilities requiring a permit to park.

~~((17))~~ (16) "Parking/traffic appeals board." Board responsible for hearing appeals of parking/traffic citations.

~~((18))~~ (17) "Business day." ~~((Set forth in RCW 42.04.060.))~~ Every working day of the week that includes Monday through Friday and excludes public holidays and weekends.

(18) "Hourly parking." Designated area with parking meters for individual stalls.

(19) "Properly displayed." In clear view, on front windshield, on rear window, face up on dashboard, or hung on inside rearview mirror.

AMENDATORY SECTION (Amending WSR 97-19-026, filed 9/8/97, effective 10/9/97)

**WAC 132P-116-040 Permits required for vehicles in designated permit areas.** Students, faculty and staff shall not stop, park or leave a vehicle, attended or unattended, in designated permit areas without a parking permit. All persons parking in designated permit areas must have the permit properly ~~((placed in or on the vehicle by the first business day of the second week of each quarter. Warning citations will be issued during the first week of the quarter))~~ displayed.

AMENDATORY SECTION (Amending WSR 97-19-026, filed 9/8/97, effective 10/9/97)

**WAC 132P-116-050 Registration of student, faculty, staff, and visitors vehicles.** Students shall register their vehicles per WAC 132P-116-060(1). Student permits are not required unless the student is a resident of the student residence center per WAC 132P-116-060(3). Students, faculty, and staff shall obtain parking permits at the security office. Visitors shall park in areas designated as "visitor" parking and shall obtain a permit at the ~~((college information office or))~~ campus security office.

AMENDATORY SECTION (Amending WSR 97-19-026, filed 9/8/97, effective 10/9/97)

**WAC 132P-116-060 Authorization for issuance of permits.** The campus security office is authorized to issue parking permits to students, faculty and staff of the college pursuant to the following regulations:

(1) Students will register their vehicle(s) ~~((with the registration))~~ using a "Student Permit Application" form at the campus security office at the beginning of each academic quarter.

(2) Faculty and staff shall be issued a parking permit upon the registration of their vehicles at the beginning of fall quarter or at the time of their employment.

(3) Resident students shall obtain a parking permit at the campus security office within five business days of becoming a resident of the student residence center.

(4) Campus security may issue temporary and special parking permits when such permits are necessary to enhance the business or operation of the college.

(5) Any permit holder may obtain a temporary parking permit~~((s))~~ at the campus security office without charge for an unregistered vehicle when necessary due to the ~~((nonavailability))~~ unavailability of his or her registered vehicle. Issuance of such permit is left to the discretion of the campus security office.

(6) Permits are issued to an individual and are not transferable. If the individual is no longer attending or employed by the college, the permit is invalid.

(7) Any permit holder may obtain a replacement permit for a replacement fee from the campus security office upon request and explanation of the loss or destruction of the original permit.

(8) Pay-by-the-day permits are not transferrable between individuals.

AMENDATORY SECTION (Amending WSR 97-19-026, filed 9/8/97, effective 10/9/97)

**WAC 132P-116-070 Valid permit.** A valid parking permit is:

(1) An unexpired **permanent** permit registered and properly displayed.

(2) A **temporary unexpired** permit issued by campus security and properly displayed.

(3) A **special unexpired** permit issued by campus security and properly displayed.

~~((4))~~ ~~((A disabled person permit issued by campus security and properly displayed.~~

~~((5))~~ A valid unexpired disabled ~~((person))~~ parking ~~((sticker))~~ placard, license plate or card issued by the state of Washington and properly displayed.

~~((6))~~ ~~((A resident student permit issued by campus security and properly displayed.~~

~~((7))~~ ~~((A car pool permit issued by campus security and properly displayed.~~

~~((8))~~ ~~((A reserved permit issued by campus security and properly displayed.))~~ (5) Unexpired pay-by-the-day permit issued by machine with the current date and properly displayed.

(6) A paid reserved permit issued by campus security with the current quarter, lot designation, and properly displayed.

(7) Load zone permit issued by campus security and properly displayed.

AMENDATORY SECTION (Amending WSR 97-19-026, filed 9/8/97, effective 10/9/97)

**WAC 132P-116-080 Display of permit.** All parking permits shall be placed at a designated location within the

vehicle in plain view. If the permit is not in plain view, a citation ~~((will))~~ may be issued.

AMENDATORY SECTION (Amending WSR 97-19-026, filed 9/8/97, effective 10/9/97)

**WAC 132P-116-120 Responsibility of ~~((person))~~ current registered vehicle owner to whom permit is issued.** The ~~((person))~~ current registered owner of the vehicle to whom a permit is issued is responsible for all violations of the parking and traffic rules and regulations involving the vehicle to which the permit is affixed. In the event that a vehicle in violation does not have a permit displayed, the current registered owner will be responsible for the violation(s).

AMENDATORY SECTION (Amending WSR 97-19-026, filed 9/8/97, effective 10/9/97)

**WAC 132P-116-130 Designation of parking spaces.** The parking spaces available on campus shall be designated and allocated in such a manner as will best achieve the objective of the rules and regulations contained in this chapter and shall include, but not be limited to:

- (1) Faculty and staff spaces.
- (2) Student spaces.
- (3) Disabled ~~((person))~~ parking spaces.
- (4) ~~((Such parking spaces may be designated for other purposes as deemed necessary.))~~ Paid reserved spaces.
- (5) Pay-by-the-day spaces.
- (6) Hourly paid parking spaces (metered).
- (7) Such parking spaces may be designated for other purposes as deemed necessary.

AMENDATORY SECTION (Amending WSR 97-19-026, filed 9/8/97, effective 10/9/97)

**WAC 132P-116-140 Parking within designated spaces.** (1) Any person parking a vehicle at a college facility shall park the vehicle in designated parking areas only. These areas are marked by curbs, signs, or white or yellow line(s). Parking on or over a line constitutes a violation.

(2) No vehicle may be parked on any area that has been landscaped or designated as a walkway or pathway (paved or unpaved), except for college vehicles, emergency vehicles, or approved agents.

(3) No vehicle may be stopped, parked, or left at a college facility in a designated permit area without a valid parking permit, with the exception of trucks or cars making deliveries.

(4) No vehicle shall be parked on campus for a period in excess of seventy-two hours, unless ~~((cleared through))~~ approved in advance by the campus security office. Vehicles which have been parked in excess of seventy-two hours shall be impounded and stored at the expense of either or both owner and operator.

(5) ~~((Staff who require parking longer than normal parking hours may apply through the campus security office for permission.))~~

~~((6))~~ All vehicles shall ~~((follow))~~ obey traffic arrows and other markings established for the purpose of directing traffic on campus.

~~((7))~~ (6) No vehicle shall be parked ~~((so as to occupy))~~ in such a manner that it occupies any portion of more than one parking space as designated within the parking area. The fact that other vehicles may have been so parked as to require the vehicle to occupy a portion or more than one space or stall shall not constitute an excuse for ~~((a violation of))~~ violating this section unless weather conditions ~~((are such as to))~~ make this impossible.

~~((8))~~ (7) No vehicle shall be parked in such a manner ~~((as to))~~ that it interferes with traffic, creates a hazardous condition, hinders maintenance~~((s))~~ or emergency vehicles, or otherwise interferes with the operation of the college.

~~((9) No vehicle shall back into parking stalls.))~~

AMENDATORY SECTION (Amending WSR 97-19-026, filed 9/8/97, effective 10/9/97)

**WAC 132P-116-170 Parking in prohibited places.** (1) No person shall stop, stand, or park any vehicle so as to obstruct traffic along or upon any street or sidewalk.

(2) No vehicle shall be parked at any place where official signs or other markings prohibit parking, or within fifteen feet of a fire hydrant.

(3) No person shall park in a place where there is not a parking stall designated by lines or signs.

AMENDATORY SECTION (Amending Order 21-80, Resolution No. 21-80, filed 8/27/80)

**WAC 132P-116-180 Control and regulation of traffic.** Drivers shall comply with the directions given them by the campus ~~((patrol person in))~~ security personnel regarding the control and regulation of traffic.

AMENDATORY SECTION (Amending WSR 97-19-026, filed 9/8/97, effective 10/9/97)

**WAC 132P-116-210 Two-wheeled motorbikes, bicycles, skateboards, ~~((or))~~ rollerblades, or roller skates.** (1) All two-wheeled vehicles powered by a battery or engine, licensed by the state of Washington, shall park in ~~((a space designated for motoreycles))~~ designated parking areas only.

(2) Bicycles and other nonengine cycles shall be subject to the posted or published regulations as established.

(3) No bicycle shall be parked inside a building, near a building exit, or on a path or sidewalk. Bicycles must be secured to racks as provided.

(4) Skateboarding ~~((and))~~ rollerblading ~~((is))~~ and roller skating are not permitted on campus.

AMENDATORY SECTION (Amending WSR 97-19-026, filed 9/8/97, effective 10/9/97)

**WAC 132P-116-220 Report of accident.** The operator of any vehicle involved in an accident on campus resulting in injury to, or death of any person, or claimed damage to either or both vehicles in any amount, shall within twenty-four hours~~((s))~~ report such accident to the campus security office. This does not relieve any person so involved in an accident from the responsibility to file a state of Washington motor vehicle accident report as required by state law.

AMENDATORY SECTION (Amending WSR 97-19-026, filed 9/8/97, effective 10/9/97)

**WAC 132P-116-250 Issuance of traffic citations.**

Upon violation(s) of any of the rules and regulations contained in this document, security officers, or ~~((designee))~~ designated traffic patrol are authorized to issue traffic citations, setting forth the date, permit number, the approximate time, license number, name of permit holder, infraction, officer and schedule of fines. Such traffic citations may be served by attaching or affixing a copy thereof in some prominent place outside such vehicle or by personally serving the citation to the operator.

Violation(s) of the campus traffic code include but are not limited to:

(1) **No parking permit displayed.** A college parking permit is necessary when parking in any designated permit area on college facilities. The permit must be displayed as set forth herein.

(2) **Failure to stop at stop signs/signals.** Failure to bring a vehicle to a complete stop at properly erected and identified stop signs/signals.

(3) **Failure to yield right of way.** The act of depriving another vehicle or pedestrian of the right of way at an intersection or crosswalk.

(4) **Improper parking.** Parking a vehicle in areas that are intended for purposes other than parking, i.e., fire lanes, driveways, sidewalk, lawns, or taking up more than one parking stall.

(5) **Permit violations.** Parking in designated permit areas without proper permit.

(6) **Negligent/reckless driving.** The operation of a vehicle in such a manner as to place persons or property in danger of injury or grievous harm.

(7) **Speeding.** The operation of a vehicle in excess of posted speed limits.

(8) **Other violations.** Such other actual violations of these regulations or city, county, or state laws or ordinances.

(9) **Impoundment.** Violations that create a hazardous condition, impede traffic or otherwise interfere with the operation of a college facility may result in the immediate impoundment (removal) of the vehicle.

AMENDATORY SECTION (Amending WSR 97-19-026, filed 9/8/97, effective 10/9/97)

**WAC 132P-116-260 Fines and penalties.** (1) Fines will be levied for violations of the rules and regulations contained in this chapter.

(2) In addition to fines imposed under these regulations, vehicles violating these regulations may be impounded. Impounded vehicles will be taken to a place for storage as designated by the administration. The expenses of such ~~((impoundings))~~ impoundment and storage of the vehicle shall be the responsibility of the registered owner or driver of the vehicle. The college shall not be liable for loss or damage of any kind resulting from such impounding and storage.

(3) An accumulation of traffic violations by a student shall be cause for disciplinary action as stated in WAC 132P-116-110 and in subsection (7) of this section.

(4) An accumulation of traffic violations by faculty and staff shall be cause for disciplinary action as stated in WAC 132P-116-100 and subsection (8) of this section.

(5) Parking and traffic violations will be processed by the college. Parking fines are to be paid at the college's cashier counter during business hours.

(6) A schedule of fines shall be reviewed annually by the director of ~~((facilities))~~ facility operations and the vice-president of administrative services or their designee. This schedule shall be a supplement to the parking and traffic rules and regulations and attached and printed on all college citation forms.

(7) In the event a ~~((student))~~ registered owner of a vehicle fails or refuses to pay a fine, the following may result:

(a) ~~((The student shall not be eligible to register for any further courses.~~

(b) ~~The student shall not be able to obtain a transcript of his or her grades or credits.~~

~~((c))~~ The fine will be referred to a collection agency and additional fees may be added.

(b) ~~The ((student)) registered owner of the vehicle may be denied future parking privileges.~~

(8) ~~((In the event that faculty or staff fails to pay a fine, they may have their parking privileges on campus revoked.~~

~~((9))~~ In the event ((that)) a ((faculty member, staff member or student)) registered owner of the vehicle has multiple unpaid fines, the vehicle may be impounded or immobilized.

AMENDATORY SECTION (Amending WSR 97-19-026, filed 9/8/97, effective 10/9/97)

**WAC 132P-116-300 Parking/traffic appeals board.**

The parking/traffic appeals board shall be appointed by the ~~((director of facilities operations))~~ campus security sergeant. The board shall include a minimum representation of one student, one faculty, and one classified staff. The board shall meet on a regular basis at such times as the ~~((director of facilities operations))~~ campus security sergeant shall designate. The board shall hear appeals of citations issued pursuant to these regulations and render a written decision within twenty business days of the hearing. The board's decision shall be final.

**WSR 11-05-025**

**PERMANENT RULES**

**DEPARTMENT OF HEALTH**

(Medical Quality Assurance Commission)

[Filed February 7, 2011, 10:13 a.m., effective March 10, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-919-010 and 246-919-480 are amended to remove the restrictions of retired active physicians practicing only in primary care services or community clinics, define emergency and intermittent [intermittent] circumstances, and include the renewal requirements. These amendments will improve access to health care services. WAC 246-919-421(4) is repealed as the renewal requirements are moved to WAC 246-919-480.

Citation of Existing Rules Affected by this Order: Amending WAC 246-919-480, 246-919-010, and 246-919-421.

Statutory Authority for Adoption: RCW 18.71.017, 18.130.250, 18.71.440.

Adopted under notice filed as WSR 10-21-103 on October 20, 2010.

A final cost-benefit analysis is available by contacting Julie Kitten, Department of Health, Medical Quality Assurance Commission, Box 47866, Olympia, WA 98504-7866, phone (360) 236-2757, fax (360) 236-2795, e-mail julie.kitten@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: December 9, 2010.

Maryella E. Jansen  
Executive Director

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-010 Definitions.** ~~((1) "Commission" means the Washington state medical quality assurance commission.~~

~~(2) "Applicant" is an individual who has completed the application form and has paid the application fee.~~

~~(3) "Physician" means a physician licensed pursuant to chapter 18.71 RCW.~~

~~(4) "Unprofessional conduct" as used in these regulations shall mean the conduct described in RCW 18.71.0193 for conduct occurring before June 11, 1986, and the conduct described in RCW 18.130.180 for conduct occurring on or after June 11, 1986.~~

~~(5) "Hospital" means any health care institution licensed pursuant to chapter 70.41 RCW.~~

~~(6) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.~~

~~(7) "Mentally or physically disabled physician" means a physician who has either been determined by a court to be mentally incompetent or mentally ill or who is unable to practice medicine with reasonable skill and safety by reason of any mental or physical condition.)~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant" is an individual who has completed the application form and has paid the application fee.

(2) "Commission" means the Washington state medical quality assurance commission.

(3) "Emergent" means a circumstance calling for immediate action.

(4) "Hospital" means any health care institution licensed pursuant to chapter 70.41 RCW.

(5) "Intermittent" means providing services on a part-time or full-time nonpermanent basis.

(6) "Mentally or physically disabled physician" means a physician who has either been determined by a court to be mentally incompetent or mentally ill or who is unable to practice medicine with reasonable skill and safety by reason of any mental or physical condition.

(7) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.

(8) "Physician" means a physician licensed pursuant to chapter 18.71 RCW.

(9) "Unprofessional conduct" as used in these regulations shall mean the conduct described in RCW 18.71.0193 for conduct occurring before June 11, 1986, and the conduct described in RCW 18.130.180 for conduct occurring on or after June 11, 1986.

AMENDATORY SECTION (Amending WSR 99-23-090, filed 11/16/99, effective 1/1/00)

**WAC 246-919-421 Renewal and continuing medical education cycle revision.** Beginning January 1, 2000, the one-year renewal cycle for physicians will transition to a two-year cycle and a four-year continuing medical education reporting cycle. The renewal and continuing medical education reporting cycle will be as follows:

(1) Effective January 1, 2000, any physician whose birth year is an even number will renew their credential for twenty-four months and every two years thereafter. Those physicians must obtain two hundred hours of continuing medical education within the next forty-eight months from the date of the initial two-year license and every four years thereafter.

(2) Effective January 1, 2001, any physician whose birth year is an odd number will renew their credential for twenty-four months and every two years thereafter. Those physicians must obtain two hundred hours of continuing medical education within the next forty-eight months from the date of the initial two-year license and every four years thereafter.

(3) Effective January 1, 2000, in order to attain full license status, individuals with a post-graduate limited license will pay the fee difference between the limited license application and the full license application. This license will expire on their second ~~((birthdate))~~ birth date after issuance and every two years thereafter.

~~((4) Effective January 1, 2000, those physicians on a retired active status will remain on the annual renewal cycle and a four-year continuing medical education reporting cycle. Those retired active physicians must report two hundred hours of continuing medical education within the next forty-eight months and every four years thereafter.))~~

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

**WAC 246-919-480 Retired active (~~(credential)~~) license.** (1) ~~((A practitioner may))~~ To obtain a retired active (~~(credential. Refer to the requirements of)~~) license a physician must comply with chapter 246-12 WAC, Part 5, excluding WAC 246-12-120 (2)(c) and (d).

~~(2) ((The practitioner's practice is limited to providing health care services without compensation;~~

~~(3) Services are provided in community clinics located in the state of Washington that are operated by public or private tax-exempt corporations; and~~

~~(4) Services must be limited to primary care.)~~ A physician with a retired active license may not receive compensation for health care services;

(3) A physician with a retired active license may practice only in emergent or intermittent circumstances; and

(4) Physicians with a retired active license must renew every two years and must report one hundred hours of continuing medical education at every renewal.

#### WSR 11-05-026

##### PERMANENT RULES

#### DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed February 7, 2011, 1:36 p.m., effective March 10, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-915-187 clarifies that telehealth is within the scope of practice of physical therapists and physical therapist assistants, clearly defines what telehealth is, clarifies that physical therapy provided via telehealth must meet all standard of care requirements and specifies that the use of telehealth must be documented in the patient health record.

Statutory Authority for Adoption: RCW 18.74.023 and 18.74.025.

Adopted under notice filed as WSR 10-20-158 on October 6, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: November 17, 2010.

Paula Mays  
Board Chair

#### NEW SECTION

**WAC 246-915-187 Use of telehealth in the practice of physical therapy.** (1) Licensed physical therapists and physical therapist assistants may provide physical therapy via telehealth following all requirements for standard of care, including those defined in chapters 18.74 RCW and 246-915 WAC.

(2) The physical therapist or physical therapist assistant must identify in the clinical record that the physical therapy occurred via telehealth.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:

(a) "Telehealth" means providing physical therapy via electronic communication where the physical therapist or physical therapist assistant and the patient are not at the same physical location.

(b) "Electronic communication" means the use of interactive, secure multimedia equipment that includes, at a minimum, audio and video equipment permitting two-way, real time interactive communication between the physical therapist or the physical therapist assistant and the patient.

#### WSR 11-05-033

##### PERMANENT RULES

#### CENTER FOR CHILDHOOD DEAFNESS AND HEARING LOSS

[Filed February 8, 2011, 2:24 p.m., effective March 11, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of these rules is to ensure that the state has rules that are consistent with federal regulations implementing the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) and state law under chapter 28A.155 RCW. Implementation of rules in conformance with IDEA 2004 is required for the receipt of federal funding.

Citation of Existing Rules Affected by this Order: Repealing chapter 148-171 WAC, WAC 148-120-220, 148-120-225, 148-120-230, 148-120-236, 148-120-300, 148-120-301, 148-120-302, 148-120-303, 148-120-304, 148-120-305, 148-120-306, 148-120-307, 148-120-308, 148-120-309, 148-120-310, 148-120-311, 148-120-312, and 148-120-415, and amending WAC 148-120-100, 148-120-205, and 148-120-314.

Statutory Authority for Adoption: RCW 72.40.0191.

Other Authority: 42 U.S.C. §§ 1400 *et seq.*; chapter 28A.155 RCW.

Adopted under notice filed as WSR 11-01-113 on December 17, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 2, Amended 0, Repealed 0; Federal Rules or Standards: New 2, Amended 0, Repealed 43; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 4, 2011.

Rick Hauan  
Director

**AMENDATORY SECTION** (Amending WSR 01-20-032, filed 9/26/01, effective 10/27/01)

**WAC 148-120-100 Conduct violations.** A student who, either as actor, aider, abettor, or accomplice, violates any provision of this chapter shall be subject to the disciplinary actions herein adopted. A student may be an accomplice, or found to have aided and abetted in the commission of a violation of the student conduct code if he or she knowingly associates with the wrongful purpose, undertaking or activity; encourages, promotes, or counsels another student in the commission of an offense, or participates in it as in something he or she desires to bring about, and seeks by his or her action to make it succeed.

The following offenses are prohibited:

(1) Physical abuse. Actual, attempted, or threatened physical abuse of any person or conduct which threatens or endangers the health and safety of any person or which intentionally causes a reasonable apprehension of harm to any person.

(2) Destroying or damaging property. Destroying, defacing, or damaging school property or the property of others on school premises or at school-sponsored activities.

(3) Sexual harassment. Engaging in unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature when:

(a) Submission to the conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining an education;

(b) Submission to or rejection of that conduct or communication by a person is used as a factor in decisions affecting that person's education;

(c) That conduct or communication has the purpose or effect of substantially or unreasonably interfering with a person's education; or creating an intimidating, hostile, or offensive educational environment.

Sexual harassment may include, but is not limited to: Unwelcome verbal harassment or abuse; unwelcome pressure for sexual activity; unwelcome, sexually motivated or inappropriate patting, pinching, or physical contact; unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats concerning a person's educational status; or unwelcome behavior, verbal, signed, or written words or symbols directed (~~at~~) at a person because of gender.

(4) Disruption. Disorderly, intimidating or abusive behavior which interferes with the rights of others, school, or school-sponsored activities; obstructing the free movement

of people or vehicles; inciting others to engage in prohibited conduct; or threatening disruption.

(5) Insubordination. Refusal or failure to follow instructions and proper orders of school officials, while on school property, during transportation to and from school, or at school-sponsored activities, thereby infringing upon the rights and privileges of others, and/or refusal to desist from prohibited conduct.

(6) False alarms. Falsely setting off, improper use or disabling of any safety equipment, alarm, exit sign, or other device.

(7) False information. Filing a formal complaint which falsely accuses another with violation of this chapter, altering or falsifying information to school officials, or forging or tendering any forged instrument to the school.

(8) Theft. Actual or attempted theft of property or services belonging to the school, any student, school employee(~~(s))~~), or school visitor, including knowing possession of stolen property.

(9) Academic dishonesty. All forms of cheating, plagiarism and fabrication, including submitting any work product that the student misrepresents as his or her work product for the purpose of fulfilling any assignment or task required as part of the student's course of studies.

(10) Conversion. Unauthorized use or possession of school equipment or services.

(11) Unlawful entry and trespassing. Entering and/or remaining in any administrative or other employee office or any locked or otherwise closed school facility, in any manner, at any time, without permission.

(12) Smoking. Students are not allowed to smoke or use tobacco products on school (~~(property)~~ ~~(premises))~~ premises or during school-sponsored activities.

(13) Alcohol. Use, possession, distribution of, or visible intoxication from alcoholic beverages is prohibited on school property or at school-sponsored activities.

(14) Drugs and controlled substances. Use, possession, distribution, or being visibly under the influence of any controlled substance (~~(for illegal drug))~~ or illegal drug as defined in WAC (~~(148-120-300))~~ 392-172A-05145(9), except when the use or possession of a drug is specifically prescribed as medication by an authorized medical doctor or dentist; possession of drug paraphernalia.

(15) Weapons, lasers, and dangerous chemicals. Unauthorized use, possession, carriage, exhibition, or storage of any weapon, laser, explosives, ammunition, dangerous chemicals, substances or instruments, which is capable of causing bodily harm on another or damage upon school property or personal property, or any device that looks like or is alleged to be a firearm or explosive device.

(16) Sexual violence. Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another's intimate parts. Intimate parts include the primary genital area, groin, inner thighs, buttocks or breast, as well as the clothing covering these areas. Sexual violence may include, but is not limited to:

(a) Touching, patting, grabbing or pinching another person's intimate parts, whether that person is of the same or the opposite sex;

(b) Coercing, forcing, attempting to coerce or force the touching of anyone's intimate parts;

(c) Coercing, forcing, attempting to coerce or force sexual intercourse or a sexual act on another;

(d) Threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another; or

(e) Threatening of forcing exposure of intimate apparel or body parts by removal of clothing.

(17) Sexual activity and displays of affection. Sexual activity involves touching of another's intimate parts. Intimate parts include the primary genital area, groin, inner thighs, buttocks or breast, as well as the clothing covering these areas. Even if consensual or mutually agreed to, sexual activity is prohibited. Excessive displays of affection are not appropriate in school or at any school-related function. Prohibited conduct includes, but is not limited to: Any physical expression of affection that is intimate or sexual in nature, passionate or prolonged kissing, sexual touching, or fondling.

(18) Pornography. Possession, distribution, display, creation or production of sexually explicit or erotic material. Sexually explicit material includes material defined in RCW 9.68.130. Erotic material includes material defined in RCW 9.68.050.

(19) ~~(Malicious harassment. Harassment consists of verbal or physical conduct relating to a person's actual or perceived national origin, disability, race, sexual orientation, or religion, which has the purpose or effect of creating an intimidating, hostile or offensive academic, residential or work environment, or the purpose or effect of substantially or unreasonably interfering with a person's academic or work performance, or otherwise adversely affects a person's academic or work opportunities. Harassment may include: Name calling, gestures, bullying, mimicking, mocking, derogatory jokes, remarks or rumors, unwelcome touching of a person or clothing, offensive or graphic posters, book covers, notes or cartoons, graffiti, display or circulation of written materials or pictures, or any other malicious or insensitive conduct of a severe or pervasive nature directed at the characteristics of a person's national origin, customs, culture, disability, race, sexual orientation, or religion.)~~ Harassment, intimidation or bullying based on actual or perceived race, color, religion, ancestry, national origin, gender, gender identity, disability, socio-economic status, physical appearance, or other distinguishing characteristic. For purposes of this rule, harassment, intimidation, and bullying includes any intentionally written message or image, including those that are electronically transmitted including, but not limited to, sexting, which constitutes any threat of or act of physical, verbal, or emotional abuse, or attacks on the property of another, which has the effect of materially interfering with a student's education; is so severe, pervasive, or persistent, and objectively offensive as to threaten an individual or limit the individual's ability to work, study or participate in the activities of WSD, creates an intimidating or threatening education or residential environment, or has the effect of materially disrupting the orderly operation of the school or residential program.

The term "sexting" as used in this rule means the sending, possession, displaying, or distribution of text messages and picture of an explicit sexual nature. Intentional acts refer

to the individual's choice to engage in the act rather than the ultimate impact of the action(s).

Harassment, intimidation, and bullying may include, but is not limited to, taunts, sexting, slurs, rumors, jokes, innuendos, demeaning comments, drawings, cartoons, pranks, gestures, ostracism, extortion of money, physical attacks, threats or other written, oral, physical or electronically transmitted messages or images.

Harassment, intimidation, and bullying are often carried out through acts of misconduct, which are addressed and prohibited under other rules in this chapter.

This rule does not prohibit the civil, respectful expression of religious or political views, provided that the expression does not materially disrupt the education environment.

(20) Unauthorized absence. Absconding from supervision; leaving or running away from the campus, a residential facility, a school building, school activity or school-related function, or school-provided transportation without permission.

(21) Gang activity. Claiming membership in, association with, affiliation with, or participation in a gang or gang-related activities at school ((~~or~~)), during school-related functions ~~((A gang is a self-formed association of peers having the following characteristics: A gang name and recognizable symbols, identifiable leadership, a geographic territory, a regular or recurrent meeting pattern, may be identified by law enforcement as a gang, and collective actions to engage in serious criminal, or violent behavior. The type of dress, apparel, activities, acts, behavior, or manner of grooming displayed, reflected, or participated in by a student shall not:~~

~~(a) Lead school officials to reasonably believe that such behavior, apparel, activities, acts, or other attributes are gang-related, and would disrupt or interfere with the school environment or activity, and/or educational objectives;~~

~~(b) Present a safety hazard to self, students, or staff;~~

~~(c) Create an atmosphere in which a student, or other person's well-being is hindered by undue pressure, behavior, intimidation, overt gesture, or threat of violence; or~~

~~(d) Imply gang membership or affiliation by written communication, marks, drawings, painting, design, emblem upon any school or personal property, or one's person))~~, or on any school property. "Gang" has the meaning given the term under RCW 28A.600.455. Prohibited dress, appearance and activities includes, but is not limited to: Clothing, accessories, personal items, or body markings, which symbolizes gang membership as reported by law enforcement agencies.

(22) Extortion. Obtaining or attempting to obtain by threat or bribery, money, property or services (including sexual favors) of another. Threats include direct as well as indirect communication.

(23) Hazing. Conspiring to engage in or participating in any method of initiation into a student organization or group, or any pastime or amusement engaged in with respect to such an organization or group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student. This does not include customary athletic events or other similar contests or competitions.

(24) Misuse of computers, electronic data or electronic communications((-)), which may include, but is not limited to:

(a) Unauthorized copying of school-owned or licensed software, copyrighted material, or another computer user's data for personal or external use((-));

(b) Modifying or damaging, attempting to modify or damage, computer equipment, software, data bases, files needed in another person's school work, or communications lines;

(c) Disrupting or attempting to disrupt computer operations;

(d) Invading the privacy of another person by using electronic means to obtain confidential information, even if access to such information is inadvertently allowed;

(e) Abusing, bullying, or harassing another person through electronic means;

(f) Using the school's computing facilities in the commission of a crime or a violation of the student conduct code;

(g) Using computer services without authorization;

(h) Allowing another person to use one's computer identity/account or using another person's computer identity/account. This includes, but is not limited to, logging on to the account, accessing programs, and reading or altering computer records without authorization.

(25) Other conduct. Any other conduct or action, the terms and violations of which are published annually in the student/parent handbook, in which the school can demonstrate a clear and distinct interest and which substantially threatens the educational process or other legitimate function of the school or the health or safety of any member of the school community is prohibited.

AMENDATORY SECTION (Amending WSR 94-13-058, filed 6/8/94, effective 7/9/94)

**WAC 148-120-205 Limitations.** (1) No form of disciplinary action shall be enforced in such a manner as to prevent a student from accomplishing specific academic grade, subject, or graduation requirement: Provided, That a student's academic grade or credit in a particular subject or course may be adversely affected as a result of excessive tardiness or absences.

(2) Corporal punishment as defined by the (~~board of education~~) superintendent of public instruction in WAC (~~(180-40-235)~~) 392-400-235(4) as now or hereafter amended, is prohibited.

NEW SECTION

**WAC 148-120-250 Discipline procedures.** Disciplinary procedures for students at WSD who are eligible for special education shall follow the requirements in WAC 392-172A-05140 through 392-172A-05175, which are adopted by reference. Students at WSD are subject to rules and procedures governing discipline for all students in public schools in chapter 392-400 WAC. WSD shall determine on a case-by-case basis whether and to what extent the rules and procedures in chapter 392-400 WAC may apply.

NEW SECTION

**WAC 148-120-260 Reentry meeting following suspension.** After completing a period of suspension, the student

shall be required to meet with an administrator and/or designated staff person upon return to school. Parents or guardians of students who have not reached the age of majority may accompany the student. The student should be prepared to acknowledge the behavior that led to suspension and commit to a plan to abide by the student conduct code, meet specific behavior expectations, and avoid repeated misconduct.

**((DISCIPLINARY EXCLUSION))**

AMENDATORY SECTION (Amending WSR 01-16-100, filed 7/27/01, effective 8/27/01)

**WAC 148-120-314 Aversive interventions.** WAC (~~(392-172-388)~~) 392-172A-03129 through (~~(392-172-396)~~) 392-172A-03135 are adopted by reference.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 148-120-220	Short-term suspension.
WAC 148-120-225	Short-term suspension— Notice and conference— Grievance procedure.
WAC 148-120-230	Long-term suspension.
WAC 148-120-234	Long-term suspension— Misconduct not a manifestation of disability—Notice.
WAC 148-120-236	Long-term suspension— Misconduct not a manifestation of disability—Hearing.
WAC 148-120-300	Disciplinary exclusion— Definitions.
WAC 148-120-301	Change of placement for disciplinary removals.
WAC 148-120-302	Removals—Ten school days or less.
WAC 148-120-303	Required services.
WAC 148-120-304	Change of placement— Removals for weapons or drugs.
WAC 148-120-305	Functional behavioral assessment and intervention plan.
WAC 148-120-306	Dangerous behavior— Authority of hearing officer.
WAC 148-120-307	Determination of interim alternative educational setting.
WAC 148-120-308	Manifestation determination review requirements.



WAC 148-120-309	Procedures for conducting a manifestation determination.	WAC 148-171-514	Transfer of parental rights at age of majority.
WAC 148-120-310	Determination that behavior was not manifestation of disability.	WAC 148-171-550	Mediation.
WAC 148-120-311	Expedited due process hearings.	WAC 148-171-601	Due process rights and procedures.
WAC 148-120-312	Placement during appeals.	WAC 148-171-605	Request for hearing, notice by parent.
WAC 148-120-415	Appeals—Long-term suspension and expulsion.	WAC 148-171-650	Surrogate parents.

### Chapter 148-172 WAC

### RULES FOR THE PROVISION OF SPECIAL EDUCATION

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 148-171-001	Purposes.
WAC 148-171-010	Definitions.
WAC 148-171-015	Definition and eligibility criteria for deafness and hearing impairment.
WAC 148-171-100	Initial assessment.
WAC 148-171-110	General areas of evaluation.
WAC 148-171-120	Evaluation procedures.
WAC 148-171-131	Evaluation report and documentation of determination of eligibility.
WAC 148-171-140	Independent educational evaluation.
WAC 148-171-150	Admission and placement—Annual review.
WAC 148-171-210	IEP meetings.
WAC 148-171-220	Participants in IEP meetings.
WAC 148-171-230	Parent participation and involvement.
WAC 148-171-240	Individualized education program.
WAC 148-171-242	Individualized education program—Implementation.
WAC 148-171-244	Individualized education program—Development, review, revision—Consideration of special factors.
WAC 148-171-410	Reevaluation.
WAC 148-171-500	When prior notice must be given.
WAC 148-171-510	Contents of prior written notice.
WAC 148-171-512	Parent consent.

#### NEW SECTION

**WAC 148-172-001 Purposes.** The purposes of this chapter are:

(1) To implement chapter 72.40 RCW in a manner that is compatible with chapters 28A.155 RCW and 392-172A WAC, and in compliance with the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Sec. 1400 et seq.; and

(2) To meet the obligations of additional federal and state civil rights laws (e.g., 29 U.S.C. Sec. 794, 42 U.S.C. Sec. 12132, RCW 49.60.030) that apply to students who have a disability regardless of the student's eligibility for special education and related services.

(3) Unless the context clearly requires otherwise, the rules for the provision of special education, contained in chapter 392-172A WAC, are incorporated by reference: Provided, That the Washington state center for childhood deafness and hearing loss (center) may undertake the responsibilities of a local educational agency (LEA) in providing a free appropriate public education only to the extent authorized by chapter 72.40 RCW and inclusion as an LEA makes the center eligible for assistance under the Individuals with Disabilities Education Act.

(4) This chapter sets forth rules and procedures applicable to the provision of special education and related services for eligible students at the center. It should be read in conjunction with chapter 392-172A WAC. In case of any conflict between specific rules and procedures adopted herein, and the rules and regulations in chapter 392-172A WAC, the specific rules and procedures shall control.

(5) Where the term "school district" is used in this chapter, it shall mean the LEA or local school district, as defined and described in RCW 28A.315.025, where a student would be enrolled and/or attending.

#### NEW SECTION

#### **WAC 148-172-100 Admission and initial evaluation.**

(1) A parent, guardian, local education agency or school district may refer a student for admission to the Washington state school for the deaf (WSD) at the center. Students who are eighteen years old or are deemed to have reached the age

of majority, consistent with RCW 26.28.010 through 26.28.020, and who are eligible for special education may self-refer for admission.

(2) An application packet for new students may be obtained by contacting the office of the superintendent at 360-696-6525 x0401 V/TTY, or through the link on the school's web site at <http://www.wsd.wa.gov/about/admissions.aspx>. Applications for admission shall include the reason(s) for referral.

(3) WSD will assess the appropriateness of admission by first considering the student for evaluation in a diagnostic placement. A diagnostic placement allows school personnel to obtain necessary information about the student's needs and to evaluate how the student will fare in a placement at WSD. The diagnostic placement is limited to forty-five school days. A visit by the parent(s)/guardian(s) and student to WSD is required before a diagnostic placement is initiated.

(4) WSD will request the following records from the student's current school district. All requested records must be received before the admissions team will consider and make a decision on the application for a diagnostic placement:

- (a) All completed forms and material in the application packet;
- (b) Student's most recent individualized education program (IEP);
- (c) Student's most recent triennial evaluation report;
- (d) All psychological records;
- (e) High school transcripts or academic records and report cards;
- (f) Records of all behavioral information, including history of criminal or violent behavior; past, current or pending disciplinary history; and other behavior that indicates the student could be a threat to the safety of staff and students; and information that would be required under RCW 28A.225.-330. Any falsification of or withholding of information will result in the termination of the application process, the evaluation, or continued placement; and
- (g) Needs assessment inventory interview (NAII) and safety risk matrix completed by the parent(s).

If access to necessary information requires parental or student consent for the exchange of information with a third party, all such written consents must be attached to the completed application.

(5) If a student is deemed to pose a safety risk after review of the records submitted during the admissions process, the admissions team and/or the superintendent may:

- (a) Deny the application for diagnostic placement; or
- (b) Develop a safety plan designed to mitigate perceived safety risk(s).

If the safety plan can be implemented within existing resources at WSD, the admissions team may accept the student for diagnostic placement. If all elements of the safety plan cannot be accomplished within existing resources at Washington school for the deaf, the application shall be denied unless additional resources which are needed to ensure the safety of the student, staff and other students can be provided through an interagency agreement with the LEA or other agency.

(6)(a) Upon approval of the application for diagnostic placement, the admissions team will establish the beginning date of the diagnostic placement.

(b) The LEA or school district is responsible for ensuring that the student's IEP and evaluations remain current and valid through the end of the diagnostic placement.

(c) The admissions team will review the student's current IEP from the LEA or school district to ascertain whether any modifications should be considered or made for the purposes of the diagnostic placement. All modifications must be approved by the parent. Modifications to a student's educational program for the purposes of a diagnostic placement shall not constitute a change in placement for purposes of the Individuals with Disabilities in Education Act or stay-put under WAC 392-172A-05125.

(d) The admissions team will provide prior written notification to the parent, LEA or school district that the diagnostic placement shall not exceed forty-five school days and shall not become the student's stay-put or current educational placement should the parent(s) or school district contest the decision on the student's educational placement at the conclusion of the diagnostic placement.

(7) Residential program services may be available to a student during a diagnostic placement: Provided, That:

- (a) The student is accepted into the academic program for diagnostic purposes;
- (b) The residential program has space available and can provide the needed services;
- (c) A one-way commute by school bus is greater than sixty minutes; and
- (d) The student is able to finger-feed, chew and swallow most foods, indicated need for help when self-soiled or wet, and assist in self-dressing and bathing.

(8) Prior to the end of the diagnostic placement timeline, the admissions team will meet to determine whether the student may be enrolled at WSD.

(a) If enrollment is approved, one of the following options will occur:

- (i) The student's evaluation and IEP from the school district is reviewed and adopted following office of the superintendent of public instruction (OSPI) transfer procedures;
- (ii) The student's evaluation from the school district is reviewed and accepted following OSPI transfer procedures, and a new IEP is developed; or
- (iii) WSD will conduct a reevaluation and develop a new IEP.

(b) If enrollment is denied, partnerships and interagency agreements with LEAs and school districts may be developed to support a student's educational placement at the school for the deaf when a lack of existing resources is a reason for denying enrollment. WSD does not constitute a potential stay-put placement for students who have been denied enrollment but may be receiving services at WSD pursuant to an interagency agreement.

(9) Pursuant to RCW 72.40.040, WSD shall not admit and may not retain any student who is an adjudicated sex offender, classified level III pursuant to RCW 13.40.217 or 72.09.345. It is the policy of the school to deny admission to any student who has sexually abused, assaulted or victimized any student who is currently enrolled at WSD.

NEW SECTION

**WAC 148-172-105 Assessment to identify students at risk for sexually aggressive behavior is not an evaluation.** The assessment to identify residential students who present a moderate or high risk of sexually aggressive behavior or who may be vulnerable to victimization by such students, required by RCW 72.40.270, shall not be considered an evaluation for eligibility for special education and related services.

NEW SECTION

**WAC 148-172-200 Child find.** The purpose of child find is to locate, evaluate and identify children with suspected disabilities in need of special education services including those who are not currently receiving special education and related services and who may be eligible for those services. In conjunction with child find activities conducted by school districts pursuant to WAC 392-172A-02040 and the reports on deaf or hard of hearing children provided by educational service districts pursuant to RCW 72.40.070, CDHL will provide an on-line survey three times per school year (fall, winter, spring) to all special education directors to identify children within their districts who are deaf, deaf-blind or hard of hearing; information to school districts regarding service delivery options in the state for students who are deaf, deaf-blind or hard of hearing; a resource and referral guide listing programs and services available statewide; and a mechanism for school districts to request training and/or consultation support for district personnel.

NEW SECTION

**WAC 148-172-300 Least restrictive environment.** Notwithstanding the provisions of WAC 392-172A-02050, the IEP team may conclude that a student will receive greater benefit from education in a specialized setting due to specific instructional and related services needs such that the least restrictive environment and appropriate placement for a student may be WSD.

**WSR 11-05-034****PERMANENT RULES****DEPARTMENT OF HEALTH**

(Board of Pharmacy)

[Filed February 8, 2011, 2:47 p.m., effective March 11, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Changes to WAC 246-887-280 expands the list of approved controlled substances authorized for use by the Washington department of fish and wildlife for its wildlife management program. The adopted rule adds butorphanol, midazolam, and fentanyl to the list of approved controlled substances that can be used when individual animals must be immobilize[d] or captured to be moved, treated, or examined, or for other legitimate purposes.

Citation of Existing Rules Affected by this Order: Amending WAC 246-887-280.

Statutory Authority for Adoption: RCW 69.50.320.

Other Authority: RCW 18.64.005.

Adopted under notice filed as WSR 10-16-111 on August 2, 2010.

A final cost-benefit analysis is available by contacting Doreen E. Beebe, Washington State Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, phone (360) 236-4834, fax (360) 236-2901, e-mail doreen.beebe@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 4, 2010.

Gary G. Harris, Chair  
Board of Pharmacy

AMENDATORY SECTION (Amending WSR 05-20-106, filed 10/5/05, effective 11/8/05)

**WAC 246-887-280 Approved controlled substances.**

~~((+))~~ The following controlled substances are ~~(hereby designated as)~~ approved ~~((controlled substances))~~ for use by officers and biologists of the department of fish and wildlife for chemical capture programs:

~~((+)) (1) Butorphanol;~~~~(2) Diazepam (Valium);~~~~(3) Diprenorphine;~~~~(4) Carfentanil (Wildnil);~~~~(5) Fentanyl;~~~~(6) Ketamine;~~~~((+)) (7) Midazolam; and~~~~(8) Tiletamine and zolazepam (Telazol)((;~~~~(e) Diazepam (Valium);~~~~(d) Carfentanil (Wildnil); and~~~~(e) Diprenorphine.~~

~~(2) Other controlled substances as approved by rule of the board after consultation with the department of fish and wildlife).~~

**WSR 11-05-036****PERMANENT RULES****DEPARTMENT OF HEALTH**

(Board of Psychology)

[Filed February 8, 2011, 3:13 p.m., effective March 11, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The examining board of psychology (board) is repealing WAC 246-924-485 as these rules are not necessary because the board has statutory authority to delegate to a panel the decision to initiate investigations.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-924-485.

Statutory Authority for Adoption: RCW 18.130.050 and 18.83.050.

Other Authority: RCW 18.130.080.

Adopted under notice filed as WSR 10-16-112 on August 2, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 1.

Date Adopted: December 22, 2010.

Christine Guzzardo, Ph.D.  
Chair

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 246-924-485      Delegation of authority to initiate investigations.

**WSR 11-05-037  
PERMANENT RULES  
BUILDING CODE COUNCIL**

[Filed February 8, 2011, 4:24 p.m., effective July 1, 2013]

Effective Date of Rule: July 1, 2013.

Purpose: Amendment of the 2009 Edition of the Uniform Plumbing Code, chapter 51-56 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 51-56-0500.

Statutory Authority for Adoption: RCW 19.27.074 and 19.27.031.

Other Authority: Chapters 19.27 and 34.05 RCW.

Adopted under notice filed as WSR 10-16-032 on July 26, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 15, 2010.

John C. Cochran  
Council Chair

AMENDATORY SECTION (Amending WSR 10-03-101, filed 1/20/10, effective 7/1/10)

**WAC 51-56-0500 Chapter 5—Water heaters.**

**501.0 General.** The regulations of this chapter shall govern the construction, location, and installation of fuel burning and other water heaters heating potable water. The minimum capacity for water heaters shall be in accordance with the first hour rating listed in Table 5-1. See the Mechanical Code for combustion air and installation of all vents and their connectors. All design, construction, and workmanship shall be in conformity with accepted engineering practices, manufacturer's installation instructions, and applicable standards and shall be of such character as to secure the results sought to be obtained by this Code. No water heater shall be hereinafter installed which does not comply in all respects with the type and model of each size thereof approved by the authority having jurisdiction. A list of accepted gas appliance standards is included in Table 14-1.

TABLE 5-1<sup>1,3</sup>

Number of Bathrooms	1 to 1.5			2 to 2.5				3 to 3.5			
	1	2	3	2	3	4	5	3	4	5	6
Number of Bedrooms											
First Hour Rating <sup>2</sup> , Gallons	42	54	54	54	67	67	80	67	80	80	80

Notes: <sup>1</sup>The first hour rating is found on the "Energy Guide" label.  
<sup>2</sup>Nonstorage and solar water heaters shall be sized to meet the appropriate first hour rating as shown in the table.  
<sup>3</sup>For replacement water heaters, see Section 101.4.1.1.1.

**502.2 Chimney** – Delete definition.  
**502.3 Chimney, Factory-Built** – Delete definition.  
**502.4 Chimney, Masonry** – Delete definition.

- 502.5 Chimney, Metal** – Delete definition.
- 502.7 Direct Vent Appliance** – Delete definition.
- 502.8 Flue Collar** – Delete definition.
- 502.9 Gas Vent, Type B** – Delete definition.
- 502.10 Gas Vent, Type L** – Delete definition.
- 502.12 Vent** – Delete definition.
- 502.13 Vent Connector** – Delete definition.
- 502.14 Venting System** – Delete definition.
- 504.1 Inspection of Chimneys or Vents.** Delete paragraph.

**505.1 Location.** Water heater installation in bedrooms and bathrooms shall comply with one of the following:

(1) Fuel-burning water heaters may be installed in a closet located in the bedroom or bathroom provided the closet is equipped with a listed, gasketed door assembly and a listed self-closing device. The self-closing door assembly shall meet the requirements of Section 505.1.1. The door assembly shall be installed with a threshold and bottom door seal and shall meet the requirements of Section 505.1.2. All combustion air for such installations shall be obtained from the outdoors in accordance with the International Mechanical Code. The closet shall be for the exclusive use of the water heater.

(2) Water heater shall be of the direct vent type.

**506.2** All storage-type water heaters deriving heat from fuels or types of energy other than gas, shall be provided with, in addition to the primary temperature controls, an over-temperature safety protection device constructed, listed, and installed in accordance with nationally recognized applicable standards for such devices and a combination temperature and pressure relief valve.

**507.0 Combustion Air.** For issues relating to combustion air, see the Mechanical Code.

Sections 507.1 through 507.9 are not adopted.

Sections 508.6 through 508.9 are not adopted.

**508.12 Delete entire section.**

**508.14 Installation in Residential Garages.**

(1) Appliances in residential garages and in adjacent spaces that open to the garage and are not part of the living space of a dwelling unit shall be installed so that burners, burner-ignition devices and ignition sources are located not less than 18 inches above the floor unless listed as flammable vapor ignition resistant.

(2) Such appliances shall be located or protected so it is not subject to physical damage by a moving vehicle.

(3) When appliances are installed in a separate enclosed space having access only from outside of the garage, such appliances shall be permitted to be installed at floor level, providing the required combustion air is taken from the exterior of the garage.

**508.18 Venting of Flue Gases - Delete entire section.**

Sections 508.20 through 508.24.5 are not adopted.

**510.0 Venting of Equipment.** Delete entire section.

**511.0 Sizing of Category I Venting Systems.** Delete entire section.

**512.0 Direct Vent Equipment.** Delete entire section.

Chapter 5, Part II is not adopted.

**WSR 11-05-047**

**PERMANENT RULES**

**PUBLIC DISCLOSURE COMMISSION**

[Filed February 10, 2011, 10:04 a.m., effective March 13, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Adoption of new WAC 390-05-274 to clarify the term "party affiliation" and reference to "party," "political party" and similar terms in Title 390 WAC.

Statutory Authority for Adoption: RCW 42.17.370.

Adopted under notice filed as WSR 11-01-053 on December 7, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New [1], Amended 1 [0], Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: January 27, 2011.

Lori Anderson  
Communications and  
Training Officer

**NEW SECTION**

**WAC 390-05-274 Party affiliation, party preference, etc.** (1) "Party affiliation" as that term is used in chapter 42.17 RCW and Title 390 WAC means the candidate's party preference as expressed on his or her declaration of candidacy. A candidate's preference does not imply that the candidate is nominated or endorsed by that party, or that the party approves of or associates with that candidate.

(2) A reference to "political party affiliation," "political party," or "party" on disclosure forms adopted by the commission and in Title 390 WAC refers to the candidate's self-identified party preference.

**WSR 11-05-048****PERMANENT RULES****PUBLIC DISCLOSURE COMMISSION**

[Filed February 10, 2011, 10:10 a.m., effective March 13, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Adoption of new WAC 390-05-196 to clarify the difference between bona fide political parties and other political committees for the purpose of contribution limits following the United States supreme court ruling upholding Washington's top two primary system and effectively repealing chapter 29A.20 RCW. This rule contains a December 31, 2011, sunset clause to accommodate 2SB [2SHB] 2016 (section 101, chapter 204, Laws of 2010) amending chapter 42.17 RCW to remove the reference to chapter 29A.20 RCW and confirming the secretary of state's ability to recognize minor bona fide political parties effective January 1, 2012.

Statutory Authority for Adoption: RCW 42.17.370.

Adopted under notice filed as WSR 11-01-053 on December 7, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New [1], Amended 1 [0], Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: January 27, 2011.

Lori Anderson  
Communications and  
Training Officer

**NEW SECTION**

**WAC 390-05-196 Bona fide political party—Application of term.** (1) An organization that filed a valid certificate of nomination with the secretary of state or a county elections official under chapter 29A.20 RCW in any year from 2002 through 2007, and any organization that is otherwise recognized by the secretary of state as a minor political party after 2007, is deemed to have satisfied the definition of bona fide political party in RCW 42.17.020.

(2) This section shall terminate effective December 31, 2011, at 11:59 p.m.

**WSR 11-05-049****PERMANENT RULES****PUBLIC DISCLOSURE COMMISSION**

[Filed February 10, 2011, 10:11 a.m., effective March 13, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend WAC 390-05-275 to reference new WAC 390-05-196 when defining party organization.

Citation of Existing Rules Affected by this Order: Amending WAC 390-05-275.

Statutory Authority for Adoption: RCW 42.17.370.

Adopted under notice filed as WSR 11-01-053 on December 7, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 27, 2011.

Lori Anderson  
Communications and  
Training Officer

**AMENDATORY SECTION** (Amending WSR 07-08-044, filed 3/28/07, effective 4/28/07)

**WAC 390-05-275 Definition—Party organization.** "Party organization," as that term is used in chapter 42.17 RCW and Title 390 WAC, means a bona fide political party as defined in RCW 42.17.020 and applied in WAC 390-05-196.

**WSR 11-05-050****PERMANENT RULES****PUBLIC DISCLOSURE COMMISSION**

[Filed February 10, 2011, 10:13 a.m., effective March 13, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend WAC 390-17-060 to implement 2SHB 2016 (section 602, chapter 204, Laws of 2010) to clarify which activities are exempt from contribution limits.

Citation of Existing Rules Affected by this Order: Amending WAC 390-17-060.

Statutory Authority for Adoption: RCW 42.17.370.

Adopted under notice filed as WSR 11-01-055 on December 7, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 27, 2011.

Lori Anderson  
Communications and  
Training Officer

**AMENDATORY SECTION** (Amending WSR 07-07-005, filed 3/8/07, effective 4/8/07)

**WAC 390-17-060 Exempt activities—Definitions, reporting.** (1)(a) "Exempt contributions" are contributions made to a political committee which are earmarked for exempt activities as described in RCW 42.17.640. Such contributions are required to be reported under RCW 42.17.090, are subject to the restrictions in RCW 42.17.105(8), but are not subject to the contribution limits in RCW 42.17.640. Any written solicitation for exempt contributions must be so designated. Suggested designations are "not for individual candidates" or "for exempt activities."

(b) Contributions made to a caucus political committee, to a candidate or candidate's authorized committee which are earmarked for voter registration, absentee ballot information, get-out-the-vote campaigns, sample ballots are presumed to be for the purpose of promoting individual candidates and are subject to the contribution limits in RCW 42.17.640.

(c) Contributions made to a caucus political committee, to a candidate or candidate's authorized committee which are earmarked for internal organization expenditures or fund-raising are presumed to be with direct association with individual candidates and are subject to the contribution limits in RCW 42.17.640.

(2) "Exempt contributions account" is the separate bank account into which only exempt contributions are deposited and out of which only expenditures for exempt activities shall be made.

(3) "Exempt activities" are those activities referenced in RCW 42.17.640 as further clarified by subsections (4), (5), and (6) ~~(-and (7))~~ of this section. Only exempt activities are eligible for payment with exempt contributions.

(4)(a) ~~(Except as permitted by WAC 390-17-030, Sample ballots and slate cards, activities referenced in RCW 42.17.640 that promote or constitute political advertising for one or more clearly identified candidates do not qualify as exempt activities.~~

~~(b) A candidate is deemed to be clearly identified if the name of the candidate is used, a photograph or likeness of the~~

~~candidate appears, or the identity of the candidate is apparent by unambiguous reference.~~

~~(5)) Activities referenced in RCW 42.17.640 (15)(a) that do not promote, or constitute political advertising for, one or more clearly identified candidates qualify as exempt activities. For example, get-out-the-vote telephone bank activity that only encourages persons called to "vote republican" or "vote democratic" in the upcoming election may be paid for with exempt contributions regardless of the number of candidates who are benefited by this message. Expenditures or contributions for electioneering communications made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent do not qualify as exempt activities, under WAC 390-05-210.~~

~~(b) Except as permitted under WAC 390-17-030, Sample ballots and slate cards, activities referenced in RCW 42.17-640 (15)(a) that promote or constitute political advertising for one or more clearly identified candidates do not qualify as exempt activities.~~

~~(c) A candidate is deemed to be clearly identified if the name of the candidate is used, a photograph or likeness of the candidate appears, or the identity of the candidate is apparent by unambiguous reference.~~

~~((6)) (5)(a) "Internal organization expenditures" referenced in RCW 42.17.640 (15)(b) are expenditures for organization purposes, including legal and accounting services, rental and purchase of equipment and office space, utilities and telephones, postage and printing of newsletters for the organization's members or contributors or staff when engaged in organizational activities such as those previously listed, all without direct association with individual candidates.~~

(b) "Fund-raising expenditures" referenced in RCW 42.17.640 (15)(b) are expenditures for fund-raising purposes, including facilities for fund-raisers, consumables furnished at the event and the cost of holding social events and party conventions, all without direct association with individual candidates.

(c) If expenditures made pursuant to subsections (a) and (b) above are made in direct association with individual candidates, they shall not be paid with exempt contributions.

~~((7)) (6) For purposes of RCW 42.17.640 and this section, activities that oppose one or more clearly identified candidates are presumed to promote the opponent(s) of the candidate(s) opposed.~~

#### WSR 11-05-051

#### PERMANENT RULES

#### PUBLIC DISCLOSURE COMMISSION

[Filed February 10, 2011, 10:14 a.m., effective March 13, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend WAC 390-18-010 to implement 2SHB 2016 (section 505, chapter 204, Laws of 2010) to clarify what disclaimers must be included when political advertising qualifies as an independent expenditure or electioneering communication. Amend WAC 390-18-030 to implement 2SHB 2016 (section 505, chapter 204, Laws of 2010) to confirm

that certain types of political advertising are exempt from sponsor ID and other disclaimers.

Citation of Existing Rules Affected by this Order: Amending WAC 390-18-010 and 390-18-030.

Statutory Authority for Adoption: RCW 42.17.370.

Adopted under notice filed as WSR 11-01-054 on December 7, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: January 27, 2011.

Lori Anderson  
Communications and  
Training Officer

**AMENDATORY SECTION** (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

**WAC 390-18-010 Advertising, political advertising, electioneering communications, and independent expenditures.** (1) For the purposes of chapter 42.17 RCW and Title 390 WAC:

(a) "Sponsor of an electioneering communication, independent expenditure or political advertising" is defined in RCW 42.17.020.

(b) Unless the context clearly provides otherwise, "advertising" or "advertisement" means political advertising, electioneering communications, or independent expenditures that are for political advertising and/or electioneering communications subject to the provisions of chapter 42.17 RCW and as defined in RCW 42.17.020 or 42.17.100.

(2) With advertising for which no payment is demanded or for which a cost is not readily ascertainable, the sponsor is the candidate, political committee or person who solicits or arranges for the advertising to be displayed or broadcast.

(3) If more than one person sponsors specific advertising, the identity of each sponsor must be shown. However, if a person contributes in cash or in-kind to a candidate or political committee to assist in paying the cost of advertising, that person is not deemed a sponsor provided the contribution is reported in accordance with applicable provisions of chapter 42.17 RCW and Title 390 WAC.

(4) Printed advertising shall clearly state, in an area set apart from any other printed matter, that it has been paid for by the sponsor (Example: (1) Paid for by the XYZ committee, mailing address, city, state, zip code; (2) Vote for John Doe, paid for by John Doe, mailing address, city, state, zip

code). However, printed advertising undertaken as an independent expenditure or electioneering communication shall comply with the (~~"notice to voters"~~) "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors" and identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee provisions of RCW 42.17.510 and provide this information in an area set apart from any other printed matter. Political committees that sponsor independent expenditure or electioneering communication printed advertising are required to provide the "top five contributors" to that political committee pursuant to WAC 390-18-025; however, this requirement does not apply to bona fide political parties sponsoring independent expenditures.

(5)(a) Advertising consisting of more than one page but intended to be presented as a single item (e.g., 3-page letter with return envelope) must identify the sponsor on the first page or fold of the advertising. Identification on an enclosed return envelope or the envelope in which the advertising is sent is not sufficient.

(b) Advertising which is a collection of several items relating to more than one candidate or committee and distributed simultaneously must show the respective sponsor on the respective items.

(6) The name of the sponsor of all radio or television advertising shall be clearly spoken or identified as required in RCW 42.17.510.

(a) All radio, telephone and television advertising undertaken as an independent expenditure as defined in RCW 42.17.020 shall comply with the (~~"notice to voters"~~) "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors" provisions of RCW 42.17.510 and this information shall be clearly spoken or identified as provided in RCW 42.17.510.

(b) All radio and television advertising undertaken as an electioneering communication as defined in RCW 42.17.020 shall comply with the (~~"notice to voters"~~) "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors" provisions of RCW 42.17.510 and this information shall be clearly spoken or identified as provided in RCW 42.17.510.

(c) Political committees that sponsor independent expenditure or electioneering communication radio and television advertising are required to clearly speak or otherwise identify the "top five contributors" to that political committee pursuant to WAC 390-18-025; however, this requirement does not apply to bona fide political parties sponsoring independent expenditures.

**AMENDATORY SECTION** (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

**WAC 390-18-030 Advertising—Exemptions from identification.** Pursuant to RCW 42.17.510(6), the following forms of advertising need not include the sponsor's name and address, the (~~"notice to voters" or~~) "no candidate authorized this ad" sponsor identification, the "top five contributors," (~~information~~) or the identification of the individual, corporation, union, association, or other entity that established,



maintains, or controls the sponsoring political committee as otherwise required by RCW 42.17.510 (1) and (2) because such identification is impractical: Ashtrays, badges and badge holders, balloons, bingo chips, brushes, bumper stickers—size 4" x 15" or smaller, buttons, cigarette lighters, clothes pins, clothing, coasters, combs, cups, earrings, emery boards, envelopes, erasers, frisbees, glasses, golf balls, golf tees, hand-held signs, hats, horns, ice scrapers, inscriptions, key rings, knives, labels, letter openers, magnifying glasses, matchbooks, nail clippers, nail files, newspaper ads of one column inch or less, noisemakers, paper and plastic cups, paper and plastic plates, paper weights, pencils, pendants, pennants, pens, pinwheels, plastic tableware, pocket protectors, pot holders, reader boards where message is affixed in moveable letters, ribbons, 12-inch or shorter rulers, shoe horns, skywriting, staple removers, stickers—size 2-3/4" x 1" or smaller, sunglasses, sun visors, swizzle sticks, state or local voters pamphlets published pursuant to law, tickets to fund raisers, water towers, whistles, yard signs—size 4' x 8' or smaller, yo-yos, and all other similar items.

**WSR 11-05-058****PERMANENT RULES****GAMBLING COMMISSION**

[Order 675—Filed February 10, 2011, 5:29 p.m., effective March 13, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This repeal removes the regulatory requirement that businesses holding a gambling licensee [license] maintain a paper gambling rules/laws manual at their licensed premises. Repealing this rule:

- Removes a regulatory requirement gambling licensees must comply with.
- Could potentially save the agency \$15,000 to \$20,000 when publishing the 2011 edition of the gambling rules manual.
- Is in-line with HB 2287 which passed in 2009 requiring agencies to develop and implement a paper conservation program with a goal of reducing current paper use.

Citation of Existing Rules Affected by this Order: Repealing WAC 230-06-060.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 10-24-014 filed on November 18, 2010, published on December 1 [15], 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 1.

Date Adopted: February 10, 2011.

Susan Arland  
Rules Coordinator

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 230-06-060

Maintain copy of commission rules on business premises.

**WSR 11-05-060****PERMANENT RULES****STATE BOARD OF HEALTH**

[Filed February 11, 2011, 11:34 a.m., effective March 14, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-105-040 Requirements based on national immunization guidelines, the reference to the advisory committee on immunization practices' (ACIP) recommended childhood [childhood] and adolescent immunization schedule is updated from the 2008 version to the 2010 version. For vaccinations required for entry into schools or child care centers, this update only affects minor changes to the ages and intervals of polio vaccine.

Citation of Existing Rules Affected by this Order: Amending WAC 246-105-040.

Statutory Authority for Adoption: RCW 28A.210.140.

Adopted under notice filed as WSR 10-20-144 on October 5, 2010.

A final cost-benefit analysis is available by contacting Jeff Wise, Washington State Department of Health, P.O. Box 47843, Olympia, WA 98504, phone (360) 236-3483, fax (360) 236-3590, e-mail jeff.wise@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 10, 2010.

Craig McLaughlin  
Executive Director

AMENDATORY SECTION (Amending WSR 09-02-003, filed 12/26/08, effective 1/26/09)

**WAC 246-105-040 Requirements based on national immunization guidelines.** The department shall develop and distribute implementation guidelines for schools and child care centers that are consistent with the national immunization guidelines described in this section and the requirements in WAC 246-105-090.

(1) Unless otherwise stated in this section, a child must be vaccinated against each vaccine-preventable disease listed in WAC 246-105-030 at ages and intervals according to the following published national immunization guidelines:

(a) ~~((Effective July 1, 2008, the "Recommended Immunization Schedule for Persons Aged 0-18 Years, United States, 2007"; as published in the Morbidity and Mortality Weekly Report (MMWR), 2007;55(51 and 52):Q1-4.~~

~~(b))~~ Effective July 1, 2009, the "Recommended Immunization Schedule for Persons Aged 0-18 Years, United States 2008"; as published in the Morbidity and Mortality Week Report (MMWR) 2008;57(01):Q1-4.

(b) Effective July 1, 2011, the "Recommended Immunization Schedule for Persons Aged 0-18 Years, United States, 2010"; as published in the Morbidity and Mortality Week Report (MMWR), 2010;58(51 and 52):Q1-4.

(2) In addition to the ages and intervals required by subsection (1) of this section, the following vaccine administration guidelines shall apply. Schools and child care centers may accept one of the following as proof of a child's immunization status against varicella:

(a) Documentation on the CIS form that the child received age appropriate varicella vaccine; or

(b) Diagnosis or verification of a history of varicella disease by a health care provider; or

(c) Diagnosis or verification of a history of herpes zoster by a health care provider; or

(d) Serologic proof of immunity against varicella; or

(e) Documentation by the parent that a child has a history of varicella. This type of proof will be accepted only for certain grade levels described in the department's implementation guidelines according to WAC 246-105-090(2).

## WSR 11-05-064

### PERMANENT RULES

#### DEPARTMENT OF ECOLOGY

[Order 10-07—Filed February 11, 2011, 2:09 p.m., effective March 14, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of the adopted Shoreline Management Act rule amendments is to:

- Respond to a legislative directive (RCW 43.21A.-681) to "adopt, by rule" guidelines that address the potential use conflicts resulting from commercial geoduck aquaculture in shoreline areas.
- Clarify WAC 173-26-201(1) regarding limited (non-comprehensive) amendments of local shoreline master programs.

- Complete some housekeeping changes - updating the rules to make them more consistent with recent changes to state statutes.

Citation of Existing Rules Affected by this Order: Repealing WAC 173-22-080; and amending chapters 173-18, 173-20, 173-22, 173-26, and 173-27 WAC.

Statutory Authority for Adoption: RCW 90.58.120 Adoption of rules and 90.58.200 Rules and regulations. RCW 90.58.060 limits amendments to chapter 173-26 WAC, Part III (shoreline master program guidelines) to one update per year. Authority to address geoduck aquaculture is found in RCW 43.21A.681.

Adopted under notice filed as WSR 10-20-009 on September 23, 2010.

Changes Other than Editing from Proposed to Adopted Version: Chapters 173-18, 173-20 and 173-27 WAC: No changes.

WAC 173-22-030(2), definition of floodplain simplified.

WAC 173-26-020(9), 173-26-221(2) and other locations, the concept of critical resource areas has been removed to avoid potential complications with administration of critical areas ordinances at the local level. Changes were made in response to comments from the department of commerce.

WAC 173-26-080, City of Oakville and Yelm are removed from the list of local governments required to develop and administer a shoreline master program.

WAC 173-26-201 (3)(c)(i), language was added to ensure special attention will be paid to identification of "ecologically intact blocks of upland vegetation, developed areas with largely intact riparian vegetation." This is consistent with other rule amendments.

WAC 173-26-201 (3)(d)(i), text removed: "... and tidelands not reserved for water dependent use or development" to make more consistent with intent of reserve areas subsection.

WAC 173-26-201 (3)(d)(vii), proposed water quality and quantity language referring to shellfish areas was replaced with: "Review data and information specific to shellfish areas. Identify measures to protect water quality for human health as described in WAC 173-26-221(6)." This adds more clarity regarding what's expected of local governments.

WAC 173-26-211 (2)(c), text at end of subsection deleted to correct reference to Growth Management Act (GMA) statutes. Now ends at "map."

WAC 173-26-211 (5)(b)(iii)(E), (d)(iii), and (e)(iii), the word "rural" was added to read "...limited areas of more intensive rural development." This section was reworded to be consistent with GMA statutes.

WAC 173-26-211 (5)(c)(ii)(G), deleted in response to comment about redundancy.

WAC 173-26-211 (5)(c)(ii)(H), renumbered as (G).

WAC 173-26-221 (2)(b)(i)(A), in response to public comments, "significant" was added back in regarding vegetation removal to exclude noxious weeds.

WAC 173-26-221 Critical saltwater habitats.

The scope of critical saltwater habitats in WAC 173-26-221 (2)(c)(iii)(A) was restored to the original language, restoring "subsistence, commercial, and recreational shellfish

beds." The purpose of the proposed language was to enhance local government abilities to address geoduck impacts on critical saltwater habitats essential to salmon recovery, and to address other use conflicts. Affected businesses, tribes, and the department of commerce all expressed concerns over the proposed language. The department of commerce was especially concerned that the proposed language created inconsistencies with GMA statutes regarding critical areas ordinances. Commerce made suggestions for how environmental designations (WAC 173-26-211), master program provisions (WAC 173-26-221), and other elements of local shoreline programs could be used to address use conflicts and accomplish adequate environmental protection.

Ecology restored the original language and added language to the principles section (WAC 173-26-221 (2)(c)(iii) (B) and 173-26-241 (3)(b)(i)-(iv)) to clarify the intended relationship between commercial geoduck aquaculture, critical saltwater habitats, and other uses. Local governments shall now require a conditional use permit for all new commercial geoduck aquaculture, not just in critical saltwater habitats.

WAC 173-26-241 (2)(b)(ii)(D), to be consistent with changes made to 173-26-241 (3)(b), "expanded" commercial geoduck aquaculture was removed and no longer explicitly requires a conditional use permit.

WAC 173-26-241 (3)(b), aquaculture, in seeking to make the format of the guidelines structurally more consistent, ecology had proposed to delete certain language from the principles subsection. Affected businesses interpreted the proposed change as a change in the state's policy toward aquaculture. Given there has not been an official change in the state's policy, ecology restored the original language.

WAC 173-26-241 (3)(b)(i)-(iv), commercial geoduck aquaculture provisions, ecology changed the commercial geoduck aquaculture provisions in response to public comment and concerns over the economic impacts to small aquaculture businesses. Ecology also changed the geoduck provisions based on consultation with businesses, tribes, and local governments as directed by Governor's Order 10-06. The subsection has been reorganized and rewritten for clarity, which has resulted in all subsections being modified or moved.

Key changes are:

A conditional use permit is required for all new commercial geoduck aquaculture projects, not just those in critical saltwater habitats. Existing and ongoing projects are not required to obtain additional permits. A conditional use permit provides for local government and ecology review of all new geoduck projects, enabling better consistency with the section 404/401 permits for new geoduck aquaculture, integration of new science as it becomes available consistent with SSHB [2SHB] 2220, and consideration of cumulative impacts as required by current statute [statute].

By not requiring new permits for successive plantings at existing projects, the costs to businesses and local governments associated with permitting is reduced. Chapter 173-27 WAC has language that still applies and stipulates local authority, civil penalties, triggers and other aspects of permit renewals or revisions.

The rule no longer requires a conditional use permit for "expanded" geoduck aquaculture.

The term "expanded" was difficult to define clearly in the rule and, due to other wording changes, is no longer necessary.

There is a wide variety in aquaculture culture methods, operations, timing of activities, and equipment - and all these elements are influenced by evolving technology. This variety makes it beyond the scope of a rule to address all possible current and future projects. Local governments must have discretion in assessing impacts and use conflicts in light of current science and knowledge, and flexibility in meeting the intent of the act and rules.

If aquaculture is introduced onto property not covered by an existing permit, this falls under the category of new geoduck aquaculture and requires a permit.

If a site is converted from existing nongeoduck aquaculture to geoduck aquaculture, local governments have the discretion to require a conditional use permit. This allows local government to consider the impacts of conversions on a case-by-case basis.

Wording related to permit limits and conditions has been changed.

Shellfish aquaculture regulatory committee (SARC) did not reach broad consensus on detailed limits and conditions or the nexus between local, state and federal permits. This was primarily due to the section 404/401 permitting process for geoduck aquaculture not being very far along. Significant progress has occurred in the past two years since the SARC recommendations were submitted to the legislature.

Since March 2010, ecology has been consulting with geoduck growers seeking federal permits for new projects, and the associated 401 water quality certification administered by ecology. Through these consultations and related field work, ecology has gained a better understanding about water quality and habitat impacts from geoduck aquaculture. The permit limits and conditions in the rule amendments have been modified to better align with those ecology expects to include in federal permits. Ecology feels such alignment meets the intent of SSHB [2SHB] 2220 and Governor's Order 10-06.

"At a minimum, conditional use permit limits and conditions should include, where applicable and appropriate," has been changed to read: "In order to avoid or limit impacts from geoduck aquaculture siting and operations and achieve no net loss of ecological functions, local governments should consider the following:." This language change was made to allow local governments more flexibility to respond to local conditions and current science, yet be clear that the intent of the permit is to avoid or limit impacts.

Also, the list of permit limits and conditions has been shortened and the wording directing local governments to specifically either "prohibit" or "limit" certain actions has been removed to provide local governments more flexibility and reduce costs to businesses.

A final cost-benefit analysis is available by contacting Cedar Bouta, Washington Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6406, fax (360) 407-6902, e-mail Cedar.Bouta@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 24, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 11, 2011.

Ted Sturdevant  
Director

AMENDATORY SECTION (Amending Order 73-14, filed 8/27/73)

**WAC 173-18-130 Douglas County. Streams.**

((Stream Name	Quadrangle Name and Size	Legal Description
(1) Columbia River (Cont.)*	Chief Joseph Dam 7 1/2 Bridgeport 7 1/2 Brewster 7 1/2 Wells Dam 7 1/2 Azwell 7 1/2 Chelan Falls 7 1/2 Wenatchee 7 1/2 Rock Island 7 1/2 Malala 7 1/2 Rock Island Dam 7 1/2 Chelan 7 1/2 Winesap 7 1/2 Entiat 7 1/2 Orondo 7 1/2 Rocky Reach Dam 7 1/2 West Bar 7 1/2	Beginning (Sec.24, T29N, R25E) below Chief Joseph Dam downstream to (Sec.13, T20N, R22E) excluding any federal lands. The flow exceeds 200 cfs MAF at Chief Joseph Dam.
(2) Moses Coulee* (Rattlesnake Creek) (Douglas Creek)	Palisades* 7 1/2 Appledale 7 1/2 Rock Island Dam 7 1/2	From the confluence of Douglas Creek and Moses Coulee (Sec.36, T23N, R23E) downstream to mouth at Columbia River (Sec.33, T21N, R22E). This stream has over 300 sq-miles of drainage area ending at mouth of Douglas Creek.)

Streams and rivers and portions thereof which constitute shorelines of the state within Douglas County are designated in the shoreline master programs of the county and the cities therein.

AMENDATORY SECTION (Amending Order DE 76-14, filed 5/3/76)

**WAC 173-18-430 Yakima County. Streams.**

((Stream Name	Quadrangle Name and Size	Legal Description
(1) Ahtanum Creek	Tampico 7 1/2 Wiley City 7 1/2 Yakima West 7 1/2 Yakima East 7 1/2	From confluence of North and South Forks of Ahtanum Creek (Sec.17, T12N, R16E) downstream to mouth at Yakima River (Sec.17, T12N, R19E) excluding those reaches within Yakima Indian Reservation.
(2) Ahtanum Creek (N. Fl.)	Foundation Ridge 7 1/2 Pine Mtn. 7 1/2 Tampico 7 1/2	From confluence of Ahtanum Creek North Fork and Ahtanum Creek Middle Fork (Sec.24, T12N, R14E) downstream to mouth at Ahtanum Creek South Fork (Sec.17, T12N, R16E).
(3) Ahtanum Creek (S. Fl.)	Pine Mtn. 7 1/2 Tampico 7 1/2	From confluence of unnamed creek and Ahtanum Creek South Fork (Sec.24, T12N, R15E) downstream to mouth at Ahtanum Creek (left bank only).
(4) Columbia River*	Priest Rapids 15	From the Yakima Firing Center boundary (Sec.3, T13N, R23E) downstream along the Grant-Yakima County line to Benton County line (Sec.12, T13N, R23E). The flow exceeds 200 cfs MAF at Yakima Firing Center boundary.
(5) Cowiche Creek (S. Fork)	Fieton 7 1/2 Naches 7 1/2 Wiley City 7 1/2 Yakima 7 1/2 Selah West 7 1/2	From an approximate point (NW1/4 of NE1/4 Sec.33, T14N, R16E) downstream through Cowiche Creek to mouth at Naches River (Sec.9, T13N, R18E).
(6) Bumping River*	Bumping Lake* 15 Old Seab Mtn. 7 1/2 Cliffdell 7 1/2	From U.S.G.S. gaging station (Sec.23, T16N, R12E) downstream to mouth at Naches and Little Naches rivers (Sec.4, T17N, R14E). Exclude federal lands. The flow is over 200 cfs MAF at U.S.G.S. gaging station.
(7) Little Naches River*	Lester 15 Easton* 15 Cliffdell 7 1/2	From confluence of North Fork and Middle Fork Little Naches River (Sec.36, T19N, R12E) downstream to mouth at Naches River (Sec.4, T17N, R14E). Exclude federal lands. The 200 cfs MAF point begins at confluence with Crow Creek (Sec.30, T18N, R14E).

((Stream Name	Quadrangle	Legal Description	(9) T29N-R27E	20-A/B	Boot Lk.	36.6	R
(8) Naches River*	<u>Cliffdell 7 1/2</u> Manastash Lake 7 1/2 Nile 7 1/2 Milk Canyon 7 1/2 Tieton 7 1/2 Naches 7 1/2 Selah 7 1/2	From confluence of Little Naches River and Bumping River (Sec.4, T17N, R14E) downstream to mouth at Yakima River (Sec.12, T13N, R18E). Exclude federal lands. The flow is 200 cfs MAF at confluence of Little Naches River and Bumping River.	(10) T29N-R28E	22-E/F	Elbow Lk.	25.4	R
(9) Rattlesnake Creek*	<u>Meeks Table 7 1/2</u> Nile 7 1/2	From Snoqualmie National Forest boundary (Sec.6, T15N, R15E) downstream to mouth at Naches River (Sec.3, same township). The flow at Snoqualmie N.F. boundary is 200 cfs MAF.	(11) T29N-R29E	2-G/H	Unnamed Lk.	21.8	R
(10) Tieton River*	<u>Weddle Canyon 7 1/2</u> Tieton* 7 1/2	From west section line (Sec.29, T14N, R15E) downstream to mouth at Naches River (Sec.35, T15N, R16E). Exclude federal lands. The flow is 200 cfs MAF at west section line (Sec.29, T14N, R15E).	(12) T29N-R29E	22-H/J	Unnamed Lk.	42.2	R
(11) Tieton River (S. Fk.)	<u>White Pass 15</u> Rimrock Lake 7 1/2	From the south section line (Sec.23, T12N, R12E) downstream to mouth at Rimrock Lake (Sec.7, T13N, R14E). Exclude federal lands.	(13) T29N-R29E	22-N	Wilson Lk.	34.5	R
(12) Yakima River (Cont.)*	<u>Pomona* 7 1/2</u> Selah 7 1/2 Yakima East 7 1/2 Wapato 7 1/2 Toppenish 7 1/2 Granger N.W. 7 1/2 Granger 7 1/2 Sunnyside 7 1/2 Mabton West 7 1/2 Mabton East 7 1/2 Prosser 7 1/2	From the Kittitas County line (Sec.33, T15N, R19E) downstream, excluding all federal lands and Yakima Indian Reservation, to Benton County line (Sec.7, T8N, R24E). The flow exceeds 200 cfs MAF at Kittitas County line.))	(14) T29N-R30E	7-SW1/4	Smith Lk.	34.1	R
			(15) T30N-R29E	36-A/B	Unnamed Lk.	24.0	R
			(16) T30N-R30E	7-J/K	Black Lk.	36.2	R))

Lakes which constitute shorelines of the state within Douglas County are designated in the shoreline master programs for the county and the cities therein.

**AMENDATORY SECTION** (Amending Order DE 76-16, filed 5/3/76)

**WAC 173-20-210 Lakes coming under purview of chapter 90.58 RCW—Douglas County lakes of statewide significance.**

((Location	Section	Name	Area (Acres)	Use
(1) T16N-R23E	16/17	Wanapum Dam Res.	1184.0 440.0 6748.0 6308.0 <hr/> 14680.0	Douglas Co. Chelan Co. Grant Co. Kittitas Co. Total
(2) T21N-R22E	5-H/J	Roek Island Pool	1735.0 1735.0 <hr/> 3470.0	Douglas Co. Chelan Co. Total
(3) T24N-R20E	35	Entiat Lk.	4930.0 4930.0 <hr/> 9860.0	Douglas Co. Chelan Co. Total
(4) T28N-R24E	6 & 7	Wells Reservoir	4850.0 4753.0 97.0 <hr/> 9700.0	Douglas Co. Okanogan Co. Chelan Co. Total
(5) T29N-R25E	24-S1/2	Rufus Wood Lk.	3900.0	Douglas Co.
(6) T28N-R29E	22&29	Banks Lk.	24,600.0 300.0 <hr/> 24,900.0	Grant Co. Douglas Co. Total))

Lakes which constitute shorelines of statewide significance within Douglas County are designated in the shoreline master programs for the county and the cities therein.

**AMENDATORY SECTION** (Amending Order DE 76-16, filed 5/3/76)

**WAC 173-20-800 Lakes coming under purview of chapter 90.58 RCW—Yakima County lakes.**

((Location	Section	Name	Area (Acres)	Use
(1) T8N-R23E	12-E	Byron Ponds (Res.)	50.0	R
(2) T9N-R22E	22-M	Horseshoe Pond	59.0	R
(3) T9N-R22E	25-F	Morgan Pond	24.6	R
(4) T9N-R22E	26-B	Giffin Lk.	104.8	R
(5) T9N-R23E	7-S1/2	Oleys Lk.	35.4	R
(6) T13N-R19E	7-M	Freeway Lk.	23.2	R
(7) T14N-R19E	31-L/P	Unnamed Lk.	22.3	R
(8) T15N-R17E	2-N	Wenas Lk. (Res.)	61.4	R,I

Streams and rivers and portions thereof which constitute shorelines of the state within Yakima County are designated in the shoreline master programs of the county and the cities therein.

**AMENDATORY SECTION** (Amending Order DE 77-17, filed 9/1/77)

**WAC 173-20-200 Lakes coming under purview of chapter 90.58 RCW—Douglas County lakes.**

((Location	Section	Name	Area (Acres)	Use
(1) T25N-R25E	12-J/K	Jameson Lk.	331.7	R
(2) T25N-R25E	12-K/Q	Jameson Pothole	20.6	R
(3) T25N-R27E	31-N/N	Intermittent	22.8	R
(4) T26N-R26E	20	Grimes Lk.	124.0	R
(5) T26N-R27E	33-B/C	Haynes Lk.	50.4	R
(6) T26N-R27E	34-D	Stallard Lk.	64.0	R
(7) T28N-R24E	35-NE1/4	Cornell Lk.	37.2	R
(8) T29N-R27E	17-J/R	Unnamed Lk.	24.2	R

<del>((Location</del>	<del>Section</del>	<del>Name</del>	<del>Area (Acres)</del>	<del>Use</del>
<del>(9) T13N-R18E</del>	<del>11-S1/2, S1/2</del>	<del>Unnamed Lake</del>	<del>21.4</del>	<del>R</del>
<del>(10) T13N-R18E</del>	<del>11-S1/2 SE1/4</del>	<del>Unnamed Lake</del>	<del>21.3</del>	<del>R))</del>

Lakes which constitute shorelines of the state within Yakima County are designated in the shoreline master programs for the county and the cities therein.

AMENDATORY SECTION (Amending Order DE 72-14, filed 6/30/72)

**WAC 173-20-810 Lakes coming under purview of chapter 90.58 RCW—Yakima County lakes of statewide significance.**

<del>((Location</del>	<del>Section</del>	<del>Name</del>	<del>Area (Acres)</del>	<del>Use</del>
<del>(1) T13N-R23E</del>	<del>2/3</del>	<del>Priest Rapids-Dam (Res.)</del>	<del>1080.0</del>	<del>Yakima Co.</del>
			<del>4540.0</del>	<del>Grant Co.</del>
			<del>2080.0</del>	<del>Kittitas Co.</del>
			<del>7700.0</del>	<del>Total P,R))</del>

Lakes which constitute shorelines of statewide significance within Yakima County are designated in the shoreline master programs for the county and the cities therein.

AMENDATORY SECTION (Amending Order 05-12, filed 1/2/07, effective 2/2/07)

**WAC 173-22-030 Definitions.** As used herein, the following words have the following meanings:

(1) "Associated wetlands" means those wetlands which are in proximity to and either influence or are influenced by tidal waters or a lake or stream subject to the Shoreline Management Act;

(2) ~~("Atypical situation" as used herein, refers to areas in which one or more parameters (vegetation, soil, and/or hydrology) have been sufficiently altered by recent human activities or natural events to preclude the presence of wetland indicators of the parameter. Recent refers to the period of time since legal jurisdiction of an applicable law or regulation took effect;~~

~~(3) "Duration (inundation/soil saturation)" means the length of time during which water stands at or above the soil surface (inundation), or during which the soil is saturated. As used herein, duration refers to a period during the growing season;~~

~~(4)) "Flood plain" is synonymous with one hundred-year flood plain and means that land area susceptible to ((being inundated by stream derived waters)) inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the act;~~

~~((5)) (3) "Floodway" has the meaning provided in RCW 90.58.030;~~

~~((6) "Growing season" means the portion of the year when soil temperatures at 19.7 inches below the soil surface are higher than biologic zero (5°C);~~

~~(7) "Hydrophytic vegetation" means the sum total of macrophytic plant life growing in water or on a substrate that~~

~~is at least periodically deficient in oxygen as a result of excessive water content. When hydrophytic vegetation comprises a community where indicators of hydric soils and wetland hydrology also occur, the area has wetland vegetation;~~

~~(8) "Hydric soil" means soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part;~~

~~(9)) (4) "Lake" means a body of standing water in a depression of land or expanded part of a river, including reservoirs, of twenty acres or greater in total area. A lake is bounded by the ordinary high water mark or, where a stream enters a lake, the extension of the elevation of the lake's ordinary high water mark within the stream;~~

~~((10) "Long duration" means a period of inundation from a single event that ranges from seven days to one month.~~

~~(11)) (5) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department. The following criteria clarify this mark on tidal waters, lakes, and streams:~~

~~(a) Tidal waters.~~

~~(i) In high energy environments where the action of waves or currents is sufficient to prevent vegetation establishment below mean higher high tide, the ordinary high water mark is coincident with the line of vegetation. Where there is no vegetative cover for less than one hundred feet parallel to the shoreline, the ordinary high water mark is the average tidal elevation of the adjacent lines of vegetation. Where the ordinary high water mark cannot be found, it is the elevation of mean higher high tide;~~

~~(ii) In low energy environments where the action of waves and currents is not sufficient to prevent vegetation establishment below mean higher high tide, the ordinary high water mark is coincident with the landward limit of salt tolerant vegetation. "Salt tolerant vegetation" means vegetation which is tolerant of interstitial soil salinities greater than or equal to 0.5 parts per thousand;~~

~~(b) Lakes. Where the ordinary high water mark cannot be found, it shall be the line of mean high water;~~

~~(c) Streams. Where the ordinary high water mark cannot be found, it shall be the line of mean high water. For braided streams, the ordinary high water mark is found on the banks forming the outer limits of the depression within which the braiding occurs;~~

~~((12) "Prevalent vegetation" means the plant community or communities that occur in an area during a given period. The prevalent vegetation is characterized by the dominant macrophytic species that comprise the plant community;~~

~~(13)) (6) "River delta" means those lands formed as an aggradational feature by stratified clay, silt, sand and gravel deposited at the mouths of streams where they enter a quieter~~

body of water. The upstream extent of a river delta is that limit where it no longer forms distributary channels;

~~((14))~~ (7) "Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous flood plain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology. Any county or city may determine that portion of a one hundred-year flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom;

~~((15))~~ (8) A "stream" is a naturally occurring body of periodic or continuously flowing water where:

(a) The mean annual flow is greater than twenty cubic feet per second; and

(b) The water is contained within a channel. A channel is an open conduit either naturally or artificially created. This definition does not include artificially created irrigation, return flow, or ~~((stockwatering))~~ stock watering channels;

~~((16))~~ (9) "Tidal water" includes marine and estuarine waters bounded by the ordinary high water mark. Where a stream enters the tidal water, the tidal water is bounded by the extension of the elevation of the marine ordinary high water mark within the stream;

~~((17))~~ "Typically adapted" is a term that refers to a species being normally or commonly suited to a given set of environmental conditions, due to some feature of its morphology, physiology, or reproduction;

(18) "Very long duration" means a period of inundation from a single event that is greater than one month.

~~((19))~~ (10) "Wetlands" or "wetland areas" means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands; and

~~((20))~~ (11) The definitions set forth in chapter 90.58 RCW shall also apply as used herein.

AMENDATORY SECTION (Amending Order 96-12, filed 2/5/97, effective 3/8/97)

**WAC 173-22-035 Wetland identification and delineation.** Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the ~~((criteria and indicators listed in WAC 173-~~

~~22-080. These criteria and indicators along with recommended methods and additional background information can be found in the Washington State Wetland Identification and Delineation Manual, Ecology Publication # 96-94)) approved federal wetland delineation manual and applicable regional supplements. Review copies are available at the department of ecology headquarters and regional offices. Links to the on-line versions are accessible through the department of ecology wetlands web page. Copies of the original published manual are available through the U.S. Army Corps of Engineers National Technical Information Service (phone 703-487-4650).~~

AMENDATORY SECTION (Amending Order 86-06, filed 5/23/86)

**WAC 173-22-0618 Douglas County.** Wetlands subject to the provisions of chapter 90.58 RCW within Douglas County ~~((designation maps approved June 30, 1972. Revision approved August 28, 1973))~~ are designated in the Douglas County shoreline master program.

AMENDATORY SECTION (Amending Order 86-06, filed 5/23/86)

**WAC 173-22-0678 Yakima County.** Wetlands subject to the provisions of chapter 90.58 RCW within Yakima County ~~((designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977. Revision approved July 2, 1980))~~ are designated in the Yakima County shoreline master program.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-22-080 Wetland delineation manual.

AMENDATORY SECTION (Amending Order 03-02, filed 12/17/03, effective 1/17/04)

**WAC 173-26-020 Definitions.** In addition to the definitions and concepts set forth in RCW 90.58.030, as amended, and the other implementing rules for the ~~((SMA))~~ Washington State Shoreline Management Act, as used herein, the following words and phrases shall have the following meanings:

(1) "Act" means the Washington State Shoreline Management Act, chapter 90.58 RCW.

(2) "Adoption by rule" means an official action by the department to make a local government shoreline master program effective through rule consistent with the requirements of the Administrative Procedure Act, chapter 34.05 RCW, thereby incorporating the adopted shoreline master program or amendment into the state master program.

(3)(a) "Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie

dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation;

(b) "Agricultural products" includes, but is not limited to, horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including, but not limited to, meat, upland finfish, poultry and poultry products, and dairy products;

(c) "Agricultural equipment" and "agricultural facilities" includes, but is not limited to:

(i) The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including, but not limited to, pumps, pipes, tapes, canals, ditches, and drains;

(ii) Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;

(iii) Farm residences and associated equipment, lands, and facilities; and

(iv) Roadside stands and on-farm markets for marketing fruit or vegetables; and

(d) "Agricultural land" means those specific land areas on which agricultural activities are conducted as of the date of adoption of a local master program pursuant to these guidelines as evidenced by aerial photography or other documentation. After the effective date of the master program, land converted to agricultural use is subject to compliance with the requirements of the master program.

(4) "Amendment" means a revision, update, addition, deletion, and/or reenactment to an existing shoreline master program.

(5) "Approval" means an official action by a local government legislative body agreeing to submit a proposed shoreline master program or amendments to the department for review and official action pursuant to this chapter; or an official action by the department to make a local government shoreline master program effective, thereby incorporating the approved shoreline master program or amendment into the state master program.

(6) "Aquaculture" means the culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the state managed wildstock geoduck fishery.

(7) "Channel migration zone (CMZ)" means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when

considered with the characteristics of the river and its surroundings.

~~((7))~~ (8) "Critical areas" as defined under chapter 36.70A RCW includes the following areas and ecosystems:

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable waters;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(9) "Department" means the state department of ecology.

~~((8))~~ (10) "Development regulations" means the controls placed on development or land uses by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a shoreline master program other than goals and policies approved or adopted under chapter 90.58 RCW, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.

~~((9))~~ (11) "Document of record" means the most current shoreline master program officially approved or adopted by rule by the department for a given local government jurisdiction, including any changes resulting from appeals filed pursuant to RCW 90.58.190.

~~((10))~~ (12) "Drift cell," "drift sector," or "littoral cell" means a particular reach of marine shore in which littoral drift may occur without significant interruption and which contains any natural sources of such drift and also accretion shore forms created by such drift.

~~((11))~~ (13) "Ecological functions" or "shoreline functions" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem. ~~((See WAC 173-26-200 (2)(e)).~~

~~((12))~~ (14) "Ecosystem-wide processes" means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

~~((13))~~ (15) "Feasible" means, for the purpose of this chapter, that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

(a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;

(b) The action provides a reasonable likelihood of achieving its intended purpose; and

(c) The action does not physically preclude achieving the project's primary intended legal use.

In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant.

In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and pub-



lic benefits, considered in the short- and long-term time frames.

~~((14))~~ (16) "Fill" means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

~~((15))~~ (17) "Flood plain" is synonymous with one hundred-year flood plain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the act.

~~((16))~~ (18) "Floodway" means the area, as identified in a master program, that either:

(a) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or

(b) Consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

(19) "Geotechnical report" or "geotechnical analysis" means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

~~((17))~~ (20) "Grading" means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

~~((18))~~ (21) "Guidelines" means those standards adopted by the department to implement the policy of chapter 90.58 RCW for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria for local governments and the department in developing and amending master programs.

~~((19))~~ (22) "Local government" means any county, incorporated city or town which contains within its boundaries shorelines of the state subject to chapter 90.58 RCW.

~~((20))~~ (23) "Marine" means pertaining to tidally influenced waters, including oceans, sounds, straits, marine channels, and estuaries, including the Pacific Ocean, Puget Sound, Straits of Georgia and Juan de Fuca, and the bays, estuaries and inlets associated therewith.

~~((21))~~ (24)(a) "Master program" or "shoreline master program" shall mean the comprehensive use plan for a described area, the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020 and the applicable guidelines. As provided in RCW 36.70A.480, 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.

(b) "Comprehensive master program update" means a master program that fully achieves the procedural and substantive requirements of the department's shoreline master program guidelines effective January 17, 2004, as now or hereafter amended;

(c) "Limited master program amendment" means a master program amendment that addresses specific procedural and/or substantive topics and which is not intended to meet the complete requirements of a comprehensive master program update.

(25) "May" means the action is acceptable, provided it conforms to the provisions of this chapter.

~~((22))~~ (26) "Must" means a mandate; the action is required.

~~((23))~~ (27) "Nonwater-oriented uses" means those uses that are not water-dependent, water-related, or water-enjoyment.

~~((24))~~ (28) "Priority habitat" means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes:

- Comparatively high fish or wildlife density;
- Comparatively high fish or wildlife species diversity;
- Fish spawning habitat;
- Important wildlife habitat;
- Important fish or wildlife seasonal range;
- Important fish or wildlife movement corridor;
- Rearing and foraging habitat;
- Important marine mammal haul-out;
- Refugia habitat;
- Limited availability;
- High vulnerability to habitat alteration;
- Unique or dependent species; or
- Shellfish bed.

A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described

by a successional stage (such as, old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as a consolidated marine/estuarine shoreline, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife.

~~((25))~~ (29) "Priority species" means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed below.

(a) Criterion 1. State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the department of fish and wildlife (POLM-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.

(b) Criterion 2. Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.

(c) Criterion 3. Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.

(d) Criterion 4. Species listed under the federal Endangered Species Act as either proposed, threatened, or endangered.

~~((26))~~ (30) "Provisions" means policies, regulations, standards, guideline criteria or environment designations.

~~((27))~~ (31) "Restore," "restoration" or "ecological restoration" means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

~~((28))~~ (32) "Shall" means a mandate; the action must be done.

~~((29))~~ (33) "Shoreline areas" and "shoreline jurisdiction" means all "shorelines of the state" and "shorelands" as defined in RCW 90.58.030.

~~((30))~~ "Shoreline master program" or "master program" means the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020.

~~As provided in RCW 36.70A.480, 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.~~

~~((31))~~ (34) "Shoreline modifications" means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

~~((32))~~ (35) "Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.

~~((33))~~ (36) "Significant vegetation removal" means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

~~((34))~~ (37) "State master program" means the cumulative total of all shoreline master programs and amendments thereto approved or adopted by rule by the department.

~~((35))~~ (38) "Substantially degrade" means to cause significant ecological impact.

~~((36))~~ (39) "Water-dependent use" means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

~~((37))~~ (40) "Water-enjoyment use" means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

~~((38))~~ (41) "Water-oriented use" means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

~~((39))~~ (42) "Water quality" means the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this chapter, the term "water quantity" refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this chapter, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

~~((40))~~ (43) "Water-related use" means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

(a) The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or

(b) The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

AMENDATORY SECTION (Amending Order 95-17, filed 9/30/96, effective 10/31/96)

**WAC 173-26-060 State master program—~~((Complete))~~ Records maintained by department.** The department shall maintain records for all master programs currently in effect and subsequent amendments thereto. Master program records shall be organized consistent with the state master program register and shall be available for public viewing and inspection during normal business hours at the headquarters of the department.

~~((The department shall maintain a record of each master program, the action taken by the department on any proposed master program or amendment, and any appeal of the department's action.))~~ Records of master programs no longer in effect will be relocated in accordance with the records retention schedule approved by the state records committee.

Such records should be maintained in two groups of files as follows:

(1) Shoreline master program working files corresponding to each proposed master program or amendment containing, where applicable:

- (a) Initial submittal from local government;
- (b) Record of notice to the public, interested parties, agencies and tribes;
- (c) Staff reports, analysis and recommendations;
- (d) Pertinent correspondence between local government and the department;
- (e) The department's letter denying, approving as submitted or approving alternatives together with findings and conclusions and amended text and/or maps;
- (f) Documents related to any appeal of the department's action on the amendment;
- (g) Supplemental materials including:
  - (i) Interested party mailing list;
  - (ii) Comment letters and exhibits from federal, state, local, and tribal agencies;
  - (iii) Comment letters and exhibits from the general public;
  - (iv) Recorded tapes and/or a summary of hearing oral testimony;
  - (v) A concise explanatory statement, if adopted by rule.

(2) State master program files, containing the master program currently in effect, with all text and map amendments incorporated, constituting the official state master program approved document of record.

AMENDATORY SECTION (Amending Order 95-17, filed 9/30/96, effective 10/31/96)

**WAC 173-26-080 Master programs required of local governments.** The following local governments, listed alphabetically by county, are required to develop and administer a shoreline master program:

Adams County.

Asotin County.

Asotin, city of.

Clarkston, city of.

Benton County.

Benton City, city of.

Kennewick, city of.

Prosser, city of.

Richland, city of.

West Richland, city of.

Chelan County.

Cashmere, city of.

Chelan, city of.

Entiat, town of.

Leavenworth, city of.

Wenatchee, city of.

Clallam County.

Forks, city of.

Port Angeles, city of.

Sequim, city of.

Clark County.

Camas, city of.

LaCenter, town of.

Ridgefield, town of.

Vancouver, city of.

Washougal, city of.

Woodland, city of.

Columbia County.

Dayton, city of.

Starbuck, town of.

Cowlitz County.

Castle Rock, city of.

Kalama, city of.

Kelso, city of.

Longview, city of.

Woodland, city of.

Douglas County.

Bridgeport, town of.

Coulee Dam, city of.

East Wenatchee, city of.

Rock Island, town of.

Ferry County.

Republic, town of.

Franklin County.

Mesa, town of.

Pasco, city of.

- Garfield County.  
Pomeroy, city of.
- Grant County.  
 Coulee City, city of.  
 Coulee Dam, city of.  
 Electric City, city of.  
 Grand Coulee, city of.  
 Krupp, town of.  
 Moses Lake, city of.  
 Soap Lake, city of.  
 Wilson Creek, town of.
- Grays Harbor County.  
 Aberdeen, city of.  
 Cosmopolis, city of.  
 Elma, city of.  
 Hoquiam, city of.  
McCleary, town of.  
 Montesano, city of.  
 (~~Oakville, city of.~~)  
 Ocean Shores, city of.  
 Westport, city of.
- Island County.  
 Coupeville, town of.  
 Langley, city of.  
 Oak Harbor, city of.
- Jefferson County.  
 Port Townsend, city of.
- King County.  
 Auburn, city of.  
 Beaux Arts Village, town of.  
 Bellevue, city of.  
 Black Diamond, city of.  
 Bothell, city of.  
 Burien, city of.  
 Carnation, town of.  
Covington, city of.  
 Des Moines, city of.  
 Duvall, city of.  
Enumclaw, city of.  
 Federal Way, city of.  
 Hunts Point, town of.  
 Issaquah, city of.  
Kenmore, city of.  
 Kent, city of.  
 Kirkland, city of.  
 Lake Forest Park, city of.  
Maple Valley, city of.  
 Medina, city of.  
 Mercer Island, city of.  
 Milton, city of.  
 (~~Newcastle, city of.~~)  
 Normandy Park, city of.  
 North Bend, city of.  
 Pacific, city of.  
 Redmond, city of.  
 Renton, city of.  
Sammamish, city of.
- Sea-Tac, city of.  
 Seattle, city of.  
 Shoreline, city of.  
 Skykomish, town of.  
 Snoqualmie, city of.  
 Tukwila, city of.  
 Woodinville, city of.  
 Yarrow Point, town of.
- Kitsap County.  
 Bremerton, city of.  
 Port Orchard, city of.  
 Poulsbo, city of.  
 Bainbridge Island, city of.
- Kittitas County.  
 Cle Elum, city of.  
 Ellensburg, city of.  
 South Cle Elum, town of.
- Klickitat County.  
 Bingen, town of.  
 Goldendale, city of.  
 White Salmon, town of.
- Lewis County.  
 Centralia, city of.  
 Chehalis, city of.  
 Morton, city of.  
Napavine, city of.  
 Pe Ell, town of.  
 Toledo, city of.  
 Vader, city of.  
 Winlock, city of.
- Lincoln County.  
 Odessa, town of.  
Reardan, town of.  
 Sprague, city of.
- Mason County.  
 Shelton, city of.
- Okanogan County.  
 Brewster, town of.  
 Conconully, town of.  
 Coulee Dam, city of.  
Elmer City, town of.  
 Okanogan, city of.  
 Omak, city of.  
 Oroville, town of.  
 Pateros, town of.  
 Riverside, town of.  
 Tonasket, town of.  
 Twisp, town of.  
 Winthrop, town of.
- Pacific County.  
 Ilwaco, town of.  
 Long Beach, town of.  
 Raymond, city of.  
 South Bend, city of.

- Pend Oreille County.  
 Cusick, town of.  
 Ione, town of.  
 Metaline, town of.  
 Metaline Falls, town of.  
 Newport, city of.
- Pierce County.  
 Bonney Lake, city of.  
 Buckley, city of.  
 Dupont, city of.  
 Eatonville, town of.  
 Fife, city of.  
 Gig Harbor, city of.  
 Lakewood, city of.  
 Milton, city of.  
 Orting, city of.  
 Pacific, city of.  
 Puyallup, city of.  
 Roy, city of.  
 Ruston, town of.  
 South Prairie, town of.  
 Steilacoom, town of.  
 Sumner, city of.  
 Tacoma, city of.  
 University Place, city of.  
 Wilkeson, town of.
- San Juan County.  
 Friday Harbor, town of.
- Skagit County.  
 Anacortes, city of.  
 Burlington, city of.  
 Concrete, town of.  
 Hamilton, town of.  
 La Conner, town of.  
 Lyman, town of.  
 Mount Vernon, city of.  
 Sedro Woolley, city of.
- Skamania County.  
 North Bonneville, city of.  
 Stevenson, town of.
- Snohomish County.  
 Arlington, city of.  
 Bothell, city of.  
 Brier, city of.  
Darrington, town of.  
 Edmonds, city of.  
 Everett, city of.  
 Gold Bar, town of.  
 Granite Falls, town of.  
 Index, town of.  
 Lake Stevens, city of.  
Lynnwood, city of.  
 Marysville, city of.  
 Monroe, city of.  
 Mountlake Terrace, city of.  
 Mukilteo, city of.  
 Snohomish, city of.
- Stanwood, city of.  
 Sultan, town of.  
 Woodway, town of.
- Spokane County.  
 Latah, town of.  
Liberty Lake, town of.  
 Medical Lake, town of.  
 Millwood, town of.  
 Rockford, town of.  
 Spokane, city of.  
Spokane Valley, city of.  
 Waverly, town of.
- Stevens County.  
 Chewelah, city of.  
Kettle Falls, city of.  
Marcus, town of.  
 Northport, town of.
- Thurston County.  
 Bucoda, town of.  
 Lacey, city of.  
 Olympia, city of.  
 Tenino, town of.  
 Tumwater, city of.  
 (~~Yelm, town of.~~)
- Wahkiakum County.  
 Cathlamet, town of.
- Walla Walla County.  
Prescott, city of.  
 Waitsburg, town of.  
 Walla Walla, city of.
- Whatcom County.  
 Bellingham, city of.  
 Blaine, city of.  
 Everson, city of.  
 Ferndale, city of.  
 Lynden, city of.  
 Nooksack, city of.  
 Sumas, city of.
- Whitman County.  
 Albion, town of.  
 Colfax, city of.  
 Malden, town of.  
 Palouse, city of.  
 Pullman, city of.  
 Rosalia, town of.  
 Tekoa, city of.
- Yakima County.  
 Grandview, city of.  
 Granger, town of.  
Mabton, city of.  
 Naches, town of.  
 Selah, city of.  
Toppenish, city of.  
 Union Gap, city of.  
Wapato, city of.

Yakima, city of.  
Zillah, city of.

AMENDATORY SECTION (Amending Order 95-17, filed 9/30/96, effective 10/31/96)

**WAC 173-26-110 Submittal to department of proposed master programs/amendments.** A master program or amendment proposed by local government shall be submitted to the department for its review and formal action. A complete submittal shall include two copies of the following, where applicable:

(1) Documentation (i.e., signed resolution or ordinance) that the proposal has been approved by the local government;

(2) If the proposal includes text amending a master program document of record, it shall be submitted in a form that can replace or be easily incorporated within the existing document. Amended text shall show strikeouts for deleted text and underlining for new text, clearly identifying the proposed changes. At the discretion of the department, strikeouts and underlined text may not be required provided the new or deleted portions of the master program are clearly identifiable;

(3) Amended environment designation map(s), showing both existing and proposed designations, together with corresponding boundaries described in text for each change of environment. (~~Environment designation maps shall include a scale and north arrow and shall be of standard size using distinct reproducible noncolor patterns.~~) All proposals for changes in environment designation and redesignation shall provide written justification for such based on existing development patterns, the biophysical capabilities and limitations of the shoreline being considered, and the goals and aspirations of the local citizenry as reflected in the locally adopted comprehensive land use plan;

(4) A summary of proposed amendments together with explanatory text indicating the scope and intent of the proposal, staff reports, records of the hearing, and/or other materials which document the necessity for the proposed changes to the master program;

(5) Evidence of compliance with chapter 43.21C RCW, the State Environmental Policy Act, specific to the proposal;

(6) Evidence of compliance with the public notice and consultation requirements of WAC 173-26-100;

(7) Copies of all public, agency and tribal comments received, including a record of names and addresses of interested parties involved in the local government review process or, where no comments have been received, a comment to that effect.

(8) A copy of the master program submittal checklist completed in accordance with WAC 173-26-201 (2)(f) and (3)(a) and (h).

(9) For comprehensive master program updates, copies of the inventory and characterization, use analysis, restoration plan and cumulative impacts analysis.

AMENDATORY SECTION (Amending Order 95-17, filed 9/30/96, effective 10/31/96)

**WAC 173-26-130 Appeal procedures for master programs.** (1) For local governments planning under chapter

36.70A RCW, ~~((the growth management hearings board with jurisdiction shall hear and make determinations regarding the department's decision to approve, adopt by rule, or deny a proposed master program or amendment. All petitions for review shall be filed within sixty days after publication of notice by the local government of the department's final action pursuant to WAC 173-26-120(9)))~~ appeals shall be to the growth management hearings board. The petition must be filed pursuant to the requirements of RCW 90.58.190. The department's (ecology's) written notice of final action will conspicuously and plainly state it is the department's final decision and there will be no further modifications under RCW 90.58.090(2).

(2) For local governments not planning under chapter 36.70A RCW, all petitions for review shall be filed with the state shorelines hearings board within thirty days of the written decision by the department approving or denying the master program or amendment. The department's written notice will conspicuously and plainly state it is the department's final decision and there will be no further modifications under RCW 90.58.090(2).

AMENDATORY SECTION (Amending Order 95-17, filed 9/30/96, effective 10/31/96)

**WAC 173-26-150 Local government annexation—Shoreline environment predesignation in planning jurisdictions.** Cities and towns planning under the Growth Management Act, chapter 36.70A RCW, may within adopted urban growth areas predesignate environments on shorelines located outside of existing city boundaries. Shoreline environment predesignations shall be consistent with the policy of chapters 36.70A and 90.58 RCW and their applicable guidelines and rules.

Such predesignation shall be conducted under a city's or town's authority to plan for growth within adopted urban growth areas.

Cities and towns not planning under the Growth Management Act, chapter 36.70A RCW, may predesignate environments on shorelines located outside their existing incorporated boundaries. Shoreline environment predesignations shall be consistent with the policy of chapter 90.58 RCW and its applicable guidelines and rules.

Environment predesignations shall be approved by the department according to the procedures set forth in this chapter for amendment of a shoreline master program. No additional procedures are required by the department at the time of annexation. The shoreline environment designation for a predesignated shoreline area shall take effect concurrent with annexation.

AMENDATORY SECTION (Amending Order 03-02, filed 12/17/03, effective 1/17/04)

**WAC 173-26-191 Master program contents.** (1) **Master program concepts.** The following concepts are the basis for effective shoreline master programs.

(a) **Master program policies and regulations.** Shoreline master programs are both planning and regulatory tools. Master programs serve a planning function in several ways. First, they balance and integrate the objectives and interests

of local citizens. Therefore, the preparation and amending of master programs shall involve active public participation, as called for in WAC 173-26-201(3). Second, they address the full variety of conditions on the shoreline. Third, they consider and, where necessary to achieve the objectives of chapter 90.58 RCW, influence planning and regulatory measures for adjacent land. For jurisdictions planning under chapter 36.70A RCW, the Growth Management Act, the requirements for consistency between shoreline and adjacent land planning are more specific and are described in WAC 173-26-191 (1)(e). Fourth, master programs address conditions and opportunities of specific shoreline segments by classifying the shorelines into "environment designations" as described in WAC 173-26-211.

The results of shoreline planning are summarized in shoreline master program policies that establish broad shoreline management directives. The policies are the basis for regulations that govern use and development along the shoreline. Some master program policies may not be fully attainable by regulatory means due to the constitutional and other legal limitations on the regulation of private property. The policies may be pursued by other means as provided in RCW 90.58.240. Some development requires a shoreline permit prior to construction. A local government evaluates a permit application with respect to the shoreline master program policies and regulations and approves a permit only after determining that the development conforms to them. Except where specifically provided in statute, the regulations apply to all uses and development within shoreline jurisdiction, whether or not a shoreline permit is required, and are implemented through an administrative process established by local government pursuant to RCW 90.58.050 and 90.58.140 and enforcement pursuant to RCW 90.58.210 through 90.58.230.

(b) **Master program elements.** RCW 90.58.100(2) states that the master programs shall, when appropriate, include the following elements:

*"(a) An economic development element for the location and design of industries, (~~industrial~~) projects of statewide significance, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of shorelines of the state;*

*(b) A public access element making provision for public access to publicly owned areas;*

*(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;*

*(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element;*

*(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;*

*(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aes-*

*thetics, and vital estuarine areas for fisheries and wildlife protection;*

*(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;*

*(h) An element that gives consideration to the statewide interest in the prevention and minimization of flood damages; and*

*(i) Any other element deemed appropriate or necessary to effectuate the policy of this chapter."*

The Growth Management Act (chapter 36.70A RCW) also uses the word "element" for discrete components of a comprehensive plan. To avoid confusion, "master program element" refers to the definition in the Shoreline Management Act as cited above. Local jurisdictions are not required to address the master program elements listed in the Shoreline Management Act as discrete sections. The elements may be addressed throughout master program provisions rather than used as a means to organize the master program.

(c) **Shorelines of statewide significance.** The Shoreline Management Act identifies certain shorelines as "shorelines of statewide significance" and raises their status by setting use priorities and requiring "optimum implementation" of the act's policy. WAC 173-26-251 describes methods to provide for the priorities listed in RCW 90.58.020 and to achieve "optimum implementation" as called for in RCW 90.58.090(4).

(d) **Shoreline environment designations.** Shoreline management must address a wide range of physical conditions and development settings along shoreline areas. Effective shoreline management requires that the shoreline master program prescribe different sets of environmental protection measures, allowable use provisions, and development standards for each of these shoreline segments.

The method for local government to account for different shoreline conditions is to assign an environment designation to each distinct shoreline section in its jurisdiction. The environment designation assignments provide the framework for implementing shoreline policies and regulatory measures specific to the environment designation. WAC 173-26-211 presents guidelines for environment designations in greater detail.

(e) **Consistency with comprehensive planning and other development regulations.** Shoreline management is most effective and efficient when accomplished within the context of comprehensive planning. For cities and counties planning under the Growth Management Act, chapter 36.70A RCW requires mutual and internal consistency between the comprehensive plan elements and implementing development regulations (including master programs). The requirement for consistency is amplified in WAC (~~365-195-500~~):

~~"Each comprehensive plan shall be an internally consistent document and all elements shall be consistent with the future land use map. This means that each part of the plan should be integrated with all other parts and that all should be capable of implementation together. Internal consistency involves at least two aspects:~~

~~(1) Ability of physical aspects of the plan to coexist on the available land.~~

~~(2) Ability of the plan to provide that adequate public facilities are available when the impacts of development occur (concurrency).~~

~~Each plan should provide mechanisms for ongoing review of its implementation and adjustment of its terms whenever internal conflicts become apparent.") 365-196-500.~~

The Growth Management Act also calls for coordination and consistency of comprehensive plans among local jurisdictions. RCW 36.70A.100 states:

*"The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues."*

Since master program goals and policies are an element of the local comprehensive plan, the requirement for internal and intergovernmental plan consistency may be satisfied by watershed-wide or regional planning.

Legislative findings provided in section 1, chapter 347, Laws of 1995 (see RCW 36.70A.470 notes) state:

*"The legislature recognizes by this act that the growth management act is a fundamental building block of regulatory reform. The state and local governments have invested considerable resources in an act that should serve as the integrating framework for all other land-use related laws. The growth management act provides the means to effectively combine certainty for development decisions, reasonable environmental protection, long-range planning for cost-effective infrastructure, and orderly growth and development."*

And RCW 36.70A.480(1) (The Growth Management Act) states:

*"For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW 90.58.020 are added as one of the goals of this chapter as set forth in RCW 36.70A.020 without creating an order of priority among the fourteen goals. The goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations."*

Furthermore, RCW 36.70A.481 states:

*"Nothing in RCW 36.70A.480 shall be construed to authorize a county or city to adopt regulations applicable to shorelands as defined in RCW 90.58.030 that are inconsistent with the provisions of chapter 90.58 RCW."*

The Shoreline Management Act addresses the issue of consistency in RCW 90.58.340, which states:

*"All state agencies, counties, and public and municipal corporations shall review administrative and management policies, regulations, plans, and ordinances relative to lands under their respective jurisdictions adjacent to the shorelines of the state so as the [to] achieve a use policy on said land consistent with the policy of this chapter, the guidelines, and the master programs for the shorelines of the state. The department may develop recommendations for land use con-*

*trol for such lands. Local governments shall, in developing use regulations for such areas, take into consideration any recommendations developed by the department as well as any other state agencies or units of local government. [1971 ex.s. c 286 § 34.]"*

Pursuant to the statutes cited above, the intent of these guidelines is to assist local governments in preparing and amending master programs that fit within the framework of applicable comprehensive plans, facilitate consistent, efficient review of projects and permits, and effectively implement the Shoreline Management Act. It should be noted the ecology's authority under the Shoreline Management Act is limited to review of shoreline master programs based solely on consistency with the ((SMA)) act and these guidelines. It is the responsibility of the local government to assure consistency between the master program and other elements of the comprehensive plan and development regulations.

Several sections in these guidelines include methods to achieve the consistency required by both the Shoreline Management Act and the Growth Management Act.

First, WAC 173-26-191 (2)(b) and (c) describe optional methods to integrate master programs and other development regulations and the local comprehensive plan.

Second, WAC 173-26-221 through 173-26-251 translate the broad policy goals in the Shoreline Management Act into more specific policies. They also provide a more defined policy basis on which to frame local shoreline master program provisions and to evaluate the consistency of applicable sections of a local comprehensive plan with the Shoreline Management Act.

Finally, WAC 173-26-211(3) presents specific methods for testing consistency between shoreline environment designations and comprehensive plan land use designations.

(2) **Basic requirements.** This chapter describes the basic components and content required in a master program. A master program must be sufficient and complete to implement the Shoreline Management Act and the provisions of this chapter. A master program shall contain policies and regulations as necessary for reviewers to evaluate proposed shoreline uses and developments for conformance to the Shoreline Management Act. As indicated in WAC 173-26-020, for this chapter: The terms "shall," "must," and "are required" and the imperative voice, mean a mandate; the action is required; the term "should" means that the particular action is required unless there is a demonstrated, ((sufficient)) compelling reason, based on a policy of the Shoreline Management Act and this chapter, for not taking the action; and the term "may" indicates that the action is within discretion and authority, provided it satisfies all other provisions in this chapter.

(a) **Master program contents.** Master programs shall include the following contents:

(i) **Master program policies.** Master programs shall provide clear, consistent policies that translate broad statewide policy goals set forth in WAC 173-26-176 and 173-26-181 into local directives. Policies are statements of intent directing or authorizing a course of action or specifying criteria for regulatory and nonregulatory actions by a local government. Master program policies provide a comprehensive foundation for the shoreline master program regulations,



which are more specific, standards used to evaluate shoreline development. Master program policies also are to be pursued and provide guidance for public investment and other non-regulatory initiatives to assure consistency with the overall goals of the master program.

Shoreline policies shall be developed through an open comprehensive shoreline planning process. For governments planning under the Growth Management Act, the master program policies are considered a shoreline element of the local comprehensive plan and shall be consistent with the planning goals of RCW 36.70A.020, as well as the act's general and special policy goals set forth in WAC 173-26-176 and 173-26-181.

At a minimum, shoreline master program policies shall:

(A) Be consistent with state shoreline management policy goals and specific policies listed in this chapter and the policies of the Shoreline Management Act;

(B) Address the master program elements of RCW 90.58.100;

(C) Include policies for environment designations as described in WAC 173-26-211. The policies shall be accompanied by a map or physical description of the schematic environment designation boundaries in sufficient detail to compare with comprehensive plan land use designations; and

(D) Be designed and implemented in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.

(ii) **Master program regulations.** RCW 90.58.100 states:

*"The master programs provided for in this chapter, when adopted or approved by the department shall constitute use regulations for the various shorelines of the state."*

In order to implement the directives of the Shoreline Management Act, master program regulations shall:

(A) Be sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies of this chapter, and local master program policies;

(B) Include environment designation regulations that apply to specific environments consistent with WAC 173-26-210;

(C) Include general regulations, use regulations that address issues of concern in regard to specific uses, and shoreline modification regulations; and

(D) Design and implement regulations and mitigation standards in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.

(iii) **Administrative provisions.**

(A) **Statement of applicability.** The Shoreline Management Act's provisions are intended to provide for the management of all development and uses within its jurisdiction, whether or not a shoreline permit is required. Many activities that may not require a substantial development permit, such as clearing vegetation or construction of a residential bulkhead, can, individually or cumulatively, adversely impact adjacent properties and natural resources, including those held in public trust. Local governments have the authority and responsibility to enforce master program regulations on all uses and development in the shoreline area. There has

been, historically, some public confusion regarding the Shoreline Management Act's applicability in this regard. Therefore, all master programs shall include the following statement:

*"Except when specifically exempted by statute, all proposed uses and development occurring within shoreline jurisdiction must conform to chapter 90.58 RCW, the Shoreline Management Act, and this master program."*

In addition to the requirements of the ((SMA)) act, permit review, implementation, and enforcement procedures affecting private property must be conducted in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property. Administrative procedures should include provisions insuring that these requirements and limitations are considered and followed in all such decisions.

While the master program is a comprehensive use regulation applicable to all land and water areas within the jurisdiction described in the act, its effect is generally on future development and changes in land use. Local government may find it necessary to regulate existing uses to avoid severe harm to public health and safety or the environment and in doing so should be cognizant of constitutional and other legal limitations on the regulation of private property. In some circumstances existing uses and properties may become non-conforming with regard to the regulations and master programs should include provisions to address these situations in a manner consistent with achievement of the policy of the act and consistent with constitutional and other legal limitations.

(B) Conditional use and variance provisions.

RCW 90.58.100(5) states:

*"Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW 90.58.020. Any such varying shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. The concept of this subsection shall be incorporated in the rules adopted by the department relating to the establishment of a permit system as provided in RCW 90.58.140 (3)."*

All master programs shall include standards for reviewing conditional use permits and variances which conform to chapter 173-27 WAC.

(C) **Administrative permit review and enforcement procedures.**

RCW 90.58.140(3) states:

*"The local government shall establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section. The administration of the system so established shall be performed exclusively by the local government."*

Local governments may include administrative, enforcement, and permit review procedures in the master program or the procedures may be defined by a local government ordinance separate from the master program. In either case, these procedures shall conform to the Shoreline Management Act,

specifically RCW 90.58.140, 90.58.143, 90.58.210 and 90.58.220 and to chapter 173-27 WAC.

Adopting review and enforcement procedures separate from the master program allows local governments to more expeditiously revise their shoreline permit review procedures and to integrate them with other permit processing activities.

**(D) Documentation of project review actions and changing conditions in shoreline areas.**

Master programs or other local permit review ordinances addressing shoreline project review shall include a mechanism for documenting all project review actions in shoreline areas. Local governments shall also identify a process for periodically evaluating the cumulative effects of authorized development on shoreline conditions. This process could involve a joint effort by local governments, state resource agencies, affected Indian tribes, and other parties.

**(b) Including other documents in a master program by reference.** Shoreline master program provisions sometimes address similar issues as other comprehensive plan elements and development regulations, such as the zoning code and critical area ordinance. For the purposes of completeness and consistency, local governments may include other locally adopted policies and regulations within their master programs. For example, a local government may include its critical area ordinance in the master program to provide for compliance with the requirements of RCW 90.58.090(4), provided the critical area ordinance is also consistent with this chapter. This can ensure that local master programs are consistent with other regulations.

Shoreline master programs may include other policies and regulations by referencing a specific, dated edition. When including referenced regulations within a master program, local governments shall ensure that the public has an opportunity to participate in the formulation of the regulations or in their incorporation into the master program, as called for in WAC 173-26-201 (3)(b)(i). In the approval process the department will review the referenced development regulation sections as part of the master program. A copy of the referenced regulations shall be submitted to the department with the proposed master program or amendment. If the development regulation is amended, the edition referenced within the master program will still be the operative regulation in the master program. Changing the referenced regulations in the master program to the new edition will require a master program amendment.

**(c) Incorporating master program provisions into other plans and regulations.** Local governments may integrate master program policies and regulations into their comprehensive plan policies and implementing development regulations rather than preparing a discrete master program in a single document. Master program provisions that are integrated into such plans and development regulations shall be clearly identified so that the department can review these provisions for approval and evaluate development proposals for compliance. RCW 90.58.120 requires that all adopted regulations, designations, and master programs be available for public inspection at the department or the applicable county or city. Local governments shall identify all documents which contain master program provisions and which provisions constitute part of the master program. Clear identifica-

tion of master program provisions is also necessary so that interested persons and entities may be involved in master program preparation and amendment, as called for in RCW 90.58.130.

Local governments integrating all or portions of their master program provisions into other plans and regulations shall submit to the department a listing and copies of all provisions that constitute the master program. The master program shall also be sufficiently complete and defined to provide:

(i) Clear directions to applicants applying for shoreline permits and exemptions; and

(ii) Clear evaluation criteria and standards to the local governments, the department, other agencies, and the public for reviewing permit applications with respect to state and local shoreline management provisions.

**(d) Multijurisdictional master program.** Two or more adjacent local governments are encouraged to jointly prepare master programs. Jointly proposed master programs may offer opportunities to effectively and efficiently manage natural resources, such as drift cells or watersheds, that cross jurisdictional boundaries. Local governments jointly preparing master programs shall provide the opportunity for public participation locally in each jurisdiction, as called for in WAC 173-26-201 (3)(b), and submit the multijurisdictional master program to the department for approval.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION** (Amending Order 03-02, filed 12/17/03, effective 1/17/04)

**WAC 173-26-201 ((Comprehensive)) Process to prepare or amend shoreline master programs. (1) Applicability.** This section outlines ~~((a comprehensive))~~ the process to prepare ~~((or amend))~~ a comprehensive shoreline master program adoption or update. ~~((Local governments shall incorporate the steps indicated if one or more of the following criteria apply:~~

~~(a) The master program amendments being considered represent a significant modification to shoreline management practices within the local jurisdiction, they modify more than one environment designation boundary, or significantly add, change or delete use regulations;~~

~~(b) Physical shoreline conditions have changed significantly, such as substantial changes in shoreline use or priority habitat integrity, since the last comprehensive master program amendment;~~

~~(c) The master program amendments being considered contain provisions that will affect a substantial portion of the local government's shoreline areas;~~

~~(d) There are substantive issues that must be addressed on a comprehensive basis. This may include issues such as salmon recovery, major use conflicts or public access;~~

~~(e) The current master program and the comprehensive plan are not mutually consistent;~~

~~(f) There has been no previous comprehensive master program amendment since the original master program adoption; or~~

~~(g) Monitoring and adaptive management indicate that changes are necessary to avoid loss of ecological functions.~~

~~Other revisions that do not meet the above criteria may be made without undertaking this comprehensive process provided that the process conforms to the requirements of WAC 173-26-030 through 173-26-160.) This section also establishes approval criteria for limited shoreline master program amendments.~~

~~(a) All master program amendments are subject to ((approval by the department as provided in RCW 90.58.090 (3) and (4)) the minimum procedural rule requirements of WAC 173-26-010 through 173-26-160, and approval by the department as provided in RCW 90.58.090.~~

~~(b) Comprehensive master program adoptions and updates shall fully achieve the procedural and substantive requirements of these guidelines. Adoption of new shoreline master programs and amendments submitted to meet the comprehensive update requirements of RCW 90.58.080 are a statewide priority over and above other amendments.~~

~~(c) Limited master program amendments may be approved by the department provided the department concludes:~~

~~(i) The amendment is necessary to:~~

~~(A) Comply with state and federal laws and implementing rules applicable to shorelines of the state within the local government jurisdiction;~~

~~(B) Include a newly annexed shoreline of the state within the local government jurisdiction;~~

~~(C) Address the results of the periodic master program review required by RCW 90.58.080(4), following a comprehensive master program update;~~

~~(D) Improve consistency with the act's goals and policies and its implementing rules; or~~

~~(E) Correct errors or omissions.~~

~~(ii) The local government is not currently conducting a comprehensive shoreline master program update designed to meet the requirements of RCW 90.58.080, unless the limited amendment is vital to the public interest;~~

~~(iii) The proposed amendment will not foster uncoordinated and piecemeal development of the state's shorelines;~~

~~(iv) The amendment is consistent with all applicable policies and standards of the act;~~

~~(v) All procedural rule requirements for public notice and consultation have been satisfied; and~~

~~(vi) Master program guidelines analytical requirements and substantive standards have been satisfied, where they reasonably apply to the limited amendment. All master program amendments must demonstrate that the amendment will not result in a net loss of shoreline ecological functions.~~

~~(d) A limited amendment in process at the time a local government's comprehensive update begins will be processed to completion, unless requested otherwise by the local government.~~

~~(2) Basic concepts.~~

~~(a) Use of scientific and technical information. To satisfy the requirements for the use of scientific and technical information in RCW 90.58.100(1), local governments shall incorporate the following two steps into their master program development and amendment process.~~

First, identify and assemble the most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern. The context, scope, magnitude, significance, and potential limitations of the scientific information should be considered. At a minimum, make use of and, where applicable, incorporate all available scientific information, aerial photography, inventory data, technical assistance materials, manuals and services from reliable sources of science. Local governments should also contact relevant state agencies, universities, affected Indian tribes, port districts and private parties for available information. While adequate scientific information and methodology necessary for development of a master program should be available, if any person, including local government, chooses to initiate scientific research with the expectation that it will be used as a basis for master program provisions, that research shall use accepted scientific methods, research procedures and review protocols. Local governments are encouraged to work interactively with neighboring jurisdictions, state resource agencies, affected Indian tribes, and other local government entities such as port districts to address technical issues beyond the scope of existing information resources or locally initiated research.

Local governments should consult the technical assistance materials produced by the department. When relevant information is available and unless there is more current or specific information available, those technical assistance materials shall constitute an element of scientific and technical information as defined in these guidelines and the use of which is required by the act.

Second, base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical information available. Local governments should be prepared to identify the following:

(i) Scientific information and management recommendations on which the master program provisions are based;

(ii) Assumptions made concerning, and data gaps in, the scientific information; and

(iii) Risks to ecological functions associated with master program provisions. Address potential risks as described in WAC 173-26-201 (3)(d).

The requirement to use scientific and technical information in these guidelines does not limit a local jurisdiction's authority to solicit and incorporate information, experience, and anecdotal evidence provided by interested parties as part of the master program amendment process. Such information should be solicited through the public participation process described in WAC 173-26-201 (3)(b). Where information collected by or provided to local governments conflicts or is inconsistent, the local government shall base master program provisions on a reasoned, objective evaluation of the relative merits of the conflicting data.

(b) **Adaptation of policies and regulations.** Effective shoreline management requires the evaluation of changing conditions and the modification of policies and regulations to address identified trends and new information. Local governments should monitor actions taken to implement the master program and shoreline conditions to facilitate appropriate updates of master program provisions to improve shoreline management over time. In reviewing proposals to amend

master programs, the department shall evaluate whether the change promotes achievement of the policies of the master program and the act. As provided in WAC 173-26-171 (3)(d), ecology will periodically review these guidelines, based in part on information provided by local government, and through that process local government will receive additional guidance on significant shoreline management issues that may require amendments to master programs.

(c) **Protection of ecological functions of the shorelines.** This chapter implements the act's policy on protection of shoreline natural resources through protection and restoration of ecological functions necessary to sustain these natural resources. The concept of ecological functions recognizes that any ecological system is composed of a wide variety of interacting physical, chemical and biological components, that are interdependent in varying degrees and scales, and that produce the landscape and habitats as they exist at any time. Ecological functions are the work performed or role played individually or collectively within ecosystems by these components.

As established in WAC 173-26-186(8), these guidelines are designed to assure, at minimum, no net loss of ecological functions necessary to sustain shoreline natural resources and to plan for restoration of ecological functions where they have been impaired. Managing shorelines for protection of their natural resources depends on sustaining the functions provided by:

- Ecosystem-wide processes such as those associated with the flow and movement of water, sediment and organic materials; the presence and movement of fish and wildlife and the maintenance of water quality.
- Individual components and localized processes such as those associated with shoreline vegetation, soils, water movement through the soil and across the land surface and the composition and configuration of the beds and banks of water bodies.

The loss or degradation of the functions associated with ecosystem-wide processes, individual components and localized processes can significantly impact shoreline natural resources and may also adversely impact human health and safety. Shoreline master programs shall address ecological functions associated with applicable ecosystem-wide processes, individual components and localized processes identified in the ecological systems analysis described in WAC 173-26-201 (3)(d)(i).

Nearly all shoreline areas, even substantially developed or degraded areas, retain important ecological functions. For example, an intensely developed harbor area may also serve as a fish migration corridor and feeding area critical to species survival. Also, ecosystems are interconnected. For example, the life cycle of anadromous fish depends upon the viability of freshwater, marine, and terrestrial shoreline ecosystems, and many wildlife species associated with the shoreline depend on the health of both terrestrial and aquatic environments. Therefore, the policies for protecting and restoring ecological functions generally apply to all shoreline areas, not just those that remain relatively unaltered.

Master programs shall contain policies and regulations that assure, at minimum, no net loss of ecological functions necessary to sustain shoreline natural resources. To achieve

this standard while accommodating appropriate and necessary shoreline uses and development, master programs should establish and apply:

- Environment designations with appropriate use and development standards; and
- Provisions to address the impacts of specific common shoreline uses, development activities and modification actions; and
- Provisions for the protection of critical areas within the shoreline; and
- Provisions for mitigation measures and methods to address unanticipated impacts.

When based on the inventory and analysis requirements and completed consistent with the specific provisions of these guidelines, the master program should ensure that development will be protective of ecological functions necessary to sustain existing shoreline natural resources and meet the standard. The concept of "net" as used herein, recognizes that any development has potential or actual, short-term or long-term impacts and that through application of appropriate development standards and employment of mitigation measures in accordance with the mitigation sequence, those impacts will be addressed in a manner necessary to assure that the end result will not diminish the shoreline resources and values as they currently exist. Where uses or development that impact ecological functions are necessary to achieve other objectives of RCW 90.58.020, master program provisions shall, to the greatest extent feasible, protect existing ecological functions and avoid new impacts to habitat and ecological functions before implementing other measures designed to achieve no net loss of ecological functions.

Master programs shall also include policies that promote restoration of ecological functions, as provided in WAC 173-26-201 (2)(f), where such functions are found to have been impaired based on analysis described in WAC 173-26-201 (3)(d)(i). It is intended that local government, through the master program, along with other regulatory and nonregulatory programs, contribute to restoration by planning for and fostering restoration and that such restoration occur through a combination of public and private programs and actions. Local government should identify restoration opportunities through the shoreline inventory process and authorize, coordinate and facilitate appropriate publicly and privately initiated restoration projects within their master programs. The goal of this effort is master programs which include planning elements that, when implemented, serve to improve the overall condition of habitat and resources within the shoreline area of each city and county.

(d) **Preferred uses.** As summarized in WAC 173-26-176, the act establishes policy that preference be given to uses that are unique to or dependent upon a shoreline location. Consistent with this policy, these guidelines use the terms "water-dependent," "water-related," and "water-enjoyment," as defined in WAC 173-26-020, when discussing appropriate uses for various shoreline areas.

Shoreline areas, being a limited ecological and economic resource, are the setting for competing uses and ecological protection and restoration activities. Consistent with RCW 90.58.020 and WAC 173-26-171 through 173-26-186, local governments shall, when determining allowable uses and

resolving use conflicts on shorelines within their jurisdiction, apply the following preferences and priorities in the order listed below, starting with (d)(i) of this subsection. For shorelines of statewide significance, also apply the preferences as indicated in WAC 173-26-251(2).

(i) Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health. In reserving areas, local governments should consider areas that are ecologically intact from the uplands through the aquatic zone of the area, aquatic areas that adjoin permanently protected uplands, and tidelands in public ownership. Local governments should ensure that these areas are reserved consistent with constitutional limits.

(ii) Reserve shoreline areas for water-dependent and associated water-related uses. Harbor areas, established pursuant to Article XV of the state Constitution, and other areas that have reasonable commercial navigational accessibility and necessary support facilities such as transportation and utilities should be reserved for water-dependent and water-related uses that are associated with commercial navigation unless the local governments can demonstrate that adequate shoreline is reserved for future water-dependent and water-related uses and unless protection of the existing natural resource values of such areas preclude such uses. Local governments may prepare master program provisions to allow mixed-use developments that include and support water-dependent uses and address specific conditions that affect water-dependent uses.

(iii) Reserve shoreline areas for other water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives.

(iv) Locate single-family residential uses where they are appropriate and can be developed without significant impact to ecological functions or displacement of water-dependent uses.

(v) Limit nonwater-oriented uses to those locations where the above described uses are inappropriate or where nonwater-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act.

Evaluation pursuant to the above criteria, local economic and land use conditions, and policies and regulations that assure protection of shoreline resources, may result in determination that other uses are considered as necessary or appropriate and may be accommodated provided that the preferred uses are reasonably provided for in the jurisdiction.

**(e) Environmental impact mitigation.**

(i) To assure no net loss of shoreline ecological functions, master programs shall include provisions that require proposed individual uses and developments to analyze environmental impacts of the proposal and include measures to mitigate environmental impacts not otherwise avoided or mitigated by compliance with the master program and other applicable regulations. To the extent Washington's State Environmental Policy Act of 1971 (SEPA), chapter 43.21C RCW, is applicable, the analysis of such environmental impacts shall be conducted consistent with the rules implementing SEPA, which also address environmental impact mitigation in WAC 197-11-660 and define mitigation in WAC 197-11-768. Master programs shall indicate that,

where required, mitigation measures shall be applied in the following sequence of steps listed in order of priority, with (e)(i)(A) of this subsection being top priority.

(A) Avoiding the impact altogether by not taking a certain action or parts of an action;

(B) Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;

(C) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(D) Reducing or eliminating the impact over time by preservation and maintenance operations;

(E) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and

(F) Monitoring the impact and the compensation projects and taking appropriate corrective measures.

(ii) In determining appropriate mitigation measures applicable to shoreline development, lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.

Consistent with WAC 173-26-186 (5) and (8), master programs shall also provide direction with regard to mitigation for the impact of the development so that:

(A) Application of the mitigation sequence achieves no net loss of ecological functions for each new development and does not result in required mitigation in excess of that necessary to assure that development will result in no net loss of shoreline ecological functions and not have a significant adverse impact on other shoreline functions fostered by the policy of the act.

(B) When compensatory measures are appropriate pursuant to the mitigation priority sequence above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans applicable to the area of impact may be authorized. Authorization of compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions.

(f) **Shoreline restoration planning.** Consistent with principle WAC 173-26-186 (8)(c), master programs shall include goals, policies and actions for restoration of impaired shoreline ecological functions. These master program provisions should be designed to achieve overall improvements in shoreline ecological functions over time, when compared to the status upon adoption of the master program. The approach to restoration planning may vary significantly among local jurisdictions, depending on:

- The size of the jurisdiction;
- The extent and condition of shorelines in the jurisdiction;
- The availability of grants, volunteer programs or other tools for restoration; and
- The nature of the ecological functions to be addressed by restoration planning.

Master program restoration plans shall consider and address the following subjects:

- (i) Identify degraded areas, impaired ecological functions, and sites with potential for ecological restoration;
- (ii) Establish overall goals and priorities for restoration of degraded areas and impaired ecological functions;
- (iii) Identify existing and ongoing projects and programs that are currently being implemented, or are reasonably assured of being implemented (based on an evaluation of funding likely in the foreseeable future), which are designed to contribute to local restoration goals;
- (iv) Identify additional projects and programs needed to achieve local restoration goals, and implementation strategies including identifying prospective funding sources for those projects and programs;
- (v) Identify timelines and benchmarks for implementing restoration projects and programs and achieving local restoration goals;
- (vi) Provide for mechanisms or strategies to ensure that restoration projects and programs will be implemented according to plans and to appropriately review the effectiveness of the projects and programs in meeting the overall restoration goals.

**(3) Steps in preparing and amending a master program.**

(a) **Process overview.** This section provides a generalized process to prepare or comprehensively amend a shoreline master program. Local governments may modify the timing of the various steps, integrate the process into other planning activities, add steps to the process, or work jointly with other jurisdictions or regional efforts, provided the provisions of this chapter are met.

The department will provide a shoreline master program amendment checklist to help local governments identify issues to address. The checklist will not create new or additional requirements beyond the provisions of this chapter. The checklist is intended to aid the preparation and review of master program amendments. Local governments shall submit the completed checklist with the proposed master program amendments.

**(b) Participation process.**

(i) **Participation requirements.** Local government shall comply with the provisions of RCW 90.58.130 which states:

*"To insure that all persons and entities having an interest in the guidelines and master programs developed under this chapter are provided with a full opportunity for involvement in both their development and implementation, the department and local governments shall:*

*(1) Make reasonable efforts to inform the people of the state about the shoreline management program of this chapter and in the performance of the responsibilities provided in this chapter, shall not only invite but actively encourage participation by all persons and private groups and entities showing an interest in shoreline management programs of this chapter; and*

*(2) Invite and encourage participation by all agencies of federal, state, and local government, including municipal and public corporations, having interests or responsibilities relating to the shorelines of the state. State and local agen-*

*cies are directed to participate fully to insure that their interests are fully considered by the department and local governments."*

Additionally, the provisions of WAC 173-26-100 apply and include provisions to assure proper public participation and, for local governments planning under the Growth Management Act, the provisions of RCW 36.70A.140 also apply.

At a minimum, all local governments shall be prepared to describe and document their methods to ensure that all interested parties have a meaningful opportunity to participate.

(ii) **Communication with state agencies.** Before undertaking substantial work, local governments shall notify applicable state agencies to identify state interests, relevant regional and statewide efforts, available information, and methods for coordination and input. Contact the department for a list of applicable agencies to be notified.

(iii) **Communication with affected Indian tribes.** Prior to undertaking substantial work, local governments shall notify affected Indian tribes to identify tribal interests, relevant tribal efforts, available information and methods for coordination and input. Contact the individual tribes or coordinating bodies such as the Northwest Indian Fisheries Commission, for a list of affected Indian tribes to be notified.

(c) **Inventory shoreline conditions.** Gather and incorporate all pertinent and available information, existing inventory data and materials from state and federal agencies, individuals and nongovernmental entities with expertise, affected Indian tribes, watershed management planning, port districts and other appropriate sources. Ensure that, whenever possible, inventory methods and protocols are consistent with those of neighboring jurisdictions and state efforts. The department will provide, to the extent possible, services and resources for inventory work. Contact the department to determine information sources and other relevant efforts. Map inventory information at an appropriate scale. The department may provide an inventory of shoreline conditions to the local jurisdiction.

Local governments shall be prepared to demonstrate how the inventory information was used in preparing their local master program amendments.

Collection of additional inventory information is encouraged and should be coordinated with other watershed, regional, or statewide inventory and planning efforts in order to ensure consistent methods and data protocol as well as effective use of fiscal and human resources. Local governments should be prepared to demonstrate that they have coordinated with applicable interjurisdictional shoreline inventory and planning programs where they exist. Two or more local governments are encouraged to jointly conduct an inventory in order to increase the efficiency of data gathering and comprehensiveness of inventory information. Data from interjurisdictional, watershed, or regional inventories may be substituted for an inventory conducted by an individual jurisdiction, provided it meets the requirements of this section.

Local government shall, at a minimum, and to the extent such information is relevant and reasonably available, collect the following information:

(i) Shoreline and adjacent land use patterns and transportation and utility facilities, including the extent of existing

structures, impervious surfaces, vegetation and shoreline modifications in shoreline jurisdiction. Special attention should be paid to identification of ecologically intact blocks of upland vegetation, developed areas with largely intact riparian vegetation, water-oriented uses and related navigation, transportation and utility facilities.

(ii) Existing aquatic and terrestrial wildlife habitats; native aquatic vegetation; riparian and associated upland plant communities; and critical areas, including wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, geologically hazardous areas, and frequently flooded areas. See also WAC 173-26-221.

(iii) Altered and degraded areas and sites with potential for ecological restoration.

(iv) Areas of special interest, such as priority habitats, ecologically intact late successional native plant communities, developing or redeveloping harbors and waterfronts, previously identified toxic or hazardous material clean-up sites, dredged material disposal sites, or eroding shorelines, to be addressed through new master program provisions.

(v) Conditions and regulations in shoreland and adjacent areas that affect shorelines, such as surface water management and land use regulations. This information may be useful in achieving mutual consistency between the master program and other development regulations.

(vi) Existing and potential shoreline public access sites, including public rights of way and utility corridors.

(vii) General location of channel migration zones, and flood plains.

(viii) Gaps in existing information. During the initial inventory, local governments should identify what additional information may be necessary for more effective shoreline management.

(ix) If the shoreline is rapidly developing or subject to substantial human changes such as clearing and grading, past and current records or historical aerial photographs may be necessary to identify cumulative impacts, such as bulkhead construction, intrusive development on priority and critical habitats, and conversion of harbor areas to nonwater-oriented uses.

(x) If archaeological or historic resources have been identified in shoreline jurisdiction, consult with the state historic preservation office and local affected Indian tribes regarding existing archaeological and historical information.

(xi) Information specific to the aquatic environment for siting in-water uses and development, such as sediment contamination, intertidal property ownership, aquaculture operations, shellfish beds, shellfish protection districts, and areas that meet department of health shellfish water quality certification requirements.

(d) **Analyze shoreline issues of concern.** Before establishing specific master program provisions, local governments shall analyze the information gathered in (c) of this subsection and as necessary to ensure effective shoreline management provisions, address the topics below, where applicable.

(i) **Characterization of functions and ecosystem-wide processes.**

(A) Prepare a characterization of shoreline ecosystems and their associated ecological functions. The characterization consists of three steps:

(I) Identify the ecosystem-wide processes and ecological functions based on the list in (d)(i)(C) of this subsection that apply to the shoreline(s) of the jurisdiction.

(II) Assess the ecosystem-wide processes to determine their relationship to ecological functions present within the jurisdiction and identify which ecological functions are healthy, which have been significantly altered and/or adversely impacted and which functions may have previously existed and are missing based on the values identified in (d)(i)(D) of this subsection; and

(III) Identify specific measures necessary to protect and/or restore the ecological functions and ecosystem-wide processes.

(B) The characterization of shoreline ecological systems may be achieved by using one or more of the approaches below:

(I) If a regional environmental management plan, such as a watershed plan or coastal erosion study, is ongoing or has been completed, then conduct the characterization either within the framework of the regional plan or use the data provided in the regional plan. This methodology is intended to contribute to an in-depth and comprehensive assessment and characterization.

(II) If a regional environmental management plan has not been completed, use available scientific and technical information, including flood studies, habitat evaluations and studies, water quality studies, and data and information from environmental impact statements. This characterization of ecosystem-wide processes and the impact upon the functions of specific habitats and human health and safety objectives may be of a generalized nature.

(III) One or more local governments may pursue a characterization which includes a greater scope and complexity than listed in (d)(i)(B)(I) and (II) of this subsection.

(C) Shoreline ecological functions include, but are not limited to:

In rivers and streams and associated flood plains:

Hydrologic: Transport of water and sediment across the natural range of flow variability; attenuating flow energy; developing pools, riffles, gravel bars, nutrient flux, recruitment and transport of large woody debris and other organic material.

Shoreline vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, sediment removal and stabilization; attenuation of high stream flow energy; and provision of ((large)) woody debris and other organic matter.

Hyporheic functions: Removing excessive nutrients and toxic compound, water storage, support of vegetation, and sediment storage and maintenance of base flows.

Habitat for native aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction; resting, hiding and migration; and food production and delivery.

In lakes:

Hydrologic: Storing water and sediment, attenuating wave energy, removing excessive nutrients and toxic compounds, recruitment of large woody debris and other organic material.

Shoreline vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, attenuating wave energy, sediment removal and stabilization; and providing woody debris and other organic matter.

~~(Hyporheic functions: Removing excessive nutrients and toxic compound, water storage, support of vegetation, and sediment storage and maintenance of base flows.)~~

Habitat for aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction, resting, hiding and migration; and food production and delivery.

In marine waters:

Hydrologic: Transporting and stabilizing sediment, attenuating wave and tidal energy, removing excessive nutrients and toxic compounds; recruitment, redistribution and reduction of woody debris and other organic material.

Vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, attenuating wave energy, sediment removal and stabilization; and providing woody debris and other organic matter.

Habitat for aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction, resting, hiding and migration; and food production and delivery.

Wetlands:

Hydrological: Storing water and sediment, attenuating wave energy, removing excessive nutrients and toxic compounds, recruiting woody debris and other organic material.

Vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, attenuating wave energy, removing and stabilizing sediment; and providing woody debris and other organic matter.

Hyporheic functions: Removing excessive nutrients and toxic compound, storing water and maintaining base flows, storing sediment and support of vegetation.

Habitat for aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction, resting, hiding and migration; and food production and delivery.

(D) The overall condition of habitat and shoreline resources are determined by the following ecosystem-wide processes and ecological functions:

The distribution, diversity, and complexity of the watersheds, marine environments, and landscape-scale features that form the aquatic systems to which species, populations, and communities are uniquely adapted.

The spatial and temporal connectivity within and between watersheds and along marine shorelines. Drainage network connections include flood plains, wetlands, upslope areas, headwater tributaries, and naturally functioning routes to areas critical for fulfilling life history requirements of aquatic and riverine-dependent species.

The shorelines, beaches, banks, marine near-shore habitats, and bottom configurations that provide the physical framework of the aquatic system.

The timing, volume, and distribution of woody debris recruitment in rivers, streams and marine habitat areas.

The water quality necessary to maintain the biological, physical, and chemical integrity of the system and support survival, growth, reproduction, and migration of individuals composing aquatic ~~((and)),~~ riverine and lacustrine communities.

The sediment regime under which aquatic ecosystems evolved. Elements of the sediment regime include the timing, volume, rate, and character of sediment input, storage, and transport.

The range of flow variability sufficient to create and sustain lacustrine, fluvial, aquatic, and wetland habitats, the patterns of sediment, nutrient, and wood routing. The timing, magnitude, duration, and spatial distribution of peak, high, and low flows, and duration of flood plain inundation and water table elevation in meadows and wetlands.

The species composition and structural diversity of plant communities in river and stream areas and wetlands that provides summer and winter thermal regulation, nutrient filtering, appropriate rates of surface erosion, bank erosion, and channel migration and to supply amounts and distributions of woody debris sufficient to sustain physical complexity and stability.

(E) Local governments should use the characterization and analysis called for in this section to prepare master program policies and regulations designed to achieve no net loss of ecological functions necessary to support shoreline resources and to plan for the restoration of the ecosystem-wide processes and individual ecological functions on a comprehensive basis over time.

(ii) **Shoreline use analysis and priorities.** Conduct an analysis to estimate the future demand for shoreline space and potential use conflicts. Characterize current shoreline use patterns and projected trends to ensure appropriate uses consistent with chapter 90.58 RCW and WAC 173-26-201 (2)(d) and 173-26-211(5).

If the jurisdiction includes a designated harbor area or urban waterfront with intensive uses or significant development or redevelopment issues, work with the Washington state department of natural resources and port authorities to ensure consistency with harbor area statutes and regulations, and to address port plans. Identify measures and strategies to encourage appropriate use of these shoreline areas in accordance with the use priorities of chapter 90.58 RCW and WAC 173-26-201 (2)(d) while pursuing opportunities for ecological restoration.

(iii) **Addressing cumulative impacts in developing master programs.** The principle that regulation of development shall achieve no net loss of ecological function requires that master program policies and regulations address the cumulative impacts on shoreline ecological functions that would result from future shoreline development and uses that are reasonably foreseeable from proposed master programs. To comply with the general obligation to assure no net loss of shoreline ecological function, the process of developing the policies and regulations of a shoreline master program



requires assessment of how proposed policies and regulations cause and avoid such cumulative impacts.

Evaluating and addressing cumulative impacts shall be consistent with the guiding principle in WAC 173-26-186 (8)(d). An appropriate evaluation of cumulative impacts on ecological functions will consider the factors identified in WAC 173-26-186 (8)(d)(i) through (iii) and the effect on the ecological functions of the shoreline that are caused by unregulated activities, development and uses exempt from permitting, effects such as the incremental impact of residential bulkheads, residential piers, or runoff from newly developed properties. Accordingly, particular attention should be paid to policies and regulations that address platting or subdividing of property, laying of utilities, and mapping of streets that establish a pattern for future development that is to be regulated by the master program.

There are practical limits when evaluating impacts that are prospective and sometimes indirect. Local government should rely on the assistance of state agencies and appropriate parties using evaluation, measurement, estimation, or quantification of impact consistent with the guidance of RCW 90.58.100(1) and WAC 173-26-201 (2)(a). Policies and regulations of a master program are not inconsistent with these guidelines for failing to address cumulative impacts where a purported impact is not susceptible to being addressed using an approach consistent with RCW 90.58.100 (1).

Complying with the above guidelines is the way that master program policies and regulations should be developed to assure that the commonly occurring and foreseeable cumulative impacts do not cause a net loss of ecological functions of the shoreline. For such commonly occurring and planned development, policies and regulations should be designed without reliance on an individualized cumulative impacts analysis. Local government shall fairly allocate the burden of addressing cumulative impacts.

For development projects and uses that may have unanticipated or uncommon impacts that cannot be reasonably identified at the time of master program development, the master program policies and regulations should use the permitting or conditional use permitting processes to ensure that all impacts are addressed and that there is no net loss of ecological function of the shoreline after mitigation.

Similarly, local government shall consider and address cumulative impacts on other functions and uses of the shoreline that are consistent with the act. For example, a cumulative impact of allowing development of docks or piers could be interference with navigation on a water body.

(iv) **Shorelines of statewide significance.** If the area contains shorelines of statewide significance, undertake the steps outlined in WAC 173-26-251.

(v) **Public access.** Identify public access needs and opportunities within the jurisdiction and explore actions to enhance shoreline recreation facilities, as described in WAC 173-26-221(4).

(vi) **Enforcement and coordination with other regulatory programs.** Local governments planning under the Growth Management Act shall review their comprehensive plan policies and development regulations to ensure mutual consistency. In order to effectively administer and enforce

master program provisions, local governments should also review their current permit review and inspection practices to identify ways to increase efficiency and effectiveness and to ensure consistency.

(vii) **Water quality and quantity.** Identify water quality and quantity issues relevant to master program provisions, including those that affect human health and safety. Review data and information specific to shellfish areas. Identify measures to protect water quality for human health as described in WAC 173-26-221(6). At a minimum, consult with appropriate federal, state, tribal, and local agencies.

(viii) **Vegetation conservation.** Identify how existing shoreline vegetation provides ecological functions and determine methods to ensure protection of those functions. Identify important ecological functions that have been degraded through loss of vegetation. Consider the amount of vegetated shoreline area necessary to achieve ecological objectives. While there may be less vegetation remaining in urbanized areas than in rural areas, the importance of this vegetation, in terms of the ecological functions it provides, is often as great or even greater than in rural areas due to its scarcity. Identify measures to ensure that new development meets vegetation conservation objectives.

(ix) **Special area planning.** Some shoreline sites or areas require more focused attention than is possible in the overall master program development process due to complex shoreline ecological issues, changing uses, or other unique features or issues. In these circumstances, the local government is encouraged to undertake special area planning. Special area planning also may be used to address: Public access, vegetation conservation, shoreline use compatibility, port development master planning, ecological restoration, or other issues best addressed on a comprehensive basis.

The resultant plans may serve as the basis for facilitating state and local government coordination and permit review. Special area planning shall provide for public and affected Indian tribe participation and compliance with all applicable provisions of the act and WAC 173-26-090 through 173-26-120.

(e) **Establish shoreline policies.** Address all of the elements listed in RCW 90.58.100(2) and all applicable provisions of these guidelines in policies. These policies should be reviewed for mutual consistency with the comprehensive plan policies. If there are shorelines of statewide significance, ensure that the other comprehensive plan policies affecting shoreline jurisdiction are consistent with the objectives of RCW 90.58.020 and 90.58.090(4).

(f) **Establish environment designations.** Establish environment designations and identify permitted uses and development standards for each environment designation.

Based on the inventory in (c) of this subsection and the analysis in (d) of this subsection, assign each shoreline segment an environment designation.

Prepare specific environment designation policies and regulations.

Review the environment designations for mutual consistency with comprehensive plan land use designations as indicated in WAC 173-26-211(3).

In determining the boundaries and classifications of environment designations, adhere to the criteria in WAC 173-26-211(5).

(g) **Prepare other shoreline regulations.** Prepare other shoreline regulations based on the policies and the analyses described in this section as necessary to assure consistency with the guidelines of this chapter. The level of detail of inventory information and planning analysis will be a consideration in setting shoreline regulations. As a general rule, the less known about existing resources, the more protective shoreline master program provisions should be to avoid unanticipated impacts to shoreline resources. If there is a question about the extent or condition of an existing ecological resource, then the master program provisions shall be sufficient to reasonably assure that the resource is protected in a manner consistent with the policies of these guidelines. ~~((Local governments may accomplish this by including master program requirements for an on-site inventory at the time of project application and performance standard that assure appropriate protection.))~~

(h) **Submit for review and approval.** Local governments are encouraged to work with department personnel during preparation of the master program and to submit draft master program provisions to the department for informal advice and guidance prior to formal submittal.

Local governments shall submit the completed checklist, as described in WAC 173-26-201 (3)(a), with their master program amendments proposed for adoption. Master program review and formal adoption procedures are described in Parts I and II of this chapter.

AMENDATORY SECTION (Amending Order 03-02, filed 12/17/03, effective 1/17/04)

**WAC 173-26-211 Environment designation system.**

(1) **Applicability.** This section applies to the establishment of environment designation boundaries and provisions as described in WAC 173-26-191 (1)(d).

(2) **Basic requirements for environment designation classification and provisions.**

(a) Master programs shall contain a system to classify shoreline areas into specific environment designations. This classification system shall be based on the existing use pattern, the biological and physical character of the shoreline, and the goals and aspirations of the community as expressed through comprehensive plans as well as the criteria in this section. Each master program's classification system shall be consistent with that described in WAC 173-26-211 (4) and (5) unless the alternative proposed provides equal or better implementation of the act.

(b) An up-to-date and accurate map of the shoreline area delineating the environment designations and their boundaries shall be prepared and maintained in the local government office that administers shoreline permits. If it is not feasible to accurately designate individual parcels on a map, the master program text shall include a clear basis for identifying the boundaries, physical features, explicit criteria, or "common" boundary descriptions to accurately define and distinguish the environments on the ground. The master program should also make it clear that in the event of a mapping error, the

jurisdiction will rely upon common boundary descriptions and the criteria contained in RCW 90.58.030(2) and chapter 173-22 WAC pertaining to determinations of shorelands, as amended, rather than the incorrect or outdated map.

(c) To facilitate consistency with land use planning, local governments planning under chapter 36.70A RCW are encouraged to illustrate shoreline designations on the comprehensive plan future land use map as described in WAC 365-195-300 (2)(d).

(d) Pursuant to RCW 90.58.040, the map should clearly illustrate what environment designations apply to all shorelines of the state as defined in RCW 90.58.030 (2)(c) within the local government's jurisdiction in a manner consistent with WAC 173-26-211 (4) and (5).

(e) The map and the master program should note that all areas within shoreline jurisdiction that are not mapped and/or designated are automatically assigned a "rural conservancy" designation, or "urban conservancy" designation if within a municipality or urban growth area, or the comparable environment designation of the applicable master program until the shoreline can be redesignated through a master program amendment.

(f) The following diagram summarizes the components of the environment designation provisions.

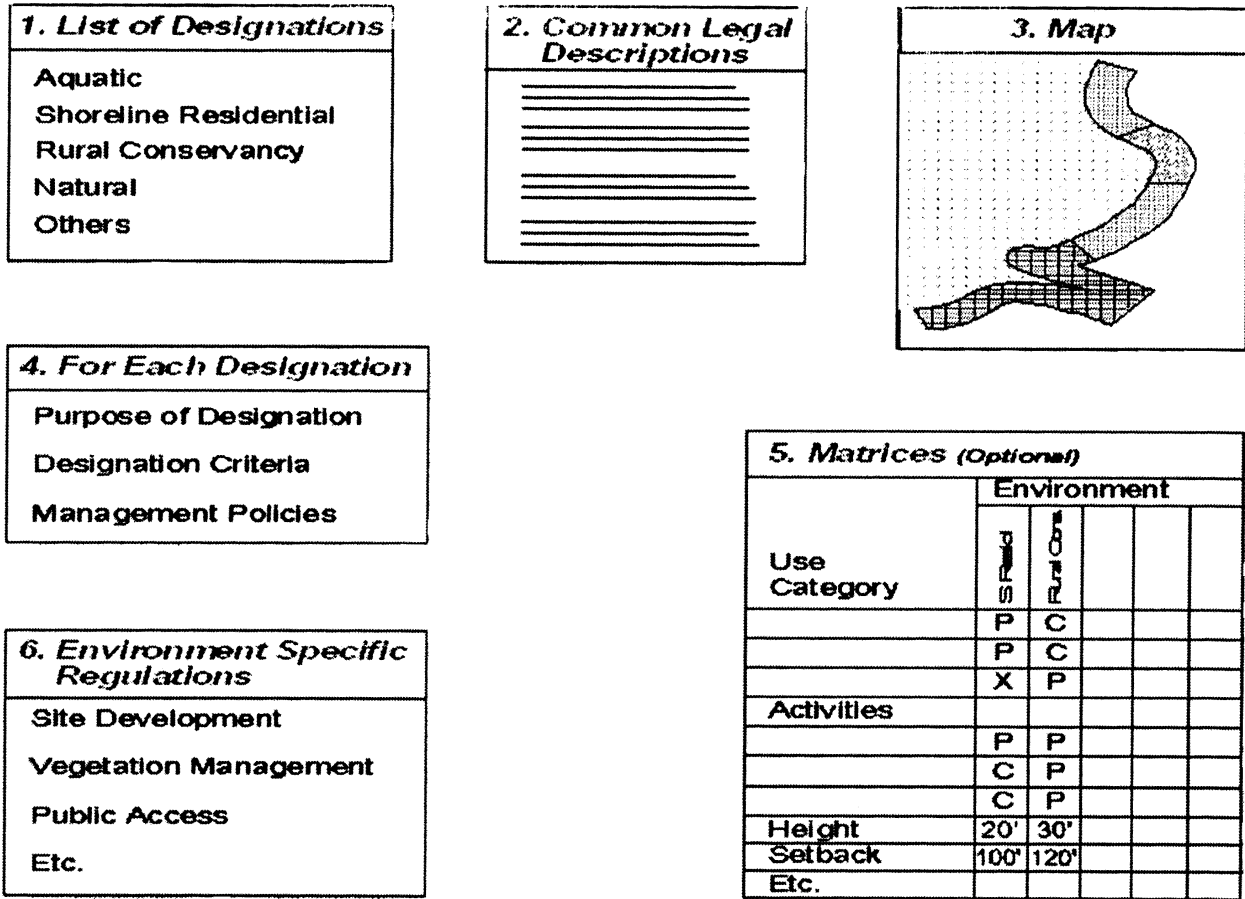


Diagram summarizing the components of the environment designation provisions.  
 (This is for illustration purposes only and does not supplement or add to the language in the chapter text.)

(3) **Consistency between shoreline environment designations and the local comprehensive plan.** As noted in WAC 173-26-191 (1)(e), RCW 90.58.340 requires that policies for lands adjacent to the shorelines be consistent with the Shoreline Management Act, implementing rules, and the applicable master program. Conversely, local comprehensive plans constitute the underlying framework within which master program provisions should fit. The Growth Management Act, where applicable, designates shoreline master program policies as an element of the comprehensive plan and requires that all elements be internally consistent. Chapter 36.70A RCW also requires development regulations to be consistent with the comprehensive plan.

The following criteria are intended to assist local governments in evaluating the consistency between master program environment designation provisions and the corresponding comprehensive plan elements and development regulations. In order for shoreline designation provisions, local comprehensive plan land use designations, and development regulations to be internally consistent, all three of the conditions below should be met:

(a) **Provisions not precluding one another.** The comprehensive plan provisions and shoreline environment designation provisions should not preclude one another. To meet this criteria, the provisions of both the comprehensive plan and the master program must be able to be met. Further,

when considered together and applied to any one piece of property, the master program use policies and regulations and the local zoning or other use regulations should not conflict in a manner that all viable uses of the property are precluded.

(b) **Use compatibility.** Land use policies and regulations should protect preferred shoreline uses from being impacted by incompatible uses. The intent is to prevent water-oriented uses, especially water-dependent uses, from being restricted on shoreline areas because of impacts to nearby nonwater-oriented uses. To be consistent, master programs, comprehensive plans, and development regulations should prevent new uses that are not compatible with preferred uses from locating where they may restrict preferred uses or development.

(c) **Sufficient infrastructure.** Infrastructure and services provided in the comprehensive plan should be sufficient to support allowed shoreline uses. Shoreline uses should not be allowed where the comprehensive plan does not provide sufficient roads, utilities, and other services to support them. Infrastructure plans must also be mutually consistent with shoreline designations. Where they do exist, utility services routed through shoreline areas shall not be a sole justification for more intense development.

(4) **General environment designation provisions.**

(a) **Requirements.** For each environment designation, the shoreline master program shall describe:

(i) **Purpose statement.** The statement of purpose shall describe the shoreline management objectives of the designation in a manner that distinguishes it from other designations.

(ii) **Classification criteria.** Clearly stated criteria shall provide the basis for classifying or reclassifying a specific shoreline area with an environment designation.

(iii) **Management policies.** These policies shall be in sufficient detail to assist in the interpretation of the environment designation regulations and, for jurisdictions planning under chapter 36.70A RCW, to evaluate consistency with the local comprehensive plan.

(iv) **Regulations.** Environment-specific regulations shall address the following where necessary to account for different shoreline conditions:

(A) Types of shoreline uses permitted, conditionally permitted, and prohibited;

(B) Building or structure height and bulk limits, setbacks, maximum density or minimum frontage requirements, and site development standards; and

(C) Other topics not covered in general use regulations that are necessary to assure implementation of the purpose of the environment designation.

(b) **The recommended classification system.** The recommended classification system consists of six basic environments: "High-intensity," "shoreline residential," "urban conservancy," "rural conservancy," "natural," and "aquatic" as described in this section and WAC 173-26-211(5). Local governments should assign all shoreline areas an environment designation consistent with the corresponding designation criteria provided for each environment. In delineating environment designations, local government should assure that existing shoreline ecological functions are protected with the proposed pattern and intensity of development. Such designations should also be consistent with policies for restoration of degraded shorelines.

(c) **Alternative systems.**

(i) Local governments may establish a different designation system or may retain their current environment designations, provided it is consistent with the purposes and policies of this section and WAC 173-26-211(5).

(ii) Local governments may use "parallel environments" where appropriate. Parallel environments divide shorelands into different sections generally running parallel to the shoreline or along a physical feature such as a bluff or railroad right of way. Such environments may be useful, for example, to accommodate resource protection near the shoreline and existing development further from the shoreline. Where parallel environments are used, developments and uses allowed in one environment should not be inconsistent with the achieving the purposes of the other.

(5) **The designations.**

(a) **"Natural" environment.**

(i) **Purpose.** The purpose of the "natural" environment is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. These systems require that only very low intensity uses be allowed in order to maintain the ecological functions and ecosystem-wide processes. Consistent with the policies of the designation, local

government should include planning for restoration of degraded shorelines within this environment.

(ii) **Management policies.**

(A) Any use that would substantially degrade the ecological functions or natural character of the shoreline area should not be allowed.

(B) The following new uses should not be allowed in the "natural" environment:

- Commercial uses.
- Industrial uses.
- Nonwater-oriented recreation.
- Roads, utility corridors, and parking areas that can be located outside of "natural" designated shorelines.

(C) Single-family residential development may be allowed as a conditional use within the "natural" environment if the density and intensity of such use is limited as necessary to protect ecological functions and be consistent with the purpose of the environment.

(D) Commercial forestry may be allowed as a conditional use in the "natural" environment provided it meets the conditions of the State Forest Practices Act and its implementing rules and is conducted in a manner consistent with the purpose of this environment designation.

(E) Agricultural uses of a very low intensity nature may be consistent with the natural environment when such use is subject to appropriate limitations or conditions to assure that the use does not expand or alter practices in a manner inconsistent with the purpose of the designation.

(F) Scientific, historical, cultural, educational research uses, and low-intensity water-oriented recreational access uses may be allowed provided that no significant ecological impact on the area will result.

(G) New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should not be allowed. Do not allow the subdivision of property in a configuration that, to achieve its intended purpose, will require significant vegetation removal or shoreline modification that adversely impacts ecological functions. That is, each new parcel must be able to support its intended development without significant ecological impacts to the shoreline ecological functions.

(ii) **Designation criteria.** A "natural" environment designation should be assigned to shoreline areas if any of the following characteristics apply:

(A) The shoreline is ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process that would be damaged by human activity;

(B) The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or

(C) The shoreline is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.

Such shoreline areas include largely undisturbed portions of shoreline areas such as wetlands, estuaries, unstable bluffs, coastal dunes, spits, and ecologically intact shoreline habitats. Shorelines inside or outside urban growth areas may be designated as "natural."

Ecologically intact shorelines, as used here, means those shoreline areas that retain the majority of their natural shoreline functions, as evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, ecologically intact shorelines are free of structural shoreline modifications, structures, and intensive human uses. In forested areas, they generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies. Recognizing that there is a continuum of ecological conditions ranging from near natural conditions to totally degraded and contaminated sites, this term is intended to delineate those shoreline areas that provide valuable functions for the larger aquatic and terrestrial environments which could be lost or significantly reduced by human development. Whether or not a shoreline is ecologically intact is determined on a case-by-case basis.

The term "ecologically intact shorelines" applies to all shoreline areas meeting the above criteria ranging from larger reaches that may include multiple properties to small areas located within a single property.

Areas with significant existing agriculture lands should not be included in the "natural" designation, except where the existing agricultural operations involve very low intensity uses where there is no significant impact on natural ecological functions, and where the intensity or impacts associated with such agriculture activities is unlikely to expand in a manner inconsistent with the "natural" designation.

**(b) "Rural conservancy" environment.**

(i) **Purpose.** The purpose of the "rural conservancy" environment is to protect ecological functions, conserve existing natural resources and valuable historic and cultural areas in order to provide for sustained resource use, achieve natural flood plain processes, and provide recreational opportunities. Examples of uses that are appropriate in a "rural conservancy" environment include low-impact outdoor recreation uses, timber harvesting on a sustained-yield basis, agricultural uses, aquaculture, low-intensity residential development and other natural resource-based low-intensity uses.

**(ii) Management policies.**

(A) Uses in the "rural conservancy" environment should be limited to those which sustain the shoreline area's physical and biological resources and uses of a nonpermanent nature that do not substantially degrade ecological functions or the rural or natural character of the shoreline area.

Except as noted, commercial and industrial uses should not be allowed. Agriculture, commercial forestry, and aquaculture when consistent with provisions of this chapter may be allowed. Low-intensity, water-oriented commercial and industrial uses may be permitted in the limited instances where those uses have located in the past or at unique sites in rural communities that possess shoreline conditions and services to support the ~~((development))~~ use.

Water-dependent and water-enjoyment recreation facilities that do not deplete the resource over time, such as boating facilities, angling, hunting, wildlife viewing trails, and swimming beaches, are preferred uses, provided significant adverse impacts to the shoreline are mitigated.

Mining is a unique use as a result of its inherent linkage to geology. Therefore, mining and related activities may be an appropriate use within the rural conservancy environment when conducted in a manner consistent with the environment policies and the provisions of WAC 173-26-241 (3)(h) and when located consistent with mineral resource lands designation criteria pursuant to RCW 36.70A.170 and WAC 365-190-070.

(B) Developments and uses that would substantially degrade or permanently deplete the biological resources of the area should not be allowed.

(C) Construction of new structural shoreline stabilization and flood control works should only be allowed where there is a documented need to protect an existing structure or ecological functions and mitigation is applied, consistent with WAC 173-26-231. New development should be designed and located to preclude the need for such work.

(D) Residential development standards shall ensure no net loss of shoreline ecological functions and should preserve the existing character of the shoreline consistent with the purpose of the environment. As a general matter, meeting this provision will require density, lot coverage, vegetation conservation and other provisions.

Scientific studies support density or lot coverage limitation standards that assure that development will be limited to a maximum of ten percent total impervious surface area within the lot or parcel, will maintain the existing hydrologic character of the shoreline. However, an alternative standard developed based on scientific information that meets the provisions of this chapter and accomplishes the purpose of the environment designation may be used.

Master programs may allow greater lot coverage to allow development of lots legally created prior to the adoption of a master program prepared under these guidelines. In these instances, master programs shall include measures to assure protection of ecological functions to the extent feasible such as requiring that lot coverage is minimized and vegetation is conserved.

(E) New shoreline stabilization, flood control measures, vegetation removal, and other shoreline modifications should be designed and managed consistent with these guidelines to ensure that the natural shoreline functions are protected. Such shoreline modification should not be inconsistent with planning provisions for restoration of shoreline ecological functions.

(iii) **Designation criteria.** Assign a "rural conservancy" environment designation to shoreline areas outside incorporated municipalities and outside urban growth areas, as defined by RCW 36.70A.110, if any of the following characteristics apply:

(A) The shoreline is currently supporting lesser-intensity resource-based uses, such as agriculture, forestry, or recreational uses, or is designated agricultural or forest lands pursuant to RCW 36.70A.170;

(B) The shoreline is currently accommodating residential uses outside urban growth areas and incorporated cities or towns;

(C) The shoreline is supporting human uses but subject to environmental limitations, such as properties that include

or are adjacent to steep banks, feeder bluffs, or flood plains or other flood-prone areas;

(D) The shoreline is of high recreational value or with unique historic or cultural resources; or

(E) The shoreline has low-intensity water-dependent uses.

Areas designated in a local comprehensive plan as "~~((rural))~~ limited areas of more ~~((intense))~~ intensive rural development," as provided for in chapter 36.70A RCW, may be designated an alternate shoreline environment, provided it is consistent with the objectives of the Growth Management Act and this chapter. "Master planned resorts" as described in RCW 36.70A.360 may be designated an alternate shoreline environment, provided the applicable master program provisions do not allow significant ecological impacts.

Lands that may otherwise qualify for designation as rural conservancy and which are designated as "mineral resource lands" pursuant to RCW 36.70A.170 and WAC 365-190-070 may be assigned a designation within the "rural conservancy" environment that allows mining and associated uses in addition to other uses consistent with the rural conservancy environment.

(c) **"Aquatic" environment.**

(i) **Purpose.** The purpose of the "aquatic" environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.

(ii) **Management policies.**

(A) Allow new over-water structures only for water-dependent uses, public access, or ecological restoration.

(B) The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.

(C) In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over-water facilities should be encouraged.

(D) All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.

(E) Uses that adversely impact the ecological functions of critical saltwater and freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in WAC 173-26-201 (2)(e) as necessary to assure no net loss of ecological functions.

(F) Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

(G) Local governments should reserve shoreline space for shoreline preferred uses. Such planning should consider upland and in-water uses, water quality, navigation, presence of aquatic vegetation, existing shellfish protection districts and critical habitats, aesthetics, public access and views.

(iii) **Designation criteria.** Assign an "aquatic" environment designation to lands waterward of the ordinary high-water mark.

Local governments may designate submerged and intertidal lands with shoreland designations (e.g., "high-intensity" or "rural conservancy") if the management policies and objectives for aquatic areas are met. In this case, the designation system used must provide regulations for managing submerged and intertidal lands that are clear and consistent with the "aquatic" environment management policies in this chapter. Additionally, local governments may assign an "aquatic" environment designation to wetlands.

(d) **"High-intensity" environment.**

(i) **Purpose.** The purpose of the "high-intensity" environment is to provide for high-intensity water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.

(ii) **Management policies.**

(A) In regulating uses in the "high-intensity" environment, first priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Nonwater-oriented uses should not be allowed except as part of mixed use developments. Nonwater-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline. Such specific situations should be identified in shoreline use analysis or special area planning, as described in WAC 173-26-200 (3)(d).

If an analysis of water-dependent use needs as described in WAC 173-26-201 (3)(d)(ii) demonstrates the needs of existing and envisioned water-dependent uses for the planning period are met, then provisions allowing for a mix of water-dependent and nonwater-dependent uses may be established. If those shoreline areas also provide ecological functions, apply standards to assure no net loss of those functions.

(B) Full utilization of existing urban areas should be achieved before further expansion of intensive development is allowed. Reasonable long-range projections of regional economic need should guide the amount of shoreline designated "high-intensity." However, consideration should be given to the potential for displacement of nonwater-oriented uses with water-oriented uses when analyzing full utilization of urban waterfronts and before considering expansion of such areas.

(C) Policies and regulations shall assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development shall include environmental cleanup and restoration of the shoreline to comply in accordance with any relevant state and federal law.

(D) Where feasible, visual and physical public access should be required as provided for in WAC 173-26-221 (4)(d).

(E) Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative buffers.

(iii) **Designation criteria.** Assign a "high-intensity" environment designation to shoreline areas within incorporated municipalities, urban growth areas, and industrial or commercial "~~((rural))~~ limited areas of more ~~((intense))~~ intensive rural development," as described by RCW 36.70A.070,

if they currently support high-intensity uses related to commerce, transportation or navigation; or are suitable and planned for high-intensity water-oriented uses.

(e) **"Urban conservancy" environment.**

(i) **Purpose.** The purpose of the "urban conservancy" environment is to protect and restore ecological functions of open space, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

(ii) **Management policies.**

(A) Uses that preserve the natural character of the area or promote preservation of open space, flood plain or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.

(B) Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the "urban conservancy" designation. These standards shall ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.

(C) Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.

(D) Water-oriented uses should be given priority over nonwater-oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses should be given highest priority.

(E) Mining is a unique use as a result of its inherent linkage to geology. Therefore, mining and related activities may be an appropriate use within the urban conservancy environment when conducted in a manner consistent with the environment policies and the provisions of WAC 173-26-240 (3)(h) and when located consistent with mineral resource lands designation criteria pursuant to RCW 36.70A.170 and WAC 365-190-070.

(iii) **Designation criteria.** Assign an "urban conservancy" environment designation to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring of the ecological functions of the area, that are not generally suitable for water-dependent uses and that lie in incorporated municipalities, urban growth areas, or commercial or industrial "~~(rural)~~ limited areas of more (~~intense~~) intensive rural development" if any of the following characteristics apply:

(A) They are suitable for water-related or water-enjoyment uses;

(B) They are open space, flood plain or other sensitive areas that should not be more intensively developed;

(C) They have potential for ecological restoration;

(D) They retain important ecological functions, even though partially developed; or

(E) They have the potential for development that is compatible with ecological restoration.

Lands that may otherwise qualify for designation as urban conservancy and which are designated as "mineral resource lands" pursuant to RCW 36.70A.170 and WAC 365-190-070 may be assigned a designation within the "urban conservancy" environment that allows mining and associated

uses in addition to other uses consistent with the urban conservancy environment.

(f) **"Shoreline residential" environment.**

(i) **Purpose.** The purpose of the "shoreline residential" environment is to accommodate residential development and appurtenant structures that are consistent with this chapter. An additional purpose is to provide appropriate public access and recreational uses.

(ii) **Management policies.**

(A) Standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall be set to assure no net loss of shoreline ecological functions, taking into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, and other comprehensive planning considerations.

Local governments may establish two or more different "shoreline residential" environments to accommodate different shoreline densities or conditions, provided both environments adhere to the provisions in this chapter.

(B) Multifamily and multilot residential and recreational developments should provide public access and joint use for community recreational facilities.

(C) Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

(D) Commercial development should be limited to water-oriented uses.

(iii) **Designation criteria.** Assign a "shoreline residential" environment designation to shoreline areas inside urban growth areas, as defined in RCW 36.70A.110, incorporated municipalities, "rural areas of more intense development," or "master planned resorts," as described in RCW 36.70A.360, if they are predominantly single-family or multifamily residential development or are planned and platted for residential development.

AMENDATORY SECTION (Amending Order 03-02, filed 12/17/03, effective 1/17/04)

**WAC 173-26-221 General master program provisions.** The provisions of this section shall be applied either generally to all shoreline areas or to shoreline areas that meet the specified criteria of the provision without regard to environment designation. These provisions address certain elements as required by RCW 90.58.100(2) and implement the principles as established in WAC 173-26-186.

(1) **Archaeological and historic resources.**

(a) **Applicability.** The following provisions apply to archaeological and historic resources that are either recorded at the state historic preservation office and/or by local jurisdictions or have been inadvertently uncovered. Archaeological sites located both in and outside shoreline jurisdiction are subject to chapter 27.44 RCW (Indian graves and records) and chapter 27.53 RCW (Archaeological sites and records) and development or uses that may impact such sites shall comply with chapter 25-48 WAC as well as the provisions of this chapter.

(b) **Principles.** Due to the limited and irreplaceable nature of the resource(s), prevent the destruction of or damage to any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities, including affected Indian tribes, and the office of archaeology and historic preservation.

(c) **Standards.** Local shoreline master programs shall include policies and regulations to protect historic, archaeological, and cultural features and qualities of shorelines and implement the following standards. A local government may reference historic inventories or regulations. Contact the office of archaeology and historic preservation and affected Indian tribes for additional information.

(i) Require that developers and property owners immediately stop work and notify the local government, the office of archaeology and historic preservation and affected Indian tribes if archaeological resources are uncovered during excavation.

(ii) Require that permits issued in areas documented to contain archaeological resources require a site inspection or evaluation by a professional archaeologist in coordination with affected Indian tribes.

(2) **Critical areas.**

(a) **Applicability.** Pursuant to the provisions of RCW 90.58.090(4) and 36.70A.480(3) as amended by chapter ((324)) 107, Laws of ((2003 (ESHB 1933)) 2010 (EHB 1653)), shoreline master programs must provide for management of critical areas designated as such pursuant to RCW 36.70A.170 (1)(d) ((and required to be protected pursuant to RCW 36.70A.060(2) that are)) located within the shorelines of the state with policies and regulations that:

(i) Are consistent with the specific provisions of this subsection (2) critical areas and subsection (3) of this section flood hazard reduction, and these guidelines; and

(ii) Provide a level of protection to critical areas within the shoreline area that ((is at least equal to that provided by the local government's critical area regulations adopted pursuant to the Growth Management Act for comparable areas other than shorelines.

When approved by ecology pursuant to RCW 90.58.090 (4), a local government's SMP becomes regulations for protection of critical areas in the shorelines of the state in the jurisdiction of the adopting local government except as noted in RCW 36.70A.480 (3)(b) and (6)) assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.

The provisions of this section and subsection (3) of this section, flood hazard reduction, shall be applied to critical areas within the shorelines of the state. RCW 36.70A.030 defines critical areas as:

*"Critical areas" include the following areas and ecosystems:*

*(a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable waters; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas."*

The provisions of WAC 365-190-080 through 365-190-130, to the extent standards for certain types of critical areas are not provided by this section and subsection (3) of this section flood hazard reduction, and to the extent consistent with

these guidelines are also applicable to and provide further definition of critical area categories and management policies.

As provided in RCW 90.58.030 (2)(f)(ii) and 36.70A.-480, as amended by chapter 321, Laws of 2003 (ESHB 1933), any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforest land use, on lands subject to the provision of ~~((f)(ii) of this subsection))~~ WAC 173-26-241 (3)(e) are not subject to additional regulations. If a local government does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized above, then the local jurisdiction shall continue to regulate those critical areas and required buffers pursuant to RCW 36.70A.060(2).

In addition to critical areas defined under chapter 36.70A RCW and critical saltwater and freshwater habitats as described in these guidelines, local governments should identify additional shoreline areas that warrant special protection necessary to achieve no net loss of ecological functions.

(b) **Principles.** Local master programs, when addressing critical areas, shall implement the following principles:

(i) Shoreline master programs shall adhere to the standards established in the following sections, unless it is demonstrated through scientific and technical information as provided in RCW 90.58.100(1) and as described in WAC 173-26-201 (2)(a) that an alternative approach provides better resource protection.

(ii) In addressing issues related to critical areas, use scientific and technical information, as described in WAC 173-26-201 (2)(a). The role of ecology in reviewing master program provisions for critical areas in shorelines of the state will be based on the Shoreline Management Act and these guidelines ((and a comparison with requirements in currently adopted critical area ordinances for comparable areas to ensure that the provisions are at least equal to the level of protection provided by the currently adopted critical area ordinance)).

(iii) In protecting and restoring critical areas within shoreline jurisdiction, integrate the full spectrum of planning and regulatory measures, including the comprehensive plan, interlocal watershed plans, local development regulations, and state, tribal, and federal programs.

(iv) The planning objectives of shoreline management provisions for critical areas shall be the protection of existing ecological functions and ecosystem-wide processes and restoration of degraded ecological functions and ecosystem-wide processes. The regulatory provisions for critical areas shall protect existing ecological functions and ecosystem-wide processes.

(v) Promote human uses and values that are compatible with the other objectives of this section, such as public access and aesthetic values, provided ~~((they do not significantly adversely))~~ that impacts to ecological functions are first avoided, and any unavoidable impacts are mitigated.

(c) **Standards.** When preparing master program provisions for critical areas, local governments should implement the following standards and ~~((the provisions of WAC 365-~~



~~190-080 and~~) use scientific and technical information, as provided for in WAC 173-26-201 (2)(a).

~~((In reviewing the critical areas segment of a master program, the department of ecology shall first assure consistency with the standards of this section Critical areas (WAC 173-26-221(2)), and with the Flood hazard reduction section (WAC 173-26-221(3)), and shall then assure that the master program also provides protection of comparable critical areas that is at least equal to the protection provided by the local governments adopted and valid critical area regulations in effect at the time of submittal of the SMP.~~

~~In conducting the review for equivalency with local regulations, the department shall not further evaluate the adequacy of the local critical area regulations. Incorporation of the adopted and valid critical area regulations in effect at the time of submittal by reference as provided in WAC 173-26-191 (2)(b) shall be deemed to meet the requirement for equivalency. However, a finding of equivalency does not constitute a finding of compliance with the requirements of this section and subsection (3) of this section flood hazard reduction, nor with the guidelines overall.~~

~~Note that))~~ Provisions for frequently flooded areas are included in WAC 173-26-221(3).

**(i) Wetlands.**

**(A) Wetland use regulations.** Local governments should consult the department's technical guidance documents on wetlands.

Regulations shall address the following uses to achieve, at a minimum, no net loss of wetland area and functions, including lost time when the wetland does not perform the function:

- The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
- The dumping, discharging, or filling with any material, including discharges of storm water and domestic, commercial, or industrial wastewater;
- The draining, flooding, or disturbing of the water level, duration of inundation, or water table;
- The driving of pilings;
- The placing of obstructions;
- The construction, reconstruction, demolition, or expansion of any structure;
- Significant vegetation removal, provided that these activities are not part of a forest practice governed under chapter 76.09 RCW and its rules;
- Other uses or development that results in ~~((a significant))~~ an ecological impact to the physical, chemical, or biological characteristics of wetlands; or
- Activities reducing the functions of buffers described in (c)(i)(D) of this subsection.

**(B) Wetland rating or categorization.** Wetlands shall be categorized based on the rarity, irreplaceability, or sensitivity to disturbance of a wetland and the functions the wetland provides. Local governments should either use the Washington state wetland rating system, Eastern or Western Washington version as appropriate, or they should develop their own, regionally specific, scientifically based method for categorizing wetlands. Wetlands should be categorized to reflect differences in wetland quality and function in order to

tailor protection standards appropriately. A wetland categorization method is not a substitute for a function assessment method, where detailed information on wetland functions is needed.

**(C) Alterations to wetlands.** Master program provisions addressing alterations to wetlands shall be consistent with the policy of no net loss of wetland area and functions, wetland rating, scientific and technical information, and the mitigation priority sequence defined in WAC 173-26-201 (2)(e).

**(D) Buffers.** Master programs shall contain requirements for buffer zones around wetlands. Buffer requirements shall be adequate to ensure that wetland functions are protected and maintained in the long term. Requirements for buffer zone widths and management shall take into account the ecological functions of the wetland, the characteristics and setting of the buffer, the potential impacts associated with the adjacent land use, and other relevant factors.

**(E) Mitigation.** Master programs shall contain wetland mitigation requirements that are consistent with WAC 173-26-201 (2)(e) and which are based on the wetland rating.

**(F) Compensatory mitigation.** Compensatory mitigation shall be allowed only after mitigation sequencing is applied and higher priority means of mitigation are determined to be infeasible.

Requirements for compensatory mitigation must include provisions for:

(I) Mitigation replacement ratios or a similar method of addressing the following:

- The risk of failure of the compensatory mitigation action;
- The length of time it will take the compensatory mitigation action to adequately replace the impacted wetland functions and values;
- The gain or loss of the type, quality, and quantity of the ecological functions of the compensation wetland as compared with the impacted wetland.

(II) Establishment of performance standards for evaluating the success of compensatory mitigation actions;

(III) Establishment of long-term monitoring and reporting procedures to determine if performance standards are met; and

(IV) Establishment of long-term protection and management of compensatory mitigation sites.

Credits from a certified mitigation bank may be used to compensate for unavoidable impacts.

**(ii) Geologically hazardous areas.** Development in designated geologically hazardous areas shall be regulated in accordance with the following:

**(A)** Consult ~~((minimum guidelines))~~ designation criteria for geologically hazardous areas, WAC ~~((365-190-080(4)))~~ 365-190-120.

**(B)** Do not allow new development or the creation of new lots that would cause foreseeable risk from geological conditions to people or improvements during the life of the development.

**(C)** Do not allow new development that would require structural shoreline stabilization over the life of the development. Exceptions may be made for the limited instances where stabilization is necessary to protect allowed uses

where no alternative locations are available and no net loss of ecological functions will result. The stabilization measures shall conform to WAC 173-26-231.

(D) Where no alternatives, including relocation or reconstruction of existing structures, are found to be feasible, and less expensive than the proposed stabilization measure, stabilization structures or measures to protect existing primary residential structures may be allowed in strict conformance with WAC 173-26-231 requirements and then only if no net loss of ecological functions will result.

(iii) **Critical saltwater habitats.**

(A) **Applicability.** Critical saltwater habitats include all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association. Critical saltwater habitats require a higher level of protection due to the important ecological functions they provide. Ecological functions of marine shorelands can affect the viability of critical saltwater habitats. Therefore, effective protection and restoration of critical saltwater habitats should integrate management of shorelands as well as submerged areas.

(B) **Principles.** Master programs shall include policies and regulations to protect critical saltwater habitats and should implement planning policies and programs to restore such habitats. The inclusion of commercial aquaculture in the critical saltwater habitat definition does not limit its regulation as a use. Reserving shoreline areas for protecting and restoring ecological functions should be done prior to reserving shoreline areas for uses described in WAC 173-26-201 (2)(d)(i) through (v). Planning for critical saltwater habitats shall incorporate the participation of state resource agencies to assure consistency with other legislatively created programs in addition to local and regional government entities with an interest such as port districts. Affected Indian tribes shall also be consulted. Local governments should review relevant comprehensive management plan policies and development regulations for shorelands and adjacent lands to achieve consistency as directed in RCW 90.58.340. Local governments should base management planning on information provided by state resource agencies and affected Indian tribes unless they demonstrate that they possess more accurate and reliable information.

The management planning should include an evaluation of current data and trends regarding the following:

- Available inventory and collection of necessary data regarding physical characteristics of the habitat, including upland conditions, and any information on species population trends;
  - Terrestrial and aquatic vegetation;
  - The level of human activity in such areas, including the presence of roads and level of recreational types (passive or active recreation may be appropriate for certain areas and habitats);
    - Restoration potential;
    - Tributaries and small streams flowing into marine waters;
    - Dock and bulkhead construction, including an inventory of bulkheads serving no protective purpose;

- Conditions and ecological functions in the near-shore area;
- Uses surrounding the critical saltwater habitat areas that may negatively impact those areas, including permanent or occasional upland, beach, or over-water uses; and
- An analysis of what data gaps exist and a strategy for gaining this information.

The management planning should address the following, where applicable:

- Protecting a system of fish and wildlife habitats with connections between larger habitat blocks and open spaces and restoring such habitats and connections where they are degraded;
- Protecting existing and restoring degraded riparian and estuarine ecosystems, especially salt marsh habitats;
- Establishing adequate buffer zones around these areas to separate incompatible uses from the habitat areas;
- Protecting existing and restoring degraded near-shore habitat;
- Protecting existing and restoring degraded or lost salmonid, shorebird, waterfowl, or marine mammal habitat;
- Protecting existing and restoring degraded upland ecological functions important to critical saltwater habitats, including riparian ~~((vegetation))~~ and associated upland native plant communities;
- Improving water quality;
- Protecting existing and restoring degraded sediment inflow and transport regimens; and
- Correcting activities that cause excessive sediment input where human activity has led to mass wasting.

Local governments, in conjunction with state resource agencies and affected Indian tribes, should classify critical saltwater habitats and protect and restore seasonal ranges and habitat elements with which federal-listed and state-listed endangered, threatened, and priority species have a primary association and which, if altered, may reduce the likelihood that a species will maintain its population and reproduce over the long term.

Local governments, in conjunction with state resource agencies and affected Indian tribes, should determine which habitats and species are of local importance.

~~((All public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas. Local governments should consider both commercial and recreational shellfish areas. Local governments should review the Washington department of health classification of commercial and recreational shellfish growing areas to determine the existing condition of these areas. Further consideration should be given to the vulnerability of these areas to contamination or potential for recovery. Shellfish protection districts established pursuant to chapter 90.72 RCW shall be included in the classification of critical shellfish areas.))~~ Local governments shall ~~((classify))~~ protect kelp and eelgrass beds, forage fish spawning and holding areas, and priority species habitat identified by the department of natural resources' aquatic resources division, the department of fish and wildlife, the department, and affected Indian tribes as critical saltwater habitats.

Comprehensive saltwater habitat management planning should identify methods for monitoring conditions and adapting management practices to new information.

(C) **Standards.** Docks, piers, bulkheads, bridges, fill, floats, jetties, utility crossings, and other human-made structures shall not intrude into or over critical saltwater habitats except when all of the conditions below are met:

- The public's need for such an action or structure is clearly demonstrated and the proposal is consistent with protection of the public trust, as embodied in RCW 90.58.020;
- Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible or would result in unreasonable and disproportionate cost to accomplish the same general purpose;
- The project including any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat.
- The project is consistent with the state's interest in resource protection and species recovery.

Private, noncommercial docks for individual residential or community use may be authorized provided that:

- Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible;
- The project including any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat.

Until an inventory of critical saltwater habitat has been done, shoreline master programs shall condition all over-water and near-shore developments in marine and estuarine waters with the requirement for an inventory of the site and adjacent beach sections to assess the presence of critical saltwater habitats and functions. The methods and extent of the inventory shall be consistent with accepted research methodology. At a minimum, local governments should consult with department technical assistance materials for guidance.

(iv) **Critical freshwater habitats.**

(A) **Applicability.** The following applies to master program provisions affecting critical freshwater habitats within shorelines of the state designated under chapter 36.70A RCW, including those portions of streams, rivers, wetlands, and lakes, their associated channel migration zones, and flood plains designated as such in the master program.

(B) **Principles.** Many ecological functions of lake, river and stream corridors depend both on continuity and connectivity along the length of the shoreline and on the conditions of the surrounding lands on either side of ~~((the))~~ river channel and lake basin. Environmental degradation caused by development such as improper storm water sewer or industrial outfalls, unmanaged clearing and grading, or runoff from buildings and parking lots within the watershed, can degrade ecological functions in lakes and downstream. Likewise, gradual destruction or loss of ~~((the vegetation))~~ riparian and associated upland native plant communities, alteration of runoff quality and quantity along the lake basin and stream corridor resulting from incremental flood plain and lake basin development can raise water temperatures and alter hydrographic conditions ~~((and degrade other))~~, degrading ecological functions ~~((, thereby making))~~. This makes the corridor inhospitable for ~~((priority))~~ invertebrate and vertebrate aquatic, amphibian and terrestrial wildlife species and susceptible to

catastrophic flooding, droughts, landslides and channel changes. These conditions also threaten human health, safety, and property. Long stretches of lake, river and stream shorelines have been significantly altered or degraded in this manner. Therefore, effective management of lake basins and river and stream corridors depends on:

(I) Planning for protection, and restoration where appropriate, throughout the lake basin and along the entire length of the corridor from river headwaters to the mouth; and

(II) Regulating uses and development within ~~((the))~~ lake basins and stream channels, associated channel migration zones, wetlands, and the flood plains, to the extent such areas are in the shoreline jurisdictional area, as necessary to assure no net loss of ecological functions ~~((associated with the river or stream corridors))~~, including where applicable the associated hyporheic zone, results from new development.

As part of a comprehensive approach to management of critical freshwater habitat and other lake, river and stream values, local governments should integrate master program provisions, including those for shoreline stabilization, fill, vegetation conservation, water quality, flood hazard reduction, and specific uses, to protect human health and safety and to protect and restore ~~((the corridor's))~~ lake and river corridor ecological functions and ecosystem-wide processes.

Applicable master programs shall contain provisions to protect hydrologic connections between water bodies, water courses, and associated wetlands. Restoration planning should include incentives and other means to restore water connections that have been impeded by previous development.

Master program provisions for lake basins and river and stream corridors should, where appropriate, be based on the information from comprehensive watershed management planning where available.

(C) **Standards.** Master programs shall implement the following standards within shoreline jurisdiction:

(I) Provide for the protection of ecological functions associated with critical freshwater habitat as necessary to assure no net loss of ecological functions.

(II) ~~((Where appropriate,))~~ Integrate protection of critical freshwater, riparian and associated upland habitat, protection with flood hazard reduction and other lake, wetland, river and stream management provisions.

(III) Include provisions that facilitate authorization of appropriate restoration projects.

(IV) Provide for the implementation of the principles identified in (c)(iv)(B) of this subsection.

(3) **Flood hazard reduction.**

(a) **Applicability.** The following provisions apply to actions taken to reduce flood damage or hazard and to uses, development, and shoreline modifications that may increase flood hazards. Flood hazard reduction measures may consist of nonstructural measures, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, bio-technical measures, and storm water management programs, and of structural measures, such as dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance Program. Additional relevant critical area provisions are in WAC 173-26-221(2).

(b) **Principles.** Flooding of rivers, streams, and other shorelines is a natural process that is affected by factors and land uses occurring throughout the watershed. Past land use practices have disrupted hydrological processes and increased the rate and volume of runoff, thereby exacerbating flood hazards and reducing ecological functions. Flood hazard reduction measures are most effective when integrated into comprehensive strategies that recognize the natural hydrogeological and biological processes of water bodies. Over the long term, the most effective means of flood hazard reduction is to prevent or remove development in flood-prone areas, to manage storm water within the flood plain, and to maintain or restore river and stream system's natural hydrological and geomorphological processes.

Structural flood hazard reduction measures, such as diking, even if effective in reducing inundation in a portion of the watershed, can intensify flooding elsewhere. Moreover, structural flood hazard reduction measures can damage ecological functions crucial to fish and wildlife species, bank stability, and water quality. Therefore, structural flood hazard reduction measures shall be avoided whenever possible. When necessary, they shall be accomplished in a manner that assures no net loss of ecological functions and ecosystem-wide processes.

The dynamic physical processes of rivers, including the movement of water, sediment and wood, cause the river channel in some areas to move laterally, or "migrate," over time. This is a natural process in response to gravity and topography and allows the river to release energy and distribute its sediment load. The area within which a river channel is likely to move over a period of time is referred to as the channel migration zone (CMZ) or the meander belt. Scientific examination as well as experience has demonstrated that interference with this natural process often has unintended consequences for human users of the river and its valley such as increased or changed flood, sedimentation and erosion patterns. It also has adverse effects on fish and wildlife through loss of critical habitat for river and riparian dependent species. Failing to recognize the process often leads to damage to, or loss of, structures and threats to life safety.

Applicable shoreline master programs should include provisions to limit development and shoreline modifications that would result in interference with the process of channel migration that may cause significant adverse impacts to property or public improvements and/or result in a net loss of ecological functions associated with the rivers and streams. (See also (c) of this subsection.)

The channel migration zone should be established to identify those areas with a high probability of being subject to channel movement based on the historic record, geologic character and evidence of past migration. It should also be recognized that past action is not a perfect predictor of the future and that human and natural changes may alter migration patterns. Consideration should be given to such changes that may have occurred and their effect on future migration patterns.

For management purposes, the extent of likely migration along a stream reach can be identified using evidence of active stream channel movement over the past one hundred years. Evidence of active movement can be provided from

historic and current aerial photos and maps and may require field analysis of specific channel and valley bottom characteristics in some cases. A time frame of one hundred years was chosen because aerial photos, maps and field evidence can be used to evaluate movement in this time frame.

In some cases, river channels are prevented from normal or historic migration by human-made structures or other shoreline modifications. The definition of channel migration zone indicates that in defining the extent of a CMZ, local governments should take into account the river's characteristics and its surroundings. Unless otherwise demonstrated through scientific and technical information, the following characteristics should be considered when establishing the extent of the CMZ for management purposes:

- Within incorporated municipalities and urban growth areas, areas separated from the active river channel by legally existing artificial channel constraints that limit channel movement should not be considered within the channel migration zone.

- All areas separated from the active channel by a legally existing artificial structure(s) that is likely to restrain channel migration, including transportation facilities, built above or constructed to remain intact through the one hundred-year flood, should not be considered to be in the channel migration zone.

- In areas outside incorporated municipalities and urban growth areas, channel constraints and flood control structures built below the one hundred-year flood elevation do not necessarily restrict channel migration and should not be considered to limit the channel migration zone unless demonstrated otherwise using scientific and technical information.

Master programs shall implement the following principles:

(i) Where feasible, give preference to nonstructural flood hazard reduction measures over structural measures.

(ii) Base shoreline master program flood hazard reduction provisions on applicable watershed management plans, comprehensive flood hazard management plans, and other comprehensive planning efforts, provided those measures are consistent with the Shoreline Management Act and this chapter.

(iii) Consider integrating master program flood hazard reduction provisions with other regulations and programs, including (if applicable):

- Storm water management plans;
- Flood plain regulations, as provided for in chapter 86.16 RCW;

- Critical area ordinances and comprehensive plans, as provided in chapter 36.70A RCW; and

- The National Flood Insurance Program.

(iv) Assure that flood hazard protection measures do not result in a net loss of ecological functions associated with the rivers and streams.

(v) Plan for and facilitate returning river and stream corridors to more natural hydrological conditions. Recognize that seasonal flooding is an essential natural process.

(vi) When evaluating alternate flood control measures, consider the removal or relocation of structures in flood-prone areas.

(vii) Local governments are encouraged to plan for and facilitate removal of artificial restrictions to natural channel migration, restoration of off channel hydrological connections and return river processes to a more natural state where feasible and appropriate.

(c) **Standards.** Master programs shall implement the following standards within shoreline jurisdiction:

(i) Development in flood plains should not significantly or cumulatively increase flood hazard or be inconsistent with a comprehensive flood hazard management plan adopted pursuant to chapter 86.12 RCW, provided the plan has been adopted after 1994 and approved by the department. New development or new uses in shoreline jurisdiction, including the subdivision of land, should not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway. The following uses and activities may be appropriate and/or necessary within the channel migration zone or floodway:

- Actions that protect or restore the ecosystem-wide processes or ecological functions.
- Forest practices in compliance with the Washington State Forest Practices Act and its implementing rules.
- Existing and ongoing agricultural practices, provided that no new restrictions to channel movement occur.
- Mining when conducted in a manner consistent with the environment designation and with the provisions of WAC 173-26-241 (3)(h).
- Bridges, utility lines, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate cost. Where such structures are allowed, mitigation shall address impacted functions and processes in the affected section of watershed or drift cell.
- Repair and maintenance of an existing legal use, provided that such actions do not cause significant ecological impacts or increase flood hazards to other uses.
- Development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.
- Modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited and that the new development includes appropriate protection of ecological functions.
- Development in incorporated municipalities and designated urban growth areas, as defined in chapter 36.70A RCW, where existing structures prevent active channel movement and flooding.
- Measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and that the measure includes appropriate mitigation of impacts to ecological functions associated with the river or stream.

(ii) Allow new structural flood hazard reduction measures in shoreline jurisdiction only when it can be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are not feasible, that impacts on ecological func-

tions and priority species and habitats can be successfully mitigated so as to assure no net loss, and that appropriate vegetation conservation actions are undertaken consistent with WAC 173-26-221(5).

Structural flood hazard reduction measures shall be consistent with an adopted comprehensive flood hazard management plan approved by the department that evaluates cumulative impacts to the watershed system.

(iii) Place new structural flood hazard reduction measures landward of the associated wetlands, and designated vegetation conservation areas, except for actions that increase ecological functions, such as wetland restoration, or as noted below. Provided that such flood hazard reduction projects be authorized if it is determined that no other alternative to reduce flood hazard to existing development is feasible. The need for, and analysis of feasible alternatives to, structural improvements shall be documented through a geotechnical analysis.

(iv) Require that new structural public flood hazard reduction measures, such as dikes and levees, dedicate and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.

(v) Require that the removal of gravel for flood management purposes be consistent with an adopted flood hazard reduction plan and with this chapter and allowed only after a biological and geomorphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of ecological functions, and is part of a comprehensive flood management solution.

**(4) Public access.**

(a) **Applicability.** Public access includes the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Public access provisions below apply to all shorelines of the state unless stated otherwise.

(b) **Principles.** Local master programs shall:

(i) Promote and enhance the public interest with regard to rights to access waters held in public trust by the state while protecting private property rights and public safety.

(ii) Protect the rights of navigation and space necessary for water-dependent uses.

(iii) To the greatest extent feasible consistent with the overall best interest of the state and the people generally, protect the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water.

(iv) Regulate the design, construction, and operation of permitted uses in the shorelines of the state to minimize, insofar as practical, interference with the public's use of the water.

(c) **Planning process to address public access.** Local governments should plan for an integrated shoreline area public access system that identifies specific public needs and opportunities to provide public access. Such a system can often be more effective and economical than applying uni-

form public access requirements to all development. This planning should be integrated with other relevant comprehensive plan elements, especially transportation and recreation. The planning process shall also comply with all relevant constitutional and other legal limitations that protect private property rights.

Where a port district or other public entity has incorporated public access planning into its master plan through an open public process, that plan may serve as a portion of the local government's public access planning, provided it meets the provisions of this chapter. The planning may also justify more flexible offsite or special area public access provisions in the master program. Public participation requirements in WAC 173-26-201 (3)(b)(i) apply to public access planning.

At a minimum, the public access planning should result in public access requirements for shoreline permits, recommended projects, port master plans, and/or actions to be taken to develop public shoreline access to shorelines on public property. The planning should identify a variety of shoreline access opportunities and circulation for pedestrians (including disabled persons), bicycles, and vehicles between shoreline access points, consistent with other comprehensive plan elements.

(d) **Standards.** Shoreline master programs should implement the following standards:

(i) Based on the public access planning described in (c) of this subsection, establish policies and regulations that protect and enhance both physical and visual public access. The master program shall address public access on public lands. The master program should seek to increase the amount and diversity of public access to the state's shorelines consistent with the natural shoreline character, property rights, public rights under the Public Trust Doctrine, and public safety.

(ii) Require that shoreline development by public entities, including local governments, port districts, state agencies, and public utility districts, include public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment. Where public access planning as described in WAC 173-26-221 (4)(c) demonstrates that a more effective public access system can be achieved through alternate means, such as focusing public access at the most desirable locations, local governments may institute master program provisions for public access based on that approach in lieu of uniform site-by-site public access requirements.

(iii) Provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and nonwater-dependent uses and for the subdivision of land into more than four parcels. In these cases, public access should be required except:

(A) Where the local government provides more effective public access through a public access planning process described in WAC 173-26-221 (4)(c).

(B) Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable.

In determining the infeasibility, undesirability, or incompatibility of public access in a given situation, local govern-

ments shall consider alternate methods of providing public access, such as offsite improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.

(C) For individual single-family residences not part of a development planned for more than four parcels.

(iv) Adopt provisions, such as maximum height limits, setbacks, and view corridors, to minimize the impacts to existing views from public property or substantial numbers of residences. Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary.

(v) Assure that public access improvements do not result in a net loss of shoreline ecological functions.

**(5) Shoreline vegetation conservation.**

(a) **Applicability.** Vegetation conservation includes activities to protect and restore vegetation along or near marine and freshwater shorelines that contribute to the ecological functions of shoreline areas. Vegetation conservation provisions include the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and nonnative species.

Unless otherwise stated, vegetation conservation does not include those activities covered under the Washington State Forest Practices Act, except for conversion to other uses and those other forest practice activities over which local governments have authority. As with all master program provisions, vegetation conservation provisions apply even to those shoreline uses and developments that are exempt from the requirement to obtain a permit. Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures, such as existing agricultural practices.

(b) **Principles.** The intent of vegetation conservation is to protect and restore the ecological functions and ecosystem-wide processes performed by vegetation along shorelines. Vegetation conservation should also be undertaken to protect human safety and property, to increase the stability of river banks and coastal bluffs, to reduce the need for structural shoreline stabilization measures, to improve the visual and aesthetic qualities of the shoreline, to protect plant and animal species and their habitats, and to enhance shoreline uses.

Master programs shall include: Planning provisions that address vegetation conservation and restoration, and regulatory provisions that address conservation of vegetation; as necessary to assure no net loss of shoreline ecological functions and ecosystem-wide processes, to avoid adverse impacts to soil hydrology, and to reduce the hazard of slope failures or accelerated erosion.

Local governments should address ecological functions and ecosystem-wide processes provided by vegetation as described in WAC 173-26-201 (3)(d)(i).

Local governments may implement these objectives through a variety of measures, where consistent with Shoreline Management Act policy, including clearing and grading regulations, setback and buffer standards, critical area regulations, conditional use requirements for specific uses or areas,

mitigation requirements, incentives and nonregulatory programs.

In establishing vegetation conservation regulations, local governments must use available scientific and technical information, as described in WAC 173-26-201 (2)(a). At a minimum, local governments should consult shoreline management assistance materials provided by the department and *Management Recommendations for Washington's Priority Habitats*, prepared by the Washington state department of fish and wildlife where applicable.

Current scientific evidence indicates that the length, width, and species composition of a shoreline vegetation community contribute substantively to the aquatic ecological functions. Likewise, the biota within the aquatic environment is essential to ecological functions of the adjacent upland vegetation. The ability of vegetated areas to provide critical ecological functions diminishes as the length and width of the vegetated area along shorelines is reduced. When shoreline vegetation is removed, the narrower the area of remaining vegetation, the greater the risk that the functions will not be performed.

In the Pacific Northwest, aquatic environments, as well as their associated upland vegetation and wetlands, provide significant habitat for a myriad of fish and wildlife species. Healthy environments for aquatic species are inseparably linked with the ecological integrity of the surrounding terrestrial ecosystem. For example, a nearly continuous corridor of mature forest characterizes the natural riparian conditions of the Pacific Northwest. Riparian corridors along marine shorelines provide many of the same functions as their freshwater counterparts. The most commonly recognized functions of the shoreline vegetation include, but are not limited to:

- Providing shade necessary to maintain the cool temperatures required by salmonids, spawning forage fish, and other aquatic biota.
- Providing organic inputs critical for aquatic life.
- Providing food in the form of various insects and other benthic macroinvertebrates.
- Stabilizing banks, minimizing erosion, and reducing the occurrence of landslides. The roots of trees and other riparian vegetation provide the bulk of this function.
- Reducing fine sediment input into the aquatic environment through storm water retention and vegetative filtering.
- Filtering and vegetative uptake of nutrients and pollutants from ground water and surface runoff.
- Providing a source of large woody debris into the aquatic system. Large woody debris is the primary structural element that functions as a hydraulic roughness element to moderate flows. Large woody debris also serves a pool-forming function, providing critical salmonid rearing and refuge habitat. Abundant large woody debris increases aquatic diversity and stabilization.
- Regulation of microclimate in the stream-riparian and intertidal corridors.
- Providing critical wildlife habitat, including migration corridors and feeding, watering, rearing, and refugia areas.

Sustaining different individual functions requires different widths, compositions and densities of vegetation. The importance of the different functions, in turn, varies with the

type of shoreline setting. For example, in forested shoreline settings, periodic recruitment of fallen trees, especially conifers, into the stream channel is an important attribute, critical to natural stream channel maintenance. Therefore, vegetated areas along streams which once supported or could in the future support mature trees should be wide enough to accomplish this periodic recruitment process.

Woody vegetation normally classed as trees may not be a natural component of plant communities in some environments, such as in arid climates and on coastal dunes. In these instances, the width of a vegetated area necessary to achieve the full suite of vegetation-related shoreline functions may not be related to vegetation height.

Local governments should identify which ecological processes and functions are important to the local aquatic and terrestrial ecology and conserve sufficient vegetation to maintain them. Such vegetation conservation areas are not necessarily intended to be closed to use and development but should provide for management of vegetation in a manner adequate to assure no net loss of shoreline ecological functions.

(c) **Standards.** Master programs shall implement the following requirements in shoreline jurisdiction.

Establish vegetation conservation standards that implement the principles in WAC 173-26-221 (5)(b). Methods to do this may include setback or buffer requirements, clearing and grading standards, regulatory incentives, environment designation standards, or other master program provisions. Selective pruning of trees for safety and view protection may be allowed and the removal of noxious weeds should be authorized.

Additional vegetation conservation standards for specific uses are included in WAC 173-26-241(3).

(6) **Water quality, storm water, and nonpoint pollution.**

(a) **Applicability.** The following section applies to all development and uses in shorelines of the state, as defined in WAC 173-26-020, that affect water quality.

(b) **Principles.** Shoreline master programs shall, as stated in RCW 90.58.020, protect against adverse impacts to the public health, to the land and its vegetation and wildlife, and to the waters of the state and their aquatic life, through implementation of the following principles:

(i) Prevent impacts to water quality and storm water quantity that would result in a net loss of shoreline ecological functions, or a significant impact to aesthetic qualities, or recreational opportunities.

(ii) Ensure mutual consistency between shoreline management provisions and other regulations that address water quality and storm water quantity, including public health, storm water, and water discharge standards. The regulations that are most protective of ecological functions shall apply.

(c) **Standards.** Shoreline master programs shall include provisions to implement the principles of this section.

AMENDATORY SECTION (Amending Order 03-02, filed 12/17/03, effective 1/17/04)

**WAC 173-26-241 Shoreline uses. (1) Applicability.** The provisions in this section apply to specific common uses and types of development to the extent they occur within

shoreline jurisdiction. Master programs should include these, where applicable, and should include specific use provisions for other common uses and types of development in the jurisdiction. All uses and development must be consistent with the provisions of the environment designation in which they are located and the general regulations of the master program.

**(2) General use provisions.**

(a) **Principles.** Shoreline master programs shall implement the following principles:

(i) Establish a system of use regulations and environment designation provisions consistent with WAC 173-26-201 (2)(d) and 173-26-211 that gives preference to those uses that are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon uses of the state's shoreline areas.

(ii) Ensure that all shoreline master program provisions concerning proposed development of property are established, as necessary, to protect the public's health, safety, and welfare, as well as the land and its vegetation and wildlife, and to protect property rights while implementing the policies of the Shoreline Management Act.

(iii) Reduce use conflicts by including provisions to prohibit or apply special conditions to those uses which are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the state's shoreline. In implementing this provision, preference shall be given first to water-dependent uses, then to water-related uses and water-enjoyment uses.

(iv) Establish use regulations designed to assure no net loss of ecological functions associated with the shoreline.

**(b) Conditional uses.**

(i) Master programs shall define the types of uses and development that require shoreline conditional use permits pursuant to RCW 90.58.100(5). Requirements for a conditional use permit may be used for a variety of purposes, including:

- To effectively address unanticipated uses that are not classified in the master program as described in WAC 173-27-030.

- To address cumulative impacts.

- To provide the opportunity to require specially tailored environmental analysis or design criteria for types of use or development that may otherwise be inconsistent with a specific environment designation within a master program or with the Shoreline Management Act policies.

In these cases, allowing a given use as a conditional use could provide greater flexibility within the master program than if the use were prohibited outright.

(ii) If master programs permit the following types of uses and development, they should require a conditional use permit:

(A) Uses and development that may significantly impair or alter the public's use of the water areas of the state.

(B) Uses and development which, by their intrinsic nature, may have a significant ecological impact on shoreline ecological functions or shoreline resources depending on location, design, and site conditions.

(C) Development and uses in critical saltwater habitats.

(D) New commercial geoduck aquaculture as described in (3)(b) of this section.

(iii) The provisions of this section are minimum requirements and are not intended to limit local government's ability to identify other uses and developments within the master program as conditional uses where necessary or appropriate.

(3) **Standards.** Master programs shall establish a comprehensive program of use regulations for shorelines and shall incorporate provisions for specific uses consistent with the following as necessary to assure consistency with the policy of the act and where relevant within the jurisdiction.

**(a) Agriculture.**

(i) For the purposes of this section, the terms agricultural activities, agricultural products, agricultural equipment and facilities and agricultural land shall have the specific meanings as provided in WAC 173-26-020.

(ii) Master programs shall not require modification of or limit agricultural activities occurring on agricultural lands. In jurisdictions where agricultural activities occur, master programs shall include provisions addressing new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and other development on agricultural land that does not meet the definition of agricultural activities.

(iii) Nothing in this section limits or changes the terms of the current exception to the definition of substantial development. A substantial development permit is required for any agricultural development not specifically exempted by the provisions of RCW 90.58.030 (3)(e)(iv).

(iv) Master programs shall use definitions consistent with the definitions found in WAC 173-26-020(3).

(v) New agricultural activities are activities that meet the definition of agricultural activities but are proposed on land not currently in agricultural use. Master programs shall include provisions for new agricultural activities to assure that:

(A) Specific uses and developments in support of agricultural use are consistent with the environment designation in which the land is located.

(B) Agricultural uses and development in support of agricultural uses, are located and designed to assure no net loss of ecological functions and to not have a significant adverse impact on other shoreline resources and values.

Measures appropriate to meet these requirements include provisions addressing water quality protection, and vegetation conservation, as described in WAC 173-26-220 (5) and (6). Requirements for buffers for agricultural development shall be based on scientific and technical information and management practices adopted by the applicable state agencies necessary to preserve the ecological functions and qualities of the shoreline environment.

(vi) Master programs shall include provisions to assure that development on agricultural land that does not meet the definition of agricultural activities, and the conversion of agricultural land to nonagricultural uses, shall be consistent with the environment designation, and the general and specific use regulations applicable to the proposed use and do not result in a net loss of ecological functions associated with the shoreline.



(b) **Aquaculture.** ((Aquaculture is the culture or farming of food fish, shellfish, or other aquatic plants and animals. This activity is of statewide interest. Properly managed, it can result in long-term over short-term benefit and can protect the resources and ecology of the shoreline. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area. Local government should consider local ecological conditions and provide limits and conditions to assure appropriate compatible types of aquaculture for the local conditions as necessary to assure no net loss of ecological functions.

Potential locations for aquaculture are relatively restricted due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, commercial navigation, and, in marine waters, salinity. The technology associated with some forms of present-day aquaculture is still in its formative stages and experimental. Local shoreline master programs should therefore recognize the necessity for some latitude in the development of this use as well as its potential impact on existing uses and natural systems.

Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass and macroalgae, or significantly conflict with navigation and other water-dependent uses. Aquacultural facilities should be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline. Impacts to ecological functions shall be mitigated according to the mitigation sequence described in WAC 173-26-020.))

(i) General provisions.

(A) Aquaculture is the culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the state managed wildstock geoduck fishery.

This activity is of statewide interest. Properly managed, it can result in long-term over short-term benefit and can protect the resources and ecology of the shoreline. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area. Local government should consider local ecological conditions and provide limits and conditions to assure appropriate compatible types of aquaculture for the local conditions as necessary to assure no net loss of ecological functions.

(B) Potential locations for aquaculture are relatively restricted due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, commercial navigation, and, in marine waters, salinity. The technology associated with some forms of present-day aquaculture is still in its formative stages and experimental. Local shoreline master programs should therefore recognize the necessity for some latitude in the development of this use as well as its potential impact on existing uses and natural systems.

(C) Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass and macroalgae, or significantly conflict with

navigation and other water-dependent uses. Aquacultural facilities should be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline. Impacts to ecological functions shall be mitigated according to the mitigation sequence described in WAC 173-26-201 (2)(e).

(D) Local government should ensure proper management of upland uses to avoid degradation of water quality of existing shellfish areas.

(ii) Siting considerations for commercial geoduck aquaculture.

In addition to the siting provisions of (b)(i) of this subsection, commercial geoduck aquaculture should only be allowed where sediments, topography, land and water access support geoduck aquaculture operations without significant clearing or grading.

(iii) Shoreline substantial development permits for geoduck aquaculture.

As determined by Attorney General Opinion 2007 No. 1, the planting, growing, and harvesting of farm-raised geoduck clams requires a substantial development permit if a specific project or practice causes substantial interference with normal public use of the surface waters, but not otherwise.

(iv) Conditional use permits for commercial geoduck aquaculture.

(A) Conditional use permits are required for new commercial geoduck aquaculture only. Where the applicant proposes to convert existing nongeoduck aquaculture to geoduck aquaculture, the requirement for a conditional use permit is at the discretion of local government.

(B) All subsequent cycles of planting and harvest shall not require a new conditional use permit.

(C) Conditional use permits must take into account that commercial geoduck operators have a right to harvest geoduck once planted.

(D) A single conditional use permit may be submitted for multiple sites within an inlet, bay or other defined feature, provided the sites are all under control of the same applicant and within the same shoreline permitting jurisdiction.

(E) Local governments should minimize redundancy between federal, state and local commercial geoduck aquaculture permit application requirements. Measures to consider include accepting documentation that has been submitted to other permitting agencies, and using permit applications that mirror federal or state permit applications.

(F) In addition to complying with chapter 173-27 WAC, the application must contain:

(I) A narrative description and timeline for all anticipated geoduck planting and harvesting activities if not already contained in the federal or state permit application or comparable information mentioned above.

(II) A baseline ecological survey of the proposed site to allow consideration of the ecological effects if not already contained in the federal or state permit application or comparable information mentioned above.

(III) Measures to achieve no net loss of ecological functions consistent with the mitigation sequence described in WAC-173-26-201 (2)(e).

(IV) Management practices that address impacts from mooring, parking, noise, lights, litter, and other activities associated with geoduck planting and harvesting operations.

(G) Local governments should provide public notice to all property owners within three hundred feet of the proposed project boundary, and notice to tribes with usual and accustomed fishing rights to the area.

(H) Commercial geoduck aquaculture workers often-times need to accomplish on-site work during low tides, which may occur at night or on weekends. Local governments must allow work during low tides but may require limits and conditions to reduce impacts, such as noise and lighting, to adjacent existing uses.

(I) Local governments should establish monitoring and reporting requirements necessary to verify that geoduck aquaculture operations are in compliance with shoreline limits and conditions set forth in conditional use permits and to support cumulative impacts analysis.

(J) Conditional use permits should be reviewed using the best scientific and technical information available.

(K) Local governments should apply best management practices to accomplish the intent of the limits and conditions.

(L) In order to avoid or limit impacts from geoduck aquaculture siting and operations and achieve no net loss of ecological functions, local governments should consider the following:

(I) The practice of placing nursery tanks or holding pools or other impervious materials directly on the intertidal sediments.

(II) Use of motorized vehicles, such as trucks, tractors and forklifts below the ordinary high water mark.

(III) Specific periods when limits on activities are necessary to protect priority habitats and associated species. The need for such measures should be identified in the baseline ecological survey conducted for the site.

(IV) Alterations to the natural condition of the site, including significant removal of vegetation or rocks and regrading of the natural slope and sediments.

(V) Installation of property corner markers that are visible at low tide during planting and harvesting.

(VI) Mitigation measures such as buffers between commercial geoduck aquaculture and other fish and wildlife habitat conservation areas as necessary to ensure no net loss of ecological functions.

(VII) Use of predator exclusion devices with minimal adverse ecological effects and requiring that they be removed as soon as they are no longer needed for predator exclusion.

(VIII) Use of the best available methods to minimize turbid runoff from the water jets used to harvest geoducks.

(IX) Number of barges or vessels that can be moored or beached at the site as well as duration limits.

(X) Public rights to navigation over the surface of the water.

(XI) Good housekeeping practices at geoduck aquaculture sites, including worker training and regular removal of equipment, tools, extra materials, and all wastes.

(XII) Where the site contains existing public access to publicly owned lands, consider recommendations from the

department of natural resources or other landowning agencies regarding protection of the existing public access.

**(c) Boating facilities.** For the purposes of this chapter, "boating facilities" excludes docks serving four or fewer single-family residences. Shoreline master programs shall contain provisions to assure no net loss of ecological functions as a result of development of boating facilities while providing the boating public recreational opportunities on waters of the state.

Where applicable, shoreline master programs should, at a minimum, contain:

(i) Provisions to ensure that boating facilities are located only at sites with suitable environmental conditions, shoreline configuration, access, and neighboring uses.

(ii) Provisions that assure that facilities meet health, safety, and welfare requirements. Master programs may reference other regulations to accomplish this requirement.

(iii) Regulations to avoid, or if that is not possible, to mitigate aesthetic impacts.

(iv) Provisions for public access in new marinas, particularly where water-enjoyment uses are associated with the marina, in accordance with WAC 173-26-221(4).

(v) Regulations to limit the impacts to shoreline resources from boaters living in their vessels (live-aboard).

(vi) Regulations that assure that the development of boating facilities, and associated and accessory uses, will not result in a net loss of shoreline ecological functions or other significant adverse impacts.

(vii) Regulations to protect the rights of navigation.

(viii) Regulations restricting vessels from extended mooring on waters of the state except as allowed by applicable state regulations and unless a lease or permission is obtained from the state and impacts to navigation and public access are mitigated.

**(d) Commercial development.** Master programs shall first give preference to water-dependent commercial uses over nonwater-dependent commercial uses; and second, give preference to water-related and water-enjoyment commercial uses over nonwater-oriented commercial uses.

The design, layout and operation of certain commercial uses directly affects their classification with regard to whether or not they qualify as water-related or water-enjoyment uses. Master programs shall assure that commercial uses that may be authorized as water-related or water-enjoyment uses are required to incorporate appropriate design and operational elements so that they meet the definition of water-related or water-enjoyment uses.

Master programs should require that public access and ecological restoration be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible or inappropriate. Where commercial use is proposed for location on land in public ownership, public access should be required. Refer to WAC 173-26-221(4) for public access provisions.

Master programs should prohibit nonwater-oriented commercial uses on the shoreline unless they meet the following criteria:

(i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public bene-

fit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or

(ii) Navigability is severely limited at the proposed site; and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

In areas designated for commercial use, nonwater-oriented commercial development may be allowed if the site is physically separated from the shoreline by another property or public right of way.

Nonwater-dependent commercial uses should not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.

Master programs shall assure that commercial development will not result in a net loss of shoreline ecological functions or have significant adverse impact to other shoreline uses, resources and values provided for in RCW 90.58.020 such as navigation, recreation and public access.

(e) **Forest practices.** Local master programs should rely on the Forest Practices Act and rules implementing the act and the *Forest and Fish Report* as adequate management of commercial forest uses within shoreline jurisdiction. However, local governments shall, where applicable, apply this chapter to Class IV-General forest practices where shorelines are being converted or are expected to be converted to non-forest uses.

Forest practice conversions and other Class IV-General forest practices where there is a likelihood of conversion to nonforest uses, shall assure no net loss of shoreline ecological functions and shall maintain the ecological quality of the watershed's hydrologic system. Master programs shall establish provisions to ensure that all such practices are conducted in a manner consistent with the master program environment designation provisions and the provisions of this chapter. Applicable shoreline master programs should contain provisions to ensure that when forest lands are converted to another use, there will be no net loss of shoreline ecological functions or significant adverse impacts to other shoreline uses, resources and values provided for in RCW 90.58.020 such as navigation, recreation and public access.

Master programs shall implement the provisions of RCW 90.58.150 regarding selective removal of timber harvest on shorelines of statewide significance. Exceptions to this standard shall be by conditional use permit only.

Lands designated as "forest lands" pursuant to RCW 36.70A.170 shall be designated consistent with either the "natural," "rural conservancy," environment designation.

Where forest practices fall within the applicability of the Forest Practices Act, local governments should consult with the department of natural resources, other applicable agencies, and local timber owners and operators.

(f) **Industry.** Master programs shall first give preference to water-dependent industrial uses over nonwater-dependent industrial uses; and second, give preference to water-related industrial uses over nonwater-oriented industrial uses.

Regional and statewide needs for water-dependent and water-related industrial facilities should be carefully considered in establishing master program environment designa-

tions, use provisions, and space allocations for industrial uses and supporting facilities. Lands designated for industrial development should not include shoreline areas with severe environmental limitations, such as critical areas.

Where industrial development is allowed, master programs shall include provisions that assure that industrial development will be located, designed, or constructed in a manner that assures no net loss of shoreline ecological functions and such that it does not have significant adverse impacts to other shoreline resources and values.

Master programs should require that industrial development consider incorporating public access as mitigation for impacts to shoreline resources and values unless public access cannot be provided in a manner that does not result in significant interference with operations or hazards to life or property, as provided in WAC 173-26-221(4).

Where industrial use is proposed for location on land in public ownership, public access should be required. Industrial development and redevelopment should be encouraged to locate where environmental cleanup and restoration of the shoreline area can be incorporated. New nonwater-oriented industrial development should be prohibited on shorelines except when:

(i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or

(ii) Navigability is severely limited at the proposed site; and the industrial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

In areas designated for industrial use, nonwater-oriented industrial uses may be allowed if the site is physically separated from the shoreline by another property or public right of way.

(g) **In-stream structural uses.** "In-stream structure" means a structure placed by humans within a stream or river waterward of the ordinary high-water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

In-stream structures shall provide for the protection and preservation, of ecosystem-wide processes, ecological functions, and cultural resources, including, but not limited to, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas. The location and planning of in-stream structures shall give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring priority habitats and species.

(h) **Mining.** Mining is the removal of sand, gravel, soil, minerals, and other earth materials for commercial and other uses. Historically, the most common form of mining in shoreline areas is for sand and gravel because of the geomorphic association of rivers and sand and gravel deposits. Mining in the shoreline generally alters the natural character, resources,

and ecology of shorelines of the state and may impact critical shoreline resources and ecological functions of the shoreline. However, in some circumstances, mining may be designed to have benefits for shoreline resources, such as creation of off channel habitat for fish or habitat for wildlife. Activities associated with shoreline mining, such as processing and transportation, also generally have the potential to impact shoreline resources unless the impacts of those associated activities are evaluated and properly managed in accordance with applicable provisions of the master program.

A shoreline master program should accomplish two purposes in addressing mining. First, identify where mining may be an appropriate use of the shoreline, which is addressed in this section and in the environment designation sections above. Second, ensure that when mining or associated activities in the shoreline are authorized, those activities will be properly sited, designed, conducted, and completed so that it will cause no net loss of ecological functions of the shoreline.

(i) Identification of shoreline areas where mining may be designated as appropriate shall:

(A) Be consistent with the environment designation provisions of WAC 173-26-211 and where applicable WAC 173-26-251(2) regarding shorelines of statewide significance; and

(B) Be consistent with local government designation of mineral resource lands with long-term significance as provided for in RCW 36.70A.170 (1)(c), 36.70A.130, and 36.70A.131; and

(C) Be based on a showing that mining is dependent on a shoreline location in the city or county, or portion thereof, which requires evaluation of geologic factors such as the distribution and availability of mineral resources for that jurisdiction, as well as evaluation of need for such mineral resources, economic, transportation, and land use factors. This showing may rely on analysis or studies prepared for purposes of GMA designations, be integrated with any relevant environmental review conducted under SEPA (chapter 43.21C RCW), or otherwise be shown in a manner consistent with RCW 90.58.100(1) and WAC 173-26-201 (2)(a).

(ii) Master programs shall include policies and regulations for mining, when authorized, that accomplish the following:

(A) New mining and associated activities shall be designed and conducted to comply with the regulations of the environment designation and the provisions applicable to critical areas where relevant. Accordingly, meeting the no net loss of ecological function standard shall include avoidance and mitigation of adverse impacts during the course of mining and reclamation. It is appropriate, however, to determine whether there will be no net loss of ecological function based on evaluation of final reclamation required for the site. Preference shall be given to mining proposals that result in the creation, restoration, or enhancement of habitat for priority species.

(B) Master program provisions and permit requirements for mining should be coordinated with the requirements of chapter 78.44 RCW.

(C) Master programs shall assure that proposed subsequent use of mined property is consistent with the provisions of the environment designation in which the property is

located and that reclamation of disturbed shoreline areas provides appropriate ecological functions consistent with the setting.

(D) Mining within the active channel or channels (a location waterward of the ordinary high-water mark) of a river shall not be permitted unless:

(I) Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the river system as a whole; and

(II) The mining and any associated permitted activities will not have significant adverse impacts to habitat for priority species nor cause a net loss of ecological functions of the shoreline.

(III) The determinations required by (h)(ii)(D)(I) and (II) of this subsection shall be made consistent with RCW 90.58.100(1) and WAC 173-26-201 (2)(a). Such evaluation of impacts should be appropriately integrated with relevant environmental review requirements of SEPA (chapter 43.21C RCW) and the SEPA rules (chapter 197-11 WAC).

(IV) In considering renewal, extension or reauthorization of gravel bar and other in-channel mining operations in locations where they have previously been conducted, local government shall require compliance with this subsection (D) to the extent that no such review has previously been conducted. Where there has been prior review, local government shall review previous determinations comparable to the requirements of this section to assure compliance with this subsection (D) under current site conditions.

(V) The provisions of this section do not apply to dredging of authorized navigation channels when conducted in accordance with WAC 173-26-231 (3)(f).

(E) Mining within any channel migration zone that is within Shoreline Management Act jurisdiction shall require a shoreline conditional use permit.

(i) **Recreational development.** Recreational development includes commercial and public facilities designed and used to provide recreational opportunities to the public. Master programs should assure that shoreline recreational development is given priority and is primarily related to access to, enjoyment and use of the water and shorelines of the state. Commercial recreational development should be consistent with the provisions for commercial development in (d) of this subsection. Provisions related to public recreational development shall assure that the facilities are located, designed and operated in a manner consistent with the purpose of the environment designation in which they are located and such that no net loss of shoreline ecological functions or ecosystem-wide processes results.

In accordance with RCW 90.58.100(4), master program provisions shall reflect that state-owned shorelines are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational uses for the public and give appropriate special consideration to the same.

For all jurisdictions planning under the Growth Management Act, master program recreation policies shall be consistent with growth projections and level-of-service standards established by the applicable comprehensive plan.

(j) **Residential development.** Single-family residences are the most common form of shoreline development and are

identified as a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. Without proper management, single-family residential use can cause significant damage to the shoreline area through cumulative impacts from shoreline armoring, storm water runoff, septic systems, introduction of pollutants, and vegetation modification and removal. Residential development also includes multifamily development and the creation of new residential lots through land division.

Master programs shall include policies and regulations that assure no net loss of shoreline ecological functions will result from residential development. Such provisions should include specific regulations for setbacks and buffer areas, density, shoreline armoring, vegetation conservation requirements, and, where applicable, on-site sewage system standards for all residential development and uses and applicable to divisions of land in shoreline jurisdiction.

Residential development, including appurtenant structures and uses, should be sufficiently set back from steep slopes and shorelines vulnerable to erosion so that structural improvements, including bluff walls and other stabilization structures, are not required to protect such structures and uses. (See RCW 90.58.100(6).)

New over-water residences, including floating homes, are not a preferred use and should be prohibited. It is recognized that certain existing communities of floating and/or over-water homes exist and should be reasonably accommodated to allow improvements associated with life safety matters and property rights to be addressed provided that any expansion of existing communities is the minimum necessary to assure consistency with constitutional and other legal limitations that protect private property.

New multiunit residential development, including the subdivision of land for more than four parcels, should provide community and/or public access in conformance to the local government's public access planning and this chapter.

Master programs shall include standards for the creation of new residential lots through land division that accomplish the following:

(i) Plats and subdivisions must be designed, configured and developed in a manner that assures that no net loss of ecological functions results from the plat or subdivision at full build-out of all lots.

(ii) Prevent the need for new shoreline stabilization or flood hazard reduction measures that would cause significant impacts to other properties or public improvements or a net loss of shoreline ecological functions.

(iii) Implement the provisions of WAC 173-26-211 and 173-26-221.

(k) **Transportation and parking.** Master programs shall include policies and regulations to provide safe, reasonable, and adequate circulation systems to, and through or over shorelines where necessary and otherwise consistent with these guidelines.

Transportation and parking plans and projects shall be consistent with the master program public access policies, public access plan, and environmental protection provisions.

Circulation system planning shall include systems for pedestrian, bicycle, and public transportation where appropriate. Circulation planning and projects should support

existing and proposed shoreline uses that are consistent with the master program.

Plan, locate, and design proposed transportation and parking facilities where routes will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses. Where other options are available and feasible, new roads or road expansions should not be built within shoreline jurisdiction.

Parking facilities in shorelines are not a preferred use and shall be allowed only as necessary to support an authorized use. Shoreline master programs shall include policies and regulations to minimize the environmental and visual impacts of parking facilities.

(l) **Utilities.** These provisions apply to services and facilities that produce, convey, store, or process power, gas, sewage, communications, oil, waste, and the like. On-site utility features serving a primary use, such as a water, sewer or gas line to a residence, are "accessory utilities" and shall be considered a part of the primary use.

Master programs shall include provisions to assure that:

All utility facilities are designed and located to assure no net loss of shoreline ecological functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth.

Utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities, that are nonwater-oriented shall not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available.

Transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline area where feasible and when necessarily located within the shoreline area shall assure no net loss of shoreline ecological functions.

Utilities should be located in existing rights of way and corridors whenever possible.

Development of pipelines and cables on tidelands, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance which disrupt shoreline ecological functions should be discouraged except where no other feasible alternative exists. When permitted, provisions shall assure that the facilities do not result in a net loss of shoreline ecological functions or significant impacts to other shoreline resources and values.

**AMENDATORY SECTION** (Amending Order 95-17a, filed 11/29/00, effective 12/30/00)

**WAC 173-26-360 Ocean management.** (1) Purpose and intent. This section implements the Ocean Resources Management Act, (RCW 43.143.005 through 43.143.030) enacted in 1989 by the Washington state legislature. The law requires the department of ecology to develop guidelines and policies for the management of ocean uses and to serve as the basis for evaluation and modification of local shoreline management master programs of coastal local governments in Jefferson, Clallam, Grays Harbor, and Pacific counties. The

guidelines are intended to clarify state shoreline management policy regarding use of coastal resources, address evolving interest in ocean development and prepare state and local agencies for new ocean developments and activities.

(2) Geographical application. The guidelines apply to Washington's coastal waters from Cape Disappointment at the mouth of the Columbia River north one hundred sixty miles to Cape Flattery at the entrance to the Strait of Juan De Fuca including the offshore ocean area, the near shore area under state ownership, shorelines of the state, and their adjacent uplands. Their broadest application would include an area seaward two hundred miles (RCW 43.143.020) and landward to include those uplands immediately adjacent to land under permit jurisdiction for which consistent planning is required under RCW 90.58.340. The guidelines address uses occurring in Washington's coastal waters, but not impacts generated from activities offshore of Oregon, Alaska, California, or British Columbia or impacts from Washington's offshore on the Strait of Juan de Fuca or other inland marine waters.

(3) Ocean uses defined. Ocean uses are activities or developments involving renewable and/or nonrenewable resources that occur on Washington's coastal waters and includes their associated off shore, near shore, inland marine, shoreland, and upland facilities and the supply, service, and distribution activities, such as crew ships, circulating to and between the activities and developments. Ocean uses involving nonrenewable resources include such activities as extraction of oil, gas and minerals, energy production, disposal of waste products, and salvage. Ocean uses which generally involve sustainable use of renewable resources include commercial, recreational, and tribal fishing, aquaculture, recreation, shellfish harvesting, and pleasure craft activity.

(4) Relationship to existing management programs. These guidelines augment existing requirements of the Shoreline Management Act, chapter 90.58 RCW, and those chapters in Title 173 of the Washington Administrative Code that implement the act. They are not intended to modify current resource allocation procedures or regulations administered by other agencies, such as the Washington department of fisheries management of commercial, recreational, and tribal fisheries. They are not intended to regulate recreational uses or currently existing commercial uses involving fishing or other renewable marine or ocean resources. Every effort will be made to take into account tribal interests and programs in the guidelines and master program amendment processes. After inclusion in the state coastal zone management program, these guidelines and resultant master programs will be used for federal consistency purposes in evaluating federal permits and activities in Washington's coastal waters. Participation in the development of these guidelines and subsequent amendments to master programs will not preclude state and local government from opposing the introduction of new uses, such as oil and gas development.

These and other statutes, documents, and regulations referred to or cited in these rules may be reviewed at the department of ecology, headquarters in Lacey, Washington, for which the mailing address is ((Mailstop PV-11)) P.O. Box 47600, Olympia, WA 98504. The physical address is 300 Desmond Drive S.E., Lacey, WA 98503.

(5) Regional approach. The guidelines are intended to foster a regional perspective and consistent approach for the management of ocean uses. While local governments may have need to vary their programs to accommodate local circumstances, local government should attempt and the department will review local programs for compliance with these guidelines and chapter ~~((473-16))~~ 173-26 WAC: Shoreline Management Act guidelines for development of master programs. It is recognized that further amendments to the master programs may be required to address new information on critical and sensitive habitats and environmental impacts of ocean uses or to address future activities, such as oil development. In addition to the criteria in RCW 43.143.030, these guidelines apply to ocean uses until local master program amendments are adopted. The amended master program shall be the basis for review of an action that is either located exclusively in, or its environmental impacts confined to, one county. Where a proposal clearly involves more than one local jurisdiction, the guidelines shall be applied and remain in effect in addition to the provisions of the local master programs.

(6) Permit criteria: Local government and the department may permit ocean or coastal uses and activities as a substantial development, variance or conditional use only if the criteria of RCW 43.143.030(2) listed below are met or exceeded:

(a) There is a demonstrated significant local, state, or national need for the proposed use or activity;

(b) There is no reasonable alternative to meet the public need for the proposed use or activity;

(c) There will be no likely long-term significant adverse impacts to coastal or marine resources or uses;

(d) All reasonable steps are taken to avoid and minimize adverse environmental impacts, with special protection provided for the marine life and resources of the Columbia River, Willapa Bay and Grays Harbor estuaries, and Olympic National Park;

(e) All reasonable steps are taken to avoid and minimize adverse social and economic impacts, including impacts on aquaculture, recreation, tourism, navigation, air quality, and recreational, commercial, and tribal fishing;

(f) Compensation is provided to mitigate adverse impacts to coastal resources or uses;

(g) Plans and sufficient performance bonding are provided to ensure that the site will be rehabilitated after the use or activity is completed; and

(h) The use or activity complies with all applicable local, state, and federal laws and regulations.

(7) General ocean uses guidelines. The following guidelines apply to all ocean uses, their service, distribution, and supply activities and their associated facilities that require shoreline permits.

(a) Ocean uses and activities that will not adversely impact renewable resources shall be given priority over those that will. Correspondingly, ocean uses that will have less adverse impacts on renewable resources shall be given priority over uses that will have greater adverse impacts.

(b) Ocean uses that will have less adverse social and economic impacts on coastal uses and communities should be

given priority over uses and activities that will have more such impacts.

(c) When the adverse impacts are generally equal, the ocean use that has less probable occurrence of a disaster should be given priority.

(d) The alternatives considered to meet a public need for a proposed use should be commensurate with the need for the proposed use. For example, if there is a demonstrated national need for a proposed use, then national alternatives should be considered.

(e) Chapter 197-11 WAC (SEPA rules) provides guidance in the application of the permit criteria and guidelines of this section. The range of impacts to be considered should be consistent with WAC 197-11-060 (4)(e) and 197-11-792 (2)(c). The determination of significant adverse impacts should be consistent with WAC 197-11-330(3) and 197-11-794. The sequence of actions described in WAC 197-11-768 should be used as an order of preference in evaluating steps to avoid and minimize adverse impacts.

(f) Impacts on commercial resources, such as the crab fishery, on noncommercial resources, such as environmentally critical and sensitive habitats, and on coastal uses, such as loss of equipment or loss of a fishing season, should be considered in determining compensation to mitigate adverse environmental, social and economic impacts to coastal resources and uses.

(g) Allocation of compensation to mitigate adverse impacts to coastal resources or uses should be based on the magnitude and/or degree of impact on the resource, jurisdiction and use.

(h) Rehabilitation plans and bonds prepared for ocean uses should address the effects of planned and unanticipated closures, completion of the activity, reasonably anticipated disasters, inflation, new technology, and new information about the environmental impacts to ensure that state of the art technology and methods are used.

(i) Local governments should evaluate their master programs and select the environment(s) for coastal waters that best meets the intent of chapter ~~((173-16))~~ 173-26 WAC, these guidelines and chapter 90.58 RCW.

(j) Ocean uses and their associated coastal or upland facilities should be located, designed and operated to prevent, avoid, and minimize adverse impacts on migration routes and habitat areas of species listed as endangered or threatened, environmentally critical and sensitive habitats such as breeding, spawning, nursery, foraging areas and wetlands, and areas of high productivity for marine biota such as upwelling and estuaries.

(k) Ocean uses should be located to avoid adverse impacts on proposed or existing environmental and scientific preserves and sanctuaries, parks, and designated recreation areas.

(l) Ocean uses and their associated facilities should be located and designed to avoid and minimize adverse impacts on historic or culturally significant sites in compliance with chapter 27.34 RCW. Permits in general should contain special provisions that require permittees to comply with chapter 27.53 RCW if any ~~((archaeological))~~ archaeological sites or ~~((archaeological))~~ archaeological objects such as artifacts and shipwrecks are discovered.

(m) Ocean uses and their distribution, service, and supply vessels and aircraft should be located, designed, and operated in a manner that minimizes adverse impacts on fishing grounds, aquatic lands, or other renewable resource ocean use areas during the established, traditional, and recognized times they are used or when the resource could be adversely impacted.

(n) Ocean use service, supply, and distribution vessels and aircraft should be routed to avoid environmentally critical and sensitive habitats such as sea stacks and wetlands, preserves, sanctuaries, bird colonies, and migration routes, during critical times those areas or species could be affected.

(o) In locating and designing associated onshore facilities, special attention should be given to the environment, the characteristics of the use, and the impact of a probable disaster, in order to assure adjacent uses, habitats, and communities adequate protection from explosions, spills, and other disasters.

(p) Ocean uses and their associated facilities should be located and designed to minimize impacts on existing water dependent businesses and existing land transportation routes to the maximum extent feasible.

(q) Onshore facilities associated with ocean uses should be located in communities where there is adequate sewer, water, power, and streets. Within those communities, if space is available at existing marine terminals, the onshore facilities should be located there.

(r) Attention should be given to the scheduling and method of constructing ocean use facilities and the location of temporary construction facilities to minimize impacts on tourism, recreation, commercial fishing, local communities, and the environment.

(s) Special attention should be given to the effect that ocean use facilities will have on recreational activities and experiences such as public access, aesthetics, and views.

(t) Detrimental effects on air and water quality, tourism, recreation, fishing, aquaculture, navigation, transportation, public infrastructure, public services, and community culture should be considered in avoiding and minimizing adverse social and economic impacts.

(u) Special attention should be given to designs and methods that prevent, avoid, and minimize adverse impacts such as noise, light, temperature changes, turbidity, water pollution and contaminated sediments on the marine, estuarine or upland environment. Such attention should be given particularly during critical migration periods and life stages of marine species and critical oceanographic processes.

(v) Preproject environmental baseline inventories and assessments and monitoring of ocean uses should be required when little is known about the effects on marine and estuarine ecosystems, renewable resource uses and coastal communities or the technology involved is likely to change.

(w) Oil and gas, mining, disposal, and energy producing ocean uses should be designed, constructed, and operated in a manner that minimizes environmental impacts on the coastal waters environment, particularly the seabed communities, and minimizes impacts on recreation and existing renewable resource uses such as fishing.

(x) To the extent feasible, the location of oil and gas, and mining facilities should be chosen to avoid and minimize

impacts on shipping lanes or routes traditionally used by commercial and recreational fishermen to reach fishing areas.

(y) Discontinuance or shutdown of oil and gas, mining or energy producing ocean uses should be done in a manner that minimizes impacts to renewable resource ocean uses such as fishing, and restores the seabed to a condition similar to its original state to the maximum extent feasible.

(8) Oil and gas uses and activities. Oil and gas uses and activities involve the extraction of oil and gas resources from beneath the ocean.

(a) Whenever feasible oil and gas facilities should be located and designed to permit joint use in order to minimize adverse impacts to coastal resources and uses and the environment.

(b) Special attention should be given to the availability and adequacy of general disaster response capabilities in reviewing ocean locations for oil and gas facilities.

(c) Because environmental damage is a very probable impact of oil and gas uses, the adequacy of plans, equipment, staffing, procedures, and demonstrated financial and performance capabilities for preventing, responding to, and mitigating the effects of accidents and disasters such as oil spills should be major considerations in the review of permits for their location and operation. If a permit is issued, it should ensure that adequate prevention, response, and mitigation can be provided before the use is initiated and throughout the life of the use.

(d) Special attention should be given to the response times for public safety services such as police, fire, emergency medical, and hazardous materials spill response services in providing and reviewing onshore locations for oil and gas facilities.

(e) Oil and gas facilities including pipelines should be located, designed, constructed, and maintained in conformance with applicable requirements but should at a minimum ensure adequate protection from geological hazards such as liquefaction, hazardous slopes, earthquakes, physical oceanographic processes, and natural disasters.

(f) Upland disposal of oil and gas construction and operation materials and waste products such as cuttings and drilling muds should be allowed only in sites that meet applicable requirements.

(9) Ocean mining. Ocean mining includes such uses as the mining of metal, mineral, sand, and gravel resources from the sea floor.

(a) Seafloor mining should be located and operated to avoid detrimental effects on ground fishing or other renewable resource uses.

(b) Seafloor mining should be located and operated to avoid detrimental effects on beach erosion or accretion processes.

(c) Special attention should be given to habitat recovery rates in the review of permits for seafloor mining.

(10) Energy production. Energy production uses involve the production of energy in a usable form directly in or on the ocean rather than extracting a raw material that is transported elsewhere to produce energy in a readily usable form. Examples of these ocean uses are facilities that use wave action or differences in water temperature to generate electricity.

(a) Energy-producing uses should be located, constructed, and operated in a manner that has no detrimental effects on beach accretion or erosion and wave processes.

(b) An assessment should be made of the effect of energy producing uses on upwelling, and other oceanographic and ecosystem processes.

(c) Associated energy distribution facilities and lines should be located in existing utility rights of way and corridors whenever feasible, rather than creating new corridors that would be detrimental to the aesthetic qualities of the shoreline area.

(11) Ocean disposal. Ocean disposal uses involve the deliberate deposition or release of material at sea, such as solid wastes, industrial waste, radioactive waste, incineration, incinerator residue, dredged materials, vessels, aircraft, ordnance, platforms, or other man-made structures.

(a) Storage, loading, transporting, and disposal of materials shall be done in conformance with local, state, and federal requirements for protection of the environment.

(b) Ocean disposal shall be allowed only in sites that have been approved by the Washington department of ecology, the Washington department of natural resources, the United States Environmental Protection Agency, and the United States Army Corps of Engineers as appropriate.

(c) Ocean disposal sites should be located and designed to prevent, avoid, and minimize adverse impacts on environmentally critical and sensitive habitats, coastal resources and uses, or loss of opportunities for mineral resource development. Ocean disposal sites for which the primary purpose is habitat enhancement may be located in a wider variety of habitats, but the general intent of the guidelines should still be met.

(12) Transportation. Ocean transportation includes such uses as: Shipping, transferring between vessels, and offshore storage of oil and gas; transport of other goods and commodities; and offshore ports and airports. The following guidelines address transportation activities that originate or conclude in Washington's coastal waters or are transporting a nonrenewable resource extracted from the outer continental shelf off Washington.

(a) An assessment should be made of the impact transportation uses will have on renewable resource activities such as fishing and on environmentally critical and sensitive habitat areas, environmental and scientific preserves and sanctuaries.

(b) When feasible, hazardous materials such as oil, gas, explosives and chemicals, should not be transported through highly productive commercial, tribal, or recreational fishing areas. If no such feasible route exists, the routes used should pose the least environmental risk.

(c) Transportation uses should be located or routed to avoid habitat areas of endangered or threatened species, environmentally critical and sensitive habitats, migration routes of marine species and birds, marine sanctuaries and environmental or scientific preserves to the maximum extent feasible.

(13) Ocean research. Ocean research activities involve scientific investigation for the purpose of furthering knowledge and understanding. Investigation activities involving necessary and functionally related precursor activities to an



ocean use or development may be considered exploration or part of the use or development. Since ocean research often involves activities and equipment, such as drilling and vessels, that also occur in exploration and ocean uses or developments, a case by case determination of the applicable regulations may be necessary.

(a) Ocean research should be encouraged to coordinate with other ocean uses occurring in the same area to minimize potential conflicts.

(b) Ocean research meeting the definition of "exploration activity" of WAC 173-15-020 shall comply with the requirements of chapter 173-15 WAC: Permits for oil or natural gas exploration activities conducted from state marine waters.

(c) Ocean research should be located and operated in a manner that minimizes intrusion into or disturbance of the coastal waters environment consistent with the purposes of the research and the intent of the general ocean use guidelines.

(d) Ocean research should be completed or discontinued in a manner that restores the environment to its original condition to the maximum extent feasible, consistent with the purposes of the research.

(e) Public dissemination of ocean research findings should be encouraged.

(14) Ocean salvage. Ocean salvage uses share characteristics of other ocean uses and involve relatively small sites occurring intermittently. Historic shipwreck salvage which combines aspects of recreation, exploration, research, and mining is an example of such a use.

(a) Nonemergency marine salvage and historic shipwreck salvage activities should be conducted in a manner that minimizes adverse impacts to the coastal waters environment and renewable resource uses such as fishing.

(b) Nonemergency marine salvage and historic shipwreck salvage activities should not be conducted in areas of cultural or historic significance unless part of a scientific effort sanctioned by appropriate governmental agencies.

AMENDATORY SECTION (Amending Order 95-17, filed 9/30/96, effective 10/31/96)

**WAC 173-27-280 Civil penalty.** (1) A person who fails to conform to the terms of a substantial development permit, conditional use permit or variance issued under RCW 90.58.140, who undertakes a development or use on shorelines of the state without first obtaining a permit, or who fails to comply with a cease and desist order issued under these regulations may be subject to a civil penalty by local government. The department may impose a penalty jointly with local government, or alone only upon an additional finding that a person:

(a) Has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule; or

(b) Has been given previous notice of the same or similar type of violation of the same statute or rule; or

(c) The violation has a probability of placing a person in danger of death or bodily harm; or

(d) Has a probability of causing more than minor environmental harm; or

(e) Has a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars.

(2) In the alternative, a penalty may be issued to a person by the department alone, or jointly with local government for violations which do not meet the criteria of subsection (1)(a) through (e) of this section, after the following information has been provided in writing to a person through a technical assistance visit or a notice of correction:

(a) A description of the condition that is not in compliance and a specific citation to the applicable law or rule;

(b) A statement of what is required to achieve compliance;

(c) The date by which the agency requires compliance to be achieved;

(d) Notice of the means to contact any technical assistance services provided by the agency or others; and

(e) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the agency.

Furthermore, no penalty shall be issued by the department until the individual or business has been given a reasonable time to correct the violation and has not done so.

(3) Amount of penalty. The penalty shall not exceed one thousand dollars for each violation. Each day of violation shall constitute a separate violation.

(4) Aiding or abetting. Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.

(5) Notice of penalty. A civil penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department and/or the local government, or from both jointly. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time.

~~((6) Application for remission or mitigation. Any person incurring a penalty may apply in writing within thirty days of receipt of the penalty to the department or local government for remission or mitigation of such penalty. Upon receipt of the application, the department or local government may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty.~~

~~When a penalty is imposed jointly by the department and local government, it may be remitted or mitigated only upon such terms as both the department and the local government agree.))~~

AMENDATORY SECTION (Amending Order 95-17, filed 9/30/96, effective 10/31/96)

**WAC 173-27-290 Appeal of civil penalty.** (1) Right of appeal. Persons incurring a penalty imposed by the depart-

ment or imposed jointly by the department and local government may appeal the same to the shorelines hearings board. Appeals to the shorelines hearings board are adjudicatory proceedings subject to the provisions of chapter 34.05 RCW. Persons incurring a penalty imposed by local government may appeal the same to the local government legislative authority.

(2) Timing of appeal. Appeals shall be filed within thirty days of the date of receipt of ~~((notice of)) the penalty ((unless an application for remission or mitigation is made to the department or local government. If such application is made, appeals shall be filed within thirty days of receipt of local government's and/or the department's decision regarding the remission or mitigation)).~~ The term "date of receipt" has the same meaning as provided in RCW 43.21B.001.

(3) Penalties due.

(a) Penalties imposed under this section shall become due and payable thirty days after receipt of notice imposing the same unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made, penalties shall become due and payable thirty days after receipt of local government's and/or the department's decision regarding the remission or mitigation. Whenever an appeal of a penalty is filed, the penalty shall become due and payable upon completion of all review proceedings and upon the issuance of a final decision confirming the penalty in whole or in part.

(b) If the amount of a penalty owed the department is not paid within thirty days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the name of the state of Washington to recover such penalty. If the amount of a penalty owed local government is not paid within thirty days after it becomes due and payable, local government may take actions necessary to recover such penalty.

(4) Penalty recovered. Penalties recovered by the department shall be paid to the state treasurer. Penalties recovered by local government shall be paid to the local government treasury. Penalties recovered jointly by the department and local government shall be divided equally between the department and the local government unless otherwise stipulated in the order.

### WSR 11-05-068

#### PERMANENT RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed February 14, 2011, 9:56 a.m., effective February 26, 2011]

Effective Date of Rule: February 26, 2011.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Under RCW 74.46.380(3) a rule may become effective earlier than thirty-one days after filing when the agency establishes that effective date in the adopting order and finds that the earlier effective date is necessary because of imminent peril to the public health, safety, or welfare. Section 23, chapter 34,

Laws of 2010 1st sp. sess. and section 958, chapter 37, Laws of 2010 1st sp. sess., declared the act necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately. The rules of this adopting order are necessary to implement chapters 34 and 37, Laws of 2010 1st sp. sess. and thus, are necessary to avoid imminent peril to the public health, safety, or welfare. The rules have been in effect since July 1, 2010, through emergency adoptions, see WSR 10-14-050 and 10-22-068.

Purpose: The amendments or adoptions to chapter 388-96 WAC to implement ESSB 6872 include but are not limited to the following: (1) The effect of bed banking on rates; (2) financing allowance component rate allocation minimum facility occupancy of licensed beds, regardless of how many beds are set up or in use at eighty-five percent for essential community providers, ninety percent for small nonessential community providers, and at ninety-two percent for large nonessential community providers; (3) to increase the categories for exceptional care rates; and (4) adopt new rules for pay-for-performance supplemental rates. The department will amend or adopt new rules to implement ESSB 6444, section 206 that include but are not limited to WAC 388-96-766(3) to implement no rate add-ons to nursing facility medicaid payment rates for capital improvements not requiring a certificate of need and a certificate of capital authorization for fiscal year 2011. On September 2, 2009, in WSR 09-17-003, <http://apps.leg.wa.gov/documents/laws/wsr/2009/17/09-17-003.htm>, the department indicated specific sections of chapter 388-96 WAC that it would amend. Also, the department stated that all sections may be amended to clarify regulations by codifying current policies and practices and editing previous codifications for substance and form.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-96-202, 388-96-740, 388-96-741, 388-96-742 and 388-96-749; and amending WAC 388-96-010, 388-96-108, 388-96-217, 388-96-218, 388-96-366, 388-96-384, 388-96-534, 388-96-535, 388-96-536, 388-96-542, 388-96-559, 388-96-561, 388-96-565, 388-96-585, 388-96-708, 388-96-709, 388-96-747, 388-96-748, 388-96-758, 388-96-759, 388-96-766, 388-96-776, 388-96-781, 388-96-782, 388-96-802, 388-96-803, 388-96-901, and 388-96-904.

Statutory Authority for Adoption: Chapter 74.46 RCW.

Other Authority: Chapter 34, Laws of 2010 1st sp. sess. and section 958, chapter 37, Laws of 2010 1st sp. sess.

Adopted under notice filed as WSR 10-20-171 on October 6, 2010.

Changes Other than Editing from Proposed to Adopted Version: 1. **"Large nonessential community provider" and "small nonessential community providers"**: Both definitions used, nonessential community provider to define what a nonessential community provider is. Whether large or small, the "nonessential community provider" definition should indicate that it is any facility that does not meet the definition of an "essential community provider.[]" The department will make the following change to both large and small definition: **"Large nonessential community providers" are not essential community providers and have more than sixty licensed beds... "Small nonessential community**

providers" are not essential community providers and have sixty or fewer licensed beds...

2. **WAC 388-96-217:** The department will change "shall" to the permissive "may."

3. The department withdraws [withdraws] the change in WAC 388-96-366(3): The facility shall deposit any resident's personal funds in excess of ~~((fifty))~~ one hundred dollars in an interest-bearing resident personal fund account or accounts, separate from any of the facility's operating accounts, and credit all interest earned on an account to the account.

4. **WAC 388-96-559 (1)(A)**, has a typo - should that be five percent of the historical value.

The following correction will be made: (A) Excluding computers and televisions, ((five)) five percent of the historical value for each noncloth item included in moveable equipment;

5. **WAC 388-96-585 (2)(vv):** The department agrees that consultant expense directly related to implementing MDS 3.0 will be allowable. The department will delete WAC 388-96-585 (2)(vv). The department is removing this disallowance. Consulting expenses incurred in implementing MDS 3.0 will be allowable.

6. **WAC 388-96-776 (15)(ii)**, reads in part (last line of page 49) "number of licensed beds time ninety percent occupancy percent for...." The 2nd percent is redundant and should be removed. The redundant "percent" will be changed to read as "percentage."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 25, Amended 28, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 25, Amended 28, Repealed 0.

Date Adopted: February 10, 2011.

Katherine I. Vasquez  
Rules and Policies Assistance Unit

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-07 issue of the Register.

## WSR 11-05-079

### PERMANENT RULES DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed February 15, 2011, 10:54 a.m., effective March 18, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending rules to change the frequency of the comprehensive assessment reporting evaluation (CARE) assessment and skilled nursing task log.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-1010, 388-106-1025, 388-106-1030, 388-106-1035, 388-106-1040, 388-106-1045, and 388-106-1050.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 10-17-075 on August 16, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: February 11, 2011.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 05-24-091, filed 12/6/05, effective 1/6/06)

**WAC 388-106-1010 Am I eligible for medicaid-funded private duty nursing services?** In order to be eligible for medicaid-funded private duty nursing (PDN)~~((you must))~~:

(1) You must be eighteen years of age or older and financially eligible, which means you:

(a) Meet medicaid requirements under the categorically needy program or the medically needy program ~~((MNP))~~; and

(b) Use private insurance as first payer, as required by medicaid rules. Private insurance benefits, which cover hospitalization and in-home services, must be ruled out as the first payment source to PDN.

(2) ~~((Be medically eligible, which means an ADSA department's community nurse consultant (CNC) or ADSA's division of disabilities services' (DDS) nursing care consultant (NCC) must assess you using the CARE assessment and the PDN skilled nursing task log for initial eligibility determination and thereafter every six months, and determine that you:))~~ You must be medically eligible, which means:

(a) The department has received the skilled nursing task log or ADSA-approved equivalent completed by a nurse licensed under chapter 18.79 RCW.

(b) You have been assessed by an ADSA community nurse consultant (CNC) or nursing care consultant (NCC) and determined medically eligible for PDN.

(3) The department must assess you using the CARE assessment tool, as provided in chapter 388-106 WAC to determine that you:

(a) Require care in a hospital or meet nursing facility level of care, as defined in WAC 388-106-0310; and

(b) Have unmet skilled nursing needs that cannot be met in a less costly program or less restrictive environment; and

(c) Are not able to have your care tasks provided through nurse delegation, WAC 246-840-910 through 246-840-970; ~~((through))~~ COPEs skilled nursing, WAC 388-515-1505; DDD waiver skilled nursing, WAC 388-845-0215 or ~~((through))~~ self-directed care RCW 74.39.050; and

(d) Have a complex medical need that requires four or more hours every day of continuous skilled nursing care ~~((which))~~ that can be safely provided outside a hospital or nursing facility; and

(e) Require skilled nursing care that is medically necessary, per WAC 388-500-0005; and

(f) ~~((Be))~~ Are able to supervise your care ~~((provider))~~ or have a guardian who is authorized and able to supervise your care; and

(g) Have a family member or other appropriate informal support who is responsible for assuming a portion of your care; and

(h) ~~((Have))~~ Are medically stable and appropriate for PDN services, as reflected by your primary care ((physician or ARNP document your medical stability and appropriateness for PDN and)) provider's:

(i) ~~((Provide))~~ Orders for medical services; and

(ii) Documentation of approval ((of)) for the service provider's PDN ~~((plan of))~~ care plan.

(i) Do not have any other resources or means ~~((for obtaining this))~~ to obtain PDN services; and

(j) Are ~~((dependant))~~ dependent upon technology every day~~((;))~~ with at least one of the following skilled care needs:

(i) ~~((You need))~~ Mechanical ventilation((, and the use of a mechanical device to fill the lungs with oxygenated air and then allow time for passive exhalation)) which takes over active breathing due to your inability to breathe on your own due to injury or illness. A tracheal tube is in place and is hooked up to a ventilator that pumps air into the lungs; or

(ii) ~~((You need))~~ Complex respiratory support, which means that you require two of the following treatment needs:

(A) ~~((You require two of the following treatment needs:~~

~~((H))~~ (B) Postural drainage and chest percussion; ~~((of))~~

~~((H))~~ (B) Application of respiratory vests; ~~((of))~~

~~((H))~~ (C) Nebulizer treatments with or without medications; ~~((of))~~

~~((V))~~ (D) Intermittent positive pressure breathing; ~~((of))~~

~~((V))~~ (E) O2 saturation measurement with treatment decisions dependent on the results; ~~((and))~~ or

(F) Tracheal suctioning.

~~((B))~~ Your treatment needs must be assessed and provided by an RN or LPN; and

~~((C))~~ Your treatment needs cannot be nurse delegated or self-directed;

~~((iii))~~ You need tracheostomy care, and tracheal suctioning;

~~((iv))~~ You need ~~((iii))~~ Intravenous/parenteral administration of multiple medications, and care is occurring on a continuing or frequent basis; or

~~((v))~~ You need ~~((iv))~~ Intravenous administration of nutritional substances, and care is occurring on a continuing or frequent basis.

AMENDATORY SECTION (Amending WSR 05-24-091, filed 12/6/05, effective 1/6/06)

WAC 388-106-1025 Who can provide my PDN services? ~~((In addition to a family member(s) or an individual provider providing self-directed care under RCW 74.39.050 or an individual provider or home care agency caregiver providing nurse delegation per WAC 246-840-910 through 246-840-970))~~ PDN services can be provided by:

(1) A home health agency licensed by the Washington state department of health ~~((can provide your PDN services as long as it also has a PDN contract with DSHS's aging and disability services administration.))~~ chapter 246-335 WAC that has a contract with the medicaid agency to provide PDN services; or

(2) ~~((If a home health agency described in subsection (1) is not willing to provide your PDN services, or is not available due to your geographic location, an ADSA private registered nurse (RN) or licensed practical nurse (LPN) who meets the requirements of WAC 388-106-1040 may be able to provide your PDN services))~~ A Washington state licensed RN, or LPN under the direction of an RN who has a contract with the medicaid agency to provide PDN services and meets the requirements set forth in WAC 388-106-1040.

AMENDATORY SECTION (Amending WSR 05-24-091, filed 12/6/05, effective 1/6/06)

WAC 388-106-1030 Are there limitations or other requirements for PDN? ~~((The limits))~~ Limitations and other requirements to PDN services are as follows:

(1) ~~((You))~~ You may be authorized to receive PDN services ((can be authorized)) for between four to sixteen hours per day, except as noted in WAC 388-106-1045(4). ~~((This authorization is based on a combination of skilled nursing tasks identified in CARE, the department designated PDN skilled nursing task log or equivalent which has been approved by ADSA prior to use, and detailed information provided to CNC or NCC. The CNC or NCC determines initial eligibility for PDN, up to a maximum of sixteen hours per day. After the initial determination of eligibility is made by the CNC or NCC, the PDN skilled nursing task log or its approved equivalent will be initiated and completed by the agency or private nurse(s) for fourteen days and submitted to the CNC or NCC for review. At the end of the fourteen-day review period, a final determination will be made on the number of PDN hours required to meet your care needs. PDN skilled task logs or their approved equivalent will also be completed for fourteen days prior to the six-month reassessment for review by the CNC or NCC to determine ongoing eligibility and required PDN hours.))~~

(2) PDN hours will be deducted from the personal care hours generated by CARE to account for services that meet your need for personal care services (i.e., one hour from the

available hours for each hour of PDN authorized). WAC 388-106-0130 (9)(e).

(3) Trained family members must provide for any hours above your assessment determination, or you or your family must pay for these additional hours.

~~((3))~~ (4) In instances where your family is temporarily absent due to vacations, additional PDN hours must be:

(a) Paid for by you or your family; or

(b) Provided by other trained family members. If this is not possible, you may ~~((need))~~ require placement in a long-term care facility during their absence.

~~((4))~~ (5) You may use respite care if you and your unpaid family caregiver meet the eligibility criteria defined in WAC 388-106-1210 (for LTC clients) or WAC 388-832-0145 (for DDD individual and family services clients) or WAC 388-845-1605 (for DDD waiver clients).

~~((5))~~ You may receive additional hours, up to thirty days ~~only~~ (6) There may be a onetime approval for additional hours for a period not to exceed thirty days when:

(a) Your family is being trained in care and procedures;

(b) You have an acute episode that would otherwise require hospitalization;

(c) Your caregiver is ill or temporarily unable to provide care; or

(d) There is a family emergency.

AMENDATORY SECTION (Amending WSR 05-24-091, filed 12/6/05, effective 1/6/06)

**WAC 388-106-1035 What requirements must a home health agency meet in order to provide and ~~((get))~~ be paid for my PDN? ~~((A))~~ In order for a home health agency to provide and be paid for your PDN, the home health agency must:**

(1) Be licensed by the Washington state department of health pursuant to chapter 246-335 WAC and have a contract with the medicaid agency to provide ~~((private-duty-nursing))~~ PDN services ~~((with-aging-and-disability-services-administration))~~;

(2) Operate under ~~((physician))~~ primary care provider orders;

(3) Develop and follow a detailed service plan that is reviewed and signed at least every six months by the client's ~~((physician))~~ primary care provider and submitted to CNC or NCC for review;

(4) Initiate and complete the PDN skilled nursing task log or an approved equivalent for ~~((fourteen))~~ seven days and ~~((submitted))~~ submit it to the CNC or NCC for review for an initial eligibility determination and ~~((fourteen-days-prior-to-the-six-month-reassessments))~~ for ongoing eligibility every six months thereafter;

(5) Meet all documentation ~~((requirement))~~ required by DOH ~~((in-home))~~ for in-home licensing, WAC 246-335-055, 246-335-080, and 246-335-110; and

(6) Submit timely and accurate invoices ~~((to-the-social-services-payment-system-(SSPS)))~~ for payments.

AMENDATORY SECTION (Amending WSR 05-24-091, filed 12/6/05, effective 1/6/06)

**WAC 388-106-1040 What requirements must a ~~((private-duty))~~ RN, or LPN under the supervision of an RN, meet in order to provide and get paid for my PDN services?** In order to be paid by the department, a private RN under the supervision of a ~~((physician/ARNP-))~~ primary care provider or an LPN under the supervision of an RN, must:

(1) ~~((Have-a))~~ Be licensed and in good standing, ~~((per))~~ as provided in RCW 18.79.030 (1)(3);

(2) ~~((Complete-a-PDN-contract-with-ADSA;~~

~~(3) Provide services according to the plan of care under the supervision/direction of a physician;~~

~~(4))~~ Have a contract with the medicaid agency to provide PDN services;

~~(3)~~ Complete a background ~~((inquiry-application-This-will))~~ check which requires fingerprinting if the RN or LPN has lived in ~~((the-state-of))~~ Washington state less than three years;

~~((5))~~ (4) Have no conviction for a disqualifying crime, as ~~((stated))~~ provided in RCW 43.43.830 and 43.43.842 and WAC 388-71-0500 through 388-71-05640 series;

~~((6))~~ (5) Have no ~~((stipulated))~~ finding of fact and conclusion of law ~~((stipulated-or-otherwise))~~, ~~((an))~~ agreed order, ~~((or-finding-of-fact-conclusion-of-law-))~~ or final order issued by a disciplining authority, a court of law, or entered into a state registry with a finding of abuse, neglect, abandonment or exploitation of a minor or vulnerable adult;

~~((7))~~ (6) Provide services according to the care plan under the supervision/direction of the primary care provider;

(7) Document all PDN services provided by the care plan as required by WAC 388-502-0020 and WAC 246-840-700;

(8) Meet provider requirements under WAC 388-71-0510, 388-71-0515, 388-71-0540, 388-71-0551, and 388-71-0556;

~~((8))~~ (9) Complete time sheets on a monthly basis;

~~((9))~~ Complete documentation regarding all PDN services provided per the plan of care as required in WAC 388-502-0020 and 246-840-700);)

(10) Complete the PDN seven-day look back skilled nursing task log ~~((or-its-approved-equivalent-must-be-initiated-and-completed-by-the-licensed-nurse-for-fourteen-days-and-submitted))~~ and submit it to the CNC or NCC for review for initial eligibility determination, and ~~((fourteen-days-prior-to-the-six-month-reassessment-determination-The-licensed-nurse-is-responsible-to-submit-these-logs-to-the-NCC-or-CNC-when-they-are-completed))~~ for ongoing eligibility every six months; and

(11) Submit timely and accurate invoices ~~((to-SSPS))~~ for payment.

AMENDATORY SECTION (Amending WSR 05-24-091, filed 12/6/05, effective 1/6/06)

**WAC 388-106-1045 Can I receive PDN services in a licensed adult family home (AFH)?** You may be eligible to receive PDN services if you are residing in an adult family home (AFH) if the AFH provider (owner and operator) ~~((meets-the-following-requirements))~~:

(1) Possesses a current Washington state registered nurse license and is in good standing;

(2) Signs a contract amendment with ADSA ~~((the))~~ by which the provider agrees to ensure provision of twenty-four-hour personal care and nursing care services. Nursing care ~~((service will))~~ services must be provided in accordance with chapter 18.79 RCW;

(3) Provides your PDN service through an RN~~((s))~~ or an LPN under the supervision of an RN. ~~The level of PDN services ((are)) provided to you is based on the CARE assessment, the department-designated PDN skilled task log or its approved equivalent, and other documentation ((which)) that determines eligibility and the number of PDN hours to be authorized;~~

(4) Provides the PDN services to you. Your service plan may ~~((be authorized for))~~ authorize you to receive four to eight hours per day and cannot exceed ~~((a maximum of))~~ eight PDN care hours per day ~~((based on the CARE assessment, the department-designated PDN skilled task log or its approved equivalent, and other documentation));~~

(5) ~~((Have))~~ Has a nursing service plan prescribed for you by your primary ~~((physician or ARNP))~~ care provider. The ~~((physician/ARNP is responsible for))~~ primary care provider must:

(a) Oversee~~((ing))~~ your ~~((plan of))~~ care plan, which must be updated at least once every six months; and

(b) Monitor~~((ing))~~ your client's medical stability~~((s and))~~.

(6) Document the services provided ~~((per the plan of))~~ in the care ~~((and the department-designated PDN skilled task log or its approved equivalent at initial eligibility determination and fourteen days prior to the six-month reassessment determination and other documentation))~~ plan, including the submission of the PDN seven-day look back skilled nursing task log by the licensed nursing to the CN or NCC for review for initial eligibility and ongoing eligibility every six months; and

(7) ~~((Keep))~~ Maintain records in ~~((accordance))~~ compliance with AFH licensing and contract requirements.

**AMENDATORY SECTION** (Amending WSR 05-24-091, filed 12/6/05, effective 1/6/06)

**WAC 388-106-1050 May I receive other long-term care services in addition to PDN?** (1) In addition to PDN services, you may be eligible to receive care through community options program entry system (COPEs), the medically needy residential waiver (MNRW), the medically needy in-home waiver (MNIW), or medicaid personal care (MPC), for unmet personal needs not performed by ~~((your family/informal support system))~~ informal supports.

(2) ~~((If you receive personal care services in addition to PDN services, you cannot receive your personal care and household tasks from an individual provider, personal aide, or home care agency provider at the same time that your PDN provider is providing your care. The agency or privately contracted nurse is responsible for providing personal care and/or household tasks that occur during the time that they are providing your PDN services, unless you have an informal support that is providing or assisting you at the same~~

~~time))~~ PDN hours will be deducted from the personal care hours generated by CARE to account for services that meet some of your need for personal care services (i.e., one hour from the available hours for each hour of PDN authorized per WAC 388-106-1030).

(3) Services may not be duplicated. PDN hours may not be scheduled during the same time that personal care hours are being provided by an individual provider or home care agency provider.

(4) The PDN provider is responsible for providing assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) unless there is an informal support that is providing or assisting at the same time.

**WSR 11-05-085  
PERMANENT RULES  
OLYMPIC REGION  
CLEAN AIR AGENCY**

[Filed February 15, 2011, 12:52 p.m., effective March 18, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The focus of the rule change was to align ORCAA's Rule 6.2 Outdoor Burning with chapter 173-425 WAC. Language was simplified and clarified throughout the revision. Outdoor burning restrictions in the City of Hoquiam were made consistent throughout the city. Recognition of the long-standing Thurston County summer burn ban was added to the regulation.

Definitions used in Rule 6.2 Outdoor Burning were moved from Rule 1.4.

Citation of Existing Rules Affected by this Order: Amending Rules 1.4, 6.2.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 10-24-012 on November 18, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 9, 2011.

Francea L. McNair  
Executive Director

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-07 issue of the Register.