WSR 23-07-130
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed March 22, 2023, 7:47 a.m., effective April 22, 2023]

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

Purpose: Amendments to WAC 388-101D-0065 replace details about background checks in WAC 388-101D-0065 with cross-references to chapters 388-113 and 388-825 WAC for consistency. Amendments to chapter 388-825 WAC replace inaccurate cross references; add, remove, and amend definitions; clarify service eligibility for state-only funded services and medicaid state plan services; update rules about home care agencies and individual providers to align with chapters 388-71, 388-113, and 388-115 WAC; amend appeal-related rules; add exemptions allowable under statute for enrolled members of federally recognized Indian tribes; amend background check rules, particularly those for residential habilitation center employees; and create comprehensive lists of developmental disabilities administration (DDA)-authorized services.

Citation of Rules Affected by this Order: New WAC 388-825-0581 and 388-825-621; repealing WAC 388-825-073, 388-825-079, 388-825-081, 388-825-325 and 388-825-395; and amending WAC 388-101D-0065, 388-825-020, 388-825-058, 388-825-059, 388-825-067, 388-825-068, 388-825-072, 388-825-074, 388-825-082, 388-825-120, 388-825-150, 388-825-300, 388-825-305, 388-825-310, 388-825-315, 388-825-330, 388-825-340, 388-825-375, 388-825-385, 388-825-396, 388-825-600, 388-825-605, 388-825-610, 388-825-615, 388-825-620, 388-825-625, 388-825-630, 388-825-635, 388-825-650, 388-825-655, 388-825-660, 388-825-670, and 388-845-1615.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.020, 71A.12.040, 71A.12.050, 71A.12.110, 71A.12.161, 43.20A.710, 43.43.837.

Adopted under notice filed as WSR 23-03-013 on January 6, 2023.

Changes Other than Editing from Proposed to Adopted Version: In WAC 388-825-615(4), an effective date was changed from January 1, 2023, to July 1, 2023. The date was mistakenly left in the proposed rule text. DDA cannot implement that change retroactively, so the rule text was updated to include an implementation date in the future.

DDA is not proceeding with amendments to WAC 388-825-0571 at this time and the rule was removed from the final rule text. Whether DDA will proceed with amendments to WAC 388-825-0571 is to be determined.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.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 the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 33, Repealed 5.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 33, Repealed 5.

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 2, Amended 33, Repealed 5.

Date Adopted: March 21, 2023.

Lisa N. H. Yanagida
Chief of Staff

SHS-4911.9

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0065 Background check—General. (1) ((~~The department is authorized to conduct~~)) A provider must follow background ((~~checks~~)) check requirements under ((~~the background check requirements of~~)) this chapter and ((~~of chapter~~)) chapters 388-113 and 388-825 WAC. ((~~Background checks include but are not limited to an inquiry into any of the following:~~

~~(a) Department and department of health findings;~~

~~(b) Administrative actions taken by the department or by other agencies;~~

~~(c) Washington state criminal background check information from the Washington state patrol;~~

~~(d) National fingerprint-based background check information from the Federal Bureau of Investigation, when required; and~~

~~(e) Information from Washington state courts.~~))

(2) Nothing in this chapter ((~~should be interpreted as requiring~~)) requires the employment of a person against the better judgment of the ((~~service~~)) provider. ((~~In addition to chapter 71A.12 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW 74.39A.056.~~))

[WSR 16-14-058, recodified as § 388-101D-0065, filed 6/30/16, effective 8/1/16. Statutory Authority: Chapter 71A.12 RCW. WSR 14-14-030, § 388-101-3245, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 71A.12.030 and [71A.12].080. WSR 12-02-048, § 388-101-3245, filed 12/30/11, effective 1/30/12. Statutory Authority: RCW 71A.12.080, chapter 74.39A RCW. WSR 10-16-084, § 388-101-3245, filed 7/30/10, effective 1/1/11.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-825-020 Definitions. **"Adult day care"** is a service administered by DDA-contracted counties that provides a structured social program for adults.

"Authorization" means DDA approval of funding for a service as identified in the ((~~individual support~~)) person-centered service plan or evidence of payment for a service.

"Assistant secretary" means the assistant secretary of the developmental disabilities administration.

"Background check system" or **"BCS"** means an online system for processing background checks.

"Consumer-directed employer" is a private entity that contracts with the department to be the legal employer of individual providers for purposes of performing administrative functions.

"Client" ((~~or "person"~~)) means a person who has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services by the administration under chapter 71A.16 RCW. "Client" may also refer to a child with a functional need for personal care services who does not have a developmental disability.

"Community first choice" or **"CFC"** is a medicaid state plan program defined in chapter 388-106 WAC.

"Department" means the department of social and health services of the state of Washington.

"DDA" means the developmental disabilities administration((~~, an administration~~)) within the department of social and health services.

"Enhanced respite services" means respite care for DDA enrolled children and youth, who meet specific criteria, in a DDA contracted and licensed staffed residential setting.

"Family" means one or more of the following relatives ((~~who live in the same home with the eligible client. Relatives include~~)): Spouse or registered domestic partner; natural, adoptive, or step((~~—~~))parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Individual provider" means an employee of a consumer-directed employer who provides personal care or respite care services.

((**"ICF/IID"** ~~means a facility certified as an i~~)) **"Intermediate care facility for individuals with intellectual disabilities"** or **"ICF/IID"** means a facility certified ((~~by~~)) under ((~~title XIX to provide diagnosis, treatment and rehabilitation services to the individuals with intellectual disabilities or individuals with related conditions~~)) federal law to provide active treatment and rehabilitation services.

((**"ICF/IID eligible"** ~~for admission to an ICF/IID means a person is determined by DDA as needing active treatment as defined in C.F.R. 483.440. Active treatment requires:~~

~~(1) Twenty-four hour supervision; and~~

~~(2) Continuous training and physical assistance in order to function on a daily basis due to deficits in the following areas: Toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication.~~

"Individual support plan" ~~or~~ **"ISP"** ~~is a document that authorizes and identifies the DDA paid services to meet a client's assessed needs.~~

"Medicaid personal care" ~~or~~ **"MPC"** ~~is a medicaid state plan program defined in chapter 388-106 WAC.~~

"Overnight planned respite services" ~~means services intended to provide short-term intermittent relief for persons who live with the DDA client as the primary care provider and are either a family member who is paid or unpaid or a nonfamily member who is not paid. These services provide person-centered support, care and planned activities for the client in the community.~~))

"Medicaid" means the federal medical aid program under title XIX of the Social Security Act that provides health care to eligible people.

"Person-centered service plan" or **"PCSP"** is a document that identifies a client's goals and assessed health and welfare needs. The PCSP also indicates the paid services and natural supports that will help a client achieve their goals and address their assessed needs.

"Residential habilitation center" or **"RHC"** means a state-operated facility under RCW 71A.20.020 ((~~certified to provide ICF/IID and/or nursing facility level of care for persons with developmental disabilities~~)).

((**~~"Residential programs"~~** ~~means provision of support for persons in community living situations. Residential programs include DDA certified community residential services and support, both facility-based such as licensed group homes, and nonfacility based, such as supported living and state-operated living alternatives (SOLA). Other residential programs include alternative living (as described in chapter 388-829A WAC, companion homes (as described in chapter 388-829C WAC), adult family homes, adult residential care services, children's foster homes, group care and staffed residential homes.~~))

"Respite care" means short-term intermittent care for DDA clients ((~~in order~~)) to provide relief for ((~~persons~~)) people who normally provide that care.

((**~~"Secretary"~~** ~~means the secretary of the department of social and health services or the secretary's designee.~~))

"State-only funded services" means those services paid entirely with state funds.

"State supplementary payment" or **"SSP"** is the state paid cash assistance program for certain DDA-eligible ((~~SSI~~)) clients.

"You" or **"your"** means the client.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-020, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 44.04.280, 2011 1st sp.s. c 30 and further amended state law, and chapter 71A.20 RCW. WSR 12-22-037, § 388-825-020, filed 11/1/12, effective 12/2/12. Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 10-02-101, § 388-825-020, filed 1/6/10, effective 2/6/10. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-020, filed 5/19/08, effective 6/19/08. Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. WSR 04-02-014, § 388-825-020, filed 12/29/03, effective 1/29/04. Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. WSR 02-16-014, § 388-825-020, filed 7/25/02, effective 8/25/02. Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 99-23-021, amended and recodified as § 388-825-020, filed 11/9/99, effective 12/10/99. Statutory Authority: RCW 71A.12.030. WSR 99-04-071, § 275-27-020, filed 2/1/99, effective 3/4/99. Statutory Authority: RCW 74.12A.030 and 71A.16.030. WSR 98-20-044, § 275-27-020, filed 9/30/98, effective 10/7/98. Statutory Authority: RCW 71A.14.030 and 71A.16.020. WSR 92-09-115 (Order 3373), § 275-27-020, filed 4/21/92, effective 5/22/92. Statutory Authority: RCW 71A.16.020. WSR 91-17-005 (Order 3230), § 275-27-020, filed 8/9/91, effective 9/9/91. Statutory Authority: RCW 71.20.070. WSR 89-06-049 (Order 2767), § 275-27-020, filed 2/28/89; WSR 84-15-058 (Order 2124), § 275-27-020, filed 7/18/84. Statutory Authority: RCW 72.01.090, 72.33.040, 72.33.125 and 72.33.165. WSR 78-04-033 (Order

1280), § 275-27-020, filed 3/16/78; Order 1143, § 275-27-020, filed 8/11/76.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-058 What services does DDA authorize? ((~~The department~~)) (1) DDA authorizes the following paid services: ((~~through programs that are designed to help you remain in the community. DDA may authorize the following services if you meet programmatic eligibility and funding is available:~~

~~(1) Medicaid state plan services;~~

~~(2) Home and community based services (HCBS) waiver services;~~

~~(3) Roads to community living services; and~~

~~(4) State-only funded services.~~

~~Participation in all DDA paid services is voluntary. Clients or their legal representatives have the right to decline or terminate services at any time~~))

(a) Adult day care.
(b) Assistive technology.
(c) Attendant care.
(d) Bed bug extermination.
(e) Behavior support treatment team.
(f) Caregiver management.
(g) Child development services.
(h) Child placing agency.
(i) Community engagement.
(j) Community inclusion.
(k) Community transition or sustainability services.
(l) Community/recreational activities.
(m) Copays for medical and therapeutic services.
(n) County services.
(o) Crisis stabilization.
(p) Durable medical equipment.
(q) Employment technical assistance add-on.
(r) Environmental adaptations.
(s) Equine therapy.
(t) Excess medical costs not covered by another source.
(u) Family and provider support.
(v) Group supported employment.
(w) Individual employment.
(x) Music therapy.
(y) Nonmedical equipment.
(z) Nurse consultation.
(a)(a) Nurse delegation.
(b)(b) Occupational therapy.
(c)(c) Overnight planned respite for adults.
(d)(d) Parent and sibling education.
(e)(e) Peer mentoring.
(f)(f) Personal emergency response system.
(g)(g) Personal care.
(h)(h) Person-centered plan facilitation.

(i)(i) Physical therapy.
(j)(j) Plethysmograph.
(k)(k) Polygraph.
(l)(l) Positive behavior support.
(m)(m) Private duty nursing.
(n)(n) Recreational opportunities.
(o)(o) Reentry community safety program.
(p)(p) Relief care.
(q)(q) Residential habilitation.
(r)(r) Respite.
(s)(s) Risk assessment.
(t)(t) Service animal services.
(u)(u) Skilled nursing.
(v)(v) Skills acquisition.
(w)(w) Specialized clothing.
(x)(x) Specialized evaluation and consultation.
(y)(y) Specialized habilitation.
(z)(z) Specialized habilitation-stabilization.
(a)(a)(a) Specialized equipment and supplies.
(b)(b)(b) Specialized nutrition.
(c)(c)(c) Speech therapy.
(d)(d)(d) Stabilization diversion bed.
(e)(e)(e) Staff and family consultation.
(f)(f)(f) Staff and family consultation-stabilization.
(g)(g)(g) State supplementary payments.
(h)(h)(h) Supported parenting.
(i)(i)(i) Therapeutic adaptations.
(j)(j)(j) Training and counseling.
(k)(k)(k) Transition services.
(l)(l)(l) Transportation.
(m)(m)(m) Vehicle modifications.
(n)(n)(n) Wellness education.

(2) This section does not include services directly provided by the department.

[Statutory Authority: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW. WSR 15-17-094, § 388-825-058, filed 8/18/15, effective 9/18/15. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-058, filed 5/19/08, effective 6/19/08.]

NEW SECTION

WAC 388-825-0581 What programs does DDA authorize services under? DDA may authorize services under the following programs:

(1) Medicaid state plan;
(2) Home and community-based services (HCBS) waiver;
(3) Roads to community living; and
(4) State-only funded services.
(5) Participation in all DDA paid services is voluntary. Clients or their legal representatives have the right to decline or terminate services at any time.

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AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-825-059 How will I know which paid services I will receive? Your person-centered service plan((~~/individual support plan (ISP)~~)) identifies the services and the amount of service you can receive.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-059, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-059, filed 5/19/08, effective 6/19/08.]

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-067 What are medicaid state plan services? (1) Medicaid state plan services are those services available to ((~~all persons~~)) people eligible for ((~~medicaid under the categorically needy program. See WAC 388-475-0100 for the categorically needy program requirements~~)) one of the following medicaid programs:

(a) The alternative benefits plan (ABP) medicaid;

(b) Categorically needy (CN) medicaid;

(c) Medically needy (MN) medicaid; or

(d) Medical care services (MCS) programs (includes capacity-based and aged, blind, and disabled medical care services), as described in WAC 182-508-0005.

(2) To receive the service, you must be assessed by ((~~DSHS~~)) DDA to have an unmet need for the service and meet the eligibility criteria for the program. ((~~See WAC 388-825-068 for services authorized by DDD.~~))

[Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-067, filed 5/19/08, effective 6/19/08.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-825-068 What medicaid state plan services can DDA authorize? If eligible, DDA may authorize one or more of the following medicaid state plan services:

(1) Community first choice((~~, per~~)) under chapter 388-106 WAC;

(2) Medicaid personal care((~~, per~~)) under chapter 388-106 WAC;

(3) Private duty nursing for adults age ((~~eighteen~~)) 18 and older((~~; per~~)) under chapter 388-106 WAC;

(4) Private duty nursing for children under the age of ((~~eighteen, per~~)) 18 under WAC 182-551-3000;

(5) ICF/IID services((~~, per~~)) under chapters 388-835 and 388-837 WAC;

(6) Nursing facility services at residential habilitation centers (RHC) ((~~per~~)) under chapter 388-97 WAC; or

(7) Preadmission screening and resident review (PASRR).

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-068, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 44.04.280, 2011 1st sp.s. c 30 and further amended state law, and chapter 71A.20 RCW. WSR 12-22-037, § 388-825-068, filed 11/1/12, effective 12/2/12. Statutory Authority: RCW 71A.12.030, 71A.12.040, 71A.14.030, 2009 c 564, section 205 (1)(j), and section 1915(i) of the Social Security Act. WSR 10-04-002, § 388-825-068, filed 1/21/10, effective 2/21/10. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-068, filed 5/19/08, effective 6/19/08.]

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-072 Where do I find information on DDA's home and community-based services (HCBS) ((~~waiver services~~)), eligibility rules, and definitions? (1) Home and community-based services (HCBS) waiver eligibility, the scope of services provided by each waiver, the service definitions, ((~~of the services, the limitations of the~~)) service limits, and qualified providers for ((~~the~~)) each service are contained in chapter 388-845 WAC.

(2) Services available under the basic plus waiver are found in WAC 388-845-0210.

(3) Services available under the core waiver are found in WAC 388-845-0215.

(4) Services available under the community protection waiver are found in WAC 388-845-0220.

(5) Services available under the children's intensive in-home behavior support waiver are found in WAC 388-845-0225.

(6) Services available under the individual and family services waiver are found in WAC 388-845-0230.

[Statutory Authority: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW. WSR 15-17-094, § 388-825-072, filed 8/18/15, effective 9/18/15. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-072, filed 5/19/08, effective 6/19/08.]

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-074 Am I eligible for state-only funded services? (1) You are eligible to receive available state-only funded services if ((~~you have been approved for funding for that service, and~~)) all of the following conditions apply:

((~~(1)~~)) (a) You have a current DDA assessment that identifies ((~~the~~)) your need for the service((~~,~~)) and the amount of service you will receive.

((~~(2)~~)) (b) You meet ((~~the programmatic and financial~~)) all eligibility requirements for the specific service ((~~or program;~~)).

((~~(3) Your need cannot be met through medicaid state plan services;~~

~~(4)~~)) (c) You are not enrolled in a DDA home and community-based services (HCBS) waiver((~~;~~)).

((~~(5)~~)) (d) You do not receive SSP as a replacement for the requested service((~~;~~)).

((~~(6)~~)) (e) The program or service is funded by the legislature.

(f) You are enrolled in medicaid or you have applied and been found ineligible for medicaid in Washington state in the past year.

(g) You have been approved for funding for a state-only funded service in WAC 388-825-082.

(2) Eligibility for state-only funded services under this section does not affect your eligibility for medicaid.

[Statutory Authority: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW. WSR 15-17-094, § 388-825-074, filed 8/18/15, effective 9/18/15. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-074, filed 5/19/08, effective 6/19/08.]

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-082 What state-only funded services ((~~are authorized in DDD rules~~)) may DDA authorize? ((~~The following~~)) DDA may authorize state-only funded services ((~~defined below are authorized only by DDD and are not contained in other rules governing DDD.~~)) as follows:

(1) ((~~"~~))Adult day care((~~" not covered by medicaid is a DDD county service providing a structured social program for adults and is limited to persons receiving the service prior to June 2005~~)).

(2) ((~~"~~))Attendant care((~~"~~)), which provides respite care or personal care and is limited to persons who:

(a) Are not eligible for other ((~~DDD~~)) DDA services ((~~to~~)) that meet their ((~~need~~)) needs; and

(b) Were receiving attendant care in March 2004.

(3) ((~~"Individual and family assistance" is a time limited county service available to individuals and families.~~

~~(a) Supports are provided to additional families and persons with developmental disabilities in need of services within existing resources;~~

~~(b) Individuals and families receiving services have more control and flexibility with the use of the resources; and~~

~~(c) The individual and family are assisted in connecting to and using natural and informal community supports~~)) Child development services.

(4) ((~~"Information and education" is a county service that provides a variety of activities and strategies to assure that individuals with developmental disabilities and families have full access to current information about services and support that will assist them in becoming full participants in their communities~~)) Crisis stabilization.

(5) ((~~"~~))Individual and family services under chapter 388-832 WAC.

(6) Medical and dental services((~~" means those services which are~~)) necessary for the health of the client ((~~and~~)) that are not covered by medicaid or private insurance.

((~~(6) "~~))(7) Medical insurance copays and costs exceeding other coverage.

(8) Offender re-entry community safety program services.

(9) Overnight planned respite services under chapter 388-829R WAC.

(10) Parent training and counseling.

(11) PASRR services under chapter 388-834 WAC if you reside in a medicaid-certified home nursing facility but you do not qualify for medicaid.

(12) Psychological counseling((~~" may provide~~)) which provides specialized cognitive counseling((~~,~~)) and strategies for effectively relating to people or coping with situations and problems.

((~~(7) "~~))(13) State supplementary payments under chapter 388-827 WAC.

(14) Transportation reimbursement for an escort((~~"~~)), which is ((~~the~~)) a payment for someone other than the driver to provide one-on-one attention to the client being transported.

(15) Waiver services under chapter 388-845 WAC if prior approval is received by the assistant secretary or designee.

[Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-082, filed 5/19/08, effective 6/19/08.]

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-120 When ((~~can~~)) may I appeal ((~~department decisions through an administrative hearing process~~)) a decision made by the developmental disabilities administration? (1) ((~~Administrative hearings are governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 71A.10.050, the rules in this chapter and by chapters 388-02 and 182-526 WAC. If any provision in this chapter conflicts with chapters 388-02 or 182-526 WAC or WAC 388-440-0001(3), the provision in this chapter shall prevail~~)) You or your authorized representative may appeal a decision made by DDA if you are an applicant, a client, or a former client.

(2) ((~~A client, former client, or applicant acting on the applicant's own behalf or through an authorized representative has the right to an administrative hearing.~~

~~(3)~~)) You have the right to an administrative hearing to dispute the following ((~~department~~)) DDA actions:

(a) ((~~Authorization~~)) Approval, denial, reduction, or termination of services;

(b) ((~~Reduction or termination of a service that was initially approved through an exception to rule;~~

~~(c)~~)) ((~~Authorization~~)) Approval, denial, or termination of eligibility;

((~~(d)~~)) (c) ((~~Authorization~~)) Approval, denial, reduction, or termination of payment of SSP authorized by DDA set forth in chapter 388-827 WAC;

((~~(e)~~)) (d) Admission or readmission to, or discharge from, a residential habilitation center set forth in WAC 388-825-155;

((~~(f)~~)) (e) Refusal to abide by your request that we not send notices to any other person;

((~~(g)~~)) (f) Refusal to comply with your request to consult only with you;

((~~(h) A decision to move you to a different type of residential service;~~

~~(i) Denial or termination of the provider of your choice or the denial of payment for any reason listed in WAC 388-825-375 through 388-825-395;~~))

(g) Denial of payment to your provider for any reason under WAC 388-825-375;

(h) Termination of your provider's contract for any reason under WAC 388-825-385 or 388-825-390;

((~~(j)~~)) (i) An unreasonable delay to act on an application for eligibility or service;

((~~(k)~~)) (j) A claim ((~~the client, former client, or applicant owes~~)) that you owe an overpayment debt;

(k) Action related to the community protection program under WAC 388-831-0300;

(l) An exception to rule decision if:

(i) The total number of service hours you are currently receiving includes hours approved as an exception to rule in addition to the number of hours available to you under program rule or DDA assessment; and

(ii) The total number of service hours you are currently receiving is reduced because of a reduction or termination in the number of hours approved as an exception to rule.

(3) Except as allowed under subsection (2)(m) of this section, you do not have a right to appeal the department's denial of an exception to rule request.

(4) If you appeal a decision made by the developmental disabilities administration, your appeal is governed by this chapter and:

(a) Chapter 34.05 RCW;

(b) Chapter 71A.10 RCW; and

(c) Chapters 388-02 or 182-526 WAC, as applicable.

(5) If any provision in this chapter conflicts with chapters 388-02 or 182-526 WAC or WAC 388-440-0001(3), the provision in this chapter prevails.

(6) If you receive personal care services under chapter 388-106 WAC that are authorized by DDA, the appeal provision in WAC 388-106-1315 applies.

((~~(4)~~)) (7) If you are not enrolled in a waiver and your request to be enrolled in a waiver is denied, your appeal rights are limited ((~~to those identified in~~)) under WAC 388-845-4005.

((~~(5)~~)) (8) If you are enrolled in a waiver and your request to be enrolled in a different waiver is denied, your appeal rights are limited ((~~to those identified in~~)) under WAC 388-845-4005.

[Statutory Authority: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW. WSR 15-17-094, § 388-825-120, filed 8/18/15, effective 9/18/15. Statutory Authority: RCW 71A.12.030, 44.04.280, 2011 1st sp.s. c 30 and further amended state law, and chapter 71A.20 RCW. WSR 12-22-037, § 388-825-120, filed 11/1/12, effective 12/2/12. Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 10-02-101, § 388-825-120, filed 1/6/10, effective 2/6/10. Statutory Authority: RCW

71A.12.030. WSR 06-19-037, § 388-825-120, filed 9/13/06, effective 10/14/06. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-120, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. WSR 04-02-014, § 388-825-120, filed 12/29/03, effective 1/29/04. Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. WSR 02-16-014, § 388-825-120, filed 7/25/02, effective 8/25/02; WSR 99-19-104, recodified as § 388-825-120, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.16.020. WSR 91-17-005 (Order 3230), § 275-27-500, filed 8/9/91, effective 9/9/91. Statutory Authority: RCW 34.05.220 (1)(a) and 71.12.030 [71A.12.030]. WSR 90-04-074 (Order 2997), § 275-27-500, filed 2/5/90, effective 3/1/90. Statutory Authority: RCW 71.20.070. WSR 86-18-049 (Order 2418), § 275-27-500, filed 8/29/86. Statutory Authority: RCW 72.33.161. WSR 84-15-038 (Order 2122), § 275-27-500, filed 7/13/84. Statutory Authority: RCW 72.01.090, 72.33.040, 72.33.125 and 72.33.165. WSR 78-04-033 (Order 1280), § 275-27-500, filed 3/16/78; Order 1143, § 275-27-500, filed 8/11/76.]

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-150 When ((~~can~~)) may the department proceed to take action during my appeal? The department will proceed to take action during your appeal if:

(1) It is an eligibility denial and you are not currently an eligible client.

(2) Your DDA eligibility under chapter 388-823 WAC has expired((~~, per WAC 388-823-0010 and 388-823-1040~~)).

(3) There is no longer funding for the state-only funded service you have been receiving.

(4) Your current services are terminated or transferred ((~~in order~~)) to comply with state law.

(5) The state-only funded service no longer exists, or the medicaid state plan, ((~~has been amended, or~~)) the HCBS waiver, or any other agreement with the federal Centers for Medicare and Medicaid Services has been amended or terminated.

(6) The administrative law judge or review judge rules that you have caused unreasonable delay in the proceedings.

(7) ((~~You are~~)) Your health, safety, or wellbeing is in imminent jeopardy.

(8) Your provider is no longer qualified to provide services due to:

(a) A lack of a contract;

(b) Decertification;

(c) Failure to complete training or certification requirements;

(d) Revocation or suspension of a license; or

(e) Lack of required registration, certification, or licensure.

(9) If you are under the age of ((~~eighteen~~)) 18 and your parent or legal representative approves the department's decision.

(10) You did not file your request for an administrative hearing within the ((~~ten-day~~)) applicable notice period((~~, as described in chapter 388-458 WAC~~)).

(11) You or your legal representative((~~:~~

~~(a)~~)) tell us in writing that you do not want continued benefits.((~~;~~

~~(b) Withdraw your administrative hearing request in writing; or~~

((~~(c) Do not follow through with the administrative hearing process.~~))

[Statutory Authority: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW. WSR 15-17-094, § 388-825-150, filed 8/18/15, effective 9/18/15. Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-06-055, § 388-825-150, filed 3/5/07, effective 4/5/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-150, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-300 What is the purpose of WAC 388-825-300 through 388-825-400? A ((~~client/legal~~)) client or client's legal representative may choose a qualified individual, agency, or licensed provider. The intent of WAC 388-825-300 through 388-825-400 is to describe:

(1) Qualifications for ((~~individuals~~)) individual providers and home care agencies ((~~providing DDA services in the client's residence or the provider's residence or other setting~~)); and

(2) Conditions under which ((~~the department~~)) DDA will pay for the services of an individual provider or a home care agency provider.((~~or other provider.~~))

[Statutory Authority: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW. WSR 15-17-094, § 388-825-300, filed 8/18/15, effective 9/18/15. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-300, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-825-305 ((~~What service providers are~~)) Who is governed by ((~~the qualifications in these rules~~)) WAC 388-825-305 through 388-825-400? ((~~These rules govern individuals and agencies contracted with to~~)) WAC 388-825-305 through 388-825-400 govern individual providers and home care agencies who provide one or more of the following:

(1) ((~~Respite care services;~~

~~(2) Personal care services through the basic plus waiver;~~

~~(3)~~)) Community first choice services;

((~~(4)~~)) (2) Medicaid personal care; or

((~~(5) Attendant~~)) (3) Respite care services.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-305, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 07-23-062, § 388-825-305, filed 11/16/07, effective 12/17/07. Statutory Authority: RCW 71A.12.030,

71A.12.120. WSR 05-17-135, § 388-825-305, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-825-310 What are the provider qualifications ((~~for respite care, community first choice, medicaid personal care, and attendant care service providers~~)), responsibilities, and training requirements for a home care agency provider? (1) ((~~The providers of services in WAC 388-825-305~~)) A home care agency provider must meet the provider qualifications, responsibilities, and training requirements ((~~in~~)) under chapter 388-71 WAC.

(2) ((~~Individuals and agencies providing state only individual and family services must meet the provider qualifications in chapter 388-832 WAC for the specific service.~~

~~(3) Individuals and agencies providing HCBS waiver services must meet the provider qualifications in chapter 388-845 WAC for the specific service. In addition to meeting the provider qualifications in chapter 388-845 WAC, respite care providers must meet requirements in subsection (1) of this section~~)) Individual providers must meet the provider qualifications, responsibilities, and training requirements under chapter 388-115 WAC.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-310, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-310, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-315 What is your responsibility when you hire an individual ((~~respite care, attendant care or personal care~~)) provider? ((~~You or your legal representative:~~

~~(1) Have the primary responsibility for locating, screening, hiring, supervising, and terminating an individual respite care, attendant care or personal care provider~~)) If you hire an individual provider, you or your legal representative must manage the individual provider according to chapter 388-115 WAC((~~;~~

~~(2) Establish an employer/employee relationship with the individual provider; and~~

~~(3) May receive assistance from the social worker/case manager or other resources in this process~~)).

[Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-315, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-825-330 What is required for agencies to provide ((~~care in the home of a person with developmental disabilities~~)) community first choice services, medicaid personal care, or respite services?

(1) ((~~Agencies providing~~)) To provide community first choice services, medicaid personal care, or respite services a home care agency must be: ((~~licensed as a home care agency or a home health agency through the department of health per chapter 246-335 WAC~~))

(a) Contracted with DSHS to provide the service; and

(b) Licensed as a home care agency or home health agency through the department of health under chapter 246-335 WAC.

(2) If a residential agency certified ((~~per~~)) under chapter 388-101 WAC wants to provide medicaid personal care services, personal care services under the community first choice program, or respite care ((~~in the client's home~~)), the agency must ((~~have a home care agency or home health license~~)) be:

(a) Contracted with DSHS to provide the service; and

(b) Licensed as a home care agency or home health agency through the department of health under chapter 246-335 WAC.

(3) If a residential agency certified ((~~per~~)) under chapter 388-101 WAC only wants to provide skills acquisition under the community first choice program, the agency must be contracted with ((~~the department~~)) DSHS to provide the service.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-330, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 10-02-101, § 388-825-330, filed 1/6/10, effective 2/6/10. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-330, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 07-23-062, filed 11/16/07, effective 12/17/07)

WAC 388-825-340 ((~~What is required for~~)) Can a provider ((~~to provide~~)) deliver respite ((~~or residential service~~)) services in ((~~their~~)) the provider's home? ((~~Unless you are related to the client, respite or residential services must take place~~)) (1) A provider may deliver respite services in the provider's home if the provider is related to the client.

(2) If the provider is not related to the client, respite services must be delivered in an appropriately ((~~home~~)) licensed ((~~by DSHS~~)) home. ((~~Services are limited to those age-specific services contained in your license.~~))

[Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 07-23-062, § 388-825-340, filed 11/16/07, effective 12/17/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-340, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-825-375 When will the department deny payment for services ((~~of an individual or home care agency providing respite care, attendant care, or personal care services~~))? (1) The department ((~~will deny payment for the services of an individual or home care agency providing respite care, attendant care, or personal care who:~~

~~(a) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant;~~

~~(b) Is providing services under this chapter to his or her natural/step/adoptive minor client aged seventeen or younger;~~

~~(c) Has been convicted of, or has a pending charge that is a disqualifying crime, under chapter 388-113 WAC;~~

~~(d) Has been subject to a negative action described in WAC 388-825-0640;~~

~~(e) Does not successfully complete the training requirements within the time limits required in chapter 388-71 WAC; or~~

~~(f) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider)~~)) will deny payment to the consumer-directed employer under WAC 388-115-05415.

(2) ((~~In addition,~~)) The department ((~~may~~)) will deny payment to ((~~or terminate the contract of an individual~~)) a home care agency provider ((~~as provided~~)) under WAC ((~~388-825-380 and~~)) 388-((~~825-385~~)) 71-05415.

(3) Under RCW 74.39A.326, the department will deny payment for the services of a home care agency providing respite or personal care if the provider is your family member unless:

(a) You are an enrolled member of a federally recognized Indian tribe; or

(b) You reside in the household of an enrolled member of a federally recognized Indian tribe.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-375, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 10-02-101, § 388-825-375, filed 1/6/10, effective 2/6/10. Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 07-23-062, § 388-825-375, filed 11/16/07, effective 12/17/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-375, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-825-385 When may the department terminate an individual respite care, attendant care, or personal care provider's contract? The department may take action to terminate an individual respite care, attendant care, or personal care provider's contract if the provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being. Examples of

circumstances indicating jeopardy to the client ((~~could~~)) include((~~, without limitation~~)):

(1) Evidence of a conviction, pending charges, or negative actions described in WAC 388-825-((~~0~~))640;

(2) Using or being under the influence of alcohol or illegal drugs during working hours;

(3) Other behavior directed toward the client or other persons involved in the client's life that places the client at risk of harm;

(4) A report from the client's health care provider that the client's health is negatively affected by inadequate care;

(5) A complaint from the client or client's representative that the client is not receiving adequate care;

(6) The absence of essential interventions identified in the service plan, such as medications or medical supplies; and((~~/or~~))

(7) Failure to respond appropriately to emergencies.

(8) The department, AAA, or department designee may also terminate an individual provider's contract for reasons described under WAC ((~~388-71-0551~~)) 388-113-0050.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-385, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 07-23-062, § 388-825-385, filed 11/16/07, effective 12/17/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-385, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 07-23-062, filed 11/16/07, effective 12/17/07)

WAC 388-825-396 ((Đ)) When does ((~~the provider of respite care, attendant care, or personal~~)) a home care agency have a right to ((~~a fair~~)) an administrative hearing? ((~~(1) The hearing rights afforded under WAC 388-825-395(1) are those of the client.~~

~~(2) The provider of respite care, attendant care, or personal care services does not have~~)) A home care agency has a right to ((~~a fair~~)) an administrative hearing under WAC 388-71-0562.

[Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 07-23-062, § 388-825-396, filed 11/16/07, effective 12/17/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-396, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-600 What definitions apply to WAC 388-825-600 through 388-825-690 of this chapter? The following definitions apply to WAC 388-825-600 through 388-825-690 of this chapter:

"Agency" means any agency of the state or any private agency providing services to individuals with developmental disabilities.

((**"Authorized"** ~~or~~ **"authorization"** ~~means not disqualified by the department to have unsupervised access to children and individuals with a developmental disability. This term applies to persons who are~~

~~certified or contracted by the department, allowed to receive payments from department funded programs, or who volunteer with department funded programs.~~))

"Background check central unit (BCCU)" means ((~~the DSHS program responsible for conducting~~)) a division within the department that processes background checks for ((~~DSHS administrations~~)) department-authorized providers and department programs.

"Certification" means a process used by the department ((~~approval of an entity that does not legally need to be licensed indicating that the entity nevertheless meets minimum licensing requirements~~)) to determine if an applicant or service provider complies with chapter 388-101 WAC and is eligible to provide certified community residential services and supports to clients.

((**"Civil adjudication proceeding"** ~~is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.~~))

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(6) and has been determined eligible to receive services by DDA under chapter 388-823 WAC.

"Community residential service businesses" ((~~include all developmental disabilities administration supported living providers with the exception of supported living providers who are also licensed as an assisted living facility or adult family home. Community residential service providers also include DDA companion homes, DDA alternative living and licensed residential homes for children~~)) has the same meaning as under RCW 74.39A.009.

"DDA" means the developmental disabilities administration within the department of social and health services (DSHS).

"Department" means the department of social and health services (DSHS).

"Disqualified" means that the results of ((~~an individual's~~)) a person's background check ((~~disqualifies him or her~~)) exclude the person from a position ((~~which~~)) that will or may involve unsupervised access to ((~~individuals with developmental disabilities~~)) DDA clients.

((**"Entity"** ~~means, but is not limited to, a licensed facility, a corporation, a partnership, a sole proprietorship, or a contracted or certified service provider.~~

"Hire" ~~means engagement by an agency, entity or a hiring individual to perform specific agreed duties as a paid employee, a contract employee, a volunteer, or a student intern.~~))

"Individual provider" has the same meaning as defined in RCW 74.39A.240.

((**"Individuals with a developmental disability"** ~~means individuals who meet eligibility requirements in Title 71A RCW as further defined in chapter 388-823 WAC.~~))

"Job class" means a level of work.

"Long-term care worker" has the same meaning as defined in RCW 74.39A.009.

((**"Permanent restraining order"** means a restraining order/order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (e.g. 1 year), after which it expires.))

"Personal information" means any individually identifiable information that could be used to identify or contact a person and includes protected health information and financial information.

"Provider" means an individual or agency who meets the provider qualifications and is contracted with a county or DSHS to provide services to a DDA client.

"Qualified" means ((an individual)) a person can be hired into a position that includes unsupervised access to ((individuals with developmental disabilities)) DDA clients because the results of ((his or her)) the person's background check are not disqualifying.

"Temporary restraining order" means a restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties in lieu of an initial hearing.

"Unsupervised," under RCW 43.43.830, means not in the presence of:

(1) ((The licensee,)) Another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check.

(2) Any relative or guardian of ((the individual with a developmental disability)) a DDA client to whom the applicant has access during the course of his or her employment or involvement with the business or organization ((~~(RCW 43.43.080(9))~~)).

((**"WSP"** refers to the Washington state patrol.))

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, amended and recodified as § 388-825-600, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0600, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-605 ((Why are)) What background ((checks done)) check requirements apply to providers? ((The department requires background checks to be run to help safeguard the health, safety and well-being of individuals with a developmental disability and to comply with the law)) (1) All DDA-contracted providers must follow background check requirements under chapter 388-113 and 388-825 WAC and applicable, program-specific rules.

(2) Alternative living providers must follow background check requirements under chapters 388-113, 388-825, and 388-829A WAC.

(3) Companion home providers must follow background check requirements under chapters 388-113, 388-825, and 388-829C WAC.

(4) Group home providers licensed as adult family homes must follow background check requirements under chapters 388-76, 388-113, and 388-825 WAC.

(5) Group home providers licensed as assisted living facilities must follow background check requirements under chapters 388-78A, 388-113, and 388-825 WAC.

(6) Individual providers must follow background check requirements under chapter 388-115 WAC.

(7) Home care agency providers must follow background check requirements under chapter 388-71 WAC.

(8) Licensed staffed residential service providers must follow background check requirements under chapters 110-04, 388-113, and 388-825 WAC.

(9) Overnight planned respite service providers must follow background check requirements under chapters 388-113, 388-825, and 388-829R WAC.

(10) Supported living and group training home providers must follow background check requirements under chapters 388-101D, 388-113, and 388-825 WAC.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-605, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0605, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-610 Who must have a ((~~Washington state and/or federal~~)) background check and a background check renewal? (1) DDA requires background checks ((~~on all contracted providers, individual providers, employees of contracted providers, and any other individual who needs to be qualified by DDA to have unsupervised access to individuals with developmental disabilities~~)) under WAC 388-825-615 and background check renewals under WAC 388-825-320 for all contracted providers, agency employees, owner-operators, administrators, subcontractors, and volunteers who may have:

(a) Unsupervised access to a DDA client; or

(b) Access to a DDA client's personal information.

(2) ((~~Long-term care workers as defined in chapter 74.39A RCW hired after January 7, 2012 are subject to national fingerprint-based background checks~~)) For community residential service businesses, any person who provides instruction and support services (ISS), including volunteers, must have a background check and background check renewal and follow background check requirements under this chapter.

(3) All residential habilitation center employees and volunteers must have a background check. If a residential habilitation center employee changes job class, the employee must have a background check renewal.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-610, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0610, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-615 What ((~~is the process for obtaining a~~)) type of background check is required? (1) ((~~L~~)) Beginning January 7, 2012, long-term care workers, including parents and individual providers, undergoing a background check for initial hire or initial contract, ((~~after January 7, 2012, will~~)) must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.~~; except that long-term care workers in community residential service businesses are subject to background checks as described in subsection (1)(a) and (b) in (2) of this section. Parents are not exempt from the long-term care background check requirements.~~))

((~~(a) Prior to January 1, 2016, community residential service businesses as defined above will be screened as follows:~~

~~(i) Individuals who have continuously resided in Washington state for the past three consecutive years will be screened through a state name and date of birth background check.~~

~~(ii) Individuals who have resided outside of Washington state within the past three years will be screened through a state name and date of birth and a national fingerprint-based background check.~~

~~(b)~~)) (2) Beginning January 1, 2016, a newly hired long-term care worker employed by a community residential service business((~~es as defined above will~~)) must be screened ((~~as described in subsection (1) of this section.~~)) through a Washington state name and date of birth check and a national fingerprint-based background check.

(a) For a renewal, a person who has continuously resided in Washington state for the past three consecutive years must be screened through a Washington state name and date of birth check.

(b) For a renewal, a person who has resided outside of Washington state in the past three years must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

((~~(2)~~)) (3) For adult family homes, refer to chapter 388-76 WAC((~~, adult family home minimum licensing requirements~~)). For assisted living facilities, refer to chapter 388-78A WAC((~~, assisted living licensing rules~~)).

(4) Beginning July 1, 2023, a residential habilitation center applicant undergoing a background check for initial hire must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(5) All background checks must be completed through the background check system.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, amended and recodified as § 388-825-615, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0615, filed 6/24/14, effective 7/25/14.]

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-620 ((~~Who must have~~)) How often must a background check ((~~renewals~~)) be renewed? (1) DDA requires ((~~rechecks for all DDA contracted providers and their employees~~)) a background check at least every three years, or more frequently if required by program rule. ((~~Rechecks~~))

(2) A background check renewal will be conducted as follows:

((~~(1)~~)) (a) Individuals who have continuously resided in Washington ((~~S~~))state for the past three consecutive years will be screened through a state name and date of birth background check.

((~~(2)~~)) (b) Individuals who have lived outside of Washington state within the past three years will be screened through a state name and date of birth check and a national fingerprint-based background check.

(c) Individuals who live outside of Washington state and provide services in Washington state will be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-620, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0620, filed 6/24/14, effective 7/25/14.]

NEW SECTION

WAC 388-825-621 May a DDA-contracted agency applicant or employee have access to clients before the completion of the Washington state name and date of birth background checks? (1) A DDA-contracted agency may allow an employee to have access to clients before completion of the Washington state name and date of birth background check if:

(a) The background check application has been submitted;

(b) The employee is directly supervised while around clients and their personal information; and

(c) The agency has a supervision plan in place for the employee.

(2) A supervision plan must:

(a) State who will supervise the employee; and

(b) Describe how the employee's breaks will be managed until the employee's background check has cleared.

[]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-625 What happens if ((~~I do not comply with the~~)) an individual receives a disqualifying background check ((~~requirement~~)) result? ((~~The department will deny, suspend or revoke your license, contract, certification, or authorization to care for individuals with~~

~~a developmental disability, if you or someone working within your program who has unsupervised access does not comply with the department's requirement for a background check~~)) (1) If an individual has a disqualifying background check result:

(a) The individual must not have access to clients or their personal information; and

(b) The department must not pay for services provided by the individual.

(2) If a provider or anyone the provider employs is required to complete a background check under WAC 388-825-610 and receives a disqualifying background check result, the department may deny, suspend, or revoke the provider's license, contract, or certification.

(3) If a provider or anyone the provider employs is required to complete a background check under WAC 388-825-610 and receives a disqualifying background check result, the provider must immediately notify DDA of the result.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-625, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0625, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-630 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include but is not limited to the following information sources:

(a) Washington state patrol.
(b) Washington courts.
(c) Department of corrections.
(d) Department of health.
(e) Civil adjudication proceedings.
(f) Applicant's self-disclosure.
(g) Out-of-state law enforcement and court records.

(2) DDA requires fingerprint-based background checks as described in WAC 388-825-615. These background checks include a review of conviction records through the Washington state patrol, the Federal Bureau of Investigation, and the ((~~national~~)) Washington state sex offender registry.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, amended and recodified as § 388-825-630, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0630, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-635 Who pays for the background check? (1) DDA pays for background checks((~~, including fingerprint-based background checks,~~)) for individuals seeking ((~~authorization~~)) to provide services to clients of DDA, if processed through the DSHS background check central unit (BCCU).

(2) DDA pays for fingerprint services if the fingerprinting entity is contracted with BCCU.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-635, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0635, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-650 What does a character, competence, and suitability review include? The contractor, entity, or hiring authority must review an individual's background to determine character, competence, and suitability to have unsupervised access to individuals with a developmental disability. In this review, the contractor, entity, or hiring authority must consider the following factors:

(1) The amount of time that has passed since ((~~you were~~)) a person was convicted or ((~~were~~)) subject to a negative action;

(2) The seriousness of the crime or action that led to the conviction or finding;

(3) The number and types of other convictions in ((~~your~~)) the person's background;

(4) ((~~Your~~)) The person's age at the time of conviction;

(5) Documentation indicating ((~~you have~~)) the person has successfully completed all court-ordered programs and restitution;

(6) ((~~Your~~)) The person's behavior since the conviction; and

(7) The vulnerability of those that would be under ((~~your~~)) the person's care.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-650, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0650, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-655 How will ((~~I~~)) someone know if ((~~I~~)) they have been disqualified by the background check? (1) The department will notify ((~~you~~)) the person, and the care provider, the employer, or the licensor if ((~~you have~~)) the person has been disqualified by the back-

ground check. The notice will be in writing and will include any laws and rules that require disqualification.

(2) If the department sends ((~~you~~)) the person a notice of disqualification, ((~~you~~)) the person will not receive a license, contract, certification, or be authorized to have unsupervised access to individuals with a developmental disability.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-655, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0655, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-660 May ((~~I appeal the department's~~)) a provider appeal DDA's decision to deny ((~~me~~)) a contract or ((~~authorization~~)) payment based on the results of the background check? ((~~(1) No,~~)) A provider or prospective ((~~volunteers, interns, contractors, or those seeking certification do~~)) provider does not have the right to appeal ((~~the department's~~)) DDA's decision to deny ((~~authorization for unsupervised access to individuals with a developmental disability.~~

~~(2) The employer or prospective employer cannot contest the department's decision on your behalf~~)) a contract or payment based on the results of a background check.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-660, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0660, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-670 May ((~~I~~)) a person receive a copy of ((~~my~~)) their criminal background check results? (1) The department will provide ((~~you~~)) a person a copy of ((~~your~~)) their criminal background check results if ((~~you~~)) the person:

(a) ((~~Make the~~)) Submits a written request ((~~in writing~~)) to the department; and

(b) ((~~Offer~~)) Offers proof of identity, such as picture identification.

(2) A copy of ((~~your~~)) a WSP criminal background check ((~~results~~)) result may also be obtained from the Washington state patrol ((~~(~~))according to the Washington State Criminal Records Privacy Act under chapter 10.97 RCW((~~)~~)).

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-670, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056,

43.20A.710. WSR 14-14-029, § 388-825-0670, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 19-04-090, filed 2/5/19, effective 3/8/19)

WAC 388-845-1615 Who may be qualified providers of respite care? Providers of respite care may be any of the following individuals or agencies contracted with the developmental disabilities administration (DDA) for respite care:

(1) Individuals who meet the provider qualifications under chapter 388-825 WAC;

(2) The consumer-directed employer under chapter 388-115 WAC;

(3) Home health agencies licensed under chapter 246-335 WAC, Part 1;

((~~(3)~~)) (4) Homecare agencies licensed under chapter 246-335 WAC, Part 1 and contracted with the area agencies on aging (AAA);

((~~(4)~~)) (5) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes, and foster group care homes;

((~~(5)~~)) (6) Licensed and contracted adult family homes;

((~~(6)~~)) (7) Licensed and contracted adult residential care facilities;

((~~(7)~~)) (8) Licensed and contracted adult residential treatment facilities under chapter 246-337 WAC;

((~~(8)~~)) (9) Licensed child care centers under chapter 110-300((~~A~~)) WAC;

((~~(9)~~)) (10) Licensed child day care centers under chapter 110-300((~~A~~)) WAC;

((~~(10)~~)) (11) Adult day care providers under chapter 388-71 WAC contracted with DDA;

((~~(11)~~)) (12) Certified providers under chapter 388-101 WAC when respite is provided within the DDA contract for certified residential services;

((~~(12)~~)) (13) A licensed practical nurse (LPN) or registered nurse (RN) acting within the scope of the standards of nursing conduct or practice under ((~~chapter~~)) title 246((~~-700~~)) WAC and contracted with DDA to provide this service; or

((~~(13)~~)) (14) Other DDA contracted providers such as a community center, senior center, parks and recreation, and summer programs.

[Statutory Authority: RCW 71A.12.030, 71A.12.120 and 42 C.F.R. 302 (a)(2). WSR 19-04-090, § 388-845-1615, filed 2/5/19, effective 3/8/19. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-1615, filed 6/20/18, effective 7/21/18. Statutory Authority: RCW 71A.12.030. WSR 17-12-011, § 388-845-1615, filed 5/26/17, effective 6/26/17. Statutory Authority: RCW 71A.12.030, 71A.12.120, and 2015 3rd sp.s. c 4. WSR 16-17-003, § 388-845-1615, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1615, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-1615, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-1615, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter

71A.12 RCW. WSR 06-01-024, § 388-845-1615, filed 12/13/05, effective 1/13/06.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-825-073	What is a "state-only funded" service?
WAC 388-825-079	If I am not on a DDD HCBS waiver, can I receive services that are available through the DDD HCBS waivers with state-only funding?
WAC 388-825-081	Can I receive state-only funded services that are not available in a DDA HCBS waiver?
WAC 388-825-325	What are the required skills and abilities for individuals and agencies contracted to provide community first choice services, medicaid personal care, respite care, or attendant care services?
WAC 388-825-395	What are the client's rights if the department denies, terminates, or summarily suspends an individual's contract to provide respite care, attendant care, or personal care?

WSR 23-08-003
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed March 22, 2023, 2:51 p.m., effective April 22, 2023]

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

Purpose: The department of revenue is amending WAC 458-65A-10001 to incorporate the changes under the Revised Uniform Unclaimed Property Act enacted in 2022 legislation, ESSB 5531 (chapter 63, Laws of 2022).

Citation of Rules Affected by this Order: Amending WAC 458-65A-10001.

Statutory Authority for Adoption: RCW 63.30.030.

Adopted under notice filed as WSR 23-01-092 on December 16, 2022.

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 the 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 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 0, Repealed 0.

Date Adopted: March 22, 2023.

Atif Aziz
Rules Coordinator

OTS-4260.2

AMENDATORY SECTION (Amending WSR 18-11-103, filed 5/21/18, effective 6/21/18)

WAC 458-65A-10001 Brief adjudicative proceedings for matters related to penalties and interest imposed under the Revised Uniform Unclaimed Property Act, chapter ((~~63.29~~)) 63.30 RCW. (1) **Introduction.** The department of revenue (department) conducts adjudicative proceedings pursuant to chapter 34.05 Revised Code of Washington (RCW), the Administrative Procedure Act (APA). The department will use a brief adjudicative proceeding as provided in RCW 34.05.482 through 34.05.494 to determine the following issues:

(a) Whether a holder is liable for accrued interest for failure to pay or deliver property to the department ((~~(RCW 63.29.340(1))~~));

(b) Whether a holder is subject to the ((~~ten~~)) 10 percent penalty for failure to timely file a report or pay or deliver any amounts or property due under a report ((~~(RCW 63.29.340(2))~~));

(c) Whether a holder is subject to the ((~~ten~~)) 10 percent penalty for an assessment following an examination, of amounts unpaid or property not delivered ((~~(RCW 63.29.340(3))~~));

(d) Whether a holder is subject to the five percent penalty for failure to timely pay or deliver property due under an assessment ((~~(RCW 63.29.340(4))~~)); and

(e) Whether a holder is subject to the five percent penalty for failing to electronically file a report or pay electronically ((~~(RCW 63.29.340(7))~~)).

((~~(i)~~)) (2) **Waivers.**

(a) For subsection (1)(a) of this rule, interest may be waived for circumstances ((~~beyond the person's control~~)) sufficient for waiver or cancellation of interest under RCW ((~~82.32.105 and WAC 458-20-228(10);~~)) 63.30.690.

((~~(ii)~~)) (b) For subsection (1) (b) through (d) of this rule, penalties may be waived ((~~if the penalty or penalties was the result of circumstances beyond the person's control~~)) for circumstances sufficient for waiver or cancellation of penalties under RCW ((~~82.32.105 and WAC 458-20-228 (9)(a);~~)) 63.30.690.

((~~(iii)~~)) (c) For subsection (1)(e) of this rule, ((~~whether good cause exists to relieve a holder from the electronic filing or payment requirement under RCW 63.29.170(5) and 63.29.190(1). "Good cause" includes, but is not limited to, a circumstance beyond a person's control sufficient for waiver or cancellation of penalties under RCW 82.32.105 and WAC 458-20-228(9)~~)) the department may relieve any holder from the electronic filing requirement for good cause as determined by the department. "Good cause" means:

(i) A circumstance or condition exists that, in the department's judgment, prevents the holder from electronically filing the report due under RCW 63.30.220; or

(ii) The department determines that relief from the electronic filing requirement supports the efficient or effective administration of chapter 63.30 RCW.

((~~(2)~~)) (3) **Multiple penalties.** The assessment of more than one type of penalty against a holder will be determined in a single brief adjudicative proceeding if those penalties were assessed in the same notice of assessment.

((~~(3)~~)) (4) **Holder defined.** Holder, as applied throughout this rule means a person obligated to ((~~report, or to deliver~~)) hold for the account of, or to deliver or pay to, the owner, property that is subject to chapter ((~~63.29~~)) 63.30 RCW, the Revised Uniform Unclaimed Property Act ((~~of 1983~~)).

((~~(4)~~)) (5) **Record in brief adjudicative proceedings.** The record with respect to a holder's petition for review ((~~per~~)) under RCW 34.05.482 through 34.05.485 will consist of:

(a) The holder's unclaimed property report and electronic confirmation of report ((~~(RCW 63.29.170)~~));

(b) Application for penalty and interest waiver ((~~(RCW 63.29.340 and 63.29.191)~~));

(c) Application for refund of property, interest, or penalty ((~~(RCW 63.29.192)~~));

(d) The holder's unclaimed property petition for review ((~~(RCW 63.29.193)~~));

(e) Request for relief from electronic filing and payment requirements ((~~(RCW 63.29.170 (5)(a) and 63.29.190 (1)(a))~~));

(f) Department's letter of denial for refund or return of property ((~~(RCW 63.29.193)~~)), if any; and

(g) All correspondence between the holder and the department regarding the penalty, interest, or refund in question.

((~~(5)~~)) (6) **Conduct of brief adjudicative proceedings.**

(a) If the department assesses penalties and interest under chapter ((~~63.29~~)) 63.30 RCW, it will notify the holder of the penalties and interest in writing and state the reason for the penalties and interest. To initiate a review of the department's assessment of penalties and interest, the holder must file a written petition for review no later than ((~~thirty days after service of the department's written notice that the holder has been assessed penalties and interest. See RCW 63.29.193~~)) 90 days after the holder receives the determination from the administrator pursuant to RCW 63.30.680 or from any extension of the due date granted by the department, or in the case of a refund or return application, 30 days after the department rejects the application in writing, regardless of any subsequent action by the department to reconsider its initial decision. The period for filing a petition for review under this section may be extended upon a written agreement signed by the holder and the department. See RCW 63.30.730.

(b) A form notice of petition for review is available at dor.wa.gov or by calling ((~~1-800-647-7706~~)) 360-534-1502. The completed form must be mailed, emailed, or faxed to the department at:

Mail:
Washington State Department of Revenue
((~~Special Programs,~~)) Unclaimed Property Section
P.O. Box 47477
Olympia, WA 98504-7477
Email: UCP@dor.wa.gov
Fax: 360-534-1498

(c) At the time the petition is filed, the holder must submit to the ((~~special programs,~~)) unclaimed property section, all arguments and any evidence or written material relevant to the matter that the party wishes the presiding officer to consider. No witnesses may offer testimony.

(d) A presiding officer, who will be the unclaimed property ((~~operations~~)) claims and outreach manager of the ((~~special programs division~~)) unclaimed property section or such other person as designated by the director of the department, will conduct brief adjudicative proceedings. The presiding officer for brief adjudicative proceedings will have agency expertise in the subject matter but will not otherwise have participated in the assessment of penalties on the holder.

(e) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis in making a decision.

(f) Within ((~~twenty-one~~)) 21 days of receipt of the holder's petition for review, the presiding officer will enter an initial order, including a brief explanation of the decision per RCW 34.05.485. All orders will be in writing. The initial order will become the department's final order unless a timely petition for review is filed with the department's administrative review and hearings division as provided in subsection ((~~(6)~~)) (7) of this rule.

((~~(6)~~)) (7) **Review of initial orders from brief adjudicative proceeding.**

(a) A holder may request a review by the department of an initial order issued per subsection ((~~(5)~~)) (6) of this rule by filing a written petition for review with the department's administrative review and hearings division within ((~~twenty-one~~)) 21 days of service of the initial order on the holder. See RCW 34.05.488. At the time the petition is filed, the holder must submit to the administrative review and hearings division all arguments and any evidence or written material

relevant to the matter that the party wishes the reviewing officer to consider.

(b) An unclaimed property petition for review of an initial order per subsection ((~~(5)~~)) (6) of this rule is available at dor.wa.gov. ((~~The petition must be sent to one of the following:~~)) The completed petition must be mailed, emailed, or faxed to the department at:

Mail:
Washington State Department of Revenue
Administrative Review and Hearings Division
P.O. Box 47460
6400 Linderson Way S.W.
Olympia, WA 98504-7460
Email: DORARHDadmin@dor.wa.gov
Fax: 360-534-1340

(c) A reviewing officer, who will be either the assistant director of the administrative review and hearings division or such other person as designated by the director, will conduct a brief adjudicative proceeding and determine whether the department's initial order issued per subsection ((~~(5)~~)) (6) of this rule was ((~~correctly~~)) correct based on the criteria set forth in RCW ((~~63.29.340~~)) 63.30.690. The reviewing officer will review the record and, if needed, convert the proceeding to a formal adjudicative proceeding in accordance with subsection ((~~(7)~~)) (8) of this rule.

(d) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer will have the authority of a presiding officer.

(e) The reviewing officer will issue a written order that includes a brief statement of the reasons for the decision, within ((~~twenty~~)) 20 days of the date the petition for review was filed. The order will include a notice that judicial review may be available. The order of the reviewing officer represents the final decision of the department.

(f) A request for review is deemed denied if the department does not issue an order on review within ((~~twenty~~)) 20 days after the petition for review is filed, unless a continuance is issued under subsection ((~~(11)~~)) (12) of this rule. See RCW 34.05.491(5).

((~~(7)~~)) (8) **Conversion of a brief adjudicative proceeding to a formal proceeding.** The presiding officer or reviewing officer may convert the brief adjudicative proceeding to a formal proceeding at any time on motion of the holder, the department, or the presiding or reviewing officer's own motion.

(a) The presiding or reviewing officer will convert the proceeding when it finds that the use of the brief adjudicative proceeding violates any provision of law, the protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the holder and department, or when the issues and interests involved warrant the use of the procedures of RCW 34.05.413 through 34.05.479.

(b) When a proceeding is converted from a brief adjudication to a formal proceeding, the director may become the reviewing officer or may designate a replacement reviewing officer to conduct the formal proceedings upon notice to the holder and the department.

(c) In the conduct of the formal proceedings, WAC 458-20-10002(2) will apply to the proceedings.

((~~(8)~~)) (9) **Court appeal.**

(a) A holder may appeal a final order of the department under Part V, chapter 34.05 RCW, when a review of the initial decision has been requested under subsection ((~~(6)~~)) (7) of this rule and all other administrative remedies have been exhausted. See RCW 34.05.534.

(b) A holder who has already paid or delivered property to the department may appeal directly to the superior court of Thurston County for a refund of such payment or property instead of appealing to the department. See RCW ((~~63.29.194~~)) 63.30.740.

((~~(9)~~)) (10) **Computation of time.** In computing any period of time prescribed by this rule, the day of the act or event after which the designated period is to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays and holidays are excluded in the computation. Service as discussed in subsection ((~~(10)~~)) (11) of this rule is deemed complete upon mailing.

((~~(10)~~)) (11) **Service.** All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the holder, their representatives/agents of record, and the department's representative.

(a) Service is made by one of the following methods:

(i) In person;

(ii) By first-class, registered or certified mail;

(iii) By fax and same-day mailing of copies;

(iv) By commercial parcel delivery company; or

(v) By electronic delivery.

(b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.

(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(e) Service by electronic delivery is regarded as completed on the date that the department electronically sends the information to the parties or electronically notifies the parties that the information is available to be accessed by them.

(f) Service to a holder and to their representative/agent of record must be to the address(es) shown on the petition for review.

(g) Service to the department's representative ((~~and to the presiding officer~~)) must be to the ((~~special programs division~~)) unclaimed property section at the address shown in subsection ((~~(5)~~)) (6) of this rule.

(h) Service to the reviewing officer must be to the administrative review and hearings division at the address shown in subsection ((~~(6)~~)) (7) of this rule.

(i) Where proof of service is required, the proof of service must include a certificate, signed by the person who served the document(s), stating the date of service; that the person did serve the document(s) upon all or one or more of the parties of record in the proceeding by delivering a copy to (names); and that the service was accomplished by a method of service as provided in this subsection.

(j) Failure to serve documents on all parties of record in the proceeding in a manner prescribed by this subsection will result in an unlawful ex parte contact. An ex parte contact cannot constitute evi-

dence of any fact at issue in the matter unless the party complies with RCW 34.05.455(5).

((~~(11)~~)) (12) **Continuance.** The presiding officer or reviewing officer may ((~~grant a request for a continuance~~)) extend any filing deadline or move the date of any hearing by motion of the holder, the department, or on its own motion.

[Statutory Authority: RCW 63.29.370. WSR 18-11-103, § 458-65A-10001, filed 5/21/18, effective 6/21/18.]

WSR 23-08-009
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed March 23, 2023, 7:54 a.m., effective April 23, 2023]

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

Purpose: The agency amended this rule to remove subsection (4)(e) to be less restrictive for providers using removable appliances as part of orthodontic treatment. The agency also removed "with alveolar process involvement" from subsection (1)(a) to eliminate limiting clients who have a cleft lip to shoe [those] with an alveolar process involvement.

Citation of Rules Affected by this Order: Amending WAC 182-535A-0040.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-05-079 on February 14, 2023.

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 the 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 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: March 23, 2023.

Wendy Barcus
Rules Coordinator

OTS-4305.1

AMENDATORY SECTION (Amending WSR 21-18-006, filed 8/18/21, effective 1/1/22)

WAC 182-535A-0040 Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage. Orthodontic treatment and orthodontic-related services require prior authorization.

(1) The medicaid agency covers orthodontic treatment and orthodontic-related services for a client who has one of the medical conditions listed in (a) and (b) of this subsection. Treatment and follow-up care must be performed only by an orthodontist or agency-recognized craniofacial team.

(a) Cleft lip and palate, cleft palate, or cleft lip ((~~with alveolar process involvement~~)).

(b) The following craniofacial anomalies including, but not limited to:

(i) Hemifacial microsomia;

(ii) Craniosynostosis syndromes;

(iii) Cleidocranial dental dysplasia;
(iv) Arthrogryposis;
(v) Marfan syndrome;
(vi) Treacher Collins syndrome;
(vii) Ectodermal dysplasia; or
(viii) Achondroplasia.

(2) The agency authorizes orthodontic treatment and orthodontic-related services when the following criteria are met:

(a) Severe malocclusions with a Washington Modified Handicapping Labiolingual Deviation (HLD) Index Score of ((~~twenty-five~~)) 25 or higher as determined by the agency;

(b) The client has established caries control; and

(c) The client has established plaque control.

(3) The agency covers orthodontic treatment for dental malocclusions other than those listed in subsections (1) and (2) of this section on a case-by-case basis when the agency determines medical necessity based on documentation submitted by the provider.

(4) The agency does not cover the following orthodontic treatment or orthodontic-related services:

(a) Orthodontic treatment for cosmetic purposes;

(b) Orthodontic treatment that is not medically necessary;

(c) Orthodontic treatment provided out-of-state, except as stated in WAC 182-501-0180 (see also WAC 182-501-0175 for medical care provided in bordering cities); or

(d) Orthodontic treatment and orthodontic-related services that do not meet the requirements of this section or other applicable WAC((~~; or~~

~~(e) Removable appliances as part of limited or comprehensive orthodontic treatment~~)).

(5) The agency covers the following orthodontic treatment and orthodontic-related services:

(a) Limited orthodontic treatment.

(b) Comprehensive full orthodontic treatment on adolescent dentition.

(c) A case study when done in conjunction with limited or comprehensive orthodontic treatment only.

(d) Other orthodontic treatment subject to review for medical necessity as determined by the agency.

(6) The agency covers the following orthodontic-related services:

(a) Clinical oral evaluations according to WAC 182-535-1080.

(b) Cephalometric films that are of diagnostic quality, dated, and labeled with the client's name.

(c) Orthodontic appliance removal as a stand-alone service only when:

(i) The client's appliance was placed by a different provider or dental clinic; and

(ii) The provider has not furnished any other orthodontic treatment or orthodontic-related services to the client.

(7) The treatment must meet industry standards and correct the medical issue. If treatment is discontinued prior to completion, or treatment objectives are not achieved, the provider must:

(a) Document in the client's record why treatment was discontinued or not completed, or why treatment goals were not achieved.

(b) Notify the agency by submitting the Orthodontic Discontinuation of Service form (HCA 13-0039).

(8) The agency evaluates a request for orthodontic treatment or orthodontic-related services:

(a) That are in excess of the limitations or restrictions listed in this section, according to WAC 182-501-0169; and

(b) That are listed as noncovered according to WAC 182-501-0160.

(9) The agency reviews requests for orthodontic treatment or orthodontic-related services for clients who are eligible for services under the EPSDT program according to the provisions of WAC 182-534-0100.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-18-006, § 182-535A-0040, filed 8/18/21, effective 1/1/22; WSR 20-03-042, § 182-535A-0040, filed 1/8/20, effective 2/8/20; WSR 19-11-028, § 182-535A-0040, filed 5/7/19, effective 7/1/19; WSR 17-20-097, § 182-535A-0040, filed 10/3/17, effective 11/3/17; WSR 16-10-064, § 182-535A-0040, filed 5/2/16, effective 6/2/16. Statutory Authority: RCW 41.05.021 and 2013 2nd sp.s. c 4 § 213. WSR 14-08-032, § 182-535A-0040, filed 3/25/14, effective 4/30/14. WSR 11-14-075, recodified as § 182-535A-0040, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 08-17-009, § 388-535A-0040, filed 8/7/08, effective 9/7/08. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 06-24-036, § 388-535A-0040, filed 11/30/06, effective 1/1/07. Statutory Authority: RCW 74.08.090, 74.09.520 and 74.09.035, 74.09.500. WSR 05-01-064, § 388-535A-0040, filed 12/8/04, effective 1/8/05. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520, 74.09.500, 42 U.S.C. 1396d(a), C.F.R. 440.100 and 225. WSR 02-01-050, § 388-535A-0040, filed 12/11/01, effective 1/11/02.]

WSR 23-08-032
PERMANENT RULES
TRANSPORTATION IMPROVEMENT BOARD
[Filed March 28, 2023, 3:08 p.m., effective April 28, 2023]

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

Purpose: The proposal is to update program changes that may include, but are not limited to: Updating and clarifying eligibility criteria, making technical corrections to ensure consistency within existing programs, updating definitions and policies to be consistent with changes in federal and state laws, and deleting obsolete program criteria.

Citation of Rules Affected by this Order: New WAC 479-06-095.

Statutory Authority for Adoption: Chapter 47.26 RCW.

Adopted under notice filed as WSR 23-05-013 on February 3, 2023.

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 the 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 6, 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: March 24, 2023.

Ashley Probart
Executive Director

OTS-4335.1

AMENDATORY SECTION (Amending WSR 13-20-087, filed 9/30/13, effective 10/31/13)

WAC 479-01-060 Executive director—Powers and duties. The board appoints an executive director who will serve at its pleasure to carry out the board priorities and the mission of the agency including the following administrative duties:

(1) The executive director will direct and supervise all day-to-day activities of the staff.

(2) The executive director is the appointing authority of the staff and may authorize subordinates to act in the executive director's place to carry out administrative duties.

(3) The executive director has sidewalk deviation authority as described in WAC 479-14-200.

(4) The executive director has administrative increase authority for projects up to the following levels:

(a) Urban program - Fifteen percent of project costs or ((~~seven hundred fifty thousand dollars~~)) $750,000 whichever is less.

(b) Small city arterial program - ((~~Up to one hundred twenty-five thousand dollars~~)) Fifteen percent of project costs or $125,000, whichever is greater.

(c) City hardship assistance program - Up to ((~~seventy-five thousand dollars~~)) $75,000.

(d) ((~~Sidewalk program - Up to fifty thousand dollars.~~)) Active transportation program - Fifteen percent of project costs or $50,000, whichever is greater.

(e) Small city preservation program - Up to ((~~two hundred thousand dollars~~)) $200,000 within available funding limitations.

(f) Arterial preservation program – Up to ((~~fifteen~~)) 15 percent of original TIB grant.

(g) Small city federal match within the limits set by the board in accordance with WAC 479-14-215.

(5) The director may authorize small city preservation projects between regularly scheduled call for projects up to $200,000 within available funding limits.

[Statutory Authority: Chapter 47.26 RCW. WSR 13-20-087, § 479-01-060, filed 9/30/13, effective 10/31/13; WSR 12-08-060, § 479-01-060, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-01-060, filed 8/30/07, effective 9/30/07.]

OTS-4336.1

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

WAC 479-02-070 Requests for public records. Public records requests should be sent to the public records officer at the office location using the following procedures:

(1) To ensure accuracy, any requests for public records should be made in writing and may be mailed((~~,~~)) or emailed((~~, faxed, or delivered to the office during business hours~~)).

(2) For prompt response, the following information should be provided in the request:

(a) The name of the person requesting the record;

(b) The date on which the request is made;

(c) A specific description of the material requested;

(d) A verification that the records requested will not be used to compile a sales list or used for commercial gain;

(e) Instructions as to whether the requestor wants to view the document at the TIB offices, receive a copy by mail, or receive an electronic copy if available.

(3) TIB's public records request form is available on the website.

[Statutory Authority: Chapter 47.26 RCW. WSR 07-18-050, § 479-02-070, filed 8/30/07, effective 9/30/07; WSR 95-04-072, § 479-02-070, filed 1/30/95, effective 3/2/95; WSR 91-13-056, § 479-02-070, filed 6/17/91, effective 7/18/91.]

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

WAC 479-02-080 Availability. Public records will be available for inspection and copying by appointment during the normal business hours of TIB. Normal office hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday, except state holidays.

[Statutory Authority: Chapter 47.26 RCW. WSR 07-18-050, § 479-02-080, filed 8/30/07, effective 9/30/07; WSR 91-13-056, § 479-02-080, filed 6/17/91, effective 7/18/91.]

OTS-4337.1

AMENDATORY SECTION (Amending WSR 18-08-068, filed 4/2/18, effective 5/3/18)

WAC 479-05-012 ((~~Emergent nature~~)) Out of call projects submission and limitations. An eligible agency may request the transportation improvement board to consider a project for funding outside of the normal call for projects. To be considered as emergent nature, a project must demonstrate one or more of the following:

(1) There has been a significant change in the location or development of traffic generators in the area of the project.

(2) The work proposed is necessary to avoid or reduce serious traffic congestion in the area of the project in the near future.

(3) A partially funded project that, if completed, would enable a community to secure an unanticipated economic development opportunity.

(4) Other funding sources the local agency has applied for or secured for the project.

(5) The project request is a result of a federal, state, or locally declared emergency and must be funded prior to the normal call for projects.

(6) A project that is cost-effective and must be funded prior to the scheduled call for projects.

In meeting one or more of the criteria, the project request may not adversely impact currently funded projects. The agency may be asked to make a presentation to the board on the project.

[Statutory Authority: Chapter 47.26 RCW. WSR 18-08-068, § 479-05-012, filed 4/2/18, effective 5/3/18; WSR 07-18-050, § 479-05-012, filed 8/30/07, effective 9/30/07.]

AMENDATORY SECTION (Amending WSR 15-22-052, filed 10/29/15, effective 11/29/15)

WAC 479-05-020 Six-year transportation plan. Projects selected in the priority array must be included in the local agency's six-year transportation plan prior to receiving authorization to proceed on the project.

Preservation projects identified through pavement condition ratings are not required to appear in the local agency's six-year transportation plan.

Complete streets projects that are operational in nature are not required to appear in the local agency's six-year transportation plan.

[Statutory Authority: Chapter 47.26 RCW. WSR 15-22-052, § 479-05-020, filed 10/29/15, effective 11/29/15; WSR 12-08-060, § 479-05-020, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-05-020, filed 8/30/07, effective 9/30/07. Statutory Authority: Chapters 47.26 and 47.66 RCW. WSR 99-24-038, § 479-05-020, filed 11/23/99, effective 12/24/99.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-05-030 A registered professional engineer must be in charge. (1) All projects using ((~~TIA~~)) transportation improvement board funds will be supervised by a professional engineer registered in the state of Washington.

(2) The executive director may waive a supervised professional engineer requirement for low-cost preventative preservation and maintenance projects and complete streets transportation projects.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-05-030, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-05-030, filed 8/30/07, effective 9/30/07. Statutory Authority: Chapters 47.26 and 47.66 RCW. WSR 99-24-038, § 479-05-030, filed 11/23/99, effective 12/24/99.]

AMENDATORY SECTION (Amending WSR 22-07-023, filed 3/9/22, effective 4/9/22)

WAC 479-05-035 Qualifications for small city projects administered by another agency. A local agency that has a small city arterial program project, small city preservation project, complete streets project, or active transportation project, may elect to have, or the executive director may require, the project to be administered by another city, a county, state department of transportation, or state transportation improvement board when:

(1) The local agency does not have certification acceptance from the state department of transportation per the Washington state department of transportation local agency guidelines manual, chapter 13; or

(2) The executive director determines that the local agency has insufficient capacity to directly administer transportation projects.

[Statutory Authority: Chapter 47.26 RCW. WSR 22-07-023, § 479-05-035, filed 3/9/22, effective 4/9/22; WSR 15-22-052, § 479-05-035, filed 10/29/15, effective 11/29/15; WSR 12-08-060, § 479-05-035, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-05-040 Value engineering study requirements. The executive director ((~~will~~)) may determine whether a value engineering study is required based on project risk factors summarized below. The agency will be notified if a value engineering study is required during the design process and must complete the study prior to authorization to bid.

(1) Significant project complexity;
(2) Significant structures;
(3) Significant right of way;
(4) Multiple alignment options;
(5) Environmentally sensitive areas;
(6) Complex interagency involvement.

The value engineering study is completed when the local agency submits the recommendation report to TIB. TIB may consider what recommendations are accepted or rejected when evaluating any funding increase or scope change request.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-05-040, filed 4/3/12, effective 5/4/12. Statutory Authority: Chapters 47.26 and 47.66 RCW. WSR 08-10-012, § 479-05-040, filed 4/24/08, effective 5/25/08. Statutory Authority: Chapter 47.26 RCW. WSR 07-18-050, § 479-05-040, filed 8/30/07, effective 9/30/07. Statutory Authority: Chapters 47.26 and 47.66 RCW. WSR 99-24-038, § 479-05-040, filed 11/23/99, effective 12/24/99.]

AMENDATORY SECTION (Amending WSR 22-07-023, filed 3/9/22, effective 4/9/22)

WAC 479-05-051 Project phases. Projects authorized by the board are divided into the following phases:

(1) Design phase – Documents that must be received prior to phase approval include:

(a) Signed funding status form confirming that the funding partners are fully committed;

(b) Page from the adopted six-year transportation plan which lists the project;

(c) Signed fuel tax agreement;

(d) Consultant agreement ((~~(~~)) when a small city ((~~arterial and small city active transportation programs only)~~)) contracts with an engineering firm or consultant to administer a transportation improvement board project on behalf of the small city.

(2) Bid advertisement phase – Documents that must be received prior to phase approval include:

(a) Signed bid authorization form that contains:

(i) Plans and specification package;

(ii) Written confirmation of funding partners; and

(iii) Confirmation that full funding is available for the project;

(b) Signed confirmation that right of way is acquired or possession and use agreement is in place;

(c) Engineer's estimate is in final format;

(d) Consultant agreement ((~~(~~)) when a small city ((~~arterial and small city active transportation programs only)~~)) contracts with an engineering firm or consultant to administer a transportation improvement board project on behalf of the small city;

(e) Certification that a cultural resource assessment was completed;

(f) Traffic signal warrants.

(3) Construction phase – Documents that must be received prior to phase approval include:

(a) Updated cost estimate form signed by a local agency official and the project engineer;

(b) Bid tabulations; and

(c) Description of cost changes.

(4) Project closeout phase – Documents that must be received prior to phase approval include:

(a) Updated cost estimate form signed by a local agency official and the project engineer;

(b) Final summary of quantities; and

(c) Accounting history signed by a local agency official or the financial manager.

(5) A manually signed copy of a contract or any amendments, statement of work or other transaction documents delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy.

(6) An electronic signature shall have the same force and effect as a manual signature on all agreements, forms, and other documents submitted in support of a project under this chapter. For purposes of this section, an "electronic signature" has the same meaning as in RCW 1.80.010(10).

[Statutory Authority: Chapter 47.26 RCW. WSR 22-07-023, § 479-05-051, filed 3/9/22, effective 4/9/22; WSR 12-08-060, § 479-05-051, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-05-051, filed 8/30/07, effective 9/30/07.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-05-060 Methods of construction. All construction using ((~~TIA~~)) transportation improvement board funds shall be advertised, competitively bid and contracted, except:

(1) Utility and railroad relocations and adjustments;

(2) Government force work;

(3) Work eligible from the small works roster; and

(4) Local agencies may be otherwise exempt from bidding requirements if so authorized by an applicable statute contained in chapter 36.77, 35.22, 35.23, or 35.27 RCW.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-05-060, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-05-060, filed 8/30/07, effective 9/30/07. Statutory Authority: Chapters 47.26 and 47.66 RCW. WSR 99-24-038, § 479-05-060, filed 11/23/99, effective 12/24/99.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-05-080 Standard specifications. The current edition of *the Standard Specifications for Road, Bridge, and Municipal Construction* ((~~or equivalent,~~)) will be used as the standard for design and construction of board funded projects.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-05-080, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-05-080, filed 8/30/07, effective 9/30/07. Statutory Authority: Chapters 47.26 and 47.66 RCW. WSR 99-24-038, § 479-05-080, filed 11/23/99, effective 12/24/99.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-05-100 Utility adjustments or relocations. Utility adjustments or relocations may be reimbursed using the following criteria:

(1) If it is a direct cost for utility adjustments that are owned by the local government;

(2) If the utility provider owns the property in fee title; or

(3) If the utility franchise agreement requires the local agency to pay for those utility adjustments or relocations required by state or local government.

Upgrading of utilities is not eligible for reimbursement by ((~~TIA~~)) transportation improvement board funds.

If the proposed work will cause a significant change in scope, the agency must seek board approval.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-05-100, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-05-100, filed 8/30/07, effective 9/30/07. Statutory Authority: Chapters 47.26 and 47.66 RCW. WSR 99-24-038, § 479-05-100, filed 11/23/99, effective 12/24/99.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-05-120 Street illumination and traffic control devices. Traffic control devices for an approved project may be purchased and installed under RCW 35.22.620(3), 35.23.352(1), and 36.77.065(3) by:

(1) The contractor for the construction phase of the project; or

(2) Local agency employees.

((~~TIA~~)) Transportation improvement board funds may be used in the costs to underground service connections for street illumination and traffic signal services within the approved project scope.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-05-120, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-05-120, filed 8/30/07, effective 9/30/07. Statutory Authority: Chapters 47.26 and

47.66 RCW. WSR 99-24-038, § 479-05-120, filed 11/23/99, effective 12/24/99.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-05-130 Project landscaping and aesthetic improvements. Cost of landscaping and aesthetic improvements is limited to five percent of the total eligible construction contract amount.

(1) Landscaping includes:

(a) Cost of trees, shrubs, sod, and other plant material.

(b) Top soil and bark.

(c) Irrigation and tree grates.

(d) Labor for installation.

(2) Aesthetic improvement includes:

(a) Ornamental lighting.

(b) The local agency share of the cost of undergrounding of utilities.

(c) Public art.

(d) Special surfacing treatments (stamped concrete, pavers).

(e) Labor for installation.

(3) Items not considered landscaping or aesthetic improvements are:

(a) Erosion control treatments.

(b) Wetland mitigation (plantings) required by federal or state regulations.

(c) Property restoration.

(d) Landscaping integral to safety performance of active transportation separation/buffers.

(e) Landscaping and aesthetic improvements (except cost of undergrounding utilities) when the project is located within zoned or planned central business center/district.

(f) Landscaping contributing to speed management treatments (such as, but not limited to: Traffic circles, chicanes, lane shifts, median refuge areas, or added vertical friction to induce slower speed selection, etc.).

Requests for increases in landscaping and related costs are subject to WAC 479-05-201, 479-05-202, and 479-05-203. Landscaping costs in excess of the five percent limit may be paid for by funding sources other than TIB funds.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-05-130, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-05-130, filed 8/30/07, effective 9/30/07. Statutory Authority: Chapters 47.26 and 47.66 RCW. WSR 99-24-038, § 479-05-130, filed 11/23/99, effective 12/24/99.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-05-131 Mitigation costs and limitations. Mitigation costs may include:

(1) Sound walls/berms: Unless required by specific regulations, TIB will not participate in this cost.

(2) Superfund sites: TIB funds will not participate in the cost of cleanup.

(3) Bridges: Bridge designs exceeding the most cost effective are not eligible for participation.

(4) Wetlands: Mitigation in excess of what is required by federal or state requirements is not eligible to be reimbursed.

((~~TIA~~)) (5) Stormwater treatment: Treatment in excess of what is required by federal or state requirements is not eligible to be reimbursed.

Transportation improvement board funds may not be used for excessive design, mitigation beyond federal or state requirements, or other unusual project features.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-05-131, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-05-131, filed 8/30/07, effective 9/30/07.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-05-140 Acquisition of rights of way. Right of way for board funded projects shall be acquired in accordance with chapters 8.26 RCW and 468-100 WAC. Reimbursement of right of way acquisition costs are eligible within the design phase of the project.

At bid advertisement phase, right of way acquisitions should be completed and certified. If all right of way cannot be certified, the local agency must have possession and use agreements for the remaining parcels.

If under any circumstances right of way purchased with board funds is subsequently sold or transferred to a nontransportation purpose, the proceeds of the sale or equivalent value shall be placed in the local agency's appropriate transportation fund and expended solely for street or road improvement purposes.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-05-140, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-05-140, filed 8/30/07, effective 9/30/07. Statutory Authority: Chapters 47.26 and 47.66 RCW. WSR 99-24-038, § 479-05-140, filed 11/23/99, effective 12/24/99.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-05-170 Reimbursement of engineering costs. Design and construction engineering costs eligible for reimbursement are limited to ((~~thirty~~)) 30 percent, or ((~~twenty~~)) 20 percent if funded as construction ready, of the approved contract bid amount((~~, plus costs designated as construction other~~)).

Surveying and materials testing costs, even if they are part of the contract costs, are considered part of construction engineering and are subject to the ((~~thirty~~)) 30 percent limit or ((~~twenty~~)) 20

percent limit if funded as construction ready. Exceptions to the ((~~thirty~~)) 30 percent engineering limit, or ((~~twenty~~)) 20 percent engineering limit if funded as construction ready, may be considered for small city projects when an unforeseen issue arises that is beyond the control of the local agency. The local agency may request an increase through WAC 479-05-202 processes.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-05-170, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-05-170, filed 8/30/07, effective 9/30/07. Statutory Authority: Chapters 47.26 and 47.66 RCW. WSR 99-24-038, § 479-05-170, filed 11/23/99, effective 12/24/99.]

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

WAC 479-05-201 When an agency may request an increase in TIB funds. Local agencies may request an increase in funds at ((~~the bid,~~)) or during the construction phase, and project closeout ((~~phases~~)).

[Statutory Authority: Chapter 47.26 RCW. WSR 07-18-050, § 479-05-201, filed 8/30/07, effective 9/30/07.]

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

WAC 479-05-202 How an agency requests an increase in TIB funds. Increases in TIB funds may be requested by the lead local agency and submitted to TIB staff through the ((~~bid authorization form or~~)) updated cost estimate form or change order form.

The executive director will consider increase requests up to the levels in WAC 479-01-060.

Increase requests above the executive director administrative authority require board action. The local agency may be asked to prepare and make a presentation to the board justifying the increase.

[Statutory Authority: Chapter 47.26 RCW. WSR 07-18-050, § 479-05-202, filed 8/30/07, effective 9/30/07.]

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

WAC 479-05-203 Criteria the board and the executive director use when reviewing increase requests. The board and executive director will consider the following when reviewing increase requests:

(1) Whether the granting of the request will obligate funding beyond an acceptable level or will adversely affect authorized funds previously approved by the board.

(2) Whether the request would fund expansion of the scope of work beyond that approved at design phase.

(3) Whether the local agency should have anticipated an increase would be necessary at the outset of the project.

(4) Requests for increases at construction approval phase will take priority over other phase requests.

(5) Local agency funding partner ability to contribute to the increased costs.

(6) Other criteria on a case-by-case basis.

[Statutory Authority: Chapter 47.26 RCW. WSR 07-18-050, § 479-05-203, filed 8/30/07, effective 9/30/07.]

OTS-4338.1

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

WAC 479-06-010 Transportation improvement board ((~~sixteen~~)) 10-year financial plan. The board will update its ((~~sixteen~~)) 10-year financial plan at the beginning of each fiscal year. The financial plan will include estimated revenue to be available for new project starts in the ensuing biennium based on forecast council's revenue forecast. Other factors included are fund balance, bond debt, interest revenue, legislative appropriation, projected expenditures by program, and any other issues that may impact new project starts.

[Statutory Authority: Chapter 47.26 RCW. WSR 07-18-050, § 479-06-010, filed 8/30/07, effective 9/30/07.]

NEW SECTION

WAC 479-06-095 Ineligibility of an agency. (1) The board may determine an agency is ineligible to apply for future project applications if there is a finding an agency has withdrawn or canceled a grant award and has spent transportation improvement board funds.

(2) The board may determine the number of grant award cycles before reinstating agency eligibility.

[]

OTS-4339.1

AMENDATORY SECTION (Amending WSR 13-20-087, filed 9/30/13, effective 10/31/13)

WAC 479-10-011 Small city pavement preservation and sidewalk account additional uses. If available, funds from the small city pavement preservation and sidewalk account may be provided to small cities

to match federal funding provided for local government federal aid of transportation((~~, on a first come/first served basis~~)).

[Statutory Authority: Chapter 47.26 RCW. WSR 13-20-087, § 479-10-011, filed 9/30/13, effective 10/31/13; WSR 10-14-027, § 479-10-011, filed 6/28/10, effective 7/29/10; WSR 08-21-005, § 479-10-011, filed 10/2/08, effective 11/2/08.]

AMENDATORY SECTION (Amending WSR 08-21-005, filed 10/2/08, effective 11/2/08)

WAC 479-10-122 Qualification for the small city preservation program—Pavement condition ratings. To qualify for funding in the current program year, a city's pavement condition rating must be less than four years old on or by the application date.

For the cities' convenience, TIB staff will conduct all pavement condition ratings on a rotational basis every four years. ((~~If the city maintains their own pavement condition rating, the methods used for scoring must comply with TIB's methodology. If scores submitted by the city are substantially different than the TIB pavement scores, the difference will be resolved through an on-site review coordinated between TIB and city staff.~~))

[Statutory Authority: Chapter 47.26 RCW. WSR 08-21-005, § 479-10-122, filed 10/2/08, effective 11/2/08.]

AMENDATORY SECTION (Amending WSR 08-21-005, filed 10/2/08, effective 11/2/08)

WAC 479-10-150 Project phases for the small city preservation program. Small city preservation program projects will have three phases. Each phase will require specific documentation as described below and each phase must be approved before the applicant agency is eligible to receive the related funding:

(1) Application phase - The city shall submit an application form as well as documentation showing route and treatment plan.

(2) Design and construction phase - TIB will provide documents for the city to sign and return. The city must submit the following agreements where utilized:

(a) Fuel tax agreement ((~~(except if services are provided by WSDOT)~~)).

(b) Rights of entry agreement (if applicable).

(c) Consultant agreement (if applicable).

((~~If pavement services will be provided through WSDOT, TIB will maintain the task order agreement and subsequent amendments.~~))

(3) Project closeout phase - All necessary project cost documentation must be received prior to final payment.

[Statutory Authority: Chapter 47.26 RCW. WSR 08-21-005, § 479-10-150, filed 10/2/08, effective 11/2/08.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-10-170 Small city federal match funding eligibility and application. Cities may request federal matching funds for projects that meet TIB eligibility requirements for small city preservation program funding as described in WAC 479-10-120 and 479-10-121. A TIB funding application form must be submitted to apply for match funding.

((~~The executive director may award match funding on a first-come, first-served basis to the limit established in WAC 479-14-215 or otherwise set by the board.~~))

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-10-170, filed 4/3/12, effective 5/4/12; WSR 10-14-027, § 479-10-170, filed 6/28/10, effective 7/29/10.]

AMENDATORY SECTION (Amending WSR 13-20-087, filed 9/30/13, effective 10/31/13)

WAC 479-10-300 Intent of the arterial preservation program. The intent of the arterial preservation program is to aid urban cities with low assessed property valuation to preserve arterial pavement.

[Statutory Authority: Chapter 47.26 RCW. WSR 13-20-087, § 479-10-300, filed 9/30/13, effective 10/31/13.]

AMENDATORY SECTION (Amending WSR 13-20-087, filed 9/30/13, effective 10/31/13)

WAC 479-10-320 Projects eligible for arterial preservation program funds. Eligible roadway projects are:

(1) ((~~Improvements~~)) Preservation on city-owned federally classified ((~~arterials~~)) routes; or

(2) City-owned federal arterial functional classification projects within cities qualifying for urban designation upon the next federal census((~~; and~~

~~(3) City-owned urban streets, not functionally classified at the time of award, but meeting federal functional classification prior to approval to expend board funds~~)).

[Statutory Authority: Chapter 47.26 RCW. WSR 13-20-087, § 479-10-320, filed 9/30/13, effective 10/31/13.]

OTS-4340.2

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-111 Who is eligible to receive urban program funding. Eligible agencies are:

(1) Counties that have an urban area; and

(2) Incorporated cities with a population of ((~~five thousand~~)) 5,000 or more. For the purposes of determining population, cities may include the population of any state correctional facility located within the city. Agencies exceeding population of ((~~five thousand~~)) 5,000 are eligible pending designation as a federal urban area following the next federal census((~~; and~~

~~(3) Transportation benefit districts~~)).

Generally, the eligible agency will be designated as the project lead. However, the executive director may designate another agency as lead in the best interest of project completion or for convenience to both parties.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-14-111, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-14-111, filed 8/30/07, effective 9/30/07.]

AMENDATORY SECTION (Amending WSR 18-08-068, filed 4/2/18, effective 5/3/18)

WAC 479-14-121 What projects are eligible for urban program funding. Eligible projects are:

(1) Improvements on federally classified ((~~arterials~~)) routes;

(2) Within a city qualifying for urban designation upon the next federal census ((~~as long as the project carries a federal arterial functional classification~~)); or

(3) Within the urban ((~~growth~~)) area in counties.

((~~Any urban street that is not functionally classified at the time of award must obtain federal functional classification prior to approval to expend board funds.~~))

Sidewalks with five feet minimum clear width are required on both sides of the arterial unless a deviation is granted under WAC 479-14-200.

[Statutory Authority: Chapter 47.26 RCW. WSR 18-08-068, § 479-14-121, filed 4/2/18, effective 5/3/18; WSR 12-08-060, § 479-14-121, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-14-121, filed 8/30/07, effective 9/30/07.]

AMENDATORY SECTION (Amending WSR 22-07-023, filed 3/9/22, effective 4/9/22)

WAC 479-14-131 Award criteria for the urban program. The board establishes the following criteria for use in evaluating urban program grant applications:

(1) Mobility improvements - Includes system connectivity, improves flow of vehicles and freight, and extends or completes corridor for network connections.

(2) Physical condition - Includes pavement, structural, and geometric design features of the arterial.

(3) Growth and development improvements - Provides or improves access to urban centers, economic development, supports annexation agreements, and increases residential density.

(4) Safety improvements - Addresses crash or severity reduction, ((~~elimination~~)) reduction of roadway hazards, ((~~corrects~~)) reduction of roadway deficiencies, and eliminates or reduces railroad at-grade crossing hazards.

(5) Sustainability - Improves mode accessibility, reduces or eliminates water detention, supports native vegetation, and encourages energy reduction technology and use of recycled materials, or increases the lifecycle of the facility.

(6) Constructability - Demonstrates a strong likelihood to achieve full funding, obtain permits, acquire right of way, and reach construction within the timelines established in WAC 479-05-211.

[Statutory Authority: Chapter 47.26 RCW. WSR 22-07-023, § 479-14-131, filed 3/9/22, effective 4/9/22; WSR 12-08-060, § 479-14-131, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-14-131, filed 8/30/07, effective 9/30/07.]

AMENDATORY SECTION (Amending WSR 15-22-052, filed 10/29/15, effective 11/29/15)

WAC 479-14-225 What is not eligible on state highways under the small city ((~~arterial~~)) preservation program? State highways in small cities are not eligible for preservation projects inside the curb face.

[Statutory Authority: Chapter 47.26 RCW. WSR 15-22-052, § 479-14-225, filed 10/29/15, effective 11/29/15.]

AMENDATORY SECTION (Amending WSR 15-22-052, filed 10/29/15, effective 11/29/15)

WAC 479-14-231 Award criteria for the small city arterial program. The board establishes the following criteria for use in evaluating small city arterial program grant applications:

((~~(1) Condition of surface;~~
~~(2) Stability of subsurface base structure;~~
~~(3) Condition of subsurface utilities;~~
~~(4) Accessibility;~~
~~(5) Leveraging of funding sources;~~
~~(6) Elimination of hazards;~~
~~(7) Continuity of improved street segments including sidewalk;~~
~~(8) Community needs;~~
~~(9) Sustainable design;~~
~~(10) Efficient project implementation.~~))

(1) Economic vitality - Improves central business district, considering all users.

(2) Physical condition - Includes pavement, structural, and geometric design features of the arterial.

(3) Safety improvements - Addresses crash or severity reduction, reduction of roadway hazards, reduction of roadway deficiencies, and eliminates or reduces railroad at-grade crossing hazards.

(4) Sustainability - Improves mode accessibility, reduces or eliminates water detention, supports native vegetation, and encourages energy reduction technology and use of recycled materials or increases the lifecycle of the facility.

(5) Constructability - Demonstrates a strong likelihood to achieve full funding, obtain permits, acquire right of way, and reach construction within the timelines established in WAC 479-05-211.

[Statutory Authority: Chapter 47.26 RCW. WSR 15-22-052, § 479-14-231, filed 10/29/15, effective 11/29/15; WSR 12-08-060, § 479-14-231, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 22-07-023, filed 3/9/22, effective 4/9/22)

WAC 479-14-411 Who is eligible to receive active transportation program funding. Each of the subprograms has separate criteria for agency eligibility as follows:

(1) Urban active transportation program agency eligibility:

(a) Incorporated cities with a population of 5,000 and over.

(b) ((~~Incorporated cities with a population less than 5,000 which are located within a federally designated urban area.~~

~~(c)~~)) Counties with a federally designated urban area.

(2) Small city active transportation program agency eligibility: Incorporated cities with a population under 5,000.

[Statutory Authority: Chapter 47.26 RCW. WSR 22-07-023, § 479-14-411, filed 3/9/22, effective 4/9/22; WSR 12-08-060, § 479-14-411, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 22-07-023, filed 3/9/22, effective 4/9/22)

WAC 479-14-421 What projects are eligible for active transportation program funding. Minimum project requirements for each subprogram are as follows:

(1) Urban active transportation program project eligibility:

(a) Must be on or related to a ((~~functionally~~)) federally classified route; and

(b) Primary purpose of the project is transportation and not recreation.

(2) Small city active transportation program project eligibility:

(a) The project must be located on or related to a street within the TIB designated arterial system; and

(b) Primary purpose of the project is transportation and not recreation.

For both of the subprograms, TIB does not participate in the cost for right of way acquisitions.

[Statutory Authority: Chapter 47.26 RCW. WSR 22-07-023, § 479-14-421, filed 3/9/22, effective 4/9/22; WSR 13-24-092, § 479-14-421, filed 12/3/13, effective 1/3/14; WSR 12-08-060, § 479-14-421, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 22-07-023, filed 3/9/22, effective 4/9/22)

WAC 479-14-431 Award criteria for the active transportation program. The board establishes the following criteria for use in evaluating ((~~sidewalk~~)) active transportation program grant applications for both urban and small city active transportation projects:

(1) Safety improvement - Projects that address hazard mitigation and crash reduction.

(2) Mobility access - Projects that improve or provide access to facilities including, but not limited to:

(a) Schools;

(b) Public buildings;

(c) Central business districts;

(d) Medical facilities;

(e) Activity centers;

(f) High density housing (including senior housing);

(g) Transit facilities;

(3) Completes or extends existing active transportation facilities.

(4) Completes or extends sidewalks to facilities listed in subsection (2) of this section that are identified in local agency latecomer agreements. The local agency must agree to collect the latecomer fee at the time of development and place the fee in its transportation improvement program.

(5) Local support - Addresses local needs and is supported by the local community.

(6) Constructability - Demonstrates a strong likelihood to reach construction within the timelines established in WAC 479-05-211.

(7) Sustainability - Right sizing sidewalk or shared use path width and material type, provides hardscaping and native plantings, addresses low impact development or natural drainage practices.

[Statutory Authority: Chapter 47.26 RCW. WSR 22-07-023, § 479-14-431, filed 3/9/22, effective 4/9/22; WSR 18-08-068, § 479-14-431, filed 4/2/18, effective 5/3/18; WSR 12-08-060, § 479-14-431, filed 4/3/12, effective 5/4/12.]

WSR 23-08-037
PERMANENT RULES
DEPARTMENT OF COMMERCE
[Filed March 29, 2023, 10:01 a.m., effective April 29, 2023]

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

Purpose: Commerce conducted a comprehensive review and update of the administrative rules that implement the Growth Management Act so that local governments have clear guidance before the next round of county and city periodic updates to comprehensive plans and development regulations, required under RCW 36.70A.130. Updates are necessary to reflect recent legislative changes such as the periodic update deadline, the buildable lands program, potable water requirements, and school siting provisions. Commerce made other changes to provide clarity on requirements and recommendations to implement the Growth Management Act, with a large focus on the designation and protection of critical areas and natural resource lands.

Citation of Rules Affected by this Order: New WAC 365-196- 350 and 365-196-585; and amending WAC 365-190-030, 365-190,040, 365-190-050, 365-190-060, 365-190-070, 365-190,080, 365-190-090, 365-190-100, 365-190-110, 365-190-120, 365-190-130, 365-195-900, 365-195-905, 365-195-910, 365-195-920, 365-196-010, 365-196-030, 365-196-060, 365-196-210, 365-196-300, 365-196-305, 365-196-310, 365-196-315, 365-196-320, 365-196-325, 365-196-330, 365-196-400, 365-196-405, 365-196-410, 365-196-415, 365-196-420, 365-196-425, 365-196-430, 365-196-435, 365-196-465, 365-196-470, 365-196-475, 365-196-480, 365-196-485, 365-196-500, 365-196-510, 365-196-530, 365-196-550, 365-196-600, 365-196-610, 365-196-630, 365-196-660, 365-196-730, 365-196-740, 365-196-825, and 365-196-830.

Statutory Authority for Adoption: RCW 36.70A.050, 36.70A.190.

Adopted under notice filed as WSR 22-13-125 and 23-01-078 on June 17, 2022, and December 15, 2022.

Changes Other than Editing from Proposed to Adopted Version: Commerce amended WAC 365-190-050 and 365-190-060 to clarify that counties may consider smaller parcels for designation as agricultural or forest resource lands if they are contiguous with larger blocks of designated resource lands. Commerce amended WAC 365-190-080 to clarify that all functions and values of critical areas must be protected.

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 4, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 50, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 50, 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: March 29, 2023.

Amanda Hathaway
Rules Coordinator

OTS-3751.2

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

WAC 365-190-030 Definitions. (1) "Agricultural land" is land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production. These lands are referred to in this chapter as agricultural resource lands to distinguish between formally designated lands, and other lands used for agricultural purposes.

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

(3) "Critical aquifer recharge areas" are areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge.

(4) "Critical areas" include the following:

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable water, referred to in this chapter as critical aquifer recharge areas;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(5) "Erosion hazard areas" are those areas containing soils which, according to the United States Department of Agriculture Natural Resources Conservation Service Soil Survey Program, may experience significant erosion. Erosion hazard areas also include coastal erosion-prone areas and channel migration zones.

(6)(a) "Fish and wildlife habitat conservation areas" are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species.

(b) "Habitats of local importance" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities.

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

(7) "Forest land" is land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through

84.33.140, and that has long-term commercial significance. These lands are referred to in this chapter as forest resource lands to distinguish between formally designated lands, and other lands used for forestry purposes.

(8) "Frequently flooded areas" are lands in the flood plain subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high groundwater. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and areas where high groundwater forms ponds on the ground surface.

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

(10) "Landslide hazard areas" are areas at risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

(11) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of land. Long-term commercial significance means the land is capable of producing the specified natural resources at commercially sustainable levels for at least the ((~~twenty-year~~)) 20-year planning period, if adequately conserved. Designated mineral resource lands of long-term commercial significance may have alternative post-mining land uses, as provided by the Surface Mining Reclamation Act, comprehensive plan and development regulations, or other laws.

(12) "Mine hazard areas" are those areas directly underlain by, adjacent to, or affected by mine workings such as adits, tunnels, drifts, or air shafts.

(13) "Mineral resource lands" means lands primarily devoted to the extraction of minerals or that have known or potential long-term commercial significance for the extraction of minerals.

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

(15) "Natural resource lands" means agricultural, forest and mineral resource lands which have long-term commercial significance.

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

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

(18) "Seismic hazard areas" are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, debris flows, lahars, or tsunamis.

(19) "Species of local importance" are those species that are of local concern due to their population status or their sensitivity to habitat alteration or that are game species.

(20) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. Urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located

in relationship to an area with urban growth on it as to be appropriate for urban growth.

(21) "Volcanic hazard areas" shall include areas subject to pyroclastic flows, lava flows, and inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

(22) "Watercourse" as defined in WAC 220-660-030(154).

(23) "Wellhead protection area (WHPA)" means protective areas associated with public drinking water sources established by water systems and approved or assigned by the state department of health.

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

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-190-030, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-190-030, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. WSR 91-07-041, § 365-190-030, filed 3/15/91, effective 4/15/91.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-040 Process. (1) The classification and designation of natural resource lands and critical areas is an important step among several in the overall growth management process. These steps, outlined in subsections (4) and (5) of this section comprise a vision of the future, and that vision gives direction to the steps in the form of specific goals and objectives. Under the act, the timing of the first steps coincided with development of the larger vision through the comprehensive planning process.

(2) The act required preliminary classifications and designations of natural resource lands and critical areas to be completed in 1991. Counties and cities planning under the act were to enact interim regulations to protect and conserve these natural resource lands and critical areas by September 1, 1991. By July 1, 1992, counties and cities not planning under the act were to bring their development regulations into conformance with their comprehensive plans. By July 1, 1993, counties and cities planning under the act were to adopt comprehensive plans, consistent with the goals of the act. Implementation of the comprehensive plans was to occur by the following year.

(3) Under RCW 36.70A.130, all counties and cities must review, and if needed, update their natural resource lands and critical areas designations. Counties and cities fully planning under the act must also review and, if needed, update their natural resource lands conservation provisions, comprehensive plans and development regulations.

Legal challenges to some updates have led to clarifications of the ongoing review and update requirements in RCW 36.70A.130, and the process for implementing those requirements. The process description and recommendations in this section incorporate those clarifications and describe both the initial designation and conservation or protection of natural resource lands and critical areas, as well as subsequent local actions to amend those designations and provisions.

(4) Classification is the first step in implementing RCW 36.70A.170 and requires defining categories to which natural resource lands and critical areas will be assigned.

(a) Counties and cities are encouraged to adopt classification schemes that are consistent with federal and state classification schemes and those of adjacent jurisdictions to ensure regional consistency. Specific classification schemes for natural resource lands and critical areas are described in WAC 365-190-050 through 365-190-130.

(b) State agency classification schemes are available for specific critical area types, including the wetlands rating systems for eastern and western Washington from the Washington state department of ecology, the priority habitats and species categories and recommendations from the Washington state department of fish and wildlife, and the high quality ecosystem and rare plant categories and listings from the department of natural resources, natural heritage program. The Washington state department of natural resources provides significant information on geologic hazards and aquatic resources that may be useful in classifying these critical areas. Not all areas classified by state agencies must be designated, but such areas may be likely candidates for designation. WAC 365-195-915 provides guidance when departing from science-based recommendations.

(5) Designation is the second step in implementing RCW 36.70A.170.

(a) Pursuant to RCW 36.70A.170, natural resource lands and critical areas must be designated based on their defined classifications. For planning purposes, designation establishes:

(i) The classification scheme;

(ii) The distribution, location, and extent of the uses of land, where appropriate, for agriculture, forestry, and mineral extraction; and

(iii) The general distribution, location, and extent of critical areas.

(b) Inventories and maps should indicate designations of natural resource lands and critical areas. In circumstances where critical areas cannot be readily identified, these areas should be designated by performance standards or definitions, so they can be specifically identified during the processing of a permit or development authorization.

(c) Designation means, at a minimum, formal adoption of a policy statement, and may include further legislative action. Designating inventoried lands for comprehensive planning and policy definition may be less precise than subsequent regulation of specific parcels for conservation and protection.

(d) Successful achievement of the natural resource industries goal set forth in RCW 36.70A.020 requires the conservation of land base sufficient in size and quality to maintain and enhance those industries, and the development and use of land use techniques that discourage uses incompatible to the management of designated lands.

(e) Mineral resource lands especially should be designated as close as possible to their likely end use areas, to avoid losing ac-

cess to those valuable minerals by development, and to minimize the costs of production and transport. It is expected that mineral resource lands will be depleted of minerals over time, and that subsequent land uses may occur on these lands after mining is completed.

(6) Classifying, inventorying, and designating lands or areas does not imply a change in a landowner's right to use his or her land under current law. The law requires that natural resource land uses be protected from land uses on adjacent lands that would restrict resource production. Development regulations adopted to protect critical areas may limit some land development options. Land uses are regulated on a parcel basis and innovative land use management techniques should be applied when counties and cities adopt development regulations to conserve and protect designated natural resource lands and critical areas. The purpose of designating natural resource lands is to enable industries to maintain access to lands with long-term commercial significance for agricultural, forest, and mineral resource production. The purpose is not to confine all natural resource production activity only to designated lands nor to require designation as the basis for a permit to engage in natural resource production. The department provides technical assistance to counties and cities on a wide array of regulatory options and alternative land use management techniques.

(7) Overlapping designations. The designation process may result in critical area designations that overlay other critical area or natural resource land classifications. Overlapping designations should not necessarily be considered inconsistent. If two or more critical area designations apply to a given parcel, or portion of a given parcel, both or all designations apply.

(a) If a critical area designation overlies a natural resource land designation, both designations apply. For counties and cities required or opting to plan under the act, reconciling these multiple designations will be the subject of local development regulations adopted pursuant to RCW 36.70A.060.

(b) If two or more natural resource land designations apply, counties and cities must determine if these designations are incompatible. If they are incompatible, counties and cities should examine the criteria to determine which use has the greatest long-term commercial significance, and that resource use should be assigned to the lands being designated.

(8) Counties and cities must involve the public in classifying and designating natural resource lands and critical areas. The process should include:

(a) Public participation program:

(i) Public participation should include, at a minimum, representative participation from the following entities: Landowners; representatives of agriculture, forestry, mining, business, environmental, and community groups; tribal governments; representatives of adjacent counties and cities; and state agencies. The public participation program should include early and timely public notice of pending designations and regulations and should address proposed nonregulatory incentive programs.

(ii) Counties and cities are encouraged to consider a variety of opportunities to adequately communicate with the public. These methods of notification may include, but are not limited to, traditional forms of mailed notices, published announcements, electronic mail, and internet sites to distribute informational brochures, meeting times, project timelines, and design and map proposals to provide an opportunity for the public to participate.

(iii) The department provides technical assistance in preparing public participation programs.

(b) Adoption process. Statutory and local processes already in place governing land use decisions are the minimum processes required for designation and regulation pursuant to RCW 36.70A.060 and 36.70A.170. At a minimum the following steps should be included in the adoption process:

(i) Accept the requirements of chapter 36.70A RCW;

(ii) Consider minimum guidelines developed by the department under RCW 36.70A.050;

(iii) Consider other definitions used by state and federal regulatory agencies;

(iv) Consider definitions used by similarly situated counties and cities;

(v) Determine recommended definitions and check conformance with minimum definitions in chapter 36.70A RCW;

(vi) Adopt definitions, classifications, and standards;

(vii) Apply definitions by mapping designated natural resource lands and critical areas; and

(viii) Establish procedures for amending natural resource lands and critical areas designations.

(c) Intergovernmental coordination.

(i) The act requires coordination among counties and cities to reconcile conflicts and strive for consistent definitions, standards, and designations within regions. The minimum coordination process may include one of two options:

(A) Notification option: Adjacent cities (or those with overlapping or adjacent planning areas); counties and the cities within them; and adjacent counties would provide each other and special purpose districts and special purpose districts within them notice of their intent to classify and designate natural resource lands and critical areas within their jurisdiction. Counties or cities receiving notice may provide comments and input to the notifying jurisdiction. The notifying jurisdiction specifies a comment period prior to adoption. Within ((~~forty-five~~)) 45 days of the jurisdiction's date of adoption of classifications or designations, affected jurisdictions are supplied information on how to locate a copy of the proposal. The department may provide mediation services to counties and cities to help resolve disputed classifications or designations.

(B) Interlocal agreement option: Adjacent counties and cities; all the cities within a county; or several counties and the cities within them may choose to cooperatively classify and designate natural resource lands and critical areas within their jurisdictions. Counties and cities by interlocal agreement would identify the definitions, classification, designation, and process that will be used to classify and designate lands within their areas. State and federal agencies or tribes may participate in the interlocal agreement or be provided a method of commenting on designations and classifications prior to adoption by jurisdictions.

(ii) Counties or cities may begin with the notification option in (c)(i)(A) of this subsection and choose to change to the interlocal agreement method in (c)(i)(B) of this subsection prior to completion of the classification and designations within their jurisdictions. Approaches to intergovernmental coordination may vary between natural resource land and critical area designation. It is intended that state and federal agencies with land ownership or management responsibilities, special purpose districts, and Indian tribes with interests

within the counties or cities adopting classification and designation be consulted and their input considered in the development and adoption of designations and classifications. The department may provide mediation services to help resolve disputes between counties and cities that are using either the notification or interlocal agreement method of coordinating between jurisdictions.

(d) Mapping natural resource lands. Mapping should be done to identify designated natural resource lands. For counties and cities fully planning under the act, natural resource lands designations must be incorporated into the comprehensive plan land use element and should be shown on the future land use map required under RCW 36.70A.070.

(9) Evaluation. When counties and cities adopt a comprehensive plan, the act requires them to evaluate their designations and development regulations to assure that they are consistent with and implement the comprehensive plan. When considering changes to the designations or development regulations, counties and cities should seek interjurisdictional coordination and must include public participation.

(10) Designation amendment process.

(a) Land use planning is a dynamic process. ((~~Designation~~)) Natural resource lands review procedures should provide a rational and predictable basis for accommodating change.

(b)(i) De-designations of natural resource lands can undermine the original designation process. De-designations threaten the viability of natural resource lands and associated industries through conversion to incompatible land uses, and through operational interference on adjacent lands. Cumulative impacts from de-designations can adversely affect the ability of natural resource-based industries to operate.

(ii) Counties and cities should maintain and enhance natural resource-based industries and discourage incompatible uses. Because of the significant amount of time needed to review natural resource lands and potential impacts from incompatible uses, frequent, piecemeal de-designations of resource lands should not be allowed. Site-specific proposals to de-designate natural resource lands must be deferred until a comprehensive countywide analysis is conducted.

(c) Reviewing natural resource lands designation. In classifying ((~~and~~)), designating and de-designating natural resource lands, counties must ((~~approach the effort as a county-wide or regional process~~)) conduct a comprehensive countywide analysis. Counties and cities should not review natural resource lands designations solely on a parcel-by-parcel ((~~process~~)) basis. Designation amendments should be based on consistency with one or more of the following criteria:

(i) A change in circumstances pertaining to the comprehensive plan or public policy related to designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);

(ii) A change in circumstances to the subject property, which is beyond the control of the landowner and is related to designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);

(iii) An error in designation or failure to designate;

(iv) New information on natural resource land or critical area status related to the designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3); or

(v) A change in population growth rates, or consumption rates, especially of mineral resources.

(11) Use of innovative land use management techniques.

(a) Natural resource uses have preferred and primary status in designated natural resource lands. Counties and cities must determine if and to what extent other uses will be allowed. If other uses are allowed, counties and cities should consider using innovative land management techniques that minimize land use incompatibilities and most effectively maintain current and future natural resource lands.

(b) Techniques to conserve and protect agricultural, forest lands, and mineral resource lands include the purchase or transfer of development rights, fee simple purchase of the land, less than fee simple purchase, purchase with leaseback, buffering, land trades, conservation easements, current use assessments, innovative zoning, or other innovations which maintain current uses and assure the conservation of these natural resource lands.

(12) Development in and adjacent to agricultural, forest, and mineral resource lands shall assure the continued management of these lands for natural resource production. Uses that would convert natural resource lands to other uses or would interfere with the allowed natural resource uses must be prohibited except as authorized in accessory uses under RCW 36.70A.177 or other applicable statutes. Any uses adjacent to agricultural, forest, and mineral resource lands of long-term commercial significance must not interfere with their continued use for the production of agricultural, forest, or mineral products respectively. Counties and cities should consider the adoption of right-to-farm provisions, and may also adopt measures to conserve and enhance marine aquaculture. Covenants or easements recognizing that farming, forestry, and mining activities will occur should be imposed on new development in or adjacent to agricultural, forest, or mineral resource lands. Where buffering is used it should be on land within the adjacent development unless an alternative is mutually agreed on by adjacent landowners.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-040, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. WSR 91-07-041, § 365-190-040, filed 3/15/91, effective 4/15/91.]

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

WAC 365-190-050 Agricultural resource lands. (1) In classifying ((~~and~~)), designating and de-designating agricultural resource lands, counties must ((~~approach the effort as a county-wide or area-wide process~~)) conduct a comprehensive countywide analysis consistent with WAC 365-190-040(10). Counties and cities should not review resource lands designations solely on a parcel-by-parcel ((~~process~~)) basis. Counties and cities must have a program for the transfer or purchase of development rights prior to designating agricultural resource lands in urban growth areas. Cities are encouraged to coordinate their agricultural resource lands designations with their county and any adjacent jurisdictions.

(2) Once lands are designated, counties and cities planning under the act must adopt development regulations that assure the conservation of agricultural resource lands. Recommendations for those regulations are found in WAC 365-196-815.

(3) Lands should be considered for designation as agricultural resource lands based on three factors:

(a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should use the criteria contained in WAC 365-196-310.

(b) The land is used or capable of being used for agricultural production. This factor evaluates whether lands are well suited to agricultural use based primarily on their physical and geographic characteristics. Some agricultural operations are less dependent on soil quality than others, including some livestock production operations.

(i) Lands that are currently used for agricultural production and lands that are capable of such use must be evaluated for designation. The intent of a landowner to use land for agriculture or to cease such use is not the controlling factor in determining if land is used or capable of being used for agricultural production. Land enrolled in federal conservation reserve programs is recommended for designation based on previous agricultural use, management requirements, and potential for reuse as agricultural land.

(ii) In determining whether lands are used or capable of being used for agricultural production, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Natural Resources Conservation Service as defined in relevant Field Office Technical Guides. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys, and are based on the growing capacity, productivity and soil composition of the land.

(c) The land has long-term commercial significance for agriculture. In determining this factor, counties and cities should consider the following nonexclusive criteria, as applicable:

(i) The classification of prime and unique farmland soils<u>, and farmlands of statewide importance,</u> as mapped by the Natural Resources Conservation Service;

(ii) The availability of public facilities, including roads used in transporting agricultural products;

(iii) Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW and whether the optional public benefit rating system is used locally, and whether there is the ability to purchase or transfer land development rights;

(iv) The availability of public services;

(v) Relationship or proximity to urban growth areas;

(vi) Predominant parcel size<u>, which may include smaller parcels if contiguous with other agricultural resource lands</u>;

(vii) Land use settlement patterns and their compatibility with agricultural practices;

(viii) Intensity of nearby land uses;

(ix) History of land development permits issued nearby;

(x) Land values under alternative uses; and

(xi) Proximity to markets.

(4) When designating agricultural resource lands, counties and cities may consider food security issues, which may include providing local food supplies for food banks, schools and institutions, vocational training opportunities in agricultural operations, and preserving heritage or artisanal foods.

(5) When applying the criteria in subsection (3)(c) of this section, the process should result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long

term; and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities.

(6) Counties and cities may further classify additional agricultural lands of local importance. Classifying additional agricultural lands of local importance should include, in addition to general public involvement, consultation with the board of the local conservation district and the local committee of the farm service agency. It may also be useful to consult with any existing local organizations marketing or using local produce, including the boards of local farmers markets, school districts, other large institutions, such as hospitals, correctional facilities, or existing food cooperatives.

These additional lands may include designated critical areas, such as bogs used to grow cranberries or farmed wetlands. Where these lands are also designated critical areas, counties and cities planning under the act must weigh the compatibility of adjacent land uses and development with the continuing need to protect the functions and values of critical areas and ecosystems.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-190-050, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-190-050, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. WSR 91-07-041, § 365-190-050, filed 3/15/91, effective 4/15/91.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-060 Forest resource lands. (1) In classifying ((~~and~~)), designating and de-designating forest resource lands, counties must ((~~approach the effort as a county-wide or regional process~~)) conduct a comprehensive countywide analysis consistent with WAC 365-190-040(10). Counties and cities should not review forest resource lands designations solely on a parcel-by-parcel basis. Counties and cities must have a program for the transfer or purchase of development rights prior to designating forest resource lands in urban growth areas. Cities are encouraged to coordinate their forest resource lands designations with their county and any adjacent jurisdictions. ((~~Counties and cities should not review forest resource lands designations solely on a parcel-by-parcel basis.~~))

(2) Lands should be designated as forest resource lands of long-term commercial significance based on three factors:

(a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should use the criteria contained in WAC 365-196-310.

(b) The land is used or capable of being used for forestry production. To evaluate this factor, counties and cities should determine whether lands are well suited for forestry use based primarily on their physical and geographic characteristics.

Lands that are currently used for forestry production and lands that are capable of such use must be evaluated for designation. The landowner's intent to either use land for forestry or to cease such use is not the controlling factor in determining if land is used or capable of being used for forestry production.

(c) The land has long-term commercial significance. When determining whether lands are used or capable of being used for forestry production, counties and cities should determine which land grade constitutes forest land of long-term commercial significance, based on local physical, biological, economic, and land use considerations. Counties and cities should use the private forest land grades of the department of revenue (WAC 458-40-530). This system incorporates consideration of growing capacity, productivity, and soil composition of the land. Forest land of long-term commercial significance will generally have a predominance of the higher private forest land grades. However, the presence of lower private forest land grades within the areas of predominantly higher grades need not preclude designation as forest land.

(3) Counties and cities may also consider secondary benefits from retaining commercial forestry operations. Benefits from retaining commercial forestry may include protecting air and water quality, maintaining adequate aquifer recharge areas, reducing forest fire risks, supporting tourism and access to recreational opportunities, providing carbon sequestration benefits, and improving wildlife habitat and connectivity for upland species. These are only potential secondary benefits from retaining commercial forestry operations, and should not be used alone as a basis for designating or de-designating forest resource lands.

(4) Counties and cities must also consider the effects of proximity to population areas and the possibility of more intense uses of the land as indicated by the following criteria as applicable:

(a) The availability of public services and facilities conducive to the conversion of forest land;

(b) The proximity of forest land to urban and suburban areas and rural settlements: Forest lands of long-term commercial significance are located outside the urban and suburban areas and rural settlements;

(c) The size of the parcels: Forest lands consist of predominantly large parcels, but may include smaller parcels if contiguous with other forest resource lands;

(d) The compatibility and intensity of adjacent and nearby land use and settlement patterns with forest lands of long-term commercial significance;

(e) Property tax classification: Property is assessed as open space or forest land pursuant to chapter 84.33 or 84.34 RCW;

(f) Local economic conditions which affect the ability to manage timberlands for long-term commercial production; and

(g) History of land development permits issued nearby.

(5) When applying the criteria in subsection (4) of this section, counties or cities should designate at least the minimum amount of forest resource lands needed to maintain economic viability for the forestry industry and to retain supporting forestry businesses, such as loggers, mills, forest product processors, equipment suppliers, and equipment maintenance and repair facilities. Economic viability in this context is that amount of designated forestry resource land needed to maintain economic viability of the forestry industry in the region over the long term.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-060, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. WSR 91-07-041, § 365-190-060, filed 3/15/91, effective 4/15/91.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-070 Mineral resource lands. (1) In classifying, designating and de-designating mineral resource lands, counties and cities must ((~~approach the effort as a county-wide or regional process~~)) conduct a comprehensive countywide analysis consistent with WAC 365-190-040(10), with the exception of owner-initiated requests for designation. Counties and cities should not review mineral resource lands designations solely on a parcel-by-parcel basis. Counties and cities may de-designate mineral resource lands without a comprehensive countywide analysis if mining operations have ceased and the site reclaimed.

(2) Counties and cities must identify and classify mineral resource lands from which the extraction of minerals occurs or can be anticipated. Counties and cities may consider the need for a longer planning period specifically to address mineral resource lands, based on the need to assure availability of minerals for future uses, and to not inadvertently preclude access to available mineral resources due to incompatible development. Other proposed land uses within these areas may require special attention to ensure future supply of aggregate and mineral resource material, while maintaining a balance of land uses.

(3) Classification criteria.

(a) Counties and cities classify mineral resource lands based on geologic, environmental, and economic factors, existing land uses, and land ownership. It is expected that mineral resource lands will be depleted of minerals over time, and that subsequent land uses may occur on these lands after mining is completed. Counties and cities may approve and permit land uses on these mineral resource lands to occur after mining is completed.

(b) Counties and cities should classify lands with potential long-term commercial significance for extracting at least the following minerals: Sand, gravel, and valuable metallic substances. Other minerals may be classified as appropriate.

(c) When classifying these areas, counties and cities should use maps and information on location and extent of mineral deposits provided by the department of natural resources, the United States Geological Service and any relevant information provided by property owners. Counties and cities may also use all or part of a detailed minerals classification system developed by the department of natural resources.

(d) Classifying mineral resource lands should be based on the geology and the distance to market of potential mineral resource lands, including:

(i) Physical and topographic characteristics of the mineral resource site, including the depth and quantity of the resource and depth of the overburden;

(ii) Physical properties of the resource including quality and type;

(iii) Projected life of the resource;

(iv) Resource availability in the region; and

(v) Accessibility and proximity to the point of use or market.

(e) Other factors to consider when classifying potential mineral resource lands should include three aspects of mineral resource lands:

(i) The ability to access needed minerals may be lost if suitable mineral resource lands are not classified and designated; and

(ii) The effects of proximity to population areas and the possibility of more intense uses of the land in both the short and long-term, as indicated by the following:

(A) General land use patterns in the area;

(B) Availability of utilities, including water supply;

(C) Surrounding parcel sizes and surrounding uses;

(D) Availability of public roads and other public services; and

(E) Subdivision or zoning for urban or small lots.

(iii) Energy costs of transporting minerals.

(4) Designation of mineral resource lands.

(a) Counties and cities must designate known mineral deposits so that access to mineral resources of long-term commercial significance is not knowingly precluded. Priority land use for mineral extraction should be retained for all designated mineral resource lands.

(b) In designating mineral resource lands, counties and cities should determine if adequate mineral resources are available for projected needs from currently designated mineral resource lands.

(c) Counties and cities may consult with the department of transportation and the regional transportation planning organization to determine projected future mineral resource needs for large transportation projects planned in their area.

(d) In designating mineral resource lands, counties and cities must also consider that mining may be a temporary use at any given mine, depending on the amount of minerals available and the consumption rate, and that other land uses can occur on the mine site after mining is completed, subject to approval.

(e) Successful achievement of the natural resource industries goal set forth in RCW 36.70A.020 requires the conservation of a land base sufficient in size and quality to maintain and enhance those industries and the development and use of land use techniques that discourage uses incompatible with the management of designated lands.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-070, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. WSR 91-07-041, § 365-190-070, filed 3/15/91, effective 4/15/91.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-080 Critical areas. (1) Counties and cities must protect critical areas. Counties and cities required or opting to plan under the act must consider the definitions and guidelines in this chapter when designating critical areas and when preparing development regulations that protect ((~~the~~)) all functions and values of critical areas to ensure no net loss of ecological functions and values. The department provides additional recommendations for adopting critical areas regulations in WAC 365-196-485.

(2) Counties and cities must include the best available science as described in chapter 365-195 WAC, when designating critical areas and when developing policies and regulations that protect critical areas. Counties and cities must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Counties and cities are encouraged to also protect

both surface and groundwater resources, because these waters often recharge wetlands, streams and lakes.

(3) Counties and cities are encouraged to develop a coordinated regional critical areas protection program that combines interjurisdictional cooperation, public education, incentives to promote voluntary protective measures, and regulatory standards that serve to protect these critical areas.

(4) Counties and cities should designate critical areas by using maps and performance standards.

(a) Maps may benefit the public by increasing public awareness of critical areas and their locations. County and city staff may also benefit from maps which provide a useful tool for determining whether a particular land use permit application may affect a critical area. However, because maps may be too inexact for regulatory purposes, counties and cities should rely primarily on performance standards to protect critical areas. Counties and cities should apply performance standards to protect critical areas when a land use permit decision is made.

(b) Counties and cities should clearly state that maps showing known critical areas are only for information or illustrative purposes.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-080, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. WSR 91-07-041, § 365-190-080, filed 3/15/91, effective 4/15/91.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-090 Wetlands. (1) The wetlands of Washington state are fragile ecosystems that serve a number of important beneficial functions. Wetlands assist in reducing erosion, siltation, flooding, ground and surface water pollution, and provide wildlife, plant, and fisheries habitats. Wetlands destruction or impairment may result in increased public and private costs and property losses.

(2) In designating wetlands for regulatory purposes, counties and cities must use the definition of wetlands in RCW 36.70A.030. Counties and cities are requested and encouraged to make their actions consistent with the intent and goals of "protection of wetlands," Executive Orders 89-10 and 90-04 as they existed on September 1, 1990. Additionally, counties and cities should consider wetlands protection guidance provided by the department of ecology, including the management recommendations based on the best available science, mitigation guidance, and provisions addressing the option of using wetland mitigation banks.

(3) Wetlands rating systems. Wetland functions vary widely.

(a) When designating wetlands, counties and cities should use a rating system that evaluates the existing wetland functions and values to determine what functions must be protected.

(b) In developing wetlands rating systems, counties and cities should consider using the wetland rating system developed jointly by the department of ecology and the United States Army Corps of Engineers.

(c) If a county or city chooses to use an alternative rating system, it must include the best available science.

(d) A rating system should evaluate, at a minimum, the following factors:

(i) Wetlands functions and values;

(ii) Degree of sensitivity to disturbance;

(iii) Rarity;

(iv) The degree to which a wetland contributes to functions and values of a larger ecosystem. Rating systems should generally rate wetlands higher when they are well-connected to adjacent or nearby habitats, are part of an intact ecosystem or function in a network of critical areas; and

(v) The ability to replace the functions and values through compensatory mitigation.

(4) Counties and cities may use the National Wetlands Inventory and a landscape-scale watershed characterization as information sources for determining the approximate distribution and extent of wetlands. The National Wetlands Inventory is an inventory providing maps of wetland areas according to the definition of wetlands issued by the United States Department of Interior Fish and Wildlife Service. A landscape-scale watershed characterization may identify areas that are conducive to forming wetlands based on topography, soils and geology, and hydrology. Regardless, any potential locations of wetlands ((~~based on the National Wetlands Inventory or landscape-scale watershed characterization~~)) should be confirmed by field visits, either before or as part of permitting activities, and identified wetlands should have their boundaries delineated for regulation consistent with the wetlands definition in RCW 36.70A.030.

(5) Counties and cities must use the methodology for regulatory delineations in the adopted state manual identified in RCW 36.70A.175.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-090, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-100 Critical aquifer recharge areas. (1) Potable water is an essential life sustaining element for people and many other species. Much of Washington's drinking water comes from groundwater. Once groundwater is contaminated it is difficult, costly, and sometimes impossible to clean up. Preventing contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people and ecosystems.

(2) The quality and quantity of groundwater in an aquifer is inextricably linked to its recharge area. Where aquifers and their recharge areas have been studied, affected counties and cities should use this information as the basis for classifying and designating these areas. Where no specific studies have been done, counties and cities may use existing soil and surficial geologic information to determine where recharge areas exist. To determine the threat to groundwater quality, existing land use activities and their potential to lead to contamination should be evaluated.

(3) Counties and cities must classify recharge areas for aquifers according to the aquifer vulnerability. Vulnerability is the combined

effect of hydrogeological susceptibility to contamination and the contamination loading potential. High vulnerability ((~~is~~)) may be indicated by hydrogeological conditions that facilitate degradation, particularly where combined with land uses that contribute, or may potentially contribute, directly or indirectly to contamination that may degrade groundwater((~~, and hydrogeologic conditions that facilitate degradation~~)). Low vulnerability ((~~is~~)) may be indicated by the combination of hydrogeological conditions that do not facilitate degradation and land uses that do not contribute, or are not likely to contribute, contaminants that will degrade groundwater((~~, and by hydrogeologic conditions that do not facilitate degradation~~)). Hydrological conditions may include those induced by limited recharge of an aquifer. Reduced aquifer recharge from effective impervious surfaces may result in higher concentrations of contaminants than would otherwise occur.

(a) To characterize hydrogeologic susceptibility of the recharge area to contamination, counties and cities may consider the following physical characteristics:

(i) Depth to groundwater;

(ii) Aquifer properties such as hydraulic conductivity, gradients, and size;

(iii) Soil (texture, permeability, and contaminant attenuation properties);

(iv) Characteristics of the vadose zone including permeability and attenuation properties; and

(v) Other relevant factors.

(b) The following may be considered to evaluate vulnerability based on the contaminant loading potential:

(i) General land use;

(ii) Waste disposal sites;

(iii) Agriculture activities;

(iv) Well logs and water quality test results;

(v) Proximity to marine shorelines; and

(vi) Other information about the potential for contamination.

(4) A classification strategy for aquifer recharge areas should be to maintain the quality, and if needed, the quantity of the groundwater, with particular attention to recharge areas of high susceptibility.

(a) In recharge areas that are highly vulnerable, studies should be initiated to determine if groundwater contamination has occurred. Classification of these areas should include consideration of the degree to which the aquifer is used as a potable water source, feasibility of protective measures to preclude further degradation, availability of treatment measures to maintain potability, and availability of alternative potable water sources.

(b) Examples of areas with a critical recharging effect on aquifers used for potable water may include:

(i) Recharge areas for sole source aquifers designated pursuant to the Federal Safe Drinking Water Act;

(ii) Areas established for special protection pursuant to a groundwater management program, chapters 90.44, 90.48, and 90.54 RCW, and chapters 173-100 and 173-200 WAC;

(iii) Areas designated for wellhead protection pursuant to the Federal Safe Drinking Water Act;

(iv) Areas near marine waters where aquifers may be subject to saltwater intrusion; and

(v) Other areas meeting the definition of "areas with a critical recharging effect on aquifers used for potable water" in these guidelines.

(c) Some aquifers may also have critical recharging effects on streams, lakes, and wetlands that provide critical fish and wildlife habitat. Protecting adequate recharge of these aquifers may provide additional benefits in maintaining fish and wildlife habitat conservation areas.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-100, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-110 Frequently flooded areas. ((~~Frequently flooded areas.~~)) Flood plains and other areas subject to flooding perform important hydrologic functions and may present a risk to persons and property.

(1) Classifications of frequently flooded areas should include, at a minimum, the 100-year flood plain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

(2) Counties and cities should consider the following when designating and classifying frequently flooded areas:

(a) Effects of flooding on human health and safety, and to public facilities and services;

(b) Available documentation including federal, state, and local laws, regulations, and programs, local studies and maps, and federal flood insurance programs, including the provisions for urban growth areas in RCW 36.70A.110;

(c) The future flow flood plain, defined as the channel of the stream and that portion of the adjoining flood plain that is necessary to contain and discharge the base flood flow at build out;

(d) The potential effects of tsunami, high tides with strong winds, sea level rise, and extreme weather events, including those potentially resulting from global climate change;

(e) Greater surface runoff caused by increasing impervious surfaces.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-110, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-120 Geologically hazardous areas. (1) ((~~Geologically hazardous areas.~~)) Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard.

(2) Some geological hazards can be reduced or mitigated by engineering, design, or modified construction or mining practices so that

risks to public health and safety are minimized. When technology cannot reduce risks to acceptable levels, building in geologically hazardous areas must be avoided. The distinction between avoidance and compensatory mitigation should be considered by counties and cities that do not currently classify geological hazards, as they develop their classification scheme.

(3) Areas that are susceptible to one or more of the following types of hazards shall be classified as a geologically hazardous area:

(a) Erosion hazard;

(b) Landslide hazard;

(c) Seismic hazard; or

(d) Areas subject to other geological events such as coal mine hazards and volcanic hazards including: Mass wasting, debris flows, rock falls, and differential settlement.

(4) Counties and cities should assess the risks and classify geologically hazardous areas as either:

(a) Known or suspected risk;

(b) No known risk; or

(c) Risk unknown - data are not available to determine the presence or absence of risk.

(5) Erosion hazard areas include areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils. Erosion hazard areas may also include coastal erosion areas: This information can be found in the Washington state coastal atlas available from the department of ecology. Counties and cities may consult with the United States Department of Agriculture Natural Resources Conservation Service for data to help identify erosion hazard areas.

(6) Landslide hazard areas include areas subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include any areas susceptible to landslide because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors, and include, at a minimum, the following:

(a) Areas of historic failures, such as:

(i) Those areas delineated by the United States Department of Agriculture Natural Resources Conservation Service as having a significant limitation for building site development;

(ii) Those coastal areas mapped as class u (unstable), uos (unstable old slides), and urs (unstable recent slides) in the department of ecology Washington coastal atlas; or

(iii) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geological Survey or Washington department of natural resources.

(b) Areas with all three of the following characteristics:

(i) Slopes steeper than ((~~fifteen~~)) 15 percent;

(ii) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

(iii) Springs or groundwater seepage.

(c) Areas that have shown movement during the holocene epoch (from ((~~ten thousand~~)) 10,000 years ago to the present) or which are underlain or covered by mass wastage debris of this epoch;

(d) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

(e) Slopes having gradients steeper than ((~~eighty~~)) 80 percent subject to rockfall during seismic shaking;

(f) Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action, including stream channel migration zones;

(g) Areas that show evidence of, or are at risk from snow avalanches;

(h) Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and

(i) Any area with a slope of ((~~forty~~)) 40 percent or steeper and with a vertical relief of ((~~ten~~)) 10 or more feet except areas composed of bedrock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ((~~ten~~)) 10 feet of vertical relief.

(7) Seismic hazard areas must include areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, surface faulting, or tsunamis. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow groundwater table. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington, and ground settlement may occur with shaking. The strength of ground shaking is primarily affected by:

(a) The magnitude of an earthquake;

(b) The distance from the source of an earthquake;

(c) The type or thickness of geologic materials at the surface; and

(d) The type of subsurface geologic structure.

(8) Other geological hazard areas:

(a) Volcanic hazard areas must include areas subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

(b) Mine hazard areas are those areas underlain by, adjacent to, or affected by mine workings such as adits, gangways, tunnels, drifts, or air shafts. Factors which should be considered include: Proximity to development, depth from ground surface to the mine working, and geologic material.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-120, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-130 Fish and wildlife habitat conservation areas.

(1) "Fish and wildlife habitat conservation" means land management for maintaining populations of species in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term and isolated subpopulations are not created. Fish and wildlife habitat conservation areas do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company. This

does not mean maintaining all individuals of all species at all times, but it does mean not degrading or reducing populations or habitats so that they are no longer viable over the long term. Counties and cities should engage in cooperative planning and coordination to help assure long term population viability.

Fish and wildlife habitat conservation areas contribute to the state's biodiversity and occur on both publicly and privately owned lands. Designating these areas is an important part of land use planning for appropriate development densities, urban growth area boundaries, open space corridors, and incentive-based land conservation and stewardship programs.

(2) Fish and wildlife habitat conservation areas that must be considered for classification and designation include:

(a) Areas where endangered, threatened, and sensitive species have a primary association;

(b) Habitats and species of local importance, as determined locally;

(c) Commercial and recreational shellfish areas;

(d) Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;

(e) Naturally occurring ponds under ((~~twenty~~)) 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;

(f) Waters of the state;

(g) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and

(h) State natural area preserves, natural resource conservation areas, and state wildlife areas.

(3) When classifying and designating these areas, counties and cities must include the best available science, as described in chapter 365-195 WAC.

(a) Counties and cities should consider the following:

(i) Creating a system of fish and wildlife habitat with connections between larger habitat blocks and open spaces, integrating with open space corridor planning where appropriate;

(ii) Level of human activity in such areas including presence of roads and level of recreation type (passive or active recreation may be appropriate for certain areas and habitats);

(iii) Protecting riparian ecosystems including salmonid habitat, which also includes marine nearshore areas;

(iv) Evaluating land uses surrounding ponds and fish and wildlife habitat conservation areas that may negatively impact these areas, or conversely, that may contribute positively to their function;

(v) Establishing buffer zones around these areas to separate incompatible uses from habitat areas;

(b) Counties and cities may also consider the following:

(i) Potential for restoring lost and impaired salmonid habitat;

(ii) Potential for designating areas important for local and ecoregional biodiversity; and

(iii) Establishing or enhancing nonregulatory approaches in addition to regulatory methods to protect fish and wildlife habitat conservation areas.

(4) Sources and methods.

(a) Endangered, threatened and sensitive species. Counties and cities should identify and classify seasonal ranges and habitat elements where federal and state listed endangered, threatened and sensitive species have a primary association and which, if altered, may reduce the likelihood that the species will persist over the long term.

Counties and cities ((~~should~~)) must consult current information on priority habitats and species identified by the Washington state department of fish and wildlife. Recovery plans and management recommendations for many of these species are available from the Unites States Fish and Wildlife Service, the National Marine Fisheries Service and the Washington state department of fish and wildlife. Additional information that must be consulted is ((~~also~~)) available from the Washington state department of natural resources, natural heritage program, and aquatic resources program.

(b) Habitats and species areas of local importance. Counties and cities should identify, classify and designate locally important habitats and species. Counties and cities ((~~should~~)) must consult current information on priority habitats and species identified by the Washington state department of fish and wildlife. Priority habitat and species information includes endangered, threatened and sensitive species, but also includes candidate species and other vulnerable and unique species and habitats. While these priorities are those of the Washington state department of fish and wildlife, they should be considered by counties and cities as they include the best available science. The Washington state department of fish and wildlife can also provide assistance with identifying and mapping important habitat areas at various landscape scales. Similarly, the Washington state department of natural resources' natural heritage program ((~~can provide a~~)) includes a list of high quality ecological communities and systems and rare plants that must be consulted.

(c) Shellfish areas. All public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas. Counties and cities should consider both commercial and recreational shellfish areas. Counties and cities should consider the Washington state department of health classification of commercial and recreational shellfish growing areas to determine the existing condition of these areas. Further consideration should be given to the vulnerability of these areas to contamination. Shellfish protection districts established pursuant to chapter 90.72 RCW shall be included in the classification of critical shellfish areas.

(d) Kelp and eelgrass beds; herring, smelt and other forage fish spawning areas. Counties and cities must classify kelp and eelgrass beds, identified by the Washington state department of natural resources and the department of ecology. Though not an inclusive inventory, locations of kelp and eelgrass beds are compiled in the Washington coastal atlas published by the department of ecology. Herring, smelt and other forage fish spawning times and locations are outlined in WAC 220-110-240 through 220-110-271.

(e) Naturally occurring ponds under ((~~twenty~~)) 20 acres and their submerged aquatic beds that provide fish or wildlife habitat. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farmponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority.

(f) Waters of the state.

(i) Waters of the state are defined in RCW 90.48.020 and include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and ((~~water courses~~)) watercourses in Washington. Stream types are classified in Title 222 WAC, the

forest practices regulations. Counties and cities may use the classification system established in WAC 222-16-030 to classify waters of the state. Counties and cities using the water types defined in WAC 222-16-030 or 222-16-031 (interim) should not rely solely on Washington state department of natural resources maps of these stream types for purposes of regulating land uses or establishing stream buffers.

(ii) Counties and cities that use the stream typing system developed by the department of natural resources should develop a process to verify actual stream conditions, identify flow alterations, and locate fish passage barriers by conducting a field visit. Field verification of all intermittent or nonfish bearing streams should occur during the wet season months of October to March or as determined locally.

(iii) Counties and cities may consider the following factors when classifying waters of the state as fish and wildlife habitat conservation areas:

(A) Species present which are endangered, threatened or sensitive, and other species of concern;

(B) Species present which are sensitive to habitat manipulation (e.g., priority habitats and species program);

(C) Historic presence of species of local importance;

(D) Existing surrounding land uses that are incompatible with salmonid habitat;

(E) Presence and size of riparian ecosystems;

(F) Existing water rights; and

(G) The intermittent nature of some waters of the state.

(g) Lakes, ponds, streams, and rivers planted with game fish. This includes game fish planted in these water bodies under the auspices of a federal, state, local, or tribal program or which supports priority fish species as identified by the Washington state department of fish and wildlife.

(h) State natural area preserves, natural resource conservation areas, and state wildlife areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the department of natural resources. State wildlife areas are defined, established, and managed by the Washington state department of fish and wildlife, which provides information about state wildlife areas for each county.

(i) Salmonid habitat. Counties and cities should consider recommendations found in salmon recovery plans (see the governor's salmon recovery office). Counties and cities may use information prepared by the United States Department of the Interior Fish and Wildlife Service, National Marine Fisheries Service, the Washington state department of fish and wildlife, the state recreation and conservation office, and the Puget Sound partnership to designate, protect and restore salmonid habitat.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-190-130, filed 1/19/10, effective 2/19/10.]

OTS-3750.1

AMENDATORY SECTION (Amending WSR 01-08-056, filed 4/2/01, effective 5/3/01)

WAC 365-195-900 Background and purpose. (1) Counties and cities planning under RCW 36.70A.040 are subject to continuing review and evaluation of their comprehensive land use plan and development regulations. ((~~Every five years~~)) Periodically, they must take action to review and revise their plans and regulations, if needed, to ensure they comply with the requirements of ((~~the Growth Management Act.~~)) RCW 36.70A.130.

(2) Counties and cities must include the "best available science" when developing policies and development regulations to protect the functions and values of critical areas and must give "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries. RCW 36.70A.172(1). The rules in WAC 365-195-900 through 365-195-925 are intended to assist counties and cities in identifying and including the best available science in newly adopted policies and regulations and in this periodic review and evaluation and in demonstrating they have met their statutory obligations under RCW 36.70A.172(1).

(3) The inclusion of the best available science in the development of critical areas policies and regulations is especially important to salmon recovery efforts, and to other decision-making affecting threatened or endangered species.

(4) These rules are adopted under the authority of RCW 36.70A.190 (4)(b) which requires the department of ((~~community, trade, and economic development~~)) commerce (department) to adopt rules to assist counties and cities to comply with the goals and requirements of the Growth Management Act.

[Statutory Authority: RCW 36.70A.190 (4)(b). WSR 01-08-056, § 365-195-900, filed 4/2/01, effective 5/3/01; WSR 00-16-064, § 365-195-900, filed 7/27/00, effective 8/27/00.]

AMENDATORY SECTION (Amending WSR 00-16-064, filed 7/27/00, effective 8/27/00)

WAC 365-195-905 Criteria for determining which information is the "best available science." (1) This section provides assessment criteria to assist counties and cities in determining whether information obtained during development of critical areas policies and regulations constitutes the "best available science."

(2) Counties and cities may use information that local, state or federal natural resource agencies have determined represents the best available science consistent with criteria set out in WAC 365-195-900 through 365-195-925. The department will ((~~make available a list of resources that state agencies have identified as meeting the criteria for best available science pursuant to this chapter~~)) work with state agencies to identify resources that meet the criteria for best available science. Such information should be reviewed for local applicability.

(3) The responsibility for including the best available science in the development and implementation of critical areas policies or regulations rests with the legislative authority of the county or city. ((~~However,~~)) Cities and counties must conduct a best available

science review when updating critical area regulations. The complexity of the review should reflect the scope of the amendment. When feasible, counties and cities should consult with a qualified scientific expert or team of qualified scientific experts to identify scientific information, determine the best available science, and assess its applicability to the relevant critical areas. The scientific expert or experts may rely on their professional judgment based on experience and training, but they should use the criteria set out in WAC 365-195-900 through 365-195-925 and any technical guidance provided by the department. Use of these criteria also should guide counties and cities that lack the assistance of a qualified expert or experts, but these criteria are not intended to be a substitute for an assessment and recommendation by a qualified scientific expert or team of experts.

(4) Whether a person is a qualified scientific expert with expertise appropriate to the relevant critical areas is determined by the person's professional credentials and/or certification, any advanced degrees earned in the pertinent scientific discipline from a recognized university, the number of years of experience in the pertinent scientific discipline, recognized leadership in the discipline of interest, formal training in the specific area of expertise, and field and/or laboratory experience with evidence of the ability to produce peer-reviewed publications or other professional literature. No one factor is determinative in deciding whether a person is a qualified scientific expert. Where pertinent scientific information implicates multiple scientific disciplines, counties and cities are encouraged to consult a team of qualified scientific experts representing the various disciplines to ensure the identification and inclusion of the best available science.

(5) Scientific information can be produced only through a valid scientific process. To ensure that the best available science is being included, a county or city should consider the following:

(a) **Characteristics of a valid scientific process.** In the context of critical areas protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government's regulatory decisions and in developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas. To determine whether information received during the public participation process is reliable scientific information, a county or city should determine whether the source of the information displays the characteristics of a valid scientific process. When weighing scientific information contained in the record for inclusion, counties and cities must weigh the scientific information contained in the record based on its scientific validity. The characteristics generally to be expected in a valid scientific process are as follows:

1. **Peer review.** The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The criticism of the peer reviewers has been addressed by the proponents of the information. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed.

2. **Methods.** The methods that were used to obtain the information are clearly stated and able to be replicated. The methods are standardized in the pertinent scientific discipline or, if not, the methods

have been appropriately peer-reviewed to assure their reliability and validity.

3. **Logical conclusions and reasonable inferences.** The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained.

4. **Quantitative analysis.** The data have been analyzed using appropriate statistical or quantitative methods.

5. **Context.** The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.

6. **References.** The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information.

(b) **Common sources of scientific information.** Some sources of information routinely exhibit all or some of the characteristics listed in (a) of this subsection. Information derived from one of the following sources may be considered scientific information if the source possesses the characteristics in Table 1. A county or city may consider information to be scientifically valid if the source possesses the characteristics listed in (a) of this subsection. The information found in Table 1 provides a general indication of the characteristics of a valid scientific process typically associated with common sources of scientific information.

Table 1	CHARACTERISTICS					
SOURCES OF SCIENTIFIC INFORMATION	Peer review	Methods	Logical conclusions & reasonable inferences	Quantitative analysis	Context	References
A. Research. Research data collected and analyzed as part of a controlled experiment (or other appropriate methodology) to test a specific hypothesis.	**X**	**X**	**X**	**X**	**X**	**X**
B. Monitoring. Monitoring data collected periodically over time to determine a resource trend or evaluate a management program.		**X**	**X**	**Y**	**X**	**X**
C. Inventory. Inventory data collected from an entire population or population segment (e.g., individuals in a plant or animal species) or an entire ecosystem or ecosystem segment (e.g., the species in a particular wetland).		**X**	**X**	**Y**	**X**	**X**
D. Survey. Survey data collected from a statistical sample from a population or ecosystem.		**X**	**X**	**Y**	**X**	**X**
E. Modeling. Mathematical or symbolic simulation or representation of a natural system. Models generally are used to understand and explain occurrences that cannot be directly observed.	**X**	**X**	**X**	**X**	**X**	**X**
F. Assessment. Inspection and evaluation of site-specific information by a qualified scientific expert. An assessment may or may not involve collection of new data.		**X**	**X**		**X**	**X**
G. Synthesis. A comprehensive review and explanation of pertinent literature and other relevant existing knowledge by a qualified scientific expert.	**X**	**X**	**X**		**X**	**X**
H. Expert Opinion. Statement of a qualified scientific expert based on his or her best professional judgment and experience in the pertinent scientific discipline. The opinion may or may not be based on site-specific information.			**X**		**X**	**X**

X = characteristic must be present for information derived to be considered scientifically valid and reliable
Y = presence of characteristic strengthens scientific validity and reliability of information derived, but is not essential to ensure scientific validity and reliability

(c) **Common sources of nonscientific information.** Many sources of information usually do not produce scientific information because they do not exhibit the necessary characteristics for scientific validity and reliability. Information from these sources may provide valuable information to supplement scientific information, but it is not an adequate substitute for scientific information. Nonscientific information should not be used as a substitute for valid and available scientific information. Common sources of nonscientific information include the following:

(i) Anecdotal information. One or more observations which are not part of an organized scientific effort (for example, "I saw a grizzly bear in that area while I was hiking").

(ii) Nonexpert opinion. Opinion of a person who is not a qualified scientific expert in a pertinent scientific discipline (for example, "I do not believe there are grizzly bears in that area").

(iii) Hearsay. Information repeated from communication with others (for example, "At a lecture last week, Dr. Smith said there were no grizzly bears in that area").

(6) Counties and cities are encouraged to monitor and evaluate their efforts in critical areas protection and incorporate new scientific information, as it becomes available.

[Statutory Authority: RCW 36.70A.190 (4)(b). WSR 00-16-064, § 365-195-905, filed 7/27/00, effective 8/27/00.]

AMENDATORY SECTION (Amending WSR 00-16-064, filed 7/27/00, effective 8/27/00)

WAC 365-195-910 Criteria for obtaining the best available science. (1) Consultation with state and federal natural resources agencies and tribes can provide a quick and cost-effective way to develop scientific information and recommendations. State natural resource agencies provide numerous guidance documents and model ordinances that incorporate the agencies' assessments of the best available science. The department can provide technical assistance in obtaining such information from state natural resources agencies, developing model GMA-compliant critical areas policies and development regulations, and related subjects. ((~~The department will make available to interested parties a current list of the best available science determined to be consistent with criteria set out in WAC 365-195-905 as identified by state or federal natural resource agencies for critical areas.~~))

(2) A county or city may compile scientific information through its own efforts, with or without the assistance of qualified experts, and through state agency review and the Growth Management Act's required public participation process. The county or city should assess whether the scientific information it compiles constitutes the best available science applicable to the critical areas to be protected, using the criteria set out in WAC 365-195-900 through 365-195-925 and any technical guidance provided by the department. If not, the county or city should identify and assemble additional scientific information to ensure it has included the best available science.

[Statutory Authority: RCW 36.70A.190 (4)(b). WSR 00-16-064, § 365-195-910, filed 7/27/00, effective 8/27/00.]

AMENDATORY SECTION (Amending WSR 00-16-064, filed 7/27/00, effective 8/27/00)

WAC 365-195-920 Criteria for addressing inadequate scientific information. (1) Where there is an absence of valid scientific information or incomplete scientific information relating to a county's or city's critical areas, leading to uncertainty about which development and land uses could lead to harm of critical areas or uncertainty about the risk to critical area function of permitting development, counties and cities should use the following approach:

((~~(1)~~)) (a) A "precautionary or a no risk approach," in which development and land use activities are strictly limited until the uncertainty is sufficiently resolved; and

((~~(2)~~)) (b) As an interim approach, an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and nonregulatory actions achieve their objectives. Management, policy, and regulatory actions are treated as experiments that are purposefully monitored and evaluated to determine whether they are effective and, if not, how they should be improved to increase their effectiveness. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. To effectively implement an adaptive management program, counties and cities should be willing to:

((~~(a)~~)) (i) Address funding for the research component of the adaptive management program;

((~~(b)~~)) (ii) Change course based on the results and interpretation of new information that resolves uncertainties; and

((~~(c)~~)) (iii) Commit to the appropriate time frame and scale necessary to reliably evaluate regulatory and nonregulatory actions affecting critical areas protection and anadromous fisheries.

(2) Ongoing permit implementation monitoring and adaptive management.

(a) In addition to the use of formal scientific approaches to monitoring and adaptive management program as an interim approach as described above, the department recommends counties and cities develop and maintain ongoing monitoring and adaptive management procedures to ensure implementation of critical area regulations is efficient and effective. Counties and cities should consult department guidance documents for information.

(b) Steps in developing permit implementation monitoring and adaptive management programs include:

(i) Determining the reasons for monitoring;

(ii) Establishing key objectives and study questions;

(iii) Designing the monitoring program;

(iv) Determining the monitoring time frame; and

(v) Evaluating results and making recommendations.

[Statutory Authority: RCW 36.70A.190 (4)(b). WSR 00-16-064, § 365-195-920, filed 7/27/00, effective 8/27/00.]

OTS-3853.4

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

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

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

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

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

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

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

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

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

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

(i) The timely financing of needed infrastructure;

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

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

(iv) The siting of essential public facilities;

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

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

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

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

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

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

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

(2) The pattern of development established in the act. The act calls for a pattern of development that consists of different types of land uses existing on the landscape. These types generally include urban land, rural land, resource lands, and critical areas. Critical areas exist in rural, urban, and resource lands. Counties and cities must designate lands in these categories and develop policies governing development consistent with these designations. The act establishes criteria to guide the designation process and to guide the character of development in these lands.

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

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

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

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

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

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

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

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

(3) How the growth management hearings board use these guidelines. The growth management hearings board must determine, in cases brought before them, whether comprehensive plans or development regulations are in compliance with the goals and requirements of the act.

When doing so, board must consider the procedural criteria contained in this chapter, but determination of compliance must be based on the act itself.

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

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

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-060 Goals. The act lists ((~~thirteen~~)) 13 overall goals in RCW 36.70A.020, plus the shoreline goal added in RCW 36.70A.480(1). Counties and cities should design comprehensive plans and development regulations to meet these goals.

(1) This list of ((~~fourteen~~)) 14 goals is not exclusive. Counties and cities may adopt additional goals. However, these additional goals must be supplementary. They may not conflict with the ((~~fourteen~~)) 14 statutory goals.

(2) Balancing the goals in the act.

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

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

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

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

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

(4) "Affordable housing" means residential housing that is rented or owned by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed ((~~thirty~~)) 30 percent of the household's monthly income.

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

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

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

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

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

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

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

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

(a) Shift demand outside of the peak travel time;

(b) Shift demand to other modes of transportation;

(c) Increase the average number of occupants per vehicle;

(d) Decrease the length of trips; and

(e) Avoid the need for vehicle trips.

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

(14) "Ecosystem functions" are the products, physical and biological conditions, and environmental qualities of an ecosystem that result from interactions among ecosystem processes and ecosystem structures. Ecosystem functions include, but are not limited to, sequestered carbon, attenuated peak streamflows, aquifer water level, reduced pollutant concentrations in surface and ground waters, cool summer in-stream water temperatures, and fish and wildlife habitats.

(15) "Ecosystem values" are the cultural, social, economic, and ecological benefits attributed to ecosystem functions.

(16) "Family day-care provider" is defined in RCW 43.215.010. It is a person who regularly provides child care and early learning services for not more than ((~~twelve~~)) 12 children. Children include both the provider's children, close relatives and other children irrespective of whether the provider gets paid to care for them. They provide their services in the family living quarters of the day care provider's home.

((~~(15)~~)) (17) "Financial commitment" means that sources of public or private funds or combinations thereof have been identified which will be sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.

((~~(16)~~)) (18) "Growth Management Act" - See definition of "act."

((~~(17)~~)) (19) "Historic preservation" or "preservation" is defined in the National Historic Preservation Act of 1966, as identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities or any combination of the foregoing activities.

((~~(18)~~)) (20) "Lands, sites, and structures, that have historical, archaeological, or traditional cultural significance" are the tangible and material evidence of the human past, aged ((~~fifty~~)) 50 years or older, and include archaeological sites, historic buildings and structures, districts, landscapes, and objects.

((~~(19)~~)) (21) "Level of service" means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need. Level of service standards are synonymous with locally established minimum standards.

((~~(20)~~)) (22) "May," as used in this chapter, indicates an option counties and cities can take at their discretion.

((~~(21)~~)) (23) "Mitigation" or "mitigation sequencing" means a prescribed order of steps taken to reduce the impacts of activities on critical areas. As defined in WAC 197-11-768, mitigation means:

(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 during the life of the action;

(e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

(f) Monitoring the impact and taking appropriate corrective measures.

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

((~~(22)~~)) (25) "New fully contained community" is a development proposed for location outside of the existing designated urban growth areas which is characterized by urban densities, uses, and services, and meets the criteria of RCW 36.70A.350.

((~~(23)~~)) (26) "Planning period" means the ((~~twenty-year~~)) 20-year period ((~~following the adoption of a comprehensive plan or such longer period as may have been selected as the initial planning horizon~~)) starting on the relevant due date for the most recent periodic update specified in RCW 36.70A.130(5).

((~~(24)~~)) (27) "Public service obligations" means obligations imposed by law on utilities to furnish facilities and supply service to all who may apply for and be reasonably entitled to service.

((~~(25)~~)) (28) "Regional transportation plan" means the transportation plan for the regionally designated transportation system which is produced by the regional transportation planning organization.

((~~(26)~~)) (29) "Regional transportation planning organization (RTPO)" means the voluntary organization conforming to RCW 47.80.020, consisting of counties and cities within a region containing one or more counties which have common transportation interests.

((~~(27)~~)) (30) "Rural lands" means all lands which are not within an urban growth area and are not designated as natural resource lands having long-term commercial significance for production of agricultural products, timber, or the extraction of minerals.

((~~(28)~~)) (31) "Sanitary sewer systems" means all facilities, including approved on-site disposal facilities, used in the collection, transmission, storage, treatment, or discharge of any waterborne waste, whether domestic in origin or a combination of domestic, commercial, or industrial waste. On-site disposal facilities are only considered sanitary sewer systems if they are designed to serve urban densities.

((~~(29)~~)) (32) "Shall," as used in this chapter, indicates a requirement for compliance with the act. It has the same meaning within this chapter as "must."

((~~(30)~~)) (33) "Should," as used in this chapter, indicates the advice of the department, but does not indicate a requirement for compliance with the act.

((~~(31)~~)) (34) "Solid waste handling facility" means any facility for the transfer or ultimate disposal of solid waste, including land fills and municipal incinerators.

((~~(32)~~)) (35) "Sufficient land capacity for development" means that the comprehensive plan and development regulations provide for the capacity necessary to accommodate all the growth in population and employment that is allocated to that jurisdiction through the process outlined in the ((~~county-wide~~)) countywide planning policies.

((~~(33)~~)) (36) "Transportation facilities" includes capital facilities related to air, water, or land transportation.

((~~(34)~~)) (37) "Transportation level of service standards" means a measure which describes the operational condition of the travel stream

and acceptable adequacy requirements. Such standards may be expressed in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety.

((~~(35)~~)) (38) "Transportation system management" means the use of low cost solutions to increase the performance of the transportation system. Transportation system management (TSM) strategies include, but are not limited to, signalization, channelization, ramp metering, incident response programs, and bus turn-outs.

((~~(36)~~)) (39) "Utilities" or "public utilities" means enterprises or facilities serving the public by means of an integrated system of collection, transmission, distribution, and processing facilities through more or less permanent physical connections between the plant of the serving entity and the premises of the customer. Included are systems for the delivery of natural gas, electricity, telecommunications services, and water, and for the disposal of sewage.

((~~(37)~~)) (40) "Visioning" means a process of citizen involvement to determine values and ideals for the future of a community and to transform those values and ideals into manageable and feasible community goals.

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

PART THREE
URBAN GROWTH AREAS AND ((~~COUNTY-WIDE~~)) COUNTYWIDE PLANNING POLICIES

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

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

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

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

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

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

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

(a) Comprehensive plans. Under RCW 36.70A.070(1) and in RCW 36.70A.110(2), the act requires that the land use element identify areas and assumed densities sufficient to accommodate the ((~~twenty-year~~)) 20-year population allocation. The land use element should clearly identify the densities, or range of densities, assumed for each land use designation as shown on the future land use map. When reviewing the urban growth area, the assumed densities in the land capacity analysis must be urban densities.

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

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

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

(4) Factors to consider for establishing urban densities. The act does not establish a uniform standard for minimum urban density. Counties and cities may establish a specified minimum density in ((~~county-wide~~)) countywide or multicounty planning policies. Counties and cities should consider the following factors when determining an appropriate range of urban densities:

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

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

(c) The areas and densities within an urban growth area must be sufficient to accommodate the portion of the ((~~twenty-year~~)) 20-year population that is allocated to the urban area. Urban densities should allow accommodation of the population allocated within the area that can be provided with adequate public facilities during the planning period.

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-305 ((~~County-wide~~)) Countywide planning policies.

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

(2) Relationship to the act. ((~~County-wide~~)) Countywide planning policies must comply with the requirements of the act. ((~~County-wide~~)) Countywide planning policies may not compel counties and cities to take action that violates the act. ((~~County-wide~~)) Countywide planning policies may not permit actions that the act prohibits nor include exceptions to such prohibitions not contained in the act. If a ((~~county-wide~~)) countywide planning policy can be implemented in a way that is

consistent with the act, then it is consistent with the act, even if its subsequent implementation is found to be out of compliance. RCW 36.70A.210(4) requires state agencies to comply with ((~~county-wide~~)) countywide planning policies.

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

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

(a) Policies to implement RCW 36.70A.110, including:

(i) Designation of urban growth areas;

(ii) Selection ((~~and allocation~~)) of population projections, employment forecasts, and growth allocations between cities and counties as part of the review of an urban growth area;

(iii) Procedures governing amendments to urban growth areas, including the review required by RCW 36.70A.130(3);

(iv) Consultation between cities and counties regarding urban growth areas; and

(v) If desired, policies governing the establishment of urban service boundaries or potential annexation areas.

(b) Promoting contiguous and orderly development and provision of urban services to such development;

(c) Siting public facilities of a ((~~county-wide~~)) countywide or statewide nature, including transportation facilities of statewide significance;

(d) ((~~County-wide~~)) Countywide transportation facilities and strategies;

(e) The need for affordable housing such as housing for all economic segments of the population and parameters for its distribution;

(f) Joint city/county planning in urban growth areas;

(g) ((~~County-wide~~)) Countywide economic development and employment;

(h) An analysis of fiscal impact; and

(i) Where applicable, policies governing the buildable lands review and evaluation program.

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

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

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

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

(a) Desired policies;

(b) Deadlines;

(c) Ratification of final agreements and demonstration; and

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

(7) Forum for ongoing coordination. Counties and cities should establish a method for ongoing coordination of issues associated with implementation of the ((~~county-wide~~)) countywide planning policies and comprehensive plans, which should include both a forum for county and city elected officials and a forum for county and city staff responsible for implementation. Cities and counties should review adopted countywide policies to determine whether they are effectively achieving their objectives. These forums may also include special purpose districts, transit districts, port districts, federal agencies, state agencies, and tribes.

(8) Multicounty planning policies.

(a) Multicounty planning policies must be adopted by two or more counties, each with a population of ((~~four hundred fifty thousand~~)) 450,000 or more, with contiguous urban areas. They may also be adopted by other counties by a process agreed to among the counties and cities within the affected counties.

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

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

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

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

(f) In order to provide an ongoing multicounty framework, a schedule for reviewing and revising the multicounty planning policies may be established. This schedule should relate to the review and revision deadlines for county and city comprehensive plans pursuant to RCW 36.70A.130.

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

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

WAC 365-196-310 Urban growth areas. (1)(a) Except as provided in (b) of this subsection, counties and cities may not expand the urban growth area into the ((~~one hundred-year~~)) 100-year flood plain of any river or river segment that:

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

(ii) Has a mean annual flow of ((~~one thousand~~)) 1,000 or more cubic feet per second as determined by the department of ecology.

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

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

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

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

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

(iii) Urban growth area expansions where:

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

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

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

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

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

(c) Under (a)(i) of this subsection, "((~~one hundred-year~~)) 100-year flood plain" means the same as "special flood hazard area" as set forth in WAC 173-158-040 as it exists on July 26, 2009.

(2) Requirements.

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

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

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

(d) Based upon the growth management planning population projection selected by the county from within the range provided by the office of financial management, and based on a ((~~county-wide~~)) county-wide employment forecast developed by the county at its discretion, the urban growth areas shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding ((~~twenty-year~~)) 20-year period. Counties and cities may provide the office of financial management with information they deem relevant to prepare the population projections, and the office shall

consider and comment on such information and review projections with cities and counties before they are adopted. Counties and cities may petition the office to revise projections they believe will not reflect actual population growth.

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

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

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

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

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

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

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

(i) The purpose of the urban growth area review is to assess the capacity of the urban land to accommodate population growth projected for the succeeding ((~~twenty-year~~)) 20-year planning period.

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

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

(3) General procedure for designating urban growth areas.

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

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

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

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

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

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

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

(4) Recommendations for meeting requirements.

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

(i) The total ((~~county-wide~~)) countywide population is the sum of the population allocated to each city; the population allocated to any portion of the urban growth area associated with cities; the population allocated to any portion of the urban growth area not associated with a city; and the population growth that is expected outside of the urban growth area. Cities and counties should use consistent growth forecasts, allocations, and planning horizons. The planning horizon should start on the relevant deadline specified in RCW 36.70A.130(5) and encompass a minimum of 20 years.

(ii) RCW 43.62.035 directs the office of financial management to provide a reasonable range of high, medium and low ((~~twenty-year~~)) 20-year population forecasts for each county in the state, with the medium forecast being most likely. Counties and cities must plan for a total ((~~county-wide~~)) countywide population that falls within the office of financial management range.

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

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

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

(C) General implications, including:

(I) Public facilities and service implications. Counties and cities should carefully consider how to finance the necessary facilities and should establish a phasing plan to ensure that development occurs at urban densities; occurs in a contiguous and orderly manner; and is

linked with provision of adequate public facilities. These considerations are particularly important when considering forecasts closer to the high end of the range. Jurisdictions considering a population forecast closer to the low end of the range should closely monitor development and population growth trends to ensure actual growth does not begin to exceed the planned capacity.

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

(III) Implications of short term updates. The act requires that ((~~twenty-year~~)) 20-year growth forecasts and designated urban growth areas be updated at a minimum during the periodic review of comprehensive plans and development regulations (WAC 365-196-610). Counties and cities should consider the likely timing of future updates, and the opportunities this provides for adjustments.

(D) Counties and cities are not required to adopt forecasts for annual growth rates within the ((~~twenty-year~~)) 20-year period, but may choose to for planning purposes. If used, annual growth projections may assume a consistent rate throughout the planning period, or may assume faster or slower than average growth in certain periods, as long as they result in total growth consistent with the ((~~twenty-year~~)) 20-year forecasts selected.

(iv) Selection of a ((~~county-wide~~)) countywide employment forecast. Counties, in consultation with cities, should adopt a ((~~twenty-year county-wide~~)) 20-year countywide employment forecast to be allocated among urban growth areas, cities, and the rural area. The following should be considered in this process:

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

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

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

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

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

(vii) Selection of the densities the community seeks to achieve in relation to its growth goals. Inside the urban growth areas densi-

ties must be urban. Outside the urban growth areas, densities must be rural.

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

(i) Estimation of the number of new persons and jobs to be accommodated based on the difference between the ((~~twenty-year~~)) 20-year forecast and current population and employment.

(ii) Estimation of the capacity of current cities and urban growth areas to accommodate additional population and employment over the ((~~twenty-year~~)) 20-year planning period. This should be based on a land capacity analysis, which may include the following:

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

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

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

(D) Based on allowed land use development densities and intensities, a projection of the additional urban population and employment growth that may occur on the available residential, commercial and industrial land base. The projection should consider the portion of population and employment growth which may occur through redevelopment of previously developed urban areas during the ((~~twenty-year~~)) 20-year planning period.

(E) The land capacity analysis must be based on the assumption that growth will occur at urban densities inside the urban growth area. In formulating land capacity analyses, counties and cities should consider data on past development, as well as factors which may cause trends to change in the future. For counties and cities subject to RCW 36.70A.215, information from associated buildable lands reports should be considered. If past development patterns have not resulted in urban densities, or have not resulted in a pattern of desired development, counties and cities should use assumptions aligned with desired future development patterns. Counties and cities should then implement strategies to better align future development patterns with those desired.

(F) The land capacity analysis may also include a reasonable land market supply factor, also referred to as the "market factor." The purpose of the market factor is to account for the estimated percentage of developable acres contained within an urban growth area that, due to fluctuating market forces, is likely to remain undeveloped over the course of the ((~~twenty-year~~)) 20-year planning period. The market factor recognizes that not all developable land will be put to its maximum use because of owner preference, cost, stability, quality, and location. If establishing a market factor, counties and cities should establish an explicit market factor for the purposes of establishing the amount of needed land capacity. Counties and cities may consider local circumstances in determining an appropriate market factor. Counties and cities may also use a number derived from general information if local study data is not available.

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

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

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

(i) Selection of appropriate densities. For all jurisdictions planning under the act, the urban growth area should represent the physical area where that jurisdiction's urban development vision can be realized over the next ((~~twenty~~)) 20 years. The urban growth area should be based on densities which accommodate urban growth, served by adequate public facilities, discourage sprawl, and promote goals of the act. RCW 36.70A.110 requires that densities specified for land inside the urban growth area must be urban densities. See WAC 365-196-300 for recommendations on determining appropriate urban densities.

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

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

(A) Existing incorporated areas;

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

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

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

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

(A) Rail access;

(B) Highway access;

(C) Large parcel size;

(D) Location along major electrical transmission lines;

(E) Location along pipelines;

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

(G) Availability of needed infrastructure; or

(H) Absence of surrounding incompatible uses.

(v) Consideration of resource lands issues. Urban growth areas should not be expanded into designated agricultural, forest or resource lands unless no other option is available. Prior to expansion of the urban growth area, counties and cities must first review the

natural resource lands designation and conclude the lands no longer meet the designation criteria for resource lands of long-term commercial significance. Designated agricultural or forest resource lands may not be located inside the urban growth area unless a city or county has enacted a program authorizing transfer or purchase of development rights.

(vi) Consideration of critical areas ((~~issues~~)) and wildfires. Although critical areas exist within urban areas, counties and cities should avoid expanding the urban growth areas into areas with known critical areas extending over a large area. Counties and cities should also consider the potential risk of wildland fires when expanding the urban growth area into areas where structures and other development intermingles with undeveloped wildland or vegetative fuels. See RCW 36.70A.110(8) for legislative direction on expansion of urban growth areas into the ((~~one hundred-year~~)) 100-year flood plain of river segments that are located west of the crest of the Cascade mountains and have a mean annual flow of ((~~one thousand~~)) 1,000 or more cubic feet per second.

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

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

(i) The anticipated ability to finance the public facilities, public services, and open space needed in the urban growth area over the planning period. When conducting a review of the urban growth areas, counties and cities should develop an analysis of the fiscal impact of alternative land use patterns that accommodate the growth anticipated over the succeeding ((~~twenty-year~~)) 20-year period. Counties and cities should identify revenue sources and develop a reasonable financial plan to support operation and maintenance of existing facilities and services, and for new or expanded facilities to accommodate projected growth over the 20-year planning period. The plan should ensure consistency between the land use element and the capital facilities plan, and demonstrate that probable funding does not fall short of the projected needs to maintain and operate public facilities, public services, and open space. This provides the public and decision makers with an estimate of the fiscal consequences of various development patterns. This analysis could be done in conjunction with the analysis required under the State Environmental Policy Act.

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

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

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

(e) County actions in adopting urban growth areas.

(i) A change to the urban growth area is an amendment to the comprehensive plan and requires, at a minimum, an amendment to the land

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

WAC 365-196-315 Buildable lands review and evaluation. (1) Purpose. The review and evaluation program required by RCW 36.70A.215 is referred to as the "buildable lands program." The buildable lands program is intended to determine if urban densities are being achieved within urban growth areas by comparing local planning goals and assumptions contained in the countywide planning policies and comprehensive plans with actual development and determining if actual development is consistent with the ((~~comprehensive~~)) adopted plans. It also determines if there is sufficient commercial, industrial and housing capacity within the adopted urban growth area to accommodate the county's ((~~twenty-year~~)) 20-year planning targets. If, through this evaluation, it is determined that there is an inconsistency between planned and built-out densities or there is insufficient development capacity, counties and cities must adopt and implement measures, other than expanding urban growth areas, that are reasonably likely to increase consistency between what was envisioned in adopted countywide planning policies, comprehensive plans and development regulations, and actual

development that has occurred. These measures are referred to as "reasonable measures." Products derived through the program should be used as a technical resource to local policy makers for subsequent comprehensive plan updates.

(2) Required jurisdictions.

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

(i) Clark;

(ii) King;

(iii) Kitsap;

(iv) Pierce;

(v) Snohomish; ((~~and~~))

(vi) Thurston; and

(vii) Whatcom.

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

(3) ((~~County-wide~~)) Countywide planning policies and supportive documents.

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

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

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

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

(ii) Provide for the evaluation of the data no later than ((~~one year~~)) the date specified in RCW 36.70A.215, prior to the deadline for review of comprehensive plans and development regulations required by RCW 36.70A.130, commonly referred to as the buildable lands report;

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

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

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

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

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

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

(B) Determine whether there is sufficient suitable land to accommodate the countywide population projection, and the subsequent population allocations within the county and between the county and its cities;

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

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

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

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

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

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

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

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

(4) Buildable lands program reporting.

(a) No later than ((~~one year~~)) the date specified in RCW 36.70A.215, prior to the deadline for review of comprehensive plans and development regulations required by RCW 36.70A.130, the buildable lands program must compile and publish an evaluation, known as the buildable lands report. Each buildable lands report must be submitted to the department upon publication.

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

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

(5) Criteria for determining consistency or inconsistency.

((~~(a)~~)) The determination of consistency or inconsistency for each county or city maintaining a buildable lands program must be made under RCW 36.70A.215(3). At a minimum, the evaluation component of the program shall determine whether there is sufficient land suitable for development or redevelopment within the 20-year planning period:

((~~(i)~~)) (a) Evaluation under RCW 36.70A.215 (3)(a) should determine whether the comprehensive plan and development regulations sufficiently accommodate the population projection established for the county and allocated within the county and between the county and its cities, consistent with the requirements in RCW 36.70A.110; the zoned capacity of land alone is not a sufficient standard to deem land suitable for development or redevelopment within the 20-year planning period.

((~~(ii)~~)) (b) Evaluation under RCW 36.70A.215 (3)(b) should compare the achieved densities, type and density range for commercial, industrial and residential land uses with the assumed densities that

were envisioned in the applicable ((~~county-wide~~)) countywide planning policies, and the comprehensive plan, including:

(i) A review and evaluation of the land use designation and zoning/development regulations; environmental regulations (such as tree retention, stormwater, or critical area regulations) impacting development; and other regulations that could prevent assigned densities from being achieved; infrastructure gaps (including, but not limited to, transportation, water, sewer, and stormwater); and

(ii) Use of a reasonable land market supply factor when evaluating land suitable to accommodate new development or redevelopment of land for residential development and employment activities. The reasonable market supply factor identifies reductions in the amount of land suitable for development and redevelopment. The methodology for conducting a reasonable land market factor shall be determined through the guidance developed in RCW 36.70A.217.

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

~~(b) The evaluation used to determine whether there is a consistency or inconsistency should include any additional standards identified in the county-wide planning policies or in other policies that are specifically directed for use in the evaluation~~)) provide an analysis of county and/or city development assumptions, targets, and objectives contained in the countywide planning policies and the county and city comprehensive plans when growth targets and assumptions are not being achieved. It is not appropriate to make a finding that assumed growth contained in the countywide planning policies and the county or city comprehensive plan will occur at the end of the current comprehensive planning 20-year planning cycle without rationale;

(d) Evaluation under RCW 36.70A.215 (3)(d) should determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses within the urban growth area since the adoption of a comprehensive plan under this chapter or since the last periodic evaluation as required by RCW 36.70A.215(1); and

(e) Evaluation under RCW 36.70A.215 (3)(e) should, based on the actual density, along with current trends and other documented factors relevant to patterns of actual growth and development as determined under RCW 36.70A.215 (3)(b), review commercial, industrial, and housing needs by type and density range to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the 20-year planning period used in the most recently adopted comprehensive plan.

(6) Measures to address inconsistencies.

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

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

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

(i) Sanitary sewer systems;

(ii) Storm drainage systems;

(iii) Domestic water systems;

(iv) Street cleaning services;

(v) Fire and police protection services;

(vi) Public transit services; and

(vii) Other public utilities associated with urban areas and normally not associated with rural areas.

(b) RCW 36.70A.030 ((~~(12) and (13)~~)) defines public facilities and public services, which in addition to those defined as urban services, also include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, parks and recreational facili-

ties, and schools, public health and environmental protection, and other governmental services.

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

(d) At a minimum, adequate public facilities in urban areas should include sanitary sewer systems, and public water service from a Group A public water system under chapter ((~~70.119 or 70.119A~~)) 70A.120 or 70A.125 RCW because these services are usually necessary to support urban densities. The services provided must be adequate to allow development at urban densities and serve development at densities consistent with the land use element, and meet all regulatory obligations under state and federal law.

(e) If potable water demand is expected to exceed a public water system's available water rights within the 20-year planning horizon, cities and counties should develop strategies to obtain sufficient water to meet anticipated demand. Strategies may include, but are not limited to, decreasing water demand through conservation, securing additional water rights and establishing an intertie agreement with another water purveyor to purchase the necessary water.

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

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

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

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

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

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

(3) Coordination of planning in urban growth areas.

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

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

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

(a) RCW 36.70A.115 requires counties and cities to ensure that, taken collectively, comprehensive plans and development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, including the accommodation of, as appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related to such growth, as adopted in the applicable ((~~county-wide~~)) countywide planning policies and consistent with the ((~~twenty-year~~)) 20-year population forecast from the office of financial management. To demonstrate this requirement is met, counties and cities must conduct an evaluation of land capacity sufficiency that is commonly referred to as a "land capacity analysis."

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

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

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

(2) Recommendations for meeting requirement.

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

(b) Appropriate area for analysis. The focus of the analysis is on the county or city's ability to meet its obligation to accommodate the growth allocated through the ((~~county-wide~~)) countywide population or employment allocation process. Providing sufficient land capacity for development does not require a county or city to achieve or evaluate sufficiency for every parcel of a future land use designation provided the area as a whole ensures sufficient land capacity for development.

(c) The land capacity analysis should evaluate what the development regulations allow, rather than what development has actually occurred. Many factors beyond the control of counties and cities will control the amount and pace of actual development, what density it is

built at and what types and densities of development are financially viable for any set of economic conditions. Counties and cities need not ensure that particular types of development are financially feasible in the context of short term market conditions. Counties and cities should, however, consider available information on trends in local markets to inform its evaluation of sufficient land capacity for the ((~~twenty-year~~)) 20-year planning period.

(d) Development phasing. RCW 36.70A.115 does not create an obligation to ensure that all land in the urban growth area is available for development at the same time. When counties or cities establish mechanisms for development phasing, zoned densities in the short term may be established that are substantially lower than called for in the future land use designations. In these cases, a county or city ensures a sufficient land capacity suitable for development by implementing its development phasing policies to allow development to occur within the ((~~twenty-year~~)) 20-year planning period. Development phasing is described in greater detail in WAC 365-196-330.

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

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

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

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

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-325, filed 1/27/15, effective 2/27/15; WSR 10-22-103, § 365-196-325, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-325, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-330 Phasing development within the UGA. (1) Purpose of development phasing. Development phasing is the sequencing of de-

velopment subareas within a city or urban growth area over the course of the ((~~twenty-year~~)) 20-year planning period. Development phasing should be considered a way to achieve one or more of the following:

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

(b) Preventing the irreversible commitment of land to urban growth before the provision of adequate public facilities. Within the comprehensive plan, the capital facilities element, transportation element, and parks and recreation element each must contain a plan to provide urban areas with adequate public facilities. The comprehensive plan must identify those facilities needed to achieve and maintain adopted levels of service over the ((~~twenty-year~~)) 20-year planning period, but only requires a six-year financing plan. Development phasing is a tool to address those areas for which capital facility needs have been identified in the ((~~twenty-year~~)) 20-year plan, but financing has not yet been identified. Because no irreversible commitment of land has been made in the zoning ordinance, if provision of urban governmental services ultimately proves infeasible, the area can be removed from the urban growth area when reassessing the land use element if probable funding falls short;

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

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

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

(a) Identification of the areas to be sequenced;

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

(c) The densities and uses allowed in identified areas that have not yet met the criteria. Densities and intensities more typical of rural development should be considered to avoid hindering future development at urban densities. Such requirements are not inconsistent with the obligation to permit urban densities if provisions are made for conversion to urban densities over the course of the ((~~twenty-year~~)) 20-year planning period. Regulations should ensure that interim uses do not preclude future development at urban densities; and

(d) The review process for transitioning to ultimate urban densities. This should involve changes to development regulations, and not require amendments to the comprehensive plan.

(3) Additional considerations.

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

(b) Counties and cities should coordinate the phasing of development within portions of urban growth areas assigned to cities, and throughout urban growth areas in which cities are located. Development

phasing polices may be addressed in ((~~county-wide~~)) countywide planning policies.

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

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

NEW SECTION

WAC 365-196-350 Extension of public facilities and utilities to serve school sited in a rural area authorized. (1) Requirements: The Growth Management Act does not prohibit a county planning under RCW 36.70A.040 from authorizing the extension of public facilities and utilities to serve a school sited in a rural area that serves students from a rural area and an urban area so long as the following requirements are met:

(a) The applicable school district board of directors has adopted a policy addressing school service area and facility needs and educational program requirements;

(b) The applicable school district has made a finding, with the concurrence of the county legislative authority and the legislative authorities of any affected cities, that the district's proposed site is suitable to site the school and any associated recreational facilities that the district has determined cannot reasonably be collocated on an existing school site, taking into consideration the policy adopted in (a) of this subsection and the extent to which vacant or developable land within the growth area meets those requirements;

(c) The county and any affected cities agree to the extension of public facilities and utilities to serve the school sited in a rural area that serves urban and rural students at the time of concurrence in (b) of this subsection;

(d) If the public facility or utility is extended beyond the urban growth area to serve a school, the public facility or utility must serve only the school and the costs of such extension must be borne by the applicable school district based on a reasonable nexus to the impacts of the school, except as provided in subsection (3) of this section; and

(e) Any impacts associated with the siting of the school are mitigated as required by the State Environmental Policy Act, chapter 43.21C RCW.

(2) The act does not prohibit either the expansion or modernization of an existing school in the rural area or the placement of portable classrooms at an existing school in the rural area.

(3) Where a public facility or utility has been extended beyond the urban growth area to serve a school, the public facility or utility may, where consistent with RCW 36.70A.110(4), serve a property or properties in addition to the school if the property owner so requests, provided that the county and any affected cities agree with the request and provided that the property is located no further from the public facility or utility than the distance that, if the property were within the urban growth area, the property would be required to connect to the public facility or utility. In such an instance, the

school district may, for a period not to exceed 20 years, require reimbursement from a requesting property owner for a proportional share of the construction costs incurred by the school district for the extension of the public facility or utility.

(4) Counties and cities must identify lands useful for public purposes, such as schools in their comprehensive plan. (See RCW 36.70A.150.) As part of subdivision approval, permitting jurisdictions must ensure appropriate provisions are made for schools and school grounds. (See RCW 58.17.110.)

(5) Recommendations for meeting requirements.

(a)(i) School sites should be considered as communities are being planned, and specifically considered when permitting large developments. (See RCW 36.70A.110(2) and 36.70A.150.)

(ii) Cities, counties, and school districts should first work together to identify potential school sites within urban growth areas. To facilitate the siting of schools within urban areas, cities and counties should work with school districts to assess zoning, height limits, and other factors that may affect the ability of a school to site within an urban growth area, including joint-use facilities. County policies may address schools in the rural area, and set out locational, buffering or screening policies to protect rural character. As schools are considered in the rural area, the long-term plan for the area should be considered, but new school development should not be used to intentionally drive urban development in a rural area.

(b) Cities, counties and school districts should:

(i) Coordinate enrollment forecasts and projections with the city and county's adopted population projections.

(ii) Identify school siting criteria with the county, cities, and regional transportation planning organizations. Such criteria may be included in countywide planning policies.

(iii) Identify suitable school sites with the county and cities, with priority to siting schools in existing cities and towns in locations where students can safely walk and bicycle to the school from their homes and that can effectively be served by transit.

(iv) Consider playgrounds and fields associated with activities during the normal school day (e.g., recess and physical education) for new, expanded, or modernized school sites. Districts may consider joint use of recreational facilities as part of the proposal.

(c) If school impact fees are collected, a jurisdiction's capital facilities element must address school facility needs related to growth. (See RCW 82.02.050 and 82.02.090(7).) Cities and counties should work with school districts to review the relationship of school district enrollment projections with local population growth projections.

(d) A school district policy adopted pursuant to RCW 36.70A.213 may include criteria for siting schools, school grade configuration, educational programming, recreational facility co-location, feeder schools, transportation routes, or other relevant factors that may affect school siting decisions.

(e) If a county or affected city concurs with the school district's finding, the county and any affected cities should also at that time agree to the extension of public facilities and utilities to serve the school. If a county or affected city finds that it cannot concur with the school district's findings regarding the proposed school, the county or city should document the reasons in their decision.

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AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

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

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

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

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

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

(i) A land use element;

(ii) A housing element;

(iii) A capital facilities plan element;

(iv) A utilities element;

(v) A transportation element.

(e) Required elements enacted after January 1, 2002, must be included in each comprehensive plan that is updated under RCW 36.70A.130(1), but only if funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before the applicable review and update deadline in RCW 36.70A.130(5). The department will notify counties and cities when funds have been appropriated for this purpose. Elements enacted after January 1, 2002, include:

(i) An economic development element; and

(ii) A parks and recreation element.

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

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

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

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

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

(a) The planning horizon for the comprehensive plan must be at least the twenty-year period following the adoption of the comprehensive plan. Counties and cities should use consistent population projections and planning horizons. The planning horizon should start on the relevant deadline specified in RCW 36.70A.130(5).

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

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

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

(e) The comprehensive plan should include a vision for the community at the end of the ((~~twenty-year~~)) 20-year planning period and identify community values derived from the visioning and other citizen participation processes. Goals may be further defined with policies and objectives in each element of the comprehensive plan.

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

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

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

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Watershed plans approved under chapter 90.82 RCW; ground water management plans approved under RCW 90.44.400; coordinated water system plans adopted under chapter ((~~70.116~~)) 70A.100 RCW; and watershed plans adopted under chapter 90.54 RCW as outlined in RCW 90.03.386.

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

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

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

(vi) Existing or potential open space corridors within and between urban growth areas as required by RCW 36.70A.160 for recreation, wildlife habitat, trails, and connection of critical areas as defined

in RCW 36.70A.030. Counties and cities may consult WAC 365-196-335 for additional information.

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

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

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

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

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

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

(f) Counties and cities must obtain ((~~twenty-year~~)) 20-year population allocations for their planning area as part of a ((~~county-wide~~)) countywide process described in WAC 365-196-305(4) and 365-196-310. Using information from the housing needs analysis, identify the amount of land suitable for development at a variety of densities consistent with the number and type of residential units likely to be needed over the planning period. At a minimum, cities must plan for the population allocated to them, but may plan for additional population within incorporated areas.

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

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

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

(i) It is strongly recommended that a table be included showing the acreage in each land use designation, the acreage in each implementing zone, the approximate densities that are assumed, and how this meets the ((~~twenty-year~~)) 20-year population projection.

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

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

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

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

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

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

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

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

(vii) Opportunities for promoting physical activity through these and other policies should be sought in existing as well as newly developing areas. Regulatory or policy barriers to promoting physical activity for new or existing development should also be removed or lessened where feasible.

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

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

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

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

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

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

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

(a) Housing goals and policies.

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

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

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

(A) Affordable housing;

(B) Preservation of neighborhood character; and

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

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

(b) Housing inventory.

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

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

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

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

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

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

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

(c) Housing needs analysis.

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

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

(iii) The analysis should be based on the most recent ((~~twenty-year~~)) 20-year population allocation.

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

(d) Housing targets or capacity.

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

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

(A) Workforce housing which is often defined as housing affordable to households earning between ((~~eighty to one hundred twenty~~)) 80 to 120 percent of the median household income.

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

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

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

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

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

(i) Determining what housing units are affordable.

(A) In the case of dwelling units for sale, affordable housing has mortgages, amortization, taxes, insurance and condominium or association fees, if any, that consume no more than ((~~thirty~~)) 30 percent of the owner's gross annual household income.

(B) In the case of dwelling units for rent, affordable housing has rent and utility costs, as defined by the county or city, that cost no more than ((~~thirty~~)) 30 percent of the tenant's gross annual household income.

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

(I) Median income refers to median household income.

(II) Extremely low-income refers to a household whose income is at or below ((~~thirty~~)) 30 percent of the median income, adjusted for household size, for the county where the housing unit is located.

(III) Low-income refers to a household whose income is between ((~~thirty percent and fifty~~)) 30 percent and 50 percent of the median income, adjusted for household size, for the county where the housing unit is located.

(IV) Moderate-income refers to a household whose income is between ((~~fifty percent and eighty~~)) 50 percent and 80 percent of the median income where the housing unit is located.

(V) Middle-income refers to a household whose income is between ((~~eighty percent and ninety-five~~)) 80 percent and 95 percent of the median income for the area where the housing unit is located.

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

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

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

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

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

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

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

(f) Implementation plan.

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

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

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

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

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

(ii) The housing element should also address how the county or city will provide for group homes, foster care facilities, and facili-

ties for other populations with special needs. The housing element should provide for an equitable distribution of these facilities among neighborhoods within the county or city

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

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

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

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

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

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

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

(2) Recommendations for meeting requirements.

(a) Inventory of existing facilities.

(i) Counties and cities should create an inventory of existing capital facilities showing locations and capacities, including the ex-

tent to which existing facilities have capacity available for future growth.

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

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

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

(b) Forecast of future needs.

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

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

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

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

(C) Counties and cities may identify any other improvements desired to raise levels of services above locally adopted minimum standards, to enhance the quality of life in the community or meet other community needs not related to growth such as administrative offices, courts or jail facilities. Counties and cities are not required to set level of service standards for facilities that are not necessary for development. Because these facilities are not necessary for development, the failure to fund these facilities as planned would not require a reassessment of the land use element if funding falls short as required by RCW 36.70A.070 (3)(e).

(c) Financing plan.

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

(ii) The six-year plan should be updated at least biennially so financial planning remains sufficiently ahead of the present for con-

currency to be evaluated. Such an update of the capital facilities element may be integrated with the county's or city's annual budget process for capital facilities.

(d) Reassessment.

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

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

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

(A) Reducing demand through demand management strategies;

(B) Reducing levels of service standards;

(C) Increasing revenue;

(D) Reducing the cost of the needed facilities;

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

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

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

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

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

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

(c) A capital facilities element includes the new and expanded facilities necessary for growth over the ((~~twenty-year~~)) 20-year life of the comprehensive plan. Facilities needed for new growth, combined with needs for maintenance and rehabilitation of the existing systems and the need to address existing deficiencies constitutes the capital facilities demand.

(4) Relationship to plans of other service providers or plans adopted by reference. A county or city should not meet their responsibility to prepare a capital facilities element by relying only on assurances of availability from other service providers. When system

plans or master plans from other service providers are adopted by reference, counties and cities should do the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

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

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

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

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

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

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

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

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

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

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

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

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

(g) Counties and cities should adopt policies that call for:

(i) Joint use of transportation rights of way and utility corridors, where possible.

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

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

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

(2) Establishing a definition of rural character.

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

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

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

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

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

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

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

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

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

(c) Counties should adopt a locally appropriate definition of rural character. Rural areas are diverse in visual character and in density, across the state and across a particular county. Rural development may consist of a variety of densities and uses. It may, for example, include clustered residential development at levels consistent

with the preservation of rural character. Counties should define rural development both in terms of its visual character and in terms of the density and intensity of uses. Defining rural development in this way allows the county to use its definition of rural development both in its future land use designations and in its development regulations governing rural development.

(3) Rural densities.

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

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

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

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

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

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

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

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

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

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

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

(b) Counties should consider the adverse impact of wildfires when establishing rural densities. Counties may reduce rural densities in areas vulnerable to wildland fires as a mitigation strategy to protect natural resource lands, critical areas, water quality, or rural character.

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

(i) Patterns of development occurring in rural areas.

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

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

(iv) Numbers of permits issued in rural areas.

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

(vi) Growth in traffic levels on rural roads.

(vii) Growth in public facilities and public services costs in rural areas.

(viii) Changes in rural land values and rural employment.

(ix) Potential build-out at the allowed rural densities.

(x) The degree to which the growth that is occurring in the rural areas is consistent with patterns of rural land use and development established in the rural element.

(4) Rural governmental services.

(a) Rural governmental services are those public facilities and services historically and typically delivered at intensities usually found in rural areas, and may include the following:

(i) Domestic water system;

(ii) Fire and police protection;

(iii) Transportation and public transportation; and

(iv) Public utilities, such as electrical, telecommunications and natural gas lines.

(b) Rural services do not include storm or sanitary sewers. Urban governmental services that pass through rural areas when connecting urban areas do not constitute an extension of urban services into a rural area provided those public services are not provided in the rural area. Sanitary sewer service may be provided only if it:

(i) Is necessary to protect basic public health and safety and the environment;

(ii) Is financially supportable at rural densities; and

(iii) Does not permit urban development.

(c) When establishing levels of service in the capital facilities and transportation element, each county should establish rural levels of service, for those rural services that are necessary for development, to determine if it is providing adequate public facilities. Counties are not required to use a single level of service for the entire rural area and may establish varying levels of service for public services in different rural areas. Where private purveyors or other public entities provide rural services, counties should coordinate with them to establish and document appropriate levels of service.

(d) Rural areas typically rely on natural systems to adequately manage stormwater and typically rely on on-site sewage systems to treat wastewater. Development in rural areas also typically relies on individual wells, exempt wells or small water systems for water. Counties should ensure the densities it establishes in rural areas do not overwhelm the ability of natural systems to provide these services without compromising either public health or the vitality of the surrounding ecosystem.

(e) Rural road systems are not typically designed to handle large traffic volumes. Local conditions may influence varying levels of service for rural road system, and level of service standards for rural arterials should be set accordingly. Generally, level of service standards should reflect the expectation that high levels of local traffic and the associated road improvements are not usually associated with rural areas.

(f) Levels of public services decrease, and corresponding costs increase when demand is spread over a large area. This is especially true for public safety services and both school and public transportation services. Counties should provide clear expectations to the public about the availability of rural public services. Counties should ensure the densities it establishes in rural areas do not overwhelm the capacity of rural public services.

(5) Innovative zoning techniques.

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

(i) Result in rural development that is more visually compatible with the surrounding rural areas;

(ii) Maximize the availability of rural land for either resource use or wildlife habitat;

(iii) Increase the operational compatibility of the rural development with use of the land for resource production;

(iv) Decrease the impact of the rural development on the surrounding ecosystem;

(v) Does not allow urban growth; and

(vi) Does not require the extension of urban governmental services.

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

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

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

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

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

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

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

(a) LAMIRDs serve the following purposes:

(i) To recognize existing areas of more intense rural development and to minimize and contain these areas to prevent low density sprawl;

(ii) To allow for small-scale commercial uses that rely on a rural location;

(iii) To allow for small-scale economic development and employment consistent with rural character; and

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

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

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

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

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

(c) Counties may allow for more intensive uses in a LAMIRD than would otherwise be allowed in rural areas and may allow public facili-

ties and services that are appropriate and necessary to serve LAMIRDs subject to the following requirements:

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

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

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

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

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

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

(III) The logical outer boundary is not required to strictly follow parcel boundaries. If a large parcel contains an existing structure, a county may include part of the parcel in the LAMIRD boundary without including the entire parcel, to avoid a significant increase in the amount of development allowed within the LAMIRD.

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

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

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

(III) The prevention of abnormally irregular boundaries; and

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

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

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

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

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

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

(II) Are small in scale;

(III) Are consistent with rural character;

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

(V) Do not include new residential development;

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

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

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

(A) Counties may allow the expansion of small-scale businesses in rural areas as long as those small-scale businesses are consistent with the rural character of the area as defined by the county in the rural element. Counties may also allow new small-scale businesses to use a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area. Any public services and public facilities provided to the cottage industry or small-scale business must be limited to those necessary to

serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl.

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

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

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Do not include new residential development;

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

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

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

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

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

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

(a) Land use assumptions used in estimating travel;

(b) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(c) Facilities and services needs, including:

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

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

(iii) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's ((~~ten-year~~)) 10-year investment program. The concurrency requirements of RCW 36.70A.070 (6)(b) do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in RCW 36.70A.070 (6)(b);

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

(v) Forecasts of traffic for at least ((~~ten~~)) 10 years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

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

(d) Finance, including:

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

(ii) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the ((~~ten-year~~)) 10-year improvement program developed by the department of transportation as required by RCW 47.05.030;

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

(e) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(f) Demand-management strategies;

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

(h) The transportation element, and the six-year plan required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and the ((~~ten-year~~)) 10-year plan required by RCW 47.05.030 for the state, must be consistent.

(2) Recommendations for meeting element requirements.

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

(i) RCW 36.70A.070(6) requires that the transportation element implement and be consistent with the land use element. Counties and cities should use consistent land use assumptions, population fore-

casts, and planning periods for both elements. Coordination of the land use and transportation elements should address how the implementation of the transportation element supports the desired land uses and form established in the land use element. Recognizing that there is a direct relationship between land use and how it is accessed.

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

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

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

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

(vi) Land use elements and transportation elements may incorporate commute trip reduction plans to ensure consistency between the commute trip reduction plans and the comprehensive plan as required by RCW ((~~70.94.527(5)~~)) 70A.15.4060. Counties and cities may also include transportation demand management programs for growth and transportation efficiency centers designated in accordance with RCW ((~~70.94.528~~)) 70A.15.4030.

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

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

(ii) Public transportation, including public transit and passenger rail, intermodal transfers, and ((~~multimodal~~)) access to transit stations and stops by people walking, bicycling, or transferring from another vehicle;

(iii) Bicycle and pedestrian travel including measures of facility quality such as level of traffic stress (an indicator used to quan-

tify the stress experienced by a cyclist or pedestrian on the segments of a road network), route directness, and network completeness;

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

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

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

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

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

(i) Air transportation facilities.

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

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

(C) Counties and cities should assess the compatibility of land uses adjacent to the airport and discourage the siting of incompatible uses in the land use element as directed by RCW 36.70A.510 and WAC 365-196-455 and in accordance with the best practices recommended by the Washington state department of transportation, aviation division.

(ii) Water transportation facilities.

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

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

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

(iii) Ground transportation facilities and services.

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

(I) Counties and cities may describe the general travel market (i.e., commuter, tourist, farm to market, etc.) served by the transportation network. The inventory may include information such as: Traffic volumes, truck volumes and classification, functional classification, strategic freight corridor designation, preferred freight routes, scenic and recreational highway designation, high occupancy vehicle lanes, business access and transit lanes, transit queue jumps, other transit priority features, bicycle facilities, sidewalks, and ownership.

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

(B) Public transportation and rail facilities and services.

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

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

(d) If the planning area is within a National Ambient Air Quality Standards nonattainment area, compliance with the Clean Air Act Amendments of 1990 is required. Where applicable, the transportation element should include: A map of the area designated as the nonattainment area for ozone, carbon monoxide, and particulate matter (PM10 and PM2.5); a discussion of the severity of the violation(s) contributed by transportation-related sources; and a description of measures that

will be implemented consistent with the state implementation plan for air quality. Counties and cities should refer to chapter 173-420 WAC, and to local air quality agencies and metropolitan planning organizations for assistance.

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

(i) RCW 36.70A.070 (6)(a)(iii)(B) requires the transportation element to include level of service standards for all locally owned arterials. Counties and cities may adopt level of service standards for all travel modes. Counties and cities may adopt level of service standards for ((~~other~~)) locally owned roads ((~~or travel modes at their discretion~~)) that are not classified as arterials.

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

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

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

(v) Adopted level of service standards should reflect access, mobility, mode-split, or capacity goals for the transportation facility depending upon the surrounding development density and community goals, and should be developed in consultation with transit agencies serving the planning area. Level of service standards should also advance the state's vehicle miles per capita reduction goals as identified in RCW 47.01.440.

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

(vii) In urban areas RCW 36.70A.108 encourages the use of methodologies analyzing the transportation system from a comprehensive, mul-

timodal perspective. Multimodal levels of service methodologies and standards should consider the needs of travelers using the four major travel modes ((~~(motor vehicle, public transportation, bicycle, and pedestrian)~~)) (pedestrian, bicycle, public transportation, motor vehicle), their impacts on each other as they share the street, and their mode specific requirements for street design and operation. For example, bicycle and pedestrian level of service standards should emphasize the availability of facilities and ((~~safety levels for users~~)) user stress based on facility attributes, traffic speed, traffic volume, number of lanes, frequency of parking turnover, ease of intersection crossings and others. Utilizing additional level of services standards can help make these modes accessible to a broad share of the population.

(f) Travel forecasts. RCW 36.70A.070 (6)(a)(iii)(E) requires forecasts of traffic for at least ((~~ten~~)) 10 years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth. Counties and cities must include at least a ((~~ten-year~~)) 10-year travel forecast in the transportation element. The forecast time period and underlying assumptions must be consistent with the land use element. Counties and cities may forecast travel for the ((~~twenty-year~~)) 20-year planning period. Counties and cities may include bicycle, pedestrian, and/or planned transit service in a multimodal forecast. Travel forecasts should be based on adopted regional growth strategies, the regional transportation plan, and comprehensive plans within the region to ensure consistency. Counties and cities should use the most current traffic forecasting methodologies that better account for the different traffic generating characteristics of different land use patterns. Traffic forecasts are one piece of information and should be balanced with other data and goals in the formation of the transportation element.

(g) Identify transportation system needs.

(i) RCW 36.70A.070 (6)(a)(iii)(D) requires that the transportation element include specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below established level of service standards. Such actions and requirements identified should include improvements to active transportation and transit access, improvements in proximity of destinations, and trip avoidance through telework and other use of telecommunications.

(ii) System needs are those improvements needed to meet and maintain adopted levels of service over at least the required ((~~ten-year~~)) 10-year forecasting period. If counties and cities use a ((~~twenty-year~~)) 20-year forecasting period, they should also identify needs for the entire ((~~twenty-year~~)) 20-year period.

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

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

(v) Counties and cities must include state transportation investments identified in the statewide multimodal transportation plan required under chapter 47.06 RCW and funded in the Washington state department of transportation's ((~~ten-year~~)) 10-year improvement program. Identified needs must be consistent with regional transportation improvements identified in regional transportation plans required under chapter 47.80 RCW. The transportation element should also include plans for new or expanded public transit and be coordinated with local transit providers.

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

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

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

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

(x) State policy goals as outlined in RCW 47.04.280. Growth in travel demand should first be met through improvements to active transportation and transit access, improvements in proximity of destinations, and trip avoidance through telework and other use of telecommunications. This approach is consistent with statewide goals to reduce per capita vehicle miles traveled and greenhouse gas emissions.

(xi) The transportation element may include, in addition to improvements or strategies to accommodate the impacts of development authorized under RCW 36.70A.070 (6)(b), multimodal transportation improvements or strategies that are made concurrent with the development. These transportation improvements or strategies may include, but are not limited to, measures implementing or evaluating:

(A) Multiple modes of transportation with peak and nonpeak hour capacity performance standards for locally owned transportation facilities; and

(B) Modal performance standards meeting the peak and nonpeak hour capacity performance standards.

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

department of transportation to understand the limits of state facilities throughout the planning period and should avoid increasing vehicle demand beyond planned capacity of state facilities.

(i) Transportation demand management.

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

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

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

(i) Collaborative efforts may include referencing local, regional, ((~~and~~)) state pedestrian and bicycle planning documents, and ADA transition plans if any. Designated shared use paths, which are part of bicycle and pedestrian networks, should be consistent with those in the parks, recreation and open space element.

(ii) To identify and designate planned improvements for bicycle facilities and corridors, the pedestrian and bicycle component should include a map of bicycle facilities, such as bicycle lanes, shared use paths, paved road shoulders. This map should identify state and local designated bicycle routes, and describe how the facilities link to those in adjacent jurisdictions. This map should also identify the level of traffic stress for each of the facilities. Jurisdictions are encouraged to consider demographic groups that may have special transportation needs, such as older adults, youth, people with low incomes, people with disabilities, and people with limited English proficiency when identifying and designating planned improvements.

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

(iv) The pedestrian and bicycle component should plan a network that connects residential and employment areas with community and regional destinations, schools, and public transportation services. The plan should consider route directness, network completeness, and level of traffic stress.

(v) The pedestrian and bicycle component should also ((~~review existing pedestrian and bicycle collision data to~~)) plan pedestrian facilities that improve pedestrian and bicycle safety following a safe systems approach and consider existing pedestrian and bicycle collision data, vehicle speeds and volumes, and level of separation of modes.

(k) Multiyear financing plan.

(i) RCW 36.70A.070 (6)(a)(iii)(B) requires that the transportation element include a multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which develop a financing plan that addresses all identified multimodal transportation facilities and services and strategies throughout the ((~~twenty-year~~)) 20-year planning period. The identified needs shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should reflect regional improvements identified in regional transportation plans required under chapter 47.80 RCW and be coordinated with the ((~~ten-year~~)) 10-year investment program developed by the Washington state department of transportation as required by RCW 47.05.030;

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

(iii) Sources of proposed funding may include:

(A) Federal or state funding.

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

(C) Developer contributions, which may include:

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

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

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

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

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

(l) Reassessment if probable funding falls short.

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

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

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

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

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

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

(D) Revise the land use element to shift future travel to areas with adequate capacity, to lower average trip length by encouraging mixed-use developments to increase the share of people who can walk, bicycle, or take transit to meet daily needs, or to avoid the need for new facilities in undeveloped areas;

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

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

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

(ii) Transportation concurrency ordinances affecting development review;

(iii) Parking standards, especially in urban centers, to reduce or eliminate vehicle parking minimum requirements, provide vehicle parking maximums and include bicycle parking;

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

(v) Access management ordinances;

(vi) ((~~Nonmotorized~~)) Active transportation funding programs;

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

(viii) Subdivision standards to reflect multimodal goals, including providing complete and connected networks, particularly for bicycle and pedestrian travel; and

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

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

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-435 Economic development element. (1) Requirements.

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

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

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

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

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

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

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

(a) A summary of the local economy.

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

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

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

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

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

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

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

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

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

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

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

(i) After identifying strengths and weaknesses, the economic development element may identify policies, programs and projects that foster economic growth and development and address future needs. The programs and policies should be targeted at addressing weaknesses or capitalizing on strengths identified in the community.

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

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

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-465 Major industrial developments. (1) General authority for major industrial developments. A county required or choosing to plan under the act may establish, in consultation with cities under the ((~~county-wide~~)) countywide planning policies outlined in RCW 36.70A.210, a process for reviewing and approving proposals to author-

ize siting of specific major industrial developments outside urban growth areas.

(2)(a) "Major industrial development" means a master planned location for specific manufacturing, industrial, or commercial businesses that:

(i) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; or

(ii) Is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent.

(b) The major industrial development shall not be for the purpose of retail commercial development or multitenant office parks.

(3) Establishment of a review process required. Before reviewing an application for a major industrial development, counties, in consultation with cities, must establish a process for reviewing and approving applications.

(4) Criteria for approving a major industrial development. A major industrial development may be approved outside an urban growth area if criteria including, but not limited to the following, are met:

(a) New infrastructure is provided for and/or applicable impact fees are paid;

(b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the major industrial development and adjacent nonurban areas;

(d) Environmental protection including air and water quality has been addressed and provided for;

(e) Development regulations are established to ensure that urban growth will not occur in adjacent nonurban areas;

(f) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands;

(g) The major industrial development plan is consistent with the county's development regulations for critical areas;

(h) An inventory of developable land has been conducted and the county has determined and entered findings that land suitable to site the major industrial development is unavailable within the urban growth area. Priority shall be given to applications for sites that are adjacent to or in close proximity to the urban growth area.

(5) Amendment to the comprehensive plan.

(a) Final approval of an application for a major industrial development is an amendment to the comprehensive plan adopted pursuant to RCW 36.70A.070, designating the major industrial development site on the land use map as an urban growth area. The major industrial development is considered urban growth. Urban services may be provided at any scale and intensity. Major industrial developments are not required to be consistent with rural character or limited to the scale and intensity of an existing rural location.

(b) An application for a major industrial development may be considered at any time and is an exception to the general rule that amendments should be considered no more frequently than once per year.

(6) Public participation.

(a) Counties should address public participation procedures for major industrial developments when establishing the process for approval of major industrial developments. Counties should use existing public participation procedures for amending the comprehensive plan and amending the urban growth area as a starting point and modify

these procedures, if necessary, to address considerations and requirements particular to major industrial developments.

(b) The public participation process should identify how a project proposal meets the statutory criteria for siting a major industrial development. However, the act does not require these proposals to undergo a greater degree of public participation than any other action.

(7) RCW 36.70A.070 (5)(e) does not prohibit the location of a major industrial development within or adjacent to an existing limited area of more intense rural development (LAMIRD) provided it is approved consistent with RCW 36.70A.365.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-465, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-470 Industrial land banks. (1) In addition to the major industrial development allowed under RCW 36.70A.365, a county planning under RCW 36.70A.040 that meets the criteria in subsection (2) of this section may establish a process for designating an industrial land bank consisting of no more than two master planned locations for major industrial activity outside urban growth areas.

(a) "Industrial land bank" means up to two master planned locations, each consisting of a parcel or parcels of contiguous land, sufficiently large so as not to be readily available within the urban growth area of a city, or otherwise meeting the criteria contained in RCW 36.70A.367 (4)(a), suitable for manufacturing, industrial, or commercial businesses and designated by the county through the comprehensive planning process specifically for major industrial use.

(b) The process of designating industrial land banks must occur in consultation with cities consistent with the ((~~county-wide~~)) countywide planning policies and, where applicable multicounty planning policies.

(c) A master planned location for major industrial developments may be approved through a two-step process: Designation of an industrial land bank area in the comprehensive plan; and subsequent approval of specific major industrial developments through a local master plan process described under subsection (3)(f) of this section.

(2) Counties eligible to create an industrial land bank. Only counties that meet one of the following criteria may designate an industrial land bank:

(a) Has a population greater than ((~~two hundred fifty thousand~~)) 250,000 and is part of a metropolitan area that includes a city in another state with a population greater than ((~~two hundred fifty thousand~~)) 250,000;

(b) Has a population greater than ((~~one hundred forty thousand~~)) 140,000 and is adjacent to another country;

(c) Has a population greater than ((~~forty thousand~~)) 40,000 but less than ((~~seventy-five thousand~~)) 75,000 and has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by ((~~twenty~~)) 20 percent and is:

(i) Bordered by the Pacific Ocean;

(ii) Located in the Interstate 5 or Interstate 90 corridor; or

(iii) Bordered by Hood Canal.

(d) Is east of the Cascade divide; and

(i) Borders another state to the south; or

(ii) Is located wholly south of Interstate 90 and borders the Columbia River to the east;

(e) Has an average population density of less than ((~~one hundred~~)) 100 persons per square mile as determined by the office of financial management, and is bordered by the Pacific Ocean and by Hood Canal; or

(f) Meets all of the following criteria:

(i) Has a population greater than ((~~forty thousand~~)) 40,000 but fewer than ((~~eighty thousand~~)) 80,000;

(ii) Has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by ((~~twenty~~)) 20 percent; and

(iii) Is located in the Interstate 5 or Interstate 90 corridor.

(g) A county's authority to create an industrial land bank expires on the due date for the next periodic update found in RCW 36.70A.130(4) occurring prior to December 31, 2014. Once a land bank area has been identified in the county's comprehensive plan, the authority of the county to process a master plan or site projects within an approved master plan does not expire.

(3) How to create an industrial land bank.

(a) Creation of an industrial land bank requires an amendment to a county's comprehensive plan and the adoption of development regulations.

(b) The comprehensive plan amendment that designates an industrial land bank must be accompanied by or contain an analysis that:

(i) Identifies locations suited to major industrial development due to proximity to transportation or resource assets. This should be based on an inventory of developable land as provided in RCW 36.70A.365. See WAC 365-196-465 for recommendations on major industrial developments.

(ii) Identifies the maximum size of the industrial land bank area and any limitations on major industrial developments based on local limiting factors, but does not need to specify a particular parcel or parcels of property or identify any specific use or user except as limited by this section.

(iii) Gives priority to locations that are adjacent to, or in close proximity to, an urban growth area. This should include an analysis of the availability of alternative sites within urban growth areas and the long-term annexation feasibility of sites outside of urban growth areas.

(c) The environmental review for amendment of the comprehensive plan should be at the programmatic level.

(d) A comprehensive plan amendment creating an industrial land bank may be considered at any time and is an exception to the requirement in RCW 36.70A.130(1) that the comprehensive plan may be amended no more often than once per year.

(e) Once the industrial land bank is created through the comprehensive plan amendment, approval of a specific major industrial development within the industrial land bank area requires no further amendment of the comprehensive plan.

(f) Development regulations. A county must also adopt development regulations for review and approval of specific major industrial developments through a master plan process. The development regulations governing the master plan process shall ensure, at a minimum, that:

(i) Urban growth will not occur in adjacent nonurban areas;

(ii) Development is consistent with the county's development regulations adopted for protection of critical areas;

(iii) Required infrastructure is identified and provided concurrent with development. Such infrastructure, however, may be phased in with development;

(iv) Transit-oriented site planning and demand management programs are specifically addressed as part of the master plan approval;

(v) Provision is made for addressing environmental protection, including air and water quality, as part of the master plan approval;

(vi) The master plan approval includes a requirement that interlocal agreements between the county and service providers, including cities and special purpose districts providing facilities or services to the approved master plan, be in place at the time of master plan approval;

(vii) A major industrial development is used primarily by industrial and manufacturing businesses, and that the gross floor area of all commercial and service buildings or facilities locating within the major industrial development do not exceed ((~~ten~~)) 10 percent of the total gross floor area of buildings or facilities in the development. The intent of this provision for commercial or service use is to meet the needs of employees, clients, customers, vendors, and others having business at the industrial site, to attract and retain a quality workforce, and to further other public objectives, such as trip reduction. These uses may not be promoted to attract additional clientele from the surrounding area. Commercial and service businesses must be established concurrently with or subsequent to the industrial or manufacturing businesses;

(viii) New infrastructure is provided for and/or applicable impact fees are paid to assure that adequate facilities are provided concurrently with the development. Infrastructure may be achieved in phases as development proceeds;

(ix) Buffers are provided between the major industrial development and adjacent rural areas;

(x) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands; and

(xi) An open record public hearing is held before either the planning commission or hearing examiner with notice published at least ((~~thirty~~)) 30 days before the hearing date and mailed to all property owners within one mile of the site.

(g) Required procedures. In addition to other procedural requirements that may apply, a county seeking to designate an industrial land bank under this section must:

(i) Provide ((~~county-wide~~)) countywide notice, in conformance with RCW 36.70A.035, of the intent to designate an industrial land bank. Notice must be published in a newspaper or newspapers of general circulation reasonably likely to reach subscribers in all geographic areas of the county. Notice must be provided not less than ((~~thirty~~)) 30 days prior to commencement of consideration by the county legislative body; and

(ii) Make a written determination of the criteria and rationale used by the legislative body as the basis for siting an industrial land bank under this chapter.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-470, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-475 Land use compatibility with military installations. (1) Military installations are of particular importance to the economic health of the state of Washington. It is a priority of the state to protect the land surrounding military installations from incompatible development. Military training, testing, and operating areas are also critical to the mission viability of Washington's military installations.

(2) A comprehensive plan, amendment to a comprehensive plan, a development regulation, or amendment to a development regulation, should not allow development in the vicinity of a military installation that is incompatible with the installation's ability to carry out its mission requirements. A county or city may find that an existing comprehensive plan or development regulations are compatible with the installation's ability to carry out its mission requirements.

(3) As part of the requirements of RCW 36.70A.070(1), each county or city planning under the act that has a federal military installation, other than a reserve center, that employs ((~~one hundred~~)) 100 or more personnel and is operated by the United States Department of Defense within or adjacent to its border, must notify the commander of the military installation of the county's or city's intent to amend its comprehensive plan or development regulations to address lands adjacent to the military installation to ensure those lands are protected from incompatible development.

(4) The notice must request from the commander of the military installation a written recommendation and supporting facts relating to the use of land being considered in the adoption of a comprehensive plan or an amendment to a plan. The notice must provide ((~~sixty~~)) 60 days for a response from the commander. If the commander does not submit a response to such request within ((~~sixty~~)) 60 days, the county or city may presume that implementation of the proposed plan or amendment will not have any adverse effect on the operation of the military installation.

(5) When a county or city intends to amend its development regulations to be consistent with the comprehensive plan elements addressed in subsection (4) of this section, notice shall be provided to the commander of the military installation consistent with subsection (3) of this section. The notice shall request from the commander of the military installation a written recommendation and supporting facts relating to the use of land being considered in the amendment to the development regulations. The notice shall provide ((~~sixty~~)) 60 days for a response from the commander to the requesting government. If the commander does not submit a response to such request within ((~~sixty~~)) 60 days, the local government may presume that implementation of the proposed development regulation or amendment will not have any adverse effect on the operation of the installation.

(6) Counties must provide written notification to the Department of Defense upon receipt of an application for a permit to site an energy plant or alternative energy resource that is connected to electrical transmission facilities of a nominal voltage of at least 115,000 volts. Counties should consider comprehensive plan policies or development regulations to ensure compliance with the notice requirements in RCW 36.01.320.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-475, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-480 Natural resource lands. (1) Requirements.

(a) In the initial period following adoption of the act, and prior to the development of comprehensive plans, counties and cities planning under the act were required to designate natural resource lands of long-term commercial significance and adopt development regulations to assure their conservation. Natural resource lands include agricultural, forest, and mineral resource lands. The previous designations and development regulations shall be reviewed in connection with the comprehensive plan adoption process and, where necessary, altered to ensure consistency.

(b) Counties and cities planning under the act must review their natural resource lands designations, comprehensive plans, policies, and development regulations as part of the required periodic update under RCW 36.70A.130(1) and 36.70A.131.

(c) Counties and cities not planning under RCW 36.70A.040 must review their natural resource lands designations, and if necessary revise those designations as part of the required periodic update under RCW 36.70A.130(1) and 36.70A.131.

(d) Forest land and agricultural land located within urban growth areas shall not be designated as forest resource land or agricultural resource land unless the county or city has enacted a program authorizing transfer or purchase of development rights.

(e) Mineral lands may be designated as mineral resource lands within urban growth areas. There may be subsequent reuse of mineral resource lands when the minerals have been mined out. In cases where designated mineral resource lands are likely to be mined out and closed to further mining within the planning period, the surface mine reclamation plan and permit from the department of natural resources division of geology should be reviewed to ensure it is consistent with the adopted comprehensive land use plan.

(f) In adopting development regulations to conserve natural resource lands, counties and cities shall address the need to buffer land uses adjacent to the natural resource lands. Where buffering is used it should be on land within the adjacent development unless an alternative is mutually agreed on by adjacent landowners.

(2) Recommendations for meeting requirements.

(a) In the initial period following adoption of the act, much of the analysis which was the basis for the comprehensive plan came later than the initial identification and regulation of natural resource lands. In all cases, counties and cities must address inconsistencies between plan policies, development regulations and previously adopted natural resource land provisions.

(b) The department issued guidelines for the classification and designation of natural resource lands which are contained in chapter 365-190 WAC. In general, natural resource lands should be located beyond the boundaries of urban growth areas; and urban growth areas should avoid including designated natural resource lands. In most cases, the designated purposes of natural resource lands are incompati-

ble with urban densities. For inclusion in the urban growth area, counties and cities must first review the natural resource lands designation and conclude the lands no longer meet the designation criteria for resource lands of long-term commercial significance.

(c) As noted in subsection (1)(f) of this section, mineral resource lands are a possible exception to the requirement that natural resource lands be designated outside the urban growth area. This guidance is based on the significant cost savings from using minerals close to their source, and the potential for reusing the mined out lands for other purposes after mining is complete. Counties and cities should consider the potential loss of access to mineral resource lands if they are not designated and conserved, and should also consider the consumptive use of mineral resources when designating specific mineral resource lands.

(d) Counties and cities may also consider retaining local agricultural lands in or near urban growth areas as part of a local strategy promoting food security, agricultural education, or in support of local food banks, schools, or other large institutions.

(e) The review of existing designations should be done on ((~~an area-wide~~)) a countywide basis, and in most cases, be limited to the question of consistency with the comprehensive plan, rather than revisiting the entire prior designation and regulation process. However, to the extent that new information is available or errors have been discovered, the review process should take this information into account. Review for consistency in this context should include whether the planned use of lands adjacent to agricultural, forest, or mineral resource lands will interfere with the continued use, in an accustomed manner and in accordance with the best management practices, of the designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals. Counties and cities must defer reviews of resource lands until they are able to conduct a comprehensive countywide analysis consistent with WAC 365-190-040(10).

(f) Development regulations must assure that the planned use of lands adjacent to natural resource lands will not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands. Guidance on development regulations ensuring the conservation of designated resource lands is found in WAC 365-196-815.

(g) Counties and cities are encouraged to use a coordinated program that includes nonregulatory programs and incentives to supplement development regulations to conserve natural resource lands. Guidance for addressing the designation of natural resource lands is located under WAC 365-190-040 through 365-190-070.

(h) When adopting comprehensive plan policies on siting energy facilities on or adjacent to natural resource lands, counties and cities must ensure that development does not result in conversion to a use that removes the land from resource production, or interferes with the usual and accustomed operations of the natural resource lands. Counties and cities are encouraged to adopt policies and regulations regarding the appropriate location for siting energy facilities on or adjacent to natural resource lands. Policies and regulations may emphasize dual-use strategies that preserve or improve natural resource lands, provide clarity to developers, and support renewable energy goals.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-480, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

WAC 365-196-485 Critical areas. (1) Relationship to the comprehensive plan.

(a) The act requires that the planning goals in RCW 36.70A.020 guide the development and adoption of comprehensive plans and development regulations. These goals include retaining open space; enhancing recreation opportunities; conserving fish and wildlife habitat; protecting the environment and enhancing the state's high quality of life, including air and water quality, and the availability of water.

(b) Jurisdictions are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas.

(c) Counties and cities are required to identify open space corridors within and between urban growth areas for multiple purposes, including those areas needed as critical habitat by wildlife.

(d) RCW 36.70A.070(1) requires counties and cities to provide for protection of the quality and quantity of ground water used for public water supplies in the land use element. Where applicable, the land use element must review drainage, flooding, and stormwater runoff in the area and in nearby jurisdictions, and provide guidance to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(e) Because the critical areas regulations must be consistent with the comprehensive plan, each comprehensive plan should set forth the underlying policies for the jurisdiction's critical areas program.

(f) In pursuing the environmental protection and open space goals of the act, such policies should identify nonregulatory measures for protecting critical areas as well as regulatory approaches. Nonregulatory measures include, but are not limited to: Incentives, public education, and public recognition, and could include innovative programs such as the purchase or transfer of development rights. When such policies are incorporated into the plan (either in a separate element or as a part of the land use element), the consistency of the regulations can be readily assessed.

(2) Requirements. Prior to the original development of comprehensive plans under the act, counties and cities were required to designate critical areas and adopt development regulations protecting them. Any previous designations and regulations must be reviewed in the comprehensive plan process to ensure consistency between previous designations and the comprehensive plan. Critical areas include the following areas and ecosystems:

(a) Wetlands;

(b) Areas of critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(3) Recommendations for meeting requirements.

(a) In the initial period following adoption of the act, much of the analysis which was the basis for the comprehensive plan came later than the initial identification and regulation of critical areas. Upon the adoption of the initial comprehensive plans, such designations and regulations were to be reviewed and, where necessary, altered to achieve consistency with the comprehensive plan. Subsequently, jurisdic-

tions updating local critical areas ordinances are required to include the best available science.

(b) The department has issued guidelines for the classification and designation of critical areas which are contained in chapter 365-190 WAC.

(c) Critical areas ((~~should~~)) must be designated and protected wherever the applicable environmental conditions exist, whether within or outside of urban growth areas. Critical areas may overlap each other, and requirements to protect critical areas apply in addition to the requirements of the underlying zoning.

(d) The review of existing designations during the comprehensive plan adoption process should, in most cases, be limited to the question of consistency with the comprehensive plan, rather than a revisiting of the entire prior designation and regulation process((~~.~~)); however, counties and cities must address the requirements to include the best available science in reviewing designations and developing policies and development regulations to protect the functions and values of critical areas, and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. To the extent that new information is available or errors have been discovered, the review process ((~~should~~)) must take this information into account unless the jurisdiction provides a reasoned, science-based justification for departure.

(e) The department recommends counties and cities review plan, regulation and permit implementation monitoring results and, where applicable, incorporate adaptive management measures to ensure regulations are efficient and effective at protecting critical area functions and values.

(f) The department recommends that planning jurisdictions identify the policies by which decisions are made on when and how regulations will be used and when and how other means will be employed (purchases, development rights, etc.). See WAC 365-196-855.

(4) Avoiding impacts through appropriate land use designations.

(a) Many existing data sources can identify, in advance of the development review process, the likely presence of critical areas. When developing and reviewing the comprehensive plan and future land use designations, counties and cities should use available information to avoid directing new growth to areas with a high probability of conflicts between new development and protecting critical areas. Identifying areas with a high probability of critical areas conflicts can help identify lands that are likely to be unsuitable for development and help a county or city better provide sufficient capacity of land that is suitable for development as required by RCW 36.70A.115. Impacts to these areas could be minimized through measures such as green infrastructure planning, open space acquisition, open space zoning, and the purchase or transfer of development rights.

(b) When considering expanding the urban growth area, counties and cities should avoid including lands that contain large amounts of mapped critical areas. Counties and cities should not designate new urban areas within the ((~~one hundred-year~~)) 100-year flood plain unless no other alternatives exist, and if included, impacts on the flood plain must be mitigated. RCW 36.70.110(8) prohibits expansion of the urban growth area into the ((~~one hundred-year~~)) 100-year flood plain in some cases. See WAC 365-196-310.

(c) If critical areas are included in urban growth areas, they still must be designated and protected. See WAC 365-196-310.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-485, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-485, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-500 Internal consistency. (1) Comprehensive plans must be internally consistent. This requirement means that differing parts of the comprehensive plan must fit together so that no one feature precludes the achievement of any other.

(2) Use of compatible assumptions. A county or city must use compatible assumptions in different aspects of the plan.

(a) A county or city should use common numeric assumptions to the fullest extent possible, particularly in the long-term growth assumptions used in developing the land use, capital facilities and other elements of the comprehensive plan.

(b) If a county or city relies on forecasts, inventories, or functional plans developed by other entities, these plans might have been developed using different time horizons or different boundaries. If these differences create inconsistent assumptions, a county or city should include an analysis in its comprehensive plan of the differences and reconcile them to create a plan that uses compatible assumptions.

(3) The development regulations must be internally consistent and be consistent with and implement the comprehensive plan.

(4) Consistency review. Each comprehensive plan should provide mechanisms for ongoing review of its implementation and adjustment of its terms whenever internal conflicts become apparent. At a minimum, any amendment to the comprehensive plan or development regulations must be reviewed for consistency. The review and update processes required in RCW 36.70A.130 (1) and (3) should include a review of the comprehensive plan and development regulations for consistency.

(5) See WAC 365-196-800 for more information on the relationship between development regulations and the comprehensive plan. See WAC 356-196-305 for more information on the relationship between ((~~county-wide~~)) countywide planning policies and the comprehensive plan. See WAC 365-196-315 (5)(a) for information on consistencies between assumptions and observed development for cities or counties subject to monitoring requirements in RCW 36.70A.215.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-500, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-510 Interjurisdictional consistency. (1) Each county or city comprehensive plan must be coordinated with, and consistent with, the comprehensive plans of other counties and cities that share common borders or related regional issues with that county or city. Determining consistency in this interjurisdictional context is compli-

cated by the differences in timing of comprehensive plan adoption and subsequent amendments.

(2) Initially, interjurisdictional consistency should be met by the adoption of comprehensive plans, and subsequent amendments, which are consistent with and carry out the relevant ((~~county-wide~~)) county-wide planning policies and, where applicable, the relevant multicounty planning policies. Adopted ((~~county-wide~~)) countywide planning policies are designed to ensure that county and city comprehensive plans are consistent. More detailed recommendations about ((~~county-wide~~)) countywide planning policies are contained in WAC 365-196-305.

(3) To better ensure consistency of comprehensive plans, counties and cities should consider using similar policies and assumptions that apply to common areas or issues.

(4) Counties and cities should use consistent population projections and planning horizons when completing the periodic review and evaluation of comprehensive plans and development regulations. The planning horizon should start on the relevant deadline specified in RCW 36.70A.130(5) and encompass a minimum of 20 years.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-510, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-530 State agency compliance. (1) RCW 36.70A.103 requires that state agencies comply with the local comprehensive plans and development regulations, and subsequent amendments, adopted pursuant to the act. An exception to this requirement exists for the state's authority to site and operate a special commitment center and a secure community transition facility to house persons conditionally released to a less restrictive alternative on McNeil Island under RCW 36.70A.200.

(2) The department construes RCW 36.70A.103 to require each state agency to meet local siting and building requirements when it occupies the position of an applicant proposing development, except where specific legislation explicitly dictates otherwise. This means that development of state facilities is subject to local approval procedures and substantive provisions, including zoning, density, setbacks, bulk and height restrictions.

(3) Under RCW 36.70A.210(4), state agencies must follow adopted ((~~county-wide~~)) countywide planning policies. Consistent with other statutory mandates, state programs should be administered in a manner which does not interfere with implementation of the county framework for interjurisdictional consistency, or the exercise by any local government of its responsibilities and authorities under the act.

(4) Overall, the broad sweep of policy contained in the act implies a requirement that all programs at the state level accommodate the outcomes of the growth management process wherever possible. The exercise of statutory powers, whether in permit functions, grant funding, property acquisition or otherwise, routinely involves such agencies in discretionary decision making. The discretion they exercise should take into account legislatively mandated local growth management programs. State agencies that approve plans of special purpose districts that are required to be consistent with local comprehensive

plans should provide guidance or technical assistance to those entities to explain the need to coordinate their planning with the local government comprehensive plans within which they provide service.

(5) After local adoption of comprehensive plans and development regulations under the act, state agencies should review their existing programs in light of the local plans and regulations. Within relevant legal constraints, this review should lead to redirecting the state's actions in the interests of consistency with the growth management effort.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-530, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

WAC 365-196-550 Essential public facilities. (1) Determining what facilities are essential public facilities.

(a) The term "essential public facilities" refers to public facilities that are typically difficult to site. Consistent with ((~~county-wide~~)) countywide planning policies, counties and cities should create their own lists of "essential public facilities," to include at a minimum those set forth in RCW 36.70A.200.

(b) For the purposes of identifying facilities subject to the "essential public facilities" siting process, it is not necessary that the facilities be publicly owned.

(c) Essential public facilities include both new and existing facilities. It may include the expansion of existing essential public facilities or support activities and facilities necessary for an essential public facility.

(d) The following facilities and types of facilities are identified in RCW 36.70A.200 as essential public facilities:

(i) Airports;

(ii) State education facilities;

(iii) State or regional transportation facilities;

(iv) Transportation facilities of statewide significance as defined in RCW 47.06.140. These include:

(A) The interstate highway system;

(B) Interregional state principal arterials including ferry connections that serve statewide travel;

(C) Intercity passenger rail services;

(D) Intercity high-speed ground transportation;

(E) Major passenger intermodal terminals excluding all airport facilities and services;

(F) The freight railroad system;

(G) The Columbia/Snake navigable river system;

(H) Marine port facilities and services that are related solely to marine activities affecting international and interstate trade;

(I) High capacity transportation systems.

(v) Regional transit authority facilities as defined under RCW 81.112.020;

(vi) State and local correctional facilities;

(vii) Solid waste handling facilities;

(viii) In-patient facilities, including substance abuse facilities;

(ix) Mental health facilities;

(x) Group homes;

(xi) Secure community transition facilities;

(xii) Any facility on the state ((~~ten-year~~)) 10-year capital plan maintained by the office of financial management.

(e) Essential public facility criteria apply to the facilities and not the operator. Cities and counties may not require applicants who operate essential public facilities to use an essential public facility siting process for projects that would otherwise be allowed by the development regulations. Applicants who operate essential public facilities may not use an essential public facility siting process to obtain approval for projects that are not essential public facilities.

(f) Regardless of whether it is a new, existing or an expansion or modification of an existing public facility, the major component in the identification of an essential public facility is whether it provides or is necessary to provide a public service and whether it is difficult to site.

(2) Criteria to determine if the facility is difficult to site. Any one or more of the following conditions is sufficient to make a facility difficult to site.

(a) The public facility needs a specific type of site of such as size, location, available public services, which there are few choices.

(b) The public facility needs to be located near another public facility or is an expansion of an essential public facility at an existing location.

(c) The public facility has, or is generally perceived by the public to have, significant adverse impacts that make it difficult to site.

(d) Use of the normal development review process would effectively preclude the siting of an essential public facility.

(e) Development regulations require the proposed facility to use an essential public facility siting process.

(3) Preclusion of essential public facilities.

(a) Cities and counties may not use their comprehensive plan or development regulations to preclude the siting of essential public facilities. Comprehensive plan provisions or development regulations preclude the siting of an essential public facility if their combined effects would make the siting of an essential public facility impossible or impracticable.

(i) Siting of an essential public facility is "impracticable" if it is incapable of being performed or accomplished by the means employed or at command.

(ii) Impracticability may also include restrictive zoning; comprehensive plan policies directing opposition to a regional decision; or the imposition of unreasonable conditions or requirements.

(iii) Limitations on essential public facilities such as capacity limits; internal staffing requirements; resident eligibility restrictions; internal security plan requirements; and provisions to demonstrate need may be considered preclusive in some circumstances.

(b) A local jurisdiction may not include criteria in its land use approval process which would allow the essential public facility to be denied, but may impose reasonable permitting requirements and require mitigation of the essential public facility's adverse effects.

(c) An essential public facility is not precluded simply because the comprehensive plan provisions would be too costly or time consuming to comply with.

(d) If the essential public facility and its location have been evaluated through a state or regional siting process, the county or city may not require the facility to go through the local siting process.

(e) Essential public facilities that are sited through a regional or state agency are distinct from those that are "sited by" a city or county or a private organization or individual. When a city or county is siting its own essential public facility, public or private, it is free to establish a nonpreclusive siting process with reasonable criteria.

(4) Comprehensive plan.

(a) Requirements:

(i) Each comprehensive plan shall include a process for identifying and siting essential public facilities. This process must be consistent with and implement applicable ((~~county-wide~~)) countywide planning policies.

(ii) No local comprehensive plan may preclude the siting of essential public facilities.

(b) Recommendations for meeting requirements:

(i) Identification of essential public facilities. When identifying essential public facilities, counties and cities should take a broad view of what constitutes a public facility, involving the full range of services to the public provided by the government, substantially funded by the government, contracted for by the government, or provided by private entities subject to public service obligations.

(ii) Agreements among jurisdictions should be sought to mitigate any disproportionate financial burden which may fall on the county or city which becomes the site of a facility of a statewide, regional, or ((~~county-wide~~)) countywide nature.

(iii) Where essential public facilities may be provided by special districts, the plans under which those districts operate must be consistent with the comprehensive plan of the city or county. Counties and cities should adopt provisions for consultation to ensure that such districts exercise their powers in a way that does not conflict with the relevant comprehensive plan.

(c) The siting process should take into consideration the need for ((~~county-wide~~)) countywide, regional, or statewide uniformity in connection with the kind of facility under review.

(5) Development regulations governing essential public facilities.

(a) Development regulations governing the siting of essential public facilities must be consistent with and implement the process set forth in the comprehensive plan.

(b) Except where ((~~county-wide~~)) countywide planning policies have otherwise dictated siting choices, provision should be made for the possibility of siting each of the listed essential public facilities somewhere within each county's or city's planning area.

(c) Counties and cities should consider the criteria established in their comprehensive plan, in consultation with this section to determine if a project is an essential public facility. Counties and cities may also adopt criteria for identifying an essential public facility.

(d) If an essential public facility does not present siting difficulties and can be permitted through the normal development review process, project review should be through the normal development review process otherwise applicable to facilities of its type.

(e) If an essential public facility presents siting difficulties, the application should be reviewed using the essential public facility siting process.

(6) The essential public facility siting process.

(a) The siting process may not be used to deny the approval of the essential public facility. The purpose of the essential public facility siting process is to allow a county or city to impose reasonable conditions on an essential public facility necessary to mitigate the impacts of the project while ensuring that its development regulations do not preclude the siting of an essential public facility.

(b) The review process for siting essential public facilities should include a requirement for notice and an opportunity to comment to other interested counties and cities and the public.

(c) The permit process may include reasonable requirements such as a conditional use permit, but the process used must ensure a decision on the essential public facility is completed without unreasonable delay.

(d) The essential public facility siting process should identify what conditions are necessary to mitigate the impacts associated with the essential public facility. The combination of any existing development regulations and any new conditions may not render impossible or impracticable, the siting, development or operation of the essential public facility.

(e) Counties and cities should consider the extent to which design conditions can be used to make a facility compatible with its surroundings. Counties and cities may also consider provisions for amenities or incentives for neighborhoods in which facilities are sited. Any conditions imposed must be necessary to mitigate an identified impact of the essential public facility.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-550, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-550, filed 1/19/10, effective 2/19/10.]

NEW SECTION

WAC 365-196-585 Tracking eligibility for state grants and loans. (1) This section defines the procedures used by the department to track and report the status of a county or city with completion of the review and revision requirement under RCW 36.70A.130, and to track any compliance orders issued by the growth management hearings board, or board, as defined under WAC 242-03-030 and established under RCW 36.70A.260.

(2) These procedures assure that the department provides timely and accurate reporting to state agencies regarding a county or city's eligibility for state grants or loans, and it assures that a county or city applicant, and the state agency reviewing grant or loan eligibility, understand the role of the department in this process for determining eligibility for state grants or loans, where applicable.

(3) These procedures are also designed to encourage and enable timely redress of overdue periodic updates or noncompliance issues. To accomplish this, a county or city must be aware of its current status so it may take necessary legislative action to achieve compliance with deadlines or board orders.

(4) Under RCW 36.70A.130(7), the act directs state agencies to consider compliance in the award of state financial assistance from a number of state grant and loan programs as follows:

(a) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW 36.70A.040(1). Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter 43.155 or 70A.135 RCW:

(i) Complying with the deadlines in this section; or

(ii) Demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas.

(b) A county or city that is fewer than 12 months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW 43.17.250.

(5) Counties and cities must notify the department in writing that the jurisdiction considers the periodic update complete. WAC 365-196-610 (2)(c) provides recommendations on documenting completion of the periodic update, either in whole or in part.

(a) Counties and cities must take legislative action, in the form of an ordinance or resolution, following a public hearing. The ordinance or resolution should clearly state the periodic update required by RCW 36.70A.130 is complete. If a county or city took multiple legislative actions as part of the periodic update process, the final ordinance or resolution should reference all prior legislative actions.

(b) Counties and cities must submit a notice of adoption to the department after taking legislative action on a comprehensive plan or development regulation amendment. The department considers the notice of adoption, required under RCW 36.70A.106(2), along with the final ordinance or resolution documenting the completion of the periodic update, as written notice.

(c) In lieu of an ordinance or resolution clearly stating that the periodic update required by RCW 36.70A.130 is complete, the department may consider a written letter from the mayor, county executive, or chair of the board of county commissioners stating that the periodic update is complete.

(6) The following state grant and loan programs use GMA compliance in the course of awarding state funds under the following programs under RCW 36.70A.130(7):

(a) Public works trust fund (public works board) under RCW 43.155.070 and WAC 399-30-030;

(b) Centennial clean water fund (department of ecology) under WAC 173-95A-610;

(c) Drinking water state revolving fund (department of health) under RCW 70A.125.070 and WAC 246-296-130;

(d) Recreation and conservation office;

(e) Transportation improvement board funding under RCW 47.26.086 and WAC 479-14-121;

(f) Predisaster mitigation grants (emergency management division, Washington military department); and

(g) Water pollution control facilities grants under RCW 70A.135.070.

The department does not determine eligibility for any particular grant or loan program administered by another state agency or board.

Eligibility, including the effect of the compliance status of a city or county may have on eligibility, is determined by the state agency authorized to administer a grant or loan program.

(7) As the designated coordinator for state government regarding implementation of chapter 36.70A RCW, the department tracks local government implementation with the act. A state agency may consult with the department in the course of administering its grant and loan program, regarding the status of a county or city progress implementing the act.

(8) The department does not determine compliance by county or city with the provisions of chapter 36.70A RCW.

(a) For completion of the periodic update under RCW 36.70A.130, compliance with the requirement is determined by the county or city. This determination must be in the form of written notice of completion provided by the county or city to the department.

(b) For all other matters, compliance is determined by the board.

(9) For compliance matters related to a board final decision and order, a county or city may avoid being determined ineligible or otherwise penalized in the award of grants or loans during a period of remand by taking action to delay the effective date of a challenged ordinance or resolution as follows:

(a) A county or city may delay the effective date of the action subject to the petition before the board until after the board issues a final determination; or

(b) Within 30 days of receiving notice of a petition for review by the board, a county or city may delay the effective date of the action subject to the petition before the board until after the board issues a final determination.

(c) To avoid a penalty, a county or city must notify the department in writing that it has delayed the effective date of the challenged ordinance. Notice must be accompanied by the board order and a copy of the ordinance or resolution showing the delay to the effective date.

(d) A delay in the effective date will not prevent a determination of ineligibility or other penalty if the board makes a determination of invalidity.

[]

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

WAC 365-196-600 Public participation. (1) Requirements.

(a) Each county and city planning under the act must establish procedures for early and continuous public participation in the development and amendment of comprehensive plans and development regulations. The procedures are not required to be reestablished for each set of amendments.

(b) The procedures must provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.

(c) Errors in exact compliance with the established procedures do not render the comprehensive plan or development regulations invalid if the spirit of the procedures is observed.

(2) Record of process.

(a) Whenever a provision of the comprehensive plan or development regulation is based on factual data, a clear reference to its source should be made part of the adoption record.

(b) The record should show how the public participation requirement was met.

(c) All public hearings should be recorded.

(3) Recommendations for meeting public participation requirements. These recommendations are a list of suggestions for meeting the public participation requirement.

(a) Designing the public participation program.

(i) Implementation of the act requires a series of interrelated steps, including: Development of the initial comprehensive plan, evaluating amendments as part of the docket cycle, conducting the periodic update and reviewing the urban growth boundaries, amending development regulations, and conducting subarea planning. Each of these has different levels of significance and different procedural requirements.

(ii) Counties and cities are not required to establish individual public participation programs for each individual amendment. Counties and cities may wish to consider establishing a public program for annual amendments, and establishing separate or updated programs for major periodic updates. When developing a public participation plan for a project not covered by the existing public participation plan, a county or city should develop a public participation plan tailored to the type of action under consideration. This public participation plan should be focused on the type of public involvement appropriate for that type of action.

(iii) The public participation plan should identify which procedural requirements apply for the type of action under consideration and how the county or city intends to meet those requirements.

(iv) To avoid duplication of effort, counties and cities should integrate public involvement required by the State Environmental Policy Act, chapter 43.21C RCW, and rules adopted thereunder, into the overall public participation plan.

(v) Where a proposed amendment involves shorelines of the state, a county or city should integrate the public participation requirements of the Shoreline Management Act, chapter 90.58 RCW, into its public participation plan, as appropriate.

(vi) The public participation program should include outreach and early coordination with state and tribal agencies with subject matter expertise. Coordination with state agencies and tribes is recommended as draft policies and regulations are being developed.

(vii) Once established, the public participation plan must be broadly disseminated.

(b) Visioning. When developing a new comprehensive plan or a significant update to an existing comprehensive plan, counties and cities should consider using a visioning process. The public should be involved, because the purpose of a visioning process is to gain public input on the desired features of the community. The comprehensive plan can then be designed to achieve these features.

(c) Planning commission. The public participation program should clearly describe the role of the planning commission, ensuring consistency with requirements of chapter 36.70, 35.63, or 35A.63 RCW.

(4) Each county or city should try to involve a broad cross-section of the community, so groups not previously involved in planning become involved. Counties and cities should implement innovative techniques that support meaningful and inclusive engagement for people of color and low-income people. Counties and cities should consider potential barriers to participation that may arise due to race, color, ethnicity, religion, age, disability, income, or education level.

(5) Counties and cities should take a broad view of public participation. The act contains no requirements or qualifications that an individual must meet in order to participate in the public process. If an individual or organization chooses to participate, it is an interested party for purposes of public participation.

(6) Providing adequate notice.

(a) Counties and cities are encouraged to consider a variety of opportunities to adequately communicate with the public. These methods of notification may include, but are not limited to, traditional forms of mailed notices, published announcements, electronic mail, and internet websites to distribute informational brochures, meeting times, project timelines, and design and map proposals to provide an opportunity for the public to participate.

(b) Counties and cities must provide effective notice. In order to be effective, notice must be designed to accomplish the following:

(i) Notice must be timely, reasonably available and reasonably likely to reach interested persons. Notice of all events where public input is sought should be broadly disseminated at least one week in advance of any public hearing. Newspaper or online articles do not substitute for the requirement that jurisdictions publish the action taken. When appropriate, notices should announce the availability of relevant draft documents and how they may be obtained.

(ii) Broad dissemination means that a county or city has made the documents widely available and provided information on how to access the available documents and how to provide comments. Examples of methods of broad dissemination may include:

(A) Posting electronic copies of draft documents on the county and city official website;

(B) Providing copies to local libraries;

(C) Providing copies as appropriate to other affected counties and cities, state and federal agencies;

(D) Providing notice to local newspapers; and

(E) Maintaining a list of individuals who have expressed an interest and providing them with notice when new materials are available.

(iii) Certain proposals may also require particularized notice to specific individuals if required by statute or adopted local policy.

(iv) The public notice must clearly specify the nature of the proposal under consideration and how the public may participate. Whenever public input is sought on proposals and alternatives, the relevant drafts should be available. The county or city must make available copies of the proposal that will be available prior to the public hearing so participants can comment appropriately. The notice should specify the range of alternatives considered or scope of alternatives available for public comment in accordance with RCW 36.70A.035 (2)(b)(i) and (ii).

(7) Receiving public comment.

(a) Public meetings on draft comprehensive plans. Once a comprehensive plan amendment or other proposal is completed in draft form, or as parts of it are drafted, the county or city may consider holding

a series of public meetings or workshops at various locations throughout the jurisdiction to obtain public comments and suggestions.

(b) Public hearings. When the final draft of the comprehensive plan is completed, at least one public hearing should be held prior to the presentation of the final draft to the county or city legislative authority adopting it.

(c) Written comment. At each stage of the process when public input is sought, opportunity should be provided to make written comment.

(d) Attendance for all meetings and hearings to which the public is invited should be free and open. At hearings all persons desiring to speak should be allowed to do so. A county or city may establish a reasonable time limitation on spoken presentations during meetings or public hearings, particularly if written comments are allowed.

(8) Continuous public involvement.

(a) Consideration of and response to public comments. All public comments should be reviewed. Adequate time should be provided between the public hearing and the date of adoption for all or any part of the comprehensive plan to evaluate and respond to public comments. The county or city should provide a written summary of all public comments with a specific response and explanation for any subsequent action taken based on the public comments. This written summary should be included in the record of adoption for the plan.

(b) Ending the opportunity for comment prior to deliberation. After the end of public comment, the local government legislative body may hold additional meetings to deliberate on the information obtained in the public hearing.

(c) Additional meetings may be necessary if the public hearings provided the county or city with new evidence or information they wish to consider. If during deliberation, the county or city legislative body identifies new information for consideration after the record of adoption has been closed, then it must provide further opportunity for public comment so this information can be included in the record.

(9) Considering changes to an amendment after the opportunity for public review has closed.

(a) If the county or city legislative body considers a change to an amendment, and the opportunity for public review and comment has already closed, then the county or city must provide an opportunity for the public to review and comment on the proposed change before the legislative body takes action.

(b) The county or city may limit the opportunity for public comment to only the proposed change to the amendment.

(c) Although counties and cities are required to provide an opportunity for public comment, alternatives to a scheduled public hearing may suffice. Adequate notice must be provided indicating how the public may obtain information and offer comments.

(d) A county or city is not required to provide an additional opportunity for public comment under (a) of this subsection if one of the following exceptions applies (see RCW 36.70A.035 (2)(a)):

(i) An environmental impact statement has been prepared under chapter 43.21C RCW, and the proposal falls within the range of alternatives considered in the environmental impact statement;

(ii) The proposed change is within the range of alternatives available for public comment. When initiating the public participation process, a county or city should consider defining the range of alternatives under consideration;

(iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies

language of a proposed ordinance or resolution without changing its effect;

(iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or

(v) The proposed change is to an ordinance or resolution enacting a moratorium or interim control adopted in compliance with RCW 36.70A.390.

(e) If a county or city adopts an amendment without providing an additional opportunity for public comment as described under (a) of this subsection, the findings of the adopted ordinance or resolution should identify which exception under RCW 36.70A.035 (2)(b) applies.

(10) Any amendment to the comprehensive plan or development regulation must follow the applicable procedural requirements and the county or city public participation plan. A county or city should not enter into an agreement that is a de facto amendment to the comprehensive plan accomplished without complying with the statutory public participation requirements. Examples of a de facto amendment include agreements that:

(a) Obligate the county or city, or authorizes another party, to act in a manner that is inconsistent with the comprehensive plan;

(b) Authorize an action the comprehensive plan prohibits; or

(c) Obligate the county or city to adopt a subsequent amendment to the comprehensive plan.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 15-04-039, § 365-196-600, filed 1/27/15, effective 2/27/15; WSR 10-03-085, § 365-196-600, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 17-20-100, filed 10/4/17, effective 11/4/17)

WAC 365-196-610 Periodic review and update of comprehensive plans and development regulations. (1) Requirements.

(a) Counties and cities must periodically take legislative action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of the act. This review and revision, required under RCW 36.70A.130(1), is referred to in this section as the periodic update.

(b)(i) Deadlines for periodic update. Comprehensive plans and development regulations are subject to periodic update on a schedule established in RCW 36.70A.130(5).

((~~(i) Deadlines for completion of periodic review are as follows:~~

~~Table WAC 365-196-610.1~~
~~Deadlines for Completion of Periodic Review~~
~~2015 - 2018~~

~~Update must be complete by June 30 of:~~	~~Affected counties and the cities within:~~
~~2015/2023~~	~~King, Pierce, Snohomish~~
~~2016/2024~~	~~Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, Whatcom~~

~~Update must be complete by June 30 of:~~	~~Affected counties and the cities within:~~
~~2017/2025~~	~~Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, Yakima~~
~~2018/2026~~	~~Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, Whitman~~))

(ii) Certain smaller, slower-growing counties and cities may take up to an additional two years to complete the update.

(A) The eligibility of a county for the two-year extension does not affect the eligibility of the cities within the county.

(B) A county is eligible if it has a population of less than ((~~fifty thousand~~)) 50,000 and a growth rate of less than ((~~seventeen~~)) 17 percent.

(C) A city is eligible if it has a population of less than ((~~five thousand~~)) 5,000, and either a growth rate of less than ((~~seventeen~~)) 17 percent or a total population growth of less than ((~~one hundred~~)) 100 persons.

(D) Growth rates are measured using the ((~~ten-year~~)) 10-year period preceding the due date listed in RCW 36.70A.130(5).

(E) If a city or county qualifies for the extension on the statutory due date, they remain eligible for the entire extension period, even if they no longer meet the criteria due to population growth.

(c) Taking legislative action.

(i) The periodic update must be accomplished through legislative action. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing including, at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore.

(ii) Legislative action includes two components. It includes a review of the comprehensive plan and development regulations and it includes the adoption of any amendments necessary to bring the comprehensive plan and development regulations into compliance with the requirements of the act.

(d) What must be reviewed.

(i) Counties and cities that plan under RCW 36.70A.040 must review and, if needed, revise their comprehensive plans and development regulations for compliance with the act. This includes the critical areas ordinance.

(ii) Counties and cities that do not plan under RCW 36.70A.040 must review and, if needed, revise their resource lands designations and their development regulations designating and protecting critical areas.

(iii) Counties participating in the voluntary stewardship program must review and, if needed, revise their development regulations not governed by the voluntary stewardship program, except as provided in RCW 36.70A.130(8).

(e) The required scope of review. The purpose of the review is to determine if revisions are needed to bring the comprehensive plan and development regulation into compliance with the requirements of the act. The update process provides the method for bringing plans into compliance with the requirements of the act that have been added or

changed since the last update and for responding to changes in land use and in population growth. This review is necessary so that comprehensive plans are not allowed to fall out of compliance with the act over time through inaction. This review must include at least the following:

(i) Consideration of the critical areas ordinance, including a best available science review (see chapter 365-195 WAC);

(ii) Analysis of urban growth area review required by RCW 36.70A.130(3) (see WAC 365-196-310);

(iii) Review of mineral resource lands designations and mineral resource lands development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060; and

(iv) Changes to the act or other applicable laws since the last review that have not been addressed in the comprehensive plan and development regulations.

(2) Recommendations for meeting requirements.

(a) Public participation program.

(i) Counties and cities should establish a public participation program that includes a schedule for the periodic update and identifies when legislative action on the review and update component are proposed to occur. The public participation program should also inform the public of when to comment on proposed changes to the comprehensive plan and clearly identify the scope of the review. Notice of the update process should be broadly disseminated as required by RCW 36.70A.035.

(ii) Counties and cities may adjust the public participation program to best meet the intent of the requirement. RCW 36.70A.140 notes that errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed. For example, if an established public participation program included one public hearing on all actions having to do with the periodic update process, the public participation program could be adjusted later to provide additional public hearings to accommodate strong public interest.

(b) Review of relevant statutes and local information and analysis of whether there is a need for revisions.

(i) Amendments to the act. Counties and cities should first review amendments to the act that have occurred since the initial adoption or previous periodic update, and determine if local amendments are needed to maintain compliance with the act. The department will maintain a comprehensive list of legislative amendments and a checklist to assist counties and cities with this review.

(ii) Review and analysis of relevant plans, regulations and information. Although existing comprehensive plans and development regulations are considered compliant, counties and cities should consider reviewing development and other activities that have occurred since adoption to determine if the comprehensive plans and development regulations remain consistent with, and implement, the act. This should include at least the following:

(A) Analysis of the population allocated to a city or county during the most recent urban growth area review (see WAC 365-196-310);

(B) Consideration of critical areas and resource lands ordinances. The department recommends evaluating the results of plan, regulation, and permit monitoring to determine if changes are needed to ensure efficient and effective implementation of critical areas ordinances (See WAC 365-195-920);

(C) Review of mineral resource lands designations and development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060;

(D) Capital facilities plans. Changes in anticipated circumstances and needs should be addressed by updating the ((~~ten-year~~)) 10-year transportation plan and six-year capital facilities elements. This includes a reassessment of the land use element if funding falls short;

(E) Land use element;

(F) Changes to comprehensive plans and development regulations in adjacent jurisdictions, special purpose districts, or state plans that create an inconsistency with the county or city's comprehensive plan or development regulations;

(G) Basic assumptions underlying key calculations and conclusions in the existing comprehensive plan. If recent data demonstrates that key existing assumptions are no longer appropriate for the remainder of the ((~~twenty-year~~)) 20-year plan, counties and cities should consider updating them as part of the periodic update (see WAC 365-196-310). Counties and cities required to establish a review and evaluation program under RCW 36.70A.215, should use that information in this review (see WAC 365-196-315); and

(H) Inventories. Counties and cities should review required inventories and to determine if new data or analysis is needed. Table 2 contains summary of the inventories required in the act.

Table WAC 365-196-610.2
Inventories Required by the Act

Requirement	RCW Location	WAC Location
Housing Inventory	36.70A.070(2)	365-196-430
Inventory and analyze existing and projected housing needs, identifying the number of housing units necessary to manage project growth.		
Capital Facilities	36.70A.070(3)	365-196-445
Inventory existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities, and forecast future needs and proposed locations and capacities of expanded or new facilities.		
Transportation	36.70A.070(6)	365-196-455
An inventory of air, water and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels and a basis for future planning. This inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries.		

(c) Take legislative action.

(i) Any legislative action that completes a portion of the review and update process, either in whole or in part, must state in its findings that it is part of the update process.

(ii) Any public hearings on legislative actions that are, either in whole or in part, legislative actions completing the update must state in the notice of hearing that the actions considered are part of the update process.

(iii) At the end of the review and update process, counties and cities should take legislative action declaring the update process complete, either as a separate legislative action, or as a part of the final legislative action that occurs as part of the update process. This action should reference all prior legislative actions occurring as part of the update process.

(d) Submit notice of completion to the department. When adopted, counties and cities should transmit the notice of adoption to the department, consistent with RCW 36.70A.106. RCW 36.70A.130 requires compliance with the review and update requirement as a condition of eligibility for state grant and loan programs. The department tracks compliance with this requirement for agencies managing these grant and loan programs. Providing notice of completion to the department will help maintain access to these grant and loan programs.

(3) Relationship to other review and amendment requirements in the act.

(a) Relationship to the comprehensive plan amendment process. Cities and counties may amend the comprehensive plan no more often than once per year, as required in RCW 36.70A.130(2), and referred to as the docket. If a city or county conducts a comprehensive plan docket cycle in the year in which the review of the comprehensive plan is completed, it must be combined with the periodic review process. Cities and counties may not conduct the periodic review and a docket of amendments as separate processes in the same year.

(b) Urban growth area (UGA) review. As part of the periodic review, cities and counties must review the areas and densities contained in the urban growth area and, if needed, revise their comprehensive plan to accommodate the growth projected to occur in the county for the succeeding ((~~twenty-year~~)) 20-year period, as required in RCW 36.70A.130(3) (see WAC 365-196-310).

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 17-20-100, § 365-196-610, filed 10/4/17, effective 11/4/17; WSR 15-04-039, § 365-196-610, filed 1/27/15, effective 2/27/15; WSR 10-22-103, § 365-196-610, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-196-610, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-630 Submitting notice of intent to adopt to the state. (1) State notification and comment.

(a) The act requires each county or city proposing adoption of an original comprehensive plan or development regulation, or amendment, under the act, ((~~must~~)) to notify the department of its intent at least ((~~sixty~~)) 60 days prior to final adoption pursuant to RCW 36.70A.106. Counties and cities may request expedited review for ((~~changes~~)) amendments to the development regulations pursuant to RCW 36.70A.106 (3)(b).

(b) State agencies, including the department, may provide comments on comprehensive plans, development regulations, and related amendments during the public review process.

(2) Notice to the department ((~~must include~~)) may be in digital format through PlanView, a web-based portal, provided by the department. A complete submittal shall include the following:

(a) A cover letter or cover page that includes an explanation of the proposed amendment, notification that the submittal is intended to begin the ((~~sixty-day~~)) 60-day review process, the planned date of adoption, and the sender's contact information; and

(b) A copy of the proposed amendment ((~~language~~)) text. The drafted amendment text should be in a complete form, and it should clearly

identify how the existing language will be modified. ((~~An example of acceptable form includes struck through and underlined text that indicates proposed deleted text and new text, respectively.~~)) 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 proposed amendment are clearly identifiable.

(c) If the proposed amendment changes during the legislative process, ((~~counties and cities~~)) following submittal, then a county or city may submit supplemental materials to the department without initiating a new ((~~sixty-day~~)) 60-day notice period. Counties and cities must identify any materials submitted to the department if they are supplemental to an earlier proposed amendment under a ((~~sixty-day~~)) 60-day review.

(3)(a) The department prefers that notices of proposed amendments, under RCW 36.70A.106, be submitted electronically through PlanView, a web-based portal. The department will provide access and instructions to a county or city for submitting notice through this process. ((~~Expedited review requests should be submitted by email as outlined in subsection (6) of this section. Counties and cities~~)) A county or city may contact the department ((~~by telephone at 360-725-3000 or~~)) by email at reviewteam@commerce.wa.gov to obtain electronic contact information and procedures for electronic submittals.

(b) Copies submitted by U.S. mail should be sent to:

Department of Commerce,
Growth Management Services
Attn: Review Team
P.O. Box 42525
Olympia, WA 98504-2525

(4) Submitting adopted amendments.

(a) Each county or city planning under the act must transmit to the department, within ((~~ten~~)) 10 days after adoption, one complete and accurate copy of its adopted comprehensive plan or development regulation, or adopted amendment to a comprehensive plan or development regulation, pursuant to RCW 36.70A.106. ((~~Additional copies should be sent to those state agencies that provided comment on the proposed amendment.~~))

(b) The submittal of an adopted amendment must include a copy of the final signed and dated ordinance or resolution identifying the legislative action.

(c) Submittal of an adopted amendment((~~s~~)) should follow the method outlined for submission of the ((~~sixty-day~~)) 60-day notice for review in subsection (3) of this section.

(5) The ((~~sixty-day~~)) 60-day period for determining when an amendment to a comprehensive plan((~~,~~)) or development regulation((~~, or amendment can~~)) may be adopted begins as follows:

(a) When the notice is automatically date-stamped by the department in the PlanView system, or upon receipt ((~~by email attachment~~)) if the submittal is transmitted electronically; or

(b) When the material is stamped upon the date of receipt at the department's planning unit reception desk during regular business hours if the submittal is transmitted by U.S. mail.

(6) Expedited review.

(a) Counties and cities may request expedited review when ((~~they are providing~~)) submitting notice to the department ((~~notice~~)) of intent to adopt an amendment to development regulations under RCW 36.70A.106 (3)(b).

(b) Expedited review is intended for amendments to development regulations for which, without expedited review, the ((~~sixty-day~~)) 60-day state agency review process would needlessly delay the jurisdictions adoption schedule.

(c) Counties and cities may not request expedited review ((~~of~~)) for comprehensive plan amendments.

(d) Certain types of development regulations are very likely to require review by state agencies, and are therefore generally not appropriate for expedited review. Proposed changes to critical areas ordinances or regulations, concurrency ordinances, or ordinances regulating essential public facilities are examples of development regulation amendments that should not be submitted for expedited review.

(e) Department responsibilities:

(i) Requests submitted for expedited review should be ((~~forwarded to other state agencies~~)) identified by the department through the PlanView system within two working days of receipt of request for expedited review.

(ii) State agencies have ((~~ten~~)) 10 working days to determine if the proposal is of interest and requires more time for review.

(iii) If the department is notified by any state agency within ((~~ten~~)) 10 working days that it has an interest in more time for review, the department will not grant expedited review until all agencies have had an opportunity to comment.

(iv) If, after ((~~ten~~)) 10 working days, a state agency does not respond to the department, then the department may grant the request for expedited review.

(v) The department may determine that it has an interest in a proposal that requires more time for review, and it may deny a request for expedited review on that basis.

(vi) The estimated time frame for processing an expedited review request is ((~~fourteen~~)) 14 days, to coincide with the State Environmental Policy Act comment period.

(vii) The expedited review request must include the information required to determine if an item is of state interest, similar to the methods outlined for submission of amendments for ((~~sixty-day~~)) 60-day review.

(f) State agency responsibilities:

(i) If a state agency intends to comment, the agency must respond to requests for expedited review within ((~~ten~~)) 10 working days.

(ii) State agencies should determine how to coordinate an agency response internally to maintain proper notification and information management between its headquarters office and regional offices. The department will work with state agencies if it can be of assistance in this process.

(iii) If a state agency has an interest in a proposed amendment for expedited review, and it has requested the department not grant expedited review, then the state agency requesting denial of the expedited review should contact and provide comment directly to the requesting ((~~jurisdiction~~)) county or city within the ((~~sixty-day~~)) 60-day period specified in RCW 36.70A.106. The state agency should notify the department when it has completed review and provided comments.

(g) County and city responsibilities:

(i) Requests for expedited review should be the exception and not the rule. Expedited review is designed for use with development regulation((~~s~~)) amendments that are unlikely to require state agency review or comment.

(ii) Expedited review should not be used as a substitute for timely notification. Counties and cities should plan for the full ((~~sixty-day~~)) 60-day review period when practicable.

(iii) Counties and cities must request expedited review on a case-by-case basis.

(iv) A r~~r~~equest((~~s~~)) for expedited review should be in the form of an electronic submittal in the PlanView system, following the department's submittal requirements for ((~~email submittal for sixty-day~~)) 60-day review in subsection (3) of this section.

(v) The request must be accompanied with enough information, as defined by the department, in consultation with other state agencies and counties and cities, to determine whether it is of state interest.

(vi) Expedited review should not be requested if the normal ((~~sixty-day~~)) 60-day period will not delay adoption.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-630, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-660 Supplementing, amending, and monitoring. (1) New development regulations may be adopted as the need for supplementing the initial implementation strategy becomes apparent.

(2) Counties and cities should institute an annual review of growth management implementation on a systematic basis. To aid in this process, counties and cities planning under the act should consider establishing a growth management monitoring program designed to measure and evaluate the progress being made toward accomplishing the act's goals and the provisions of the comprehensive plan.

(a) This process should also include a review of comprehensive plan or regulatory deficiencies encountered during project review.

(b) The department recommends critical areas regulations be reviewed to ensure they are achieving no net loss of ecosystem functions and values. This review should include an analysis of monitoring plans, regulations and permits to ensure they are efficient and effective at achieving protection goals and implementation benchmarks.

(c) This process should be integrated with provisions for continuous public involvement. See WAC 365-196-600.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-660, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-730 Federal authorities. (1) Counties and cities drafting or amending comprehensive plans and development regulations

under the act should consider the effects of federal authority over land or resource use within the planning area, including:

(a) Treaties with Native Americans;

(b) Jurisdiction on land owned or held in trust by the federal government;

(c) Federal statutes or regulations imposing national standards;

(d) Federal permit programs and plans;

(e) Metropolitan planning organizations, which are also designated as regional transportation planning organizations established in chapter 47.80 RCW; and

(f) The Central Puget Sound economic development district.

(2) Examples of such federal standards, permit programs and plans are:

(a) National ambient air quality standards, adopted under the Federal Clean Air Act;

(b) Drinking water standards, adopted under the Federal Safe Drinking Water Act;

(c) Effluent limitations, adopted under the Federal Clean Water Act;

(d) Dredge and fill permits issued by the Army Corps of Engineers under the Federal Clean Water Act;

(e) Licenses for hydroelectric projects issued by the Federal Energy Regulatory Commission;

(f) Plans created under the Pacific Northwest Electric Power Planning and Conservation Act;

(g) Recovery plans and the prohibition on taking listed species under the Endangered Species Act;

(h) State and local consolidated plans required by the Department of Housing and Urban Development under the Code of Federal Regulations (24 C.F.R. 91 and 24 C.F.R. 570);

(i) Historic preservation requirements and standards of the National Historic Preservation Act;

(j) Regulatory requirements of section 4(f) of the Department of Transportation Act; ((~~and~~))

(k) Plans adopted by metropolitan planning organizations to meet federal transportation planning responsibilities established by the U.S. Federal Highway Administration (FHWA) and the U.S. Federal Transit Administration (FTA)<u>;</u>

<u>(l) Habitat alteration restrictions arising from the Bald and Golden Eagle Protection Act administered by the U.S. Fish and Wildlife Service; and</u>

<u>(m) Habitat alteration restrictions arising from the Migratory Bird Treaty Act administered by the U.S. Fish and Wildlife Service</u>.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-730, filed 1/19/10, effective 2/19/10.]

<u>AMENDATORY SECTION</u> (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-740 Regional perspective. Some of the authorities in WAC 365-196-730 and 365-196-735 require planning for particular purposes for areas related by physical features, such as watersheds, rather than by political boundaries. Moreover, the environmental and ecological systems addressed in resource management, service by util-

ities, fish and wildlife management and pollution control are generally not circumscribed by county and city lines. Planning entities should attempt to identify these geographic areas which require a regional planning approach and, if needed, work toward creating collaborative processes involving all agencies with jurisdiction in the relevant geographical area. This approach should assist in achieving interjurisdictional consistency, consistency with the ((~~county-wide~~)) countywide planning policies and, where applicable, multicounty planning policies. See WAC 365-196-305 regarding ((~~county-wide~~)) countywide planning policies.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-740, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-825 Potable water. (1) Each applicant for a building permit of a building needing potable water shall provide evidence of an adequate water supply for the intended use of the building. Local regulations should be designed to produce enough data to make such a determination, addressing both water quality and water quantity issues. RCW 19.27.097 provides that such evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply.

(2) Requirements under RCW 90.94.020 and 90.94.030 apply to counties and cities reviewing water adequacy for development.

(3) Counties and cities should give consideration to guidelines promulgated by the departments of ecology and health on what constitutes an adequate water supply. ((~~In addition, Attorney General's Opinion, AGO 1992 No. 17, should be consulted for assistance in determining what substantive standards should be applied.~~

~~(3)~~)) The department of health regulates the maximum number of equivalent residential units (including each domestic unit within a multifamily development) that can be legally and physically served by each public water system. Each water system tracks the current number of available equivalent residential units.

(4) If the department of ecology has adopted rules on this subject, or any part of it, local regulations ((~~should~~)) must be consistent with those rules. Such rules may include instream flow rules, which may limit the availability of additional ground or surface water within a specific geographic area.

((~~(4)~~)) (5) Counties and cities may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-825, filed 1/19/10, effective 2/19/10.]

AMENDATORY SECTION (Amending WSR 17-20-100, filed 10/4/17, effective 11/4/17)

WAC 365-196-830 Protection of critical areas. (1) The act requires the designation of critical areas and the adoption of regulations for the protection of such areas by all counties and cities, including those that do not plan under RCW 36.70A.040. The department has adopted minimum guidelines in chapter 365-190 WAC detailing the process involved in establishing a program to protect critical areas.

(2) Critical areas that must be protected include the following areas and ecosystems:

(a) Wetlands;

(b) Areas of critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(3) "Protection" in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety.

(4) Although counties and cities may protect critical areas in different ways or may allow some localized impacts to critical areas, or even the potential loss of some critical areas, development regulations must preserve the existing functions and values of critical areas. Avoidance is the most effective way to protect critical areas. If development regulations allow harm to critical areas, they must require compensatory mitigation of the harm. Development regulations may not allow a net loss of the functions and values of the ecosystem that includes the impacted or lost critical areas.

(5) Counties and cities must include the best available science in developing policies and development regulations to protect functions and values of critical areas. See chapter 365-195 WAC.

(6) Functions and values must be evaluated at a scale appropriate to the function being evaluated. Ecosystem functions ((~~are the conditions and processes that support the ecosystem. Conditions and processes~~)) and values operate on varying geographic scales ranging from site-specific to watershed and even regional scales. Some critical areas, such as wetlands and fish and wildlife habitat conservation areas, may constitute ecosystems or parts of ecosystems that transcend the boundaries of individual parcels and jurisdictions, so that protection of their function, and values should be considered on a larger scale.

(7) Protecting some critical areas may require using both regulatory and nonregulatory measures. When impacts to critical areas are from development beyond jurisdictional control, counties and cities are encouraged to use regional approaches to protect functions and values. It is especially important to use a regional approach when giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Conservation and protection measures may address land uses on any lands within a jurisdiction, and not only lands with designated critical areas.

(8) Local government may develop and implement alternative means of protecting critical areas from some activities using best management practices or a combination of regulatory and nonregulatory programs.

(a) When developing alternative means of protection, counties and cities must assure no net loss of functions and values and must include the best available science.

(b) Local governments must review and, if needed, revise their development regulations to assure the protection of critical areas where agricultural activities take place.

(c) Local governments shall not broadly exempt agricultural activities from their critical areas regulations.

(d) Counties participating in the voluntary stewardship program must review and, if needed, revise their development regulations not governed by the voluntary stewardship program, except as provided in RCW 36.70A.130(8).

(9) In designing development regulations and nonregulatory programs to protect designated critical areas, counties and cities should endeavor to make such regulations and programs fit together with regional, state and federal programs directed to the same environmental, health, safety and welfare ends. Local plans and policies may in some respects be adequately implemented by adopting the provisions of such other programs as part of the local regulations.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 17-20-100, § 365-196-830, filed 10/4/17, effective 11/4/17; WSR 10-03-085, § 365-196-830, filed 1/19/10, effective 2/19/10.]

WSR 23-08-052
PERMANENT RULES
DEPARTMENT OF TRANSPORTATION
[Filed March 31, 2023, 1:48 p.m., effective May 1, 2023]

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

Purpose: Previously adopted WAC regarding the Manual on Uniform Traffic Control Devices contained minor errors. Correcting these errors will result in accurate language for the intended rules.

Citation of Rules Affected by this Order: Amending WAC 468-95-085, 468-95-120, 468-95-131, and 468-95-280.

Statutory Authority for Adoption: RCW 47.36.030.

Adopted under notice filed as WSR 22-19-002 on September 7, 2022.

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 the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, 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: March 29, 2023.

Sam Wilson, Director
Business Support Services

OTS-4071.1

AMENDATORY SECTION (Amending WSR 11-23-101, filed 11/18/11, effective 12/19/11)

WAC 468-95-085 Two-way left turn only signs (R3-9a, R3-9b). Pursuant to RCW 46.61.290(3), amend Paragraph 01 to Option and Paragraph ((~~03~~)) 02 Support in MUTCD Section 2B.24 with the following:

Option:

Two-way left turn only (R9-3a or R9-3b) signs (see Figure 2B-6) may be used in conjunction with the required pavement markings where a nonreversible lane is reserved for the exclusive use of left-turning vehicles in either direction, or turning into the roadway, and is not used for passing, overtaking, or through travel.

Support:

Upon a roadway where a center lane has been provided by distinctive pavement markings for the use of vehicles turning left from either direction, no vehicles may turn left from any other lane. No vehicle may travel further than three hundred feet within the lane. A signal, either electric or manual, for indicating a left turn movement, shall be made at least one hundred feet before the actual left turn movement is made.

[Statutory Authority: RCW 47.36.030. WSR 11-23-101, § 468-95-085, filed 11/18/11, effective 12/19/11.]

AMENDATORY SECTION (Amending WSR 11-23-101, filed 11/18/11, effective 12/19/11)

WAC 468-95-120 Traffic signal signs. Pursuant to RCW 46.61.055, amend the ((~~second~~)) Standard of MUTCD Section 2B.54 to read:

The NO TURN ON RED sign (R10-11a, R10-11b) shall be used to prohibit any right turn on red; or a left turn on red from a one-way or two-way street into a one-way street carrying traffic in the direction of the left turn.

[Statutory Authority: RCW 47.36.030. WSR 11-23-101, § 468-95-120, filed 11/18/11, effective 12/19/11. Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030 [RCW 47.36.030]. WSR 05-23-003, § 468-95-120, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. WSR 03-06-053, § 468-95-120, filed 2/28/03, effective 3/31/03.]

AMENDATORY SECTION (Amending WSR 11-23-101, filed 11/18/11, effective 12/19/11)

WAC 468-95-131 Bridge ices before road sign. Delete paragraph 05 from Section 2C.32 and sign W8-13 from the MUTCD.

[Statutory Authority: RCW 47.36.030. WSR 11-23-101, § 468-95-131, filed 11/18/11, effective 12/19/11. Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030 [RCW 47.36.030]. WSR 05-23-003, § 468-95-131, filed 11/3/05, effective 12/4/05.]

AMENDATORY SECTION (Amending WSR 11-23-101, filed 11/18/11, effective 12/19/11)

WAC 468-95-280 Operation of lane-use control signals. Pursuant to RCW 46.61.072, in MUTCD Section 4M.04, amend the first sentence of ((~~the first~~)) paragraph ((~~after item G in the first Standard~~)) 03 to read:

A moving condition in one direction shall be terminated either by the immediate display of a RED X signal indication or by a YELLOW X signal indication followed by a RED X signal indication or a flashing RED X indication followed by a RED X indication.

[Statutory Authority: RCW 47.36.030. WSR 11-23-101, § 468-95-280, filed 11/18/11, effective 12/19/11. Statutory Authority: Chapter 34.05 RCW and RCW 46.36.030 [RCW 47.36.030]. WSR 05-23-003, § 468-95-280, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. WSR 03-06-053, § 468-95-280, filed 2/28/03, effective 3/31/03.]

WSR 23-08-063
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed April 4, 2023, 8:29 a.m., effective May 5, 2023]

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

Purpose: The purpose of this rule making is to clearly explain when a presumption for posttraumatic stress disorder (PTSD) exists for certain firefighters, law enforcement officers, and emergency medical technicians. This rule also explains the addition of telecommunicators to the list of those who can file an occupational disease claim for PTSD; however, it is not presumptively caused by their work.

Citation of Rules Affected by this Order: Amending WAC 296-14-300.

Statutory Authority for Adoption: RCW 51.04.020.

Other Authority: RCW 51.08.142 and 51.32.185.

Adopted under notice filed as WSR 22-23-145 on November 22, 2022.

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 the 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 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 0, Repealed 0.

Date Adopted: April 4, 2023.

Joel Sacks
Director

OTS-4168.3

AMENDATORY SECTION (Amending WSR 15-19-139, filed 9/22/15, effective 10/23/15)

WAC 296-14-300 Mental condition/mental disabilities. (1) Claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of an occupational disease ((~~in RCW 51.08.140~~)).

Examples of mental conditions or mental disabilities caused by stress that do not fall within occupational disease shall include, but are not limited to, those conditions and disabilities resulting from:

(a) Change of employment duties;

(b) Conflicts with a supervisor;

(c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;

(d) Relationships with supervisors, coworkers, or the public;

(e) Specific or general job dissatisfaction;

(f) Work load pressures;

(g) Subjective perceptions of employment conditions or environment;

(h) Loss of job or demotion for whatever reason;

(i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;

(j) Objective or subjective stresses of employment;

(k) Personnel decisions;

(l) Actual, perceived, or anticipated financial reversals or difficulties occurring to the businesses of self-employed individuals or corporate officers.

(2)(a) Stress resulting from exposure to a single traumatic event will be adjudicated as an industrial injury. See RCW 51.08.100.

(b) Examples of single traumatic events include: Actual or threatened death, actual or threatened physical assault, actual or threatened sexual assault, and life-threatening traumatic injury.

(c) These exposures must occur in one of the following ways:

(i) Directly experiencing the traumatic event;

(ii) Witnessing, in person, the event as it occurred to others; or

(iii) Extreme exposure to aversive details of the traumatic event.

(d) Repeated exposure to traumatic events, none of which are a single traumatic event as defined in subsection (2)(b) and (c) of this section, is not an industrial injury (see RCW 51.08.100) or an occupational disease (see RCW 51.08.142). A single traumatic event as defined in subsection (2)(b) and (c) of this section that occurs within a series of exposures will be adjudicated as an industrial injury (see RCW 51.08.100).

(3) For certain firefighters and law enforcement officers, there is a presumption that posttraumatic stress disorder (PTSD) is an occupational disease as provided by RCW 51.08.142 and 51.32.185.

(4) For public safety telecommunicators, PTSD may be considered an occupational disease as provided by RCW 51.08.142.

(5) Mental conditions or mental disabilities that specify pain primarily as a psychiatric symptom (e.g., somatic symptom disorder, with predominant pain), or that are characterized by excessive or abnormal thoughts, feelings, behaviors or neurological symptoms (e.g., conversion disorder, factitious disorder) are not clinically related to occupational exposure.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 51.08.142. WSR 15-19-139, § 296-14-300, filed 9/22/15, effective 10/23/15. Statutory Authority: Chapters 51.08 and 51.32 RCW. WSR 88-14-011 (Order 88-13), § 296-14-300, filed 6/24/88.]

WSR 23-08-068
PERMANENT RULES
DEPARTMENT OF HEALTH
(Board of Osteopathic Medicine and Surgery)
[Filed April 4, 2023, 8:49 a.m., effective May 5, 2023]

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

Purpose: Safe and effective analgesia and anesthesia administration in office-based settings, WAC 246-853-650. The board of osteopathic medicine and surgery (board) is adopting rule amendments to remain consistent with the recent Washington medical commission updates and best practices. These changes include clarifying definitions, exemption while performing surgery under general anesthesia, exemption for anesthesia in a dental office, criteria for approval of an accrediting entity for facilities, and required resuscitation techniques.

Citation of Rules Affected by this Order: Amending WAC 246-853-650.

Statutory Authority for Adoption: RCW 18.57.005 and 18.130.050.

Adopted under notice filed as WSR 22-21-129 on October 18, 2022.

A final cost-benefit analysis is available by contacting Becky McElhiney, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4766, fax 360-236-2901, TTY 711, email osteopathic@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 the 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 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: December 2, 2022.

Alex Sobel, DO, Chair
Board of Osteopathic Medicine and Surgery

OTS-3304.3

AMENDATORY SECTION (Amending WSR 11-01-117, filed 12/17/10, effective 1/17/11)

WAC 246-853-650 Safe and effective analgesia and anesthesia administration in office-based settings. (1) Purpose. The purpose of this rule is to promote and establish consistent standards, continuing competency, and to promote patient safety. The board of osteopathic medicine and surgery establishes the following rule for physicians licensed under chapter 18.57 RCW who perform surgical procedures and use anesthesia, analgesia or sedation in office-based settings.

(2) Definitions. The ((~~following terms used~~)) definitions in this subsection apply throughout this ((~~rule~~)) section unless the ((~~text~~)) context clearly ((~~indicates~~)) requires otherwise:

(a) "Board" means the board of osteopathic medicine and surgery.

(b) "Deep sedation" or "analgesia" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(c) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway, and cardiovascular function may be impaired. Sedation that unintentionally progresses to the point at which the ((~~patent~~)) patient is without protective reflexes and is unable to maintain an airway is not considered general anesthesia.

(d) "Local infiltration" means the process of infusing a local anesthetic agent into the skin and other tissues to allow painless wound irrigation, exploration and repair, and other procedures, including procedures such as retrobulbar or periorbital ocular blocks only when performed by a board eligible or board certified ophthalmologist. It does not include procedures in which local anesthesia is injected into areas of the body other than skin or muscle where significant cardiovascular or respiratory complications may result.

(e) "Major conduction anesthesia" means the administration of a drug or combination of drugs to interrupt nerve impulses without loss of consciousness, such as epidural, caudal, or spinal anesthesia, lumbar or brachial plexus blocks, and intravenous regional anesthesia. Major conduction anesthesia does not include isolated blockade of small peripheral nerves, such as digital nerves.

(f) "Minimal sedation" ((~~or "analgesia"~~)) means a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected. Minimal sedation is limited to oral, intranasal, or intramuscular medications((~~, or both~~)).

(g) "Moderate sedation" or "analgesia" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(h) "Office-based surgery" means any surgery or invasive medical procedure requiring analgesia or sedation, including, but not limited to, local infiltration for tumescent liposuction, performed in a location other than a hospital((~~,~~)) or hospital-associated surgical center licensed under chapter 70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW.

(i) "Physician" means an osteopathic physician licensed under chapter 18.57 RCW.

(3) Exemptions. This rule does not apply to physicians when:

(a) Performing surgery and medical procedures that require only minimal sedation (anxiolysis), or infiltration of local anesthetic around peripheral nerves. Infiltration around peripheral nerves does

not include infiltration of local anesthetic agents in an amount that exceeds the manufacturer's published recommendations.

(b) Performing surgery in a hospital or hospital-associated surgical center licensed under chapter 70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW.

(c) Performing surgery ((~~using~~)) utilizing or administering general anesthesia. Facilities in which physicians administer general anesthesia or perform procedures in which general anesthesia is a planned event are regulated by rules related to a hospital((~~s~~)) or hospital-associated surgical center((~~s~~)) licensed under chapter 70.41 RCW, ((~~or~~)) an ambulatory surgical ((~~facilities~~)) facility licensed under chapter 70.230 RCW, or a dental office under WAC 246-853-655.

(d) Administering deep sedation or general anesthesia to a patient in a dental office under WAC 246-853-655.

(e) Performing oral and maxillofacial surgery, and the physician:

(i) Is licensed both as a physician under chapter 18.57 RCW and as a dentist under chapter 18.32 RCW;

(ii) Complies with dental quality assurance commission regulations;

(iii) Holds a valid:

(A) Moderate sedation permit; or

(B) Moderate sedation with parenteral agents permit; or

(C) General anesthesia and deep sedation permit; and

(iv) Practices within the scope of ((~~his or her~~)) their specialty.

(4) Application of rule. This rule applies to physicians practicing independently or in a group setting who perform office-based surgery employing one or more of the following levels of sedation or anesthesia:

(a) Moderate sedation or analgesia; or

(b) Deep sedation or analgesia; or

(c) Major conduction anesthesia.

(5) Accreditation or certification. ((~~Within three hundred sixty-five calendar days of the effective date of this rule,~~))

(a) A physician who performs a procedure under this rule must ensure that the procedure is performed in a facility that is appropriately equipped and maintained to ensure patient safety through accreditation or certification and in good standing from ((~~one of the following:~~

~~(a) The Joint Commission (JC);~~

~~(b) The Accreditation Association for Ambulatory Health Care (AAAHC);~~

~~(c) The American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF);~~

~~(d) The Centers for Medicare and Medicaid Services (CMS); or~~

~~(e) Planned Parenthood Federation of America or the National Abortion Federation, for facilities limited to office-based surgery for abortion or abortion-related services.~~)) an accrediting entity approved by the board.

(b) The board may approve an accrediting entity that demonstrates to the satisfaction of the board that it has all of the following:

(i) Standards pertaining to patient care, recordkeeping, equipment, personnel, facilities and other related matters that are in accordance with acceptable and prevailing standards of care as determined by the board;

(ii) Processes that assure a fair and timely review and decision on any applications for accreditation or renewals thereof;

(iii) Processes that assure a fair and timely review and resolution of any complaints received concerning accredited or certified facilities; and

(iv) Resources sufficient to allow the accrediting entity to fulfill its duties in a timely manner.

(c) A physician may perform procedures under this rule in a facility that is not accredited or certified, provided that the facility has submitted an application for accreditation by a board-approved accrediting entity, and that the facility is appropriately equipped and maintained to ensure patient safety such that the facility meets the accreditation standards. If the facility is not accredited or certified within one year of the physician's performance of the first procedure under this rule, the physician must cease performing procedures under this rule until the facility is accredited or certified.

(d) If a facility loses its accreditation or certification and is no longer accredited or certified by at least one board-approved entity, the physician shall immediately cease performing procedures under this rule in that facility.

(6) Competency. When an anesthesiologist or certified registered nurse anesthetist is not present, the physician performing office-based surgery and using a form of sedation defined in subsection (4) of this section must be competent and qualified both to perform the operative procedure and to oversee the administration of intravenous sedation and analgesia.

(7) Qualifications for administration of sedation and analgesia may include:

(a) Completion of a continuing medical education course in conscious sedation; ((~~or~~))

(b) Relevant training in a residency training program; or

(c) Having privileges for conscious sedation granted by a hospital medical staff.

(8) ((~~Resuscitative preparedness.~~)) At least one licensed health care practitioner currently certified in advanced resuscitative techniques appropriate for the patient age group ((~~(e.g., advanced cardiac life support (ACLS), pediatric advanced life support (PALS) or advanced pediatric life support (APLS))~~)) must be present or immediately available with age-size appropriate resuscitative equipment throughout the procedure and until the patient has met the criteria for discharge from the facility. Certification in advanced resuscitative techniques includes, but is not limited to, advanced cardiac life support (ACLS), pediatric advanced life support (PALS), or advanced pediatric life support (APLS).

(9) Sedation((~~,~~)) assessment and management. ((~~(a)~~)) Sedation is a continuum. Depending on the patient's response to drugs, the drugs administered, and the dose and timing of drug administration, it is possible that a deeper level of sedation will be produced than initially intended.

((~~(b)~~)) (a) If an anesthesiologist or certified registered nurse anesthetist is not present, a physician intending to produce a given level of sedation should be able to "rescue" a patient((~~s~~)) who enters a deeper level of sedation than intended.

((~~(c)~~)) (b) If a patient enters into a deeper level of sedation than planned, the physician must return the patient to the lighter level of sedation as quickly as possible, while closely monitoring the patient to ensure the airway is patent, the patient is breathing, and that oxygenation, ((~~the~~)) heart rate((~~,~~)) and blood pressure are within acceptable values. A physician who returns a patient to a lighter

level of sedation in accordance with this subsection ((~~(c)~~)) (9)(b) does not violate subsection (10) of this section.

(10) Separation of surgical and monitoring functions.

(a) The physician performing the surgical procedure must not administer the intravenous sedation, or monitor the patient.

(b) The licensed health care practitioner, designated by the physician to administer intravenous medications and monitor the patient who is under moderate sedation, may assist the operating physician with minor, interruptible tasks of short duration once the patient's level of sedation and vital signs have been stabilized, provided that adequate monitoring of the patient's condition is maintained. The licensed health care practitioner who administers intravenous medications and monitors a patient under deep sedation or analgesia must not perform or assist in the surgical procedure.

(11) Emergency care and transfer protocols. A physician performing office-based surgery must ensure that in the event of a complication or emergency:

(a) All office personnel are familiar with a written and documented plan to timely and safely transfer patients to an appropriate hospital.

(b) The plan must include arrangements for emergency medical services and appropriate escort of the patient to the hospital.

(12) Medical record. The physician performing office-based surgery must maintain a legible, complete, comprehensive, and accurate medical record for each patient.

(a) The medical record must include all of the following:

(i) Identity of the patient;

(ii) History and physical, diagnosis and plan;

(iii) Appropriate lab, X-ray or other diagnostic reports;

(iv) Appropriate preanesthesia evaluation;

(v) Narrative description of procedure;

(vi) Pathology reports, if relevant;

(vii) Documentation of which, if any, tissues and other specimens have been submitted for histopathologic diagnosis;

(viii) Provision for continuity of postoperative care; and

(ix) Documentation of the outcome and the follow-up plan.

(b) When moderate or deep sedation, or major conduction anesthesia is used, the patient medical record must include a separate anesthesia record that documents:

(i) The type of sedation or anesthesia used;

(ii) ((~~Drugs (name and dose)~~)) Name, dose, and time of administration of drugs;

(iii) Documentation at regular intervals of information obtained from the intraoperative and postoperative monitoring;

(iv) Fluids administered during the procedure;

(v) Patient weight;

(vi) Level of consciousness;

(vii) Estimated blood loss;

(viii) Duration of procedure; and

(ix) Any complication or unusual events related to the procedure or sedation/anesthesia.

[Statutory Authority: RCW 18.57.005 and 18.130.050. WSR 11-01-117, § 246-853-650, filed 12/17/10, effective 1/17/11.]

WSR 23-08-069
PERMANENT RULES
DEPARTMENT OF HEALTH
(Nursing Care Quality Assurance Commission)
[Filed April 4, 2023, 8:54 a.m., effective May 7, 2023]

Effective Date of Rule: May 7, 2023.

Purpose: WAC 246-840-365 Inactive and reactivating an ARNP license and 246-840-367 Expired license. The nursing care quality assurance commission (commission) is adopting amendments to WAC 246-840-365 and 246-840-367 to remove nonevidence-based licensure requirements for inactive and reactivating advanced registered nurse practitioner (ARNP) licenses.

Amendments to WAC 246-840-365 and 246-840-367 are currently enacted under emergency rule, and the commission is adopting the amendments into permanent rule. The requirements include completion of 250 hours of advanced clinical practice for each designation within the past two years. If the ARNP has not satisfied the advanced clinical practice requirements, the requirements include completion of at least 250 hours of supervised advanced clinical practice hours and the need to obtain an interim permit to complete the practice hours.

For ARNPs whose license has been expired for less than two years, the rule removes the requirement for ARNPs who do not meet required advanced clinical practice requirements to complete 250 hours of supervised advanced clinical practice for every two years the ARNP has been out of practice and the need to obtain an interim permit to complete the practice hours.

Housekeeping amendments remove "of chapter 246-12 WAC, Part 2" in subsection (1)(a) and replaces [it] with "for initial and renewal credentialing of practitioners as identified under WAC 246-12-020 through 246-12-051[.]"

The commission is adopting amendments to current rules identified as barriers to the provision of services both in emergency response and during regular operations.

Citation of Rules Affected by this Order: Amending WAC 246-840-365 and 246-840-367.

Statutory Authority for Adoption: RCW 18.79.010, 18.79.110, and 18.79.250.

Adopted under notice filed as WSR 23-01-134 on December 20, 2022.

A final cost-benefit analysis is available by contacting Jessilyn Dagum, P.O. Box 47865, Olympia, WA 98504-7864 [7865], phone 360-236-3538, fax 360-236-4738, TTY 711, email ncqac.rules@doh.wa.gov, website www.nursing.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 the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, 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, 2023.

Paula R. Meyer, RN, MSN, FRE
Executive Director
Nursing Care Quality Assurance Commission

OTS-3963.2

AMENDATORY SECTION (Amending WSR 19-08-031, filed 3/27/19, effective 4/27/19)

WAC 246-840-365 Inactive and reactivating an ARNP license. To apply for an inactive ARNP license, an ARNP shall comply with WAC 246-12-090 or 246-12-540, if military related.

(1) An ARNP may apply for an inactive license if he or she holds an active Washington state ARNP license without sanctions or restrictions.

(2) To return to active status the ARNP:

(a) Shall meet the requirements ((~~identified in chapter 246-12 WAC, Part 4~~)) for an inactive credential for nonmilitary practitioners identified under WAC 246-12-090 through 246-12-110;

(b) Must hold an active RN license under chapter 18.79 RCW without sanctions or restrictions;

(c) Shall submit the fee as identified under WAC 246-840-990;

(d) Shall submit evidence of current certification by the commission approved certifying body identified in WAC 246-840-302(1); and

(e) Shall submit evidence of ((~~thirty~~)) 30 contact hours of continuing education for each designation within the past two years((~~; and~~

~~(f) Shall submit evidence of two hundred fifty hours of advanced clinical practice for each designation within the last two years.~~

~~(3) An ARNP applicant who does not have the required practice requirements, shall complete two hundred fifty hours of supervised advanced clinical practice for every two years the applicant may have been out of practice, not to exceed one thousand hours.~~

~~(4) The ARNP applicant needing to complete supervised advanced clinical practice shall obtain an ARNP interim permit consistent with the requirements for supervised practice defined in WAC 246-840-340 (4) and (5)~~)).

((~~(5)~~)) (3) To regain prescriptive authority after inactive status, the applicant must meet the prescriptive authority requirements identified in WAC 246-840-410.

[Statutory Authority: RCW 18.79.110. WSR 19-08-031, § 246-840-365, filed 3/27/19, effective 4/27/19. Statutory Authority: RCW 18.79.050, 18.79.110, and 18.79.160. WSR 16-08-042, § 246-840-365, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 18.79.010, [18.79.]050, [18.79.]110, and [18.79.]210. WSR 09-01-060, § 246-840-365, filed 12/11/08, effective 1/11/09. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-840-365, filed 2/13/98, effective 3/16/98. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-365, filed 6/18/97, effective 7/19/97.]

AMENDATORY SECTION (Amending WSR 19-08-031, filed 3/27/19, effective 4/27/19)

WAC 246-840-367 Expired license. When an ARNP license is not renewed, it is placed in expired status and the nurse must not practice as an ARNP.

(1) To return to active status when the license has been expired for less than two years, the nurse shall:

(a) Meet the requirements ((~~of chapter 246-12 WAC, Part 2~~)) for initial and renewal credentialing of practitioners as identified under WAC 246-12-020 through 246-12-051;

(b) Meet ARNP renewal requirements identified in WAC 246-840-360; and

(c) Meet the prescriptive authority requirements identified in WAC 246-840-450, if renewing prescriptive authority.

(2) ((~~Applicants who do not meet the required advanced clinical practice requirements must complete two hundred fifty hours of supervised advanced clinical practice for every two years the applicant may have been out of practice, not to exceed one thousand hours.~~

~~(3) The ARNP applicant needing to complete supervised advanced clinical practice shall obtain an ARNP interim permit consistent with the requirements for supervised practice defined in WAC 246-840-340 (4) and (5).~~

~~(4)~~)) If the ARNP license has expired for two years or more, the applicant shall:

(a) Meet the requirements ((~~of chapter 246-12 WAC, Part 2~~)) for initial and renewal credentialing of practitioners as identified under WAC 246-12-020 through 246-12-051;

(b) Submit evidence of current certification by the commission approved certifying body identified in WAC 246-840-302(3);

(c) Submit evidence of ((~~thirty~~)) 30 contact hours of continuing education for each designation within the prior two years; and

(d) ((~~Submit evidence of two hundred fifty hours of advanced clinical practice completed within the prior two years; and~~

~~(e) Submit evidence of an additional thirty contact hours in pharmacology if requesting prescriptive authority, which may be granted once the ARNP license is returned to active status.~~

~~(5) If the applicant does not meet the required advanced clinical practice hours, the applicant shall obtain an ARNP interim permit consistent with the requirements for supervised advanced clinical practice as defined in WAC 246-840-340 (4) and (5).~~)) Meet the prescriptive authority requirements identified in WAC 246-840-410 if requesting prescriptive authority, which may be granted once the ARNP license is returned to active status.

[Statutory Authority: RCW 18.79.110. WSR 19-08-031, § 246-840-367, filed 3/27/19, effective 4/27/19. Statutory Authority: RCW 18.79.050, 18.79.110, and 18.79.160. WSR 16-08-042, § 246-840-367, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 18.79.010, [18.79.]050, [18.79.]110, and [18.79.]210. WSR 09-01-060, § 246-840-367, filed 12/11/08, effective 1/11/09.]

WSR 23-08-080
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed April 5, 2023, 6:49 a.m., effective May 6, 2023]

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

Purpose: The agency amended these rules to (1) correct an incorrect WAC subsection reference in WAC 182-535-1098 (4)(c) (subsection (4)(c) indicates "refer to WAC 182-535-1094(3)" and should say "WAC 182-535-1094(4)"; and (2) remove subsection (2)(f)(x), replacement of agency-purchased prosthodontics, from WAC 182-535-1100 Not covered. Dentures are a covered service.

Citation of Rules Affected by this Order: Amending WAC 182-535-1098 and 182-535-1100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-06-044 on February 24, 2023.

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 the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, 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: April 5, 2023.

Wendy Barcus
Rules Coordinator

OTS-4328.1

AMENDATORY SECTION (Amending WSR 21-14-055, filed 7/1/21, effective 8/1/21)

WAC 182-535-1098 Covered—Adjunctive general services. Clients described in WAC 182-535-1060 are eligible to receive the adjunctive general services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Adjunctive general services.** The medicaid agency:

(a) Covers palliative (emergency) treatment, not to include pupal debridement (see WAC 182-535-1086 (2)(b)), for treatment of dental pain, limited to once per day, per client, as follows:

(i) The treatment must occur during limited evaluation appointments;

(ii) A comprehensive description of the diagnosis and services provided must be documented in the client's record; and

(iii) Appropriate radiographs must be in the client's record supporting the medical necessity of the treatment.

(b) Covers local anesthesia and regional blocks as part of the global fee for any procedure being provided to clients.

(c) Covers office-based deep sedation/general anesthesia services:

(i) For all eligible clients age eight and younger and clients any age of the developmental disabilities administration of the department of social and health services (DSHS). Documentation supporting the medical necessity of the anesthesia service must be in the client's record.

(ii) For clients age nine through ((~~twenty~~)) 20 on a case-by-case basis and when prior authorized, except for oral surgery services. For oral surgery services listed in WAC 182-535-1094 (1)(f) through (l) and clients with cleft palate diagnoses, the agency does not require prior authorization for deep sedation/general anesthesia services.

(iii) For clients age ((~~twenty-one~~)) 21 and older when prior authorized. The agency considers these services for only those clients:

(A) With medical conditions such as tremors, seizures, or asthma;

(B) Whose records contain documentation of tried and failed treatment under local anesthesia or other less costly sedation alternatives due to behavioral health conditions; or

(C) With other conditions for which general anesthesia is medically necessary, as defined in WAC 182-500-0070.

(d) Covers office-based intravenous moderate (conscious) sedation/analgesia:

(i) For any dental service for clients age ((~~twenty~~)) 20 and younger, and for clients any age of the developmental disabilities administration of DSHS. Documentation supporting the medical necessity of the service must be in the client's record.

(ii) For clients age ((~~twenty-one~~)) 21 and older when prior authorized. The agency considers these services for only those clients:

(A) With medical conditions such as tremors, seizures, or asthma;

(B) Whose records contain documentation of tried and failed treatment under local anesthesia, or other less costly sedation alternatives due to behavioral health conditions; or

(C) With other conditions for which general anesthesia or conscious sedation is medically necessary, as defined in WAC 182-500-0070.

(e) Covers office-based nonintravenous conscious sedation:

(i) For any dental service for clients age ((~~twenty~~)) 20 and younger, and for clients any age of the developmental disabilities administration of DSHS. Documentation supporting the medical necessity of the service must be in the client's record.

(ii) For clients age ((~~twenty-one~~)) 21 and older, only when prior authorized.

(f) Requires providers to bill anesthesia services using the current dental terminology (CDT) codes listed in the agency's current published billing instructions.

(g) Requires providers to have a current anesthesia permit on file with the agency.

(h) Covers administration of nitrous oxide once per day, per client per provider.

(i) Requires providers of oral or parenteral conscious sedation, deep sedation, or general anesthesia to meet:

(i) The prevailing standard of care;

(ii) The provider's professional organizational guidelines;

(iii) The requirements in chapter 246-817 WAC; and

(iv) Relevant department of health (DOH) medical, dental, or nursing anesthesia regulations.

(j) Pays for dental anesthesia services according to WAC 182-535-1350.

(k) Covers professional consultation/diagnostic services as follows:

(i) A dentist or a physician other than the practitioner providing treatment must provide the services; and

(ii) A client must be referred by the agency for the services to be covered.

(2) **Professional visits.** The agency covers:

(a) Up to two house/extended care facility calls (visits) per facility, per provider. The agency limits payment to two facilities per day, per provider.

(b) One hospital visit, including emergency care, per day, per provider, per client, and not in combination with a surgical code unless the decision for surgery is a result of the visit.

(c) Emergency office visits after regularly scheduled hours. The agency limits payment to one emergency visit per day, per client, per provider.

(3) **Drugs and medicaments (pharmaceuticals).**

(a) The agency covers oral sedation medications only when prescribed and the prescription is filled at a pharmacy. The agency does not cover oral sedation medications that are dispensed in the provider's office for home use.

(b) The agency covers therapeutic parenteral drugs as follows:

(i) Includes antibiotics, steroids, anti-inflammatory drugs, or other therapeutic medications. This does not include sedative, anesthetic, or reversal agents.

(ii) Only one single-drug injection or one multiple-drug injection per date of service.

(c) For clients age ((~~twenty~~)) 20 and younger, the agency covers other drugs and medicaments dispensed in the provider's office for home use. This includes, but is not limited to, oral antibiotics and oral analgesics. The agency does not cover the time spent writing prescriptions.

(d) For clients enrolled in an agency-contracted managed care organization (MCO), the client's MCO pays for dental prescriptions.

(4) **Miscellaneous services.** The agency covers:

(a) Behavior management provided by a dental provider or clinic. The agency does not cover assistance with managing a client's behavior provided by a dental provider or staff member delivering the client's dental treatment.

(i) Documentation supporting the need for behavior management must be in the client's record and including the following:

(A) A description of the behavior to be managed;

(B) The behavior management technique used; and

(C) The identity of the additional professional staff used to provide the behavior management.

(ii) Clients, who meet one of the following criteria and whose documented behavior requires the assistance of one additional professional staff employed by the dental provider or clinic to protect the client and the professional staff from injury while treatment is rendered, may receive behavior management:

(A) Clients age eight and younger;

(B) Clients age nine through ((~~twenty~~)) 20, only on a case-by-case basis and when prior authorized;

(C) Clients any age of the developmental disabilities administration of DSHS;

(D) Clients diagnosed with autism;

(E) Clients who reside in an alternate living facility (ALF) as defined in WAC 182-513-1301, or in a nursing facility as defined in WAC 182-500-0075.

(iii) Behavior management can be performed in the following settings:

(A) Clinics (including independent clinics, tribal health clinics, federally qualified health centers, rural health clinics, and public health clinics);

(B) Offices;

(C) Homes (including private homes and group homes); and

(D) Facilities (including nursing facilities and alternate living facilities).

(b) Treatment of post-surgical complications (e.g., dry socket). Documentation supporting the medical necessity of the service must be in the client's record.

(c) Occlusal guards when medically necessary and prior authorized. (Refer to WAC 182-535-1094((~~(3)~~)) (4) for occlusal orthotic device coverage and coverage limitations.) The agency covers:

(i) An occlusal guard only for clients age ((~~twelve~~)) 12 through ((~~twenty~~)) 20 when the client has permanent dentition; and

(ii) An occlusal guard only as a laboratory processed full arch appliance.

(5) **Nonclinical procedures.**

(a) The agency covers teledentistry according to the department of health, health systems quality assurance office of health professions, current guidelines, appropriate use of teledentistry, and as follows (see WAC 182-531-1730 for coverage limitations not listed in this section):

(i) Synchronous teledentistry at the distant site for clients of all ages; and

(ii) Asynchronous teledentistry at the distant site for clients of all ages.

(b) The client's record must include the following supporting documentation regarding teledentistry:

(i) Service provided via teledentistry;

(ii) Location of the client;

(iii) Location of the provider; and

(iv) Names and credentials of all persons involved in the teledentistry visit and their role in providing the service at both the originating and distant sites.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-14-055, § 182-535-1098, filed 7/1/21, effective 8/1/21; WSR 20-08-103, § 182-535-1098, filed 3/30/20, effective 4/30/20. Statutory Authority: RCW 41.05.021, 41.05.160 and 2017 3rd sp.s. c 1 § 213 (1)(c). WSR 19-09-058, § 182-535-1098, filed 4/15/19, effective 7/1/19. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-20-097, § 182-535-1098, filed 10/3/17, effective 11/3/17; WSR 16-18-033, § 182-535-1098, filed 8/26/16, effective 9/26/16; WSR 15-10-043, § 182-535-1098, filed 4/29/15, effective 5/30/15. Statutory Authority: RCW 41.05.021 and 2013 2nd sp.s. c 4 § 213. WSR 14-08-032, § 182-535-1098, filed 3/25/14, effective 4/30/14. Statutory Authority: RCW 41.05.021. WSR 12-09-081, § 182-535-1098, filed 4/17/12, effective 5/18/12. WSR 11-14-075, recodified as § 182-535-1098, filed 6/30/11, effective

7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.520. WSR 07-06-042, § 388-535-1098, filed 3/1/07, effective 4/1/07.]

AMENDATORY SECTION (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

WAC 182-535-1100 Dental-related services—Not covered. (1) The medicaid agency does not cover the following under the dental program:

(a) The dental-related services described in subsection (2) of this section unless the services are covered under the early periodic screening, diagnostic, and treatment (EPSDT) program. When EPSDT applies, the agency evaluates a noncovered service, equipment, or supply according to the process in WAC 182-501-0165 to determine if it is medically necessary, safe, effective, and not experimental.

(b) Any service specifically excluded by statute.

(c) More costly services when less costly, equally effective services as determined by the agency are available.

(d) Services, procedures, treatment, devices, drugs, or application of associated services:

(i) That the agency or the Centers for Medicare and Medicaid Services (CMS) considers investigative or experimental on the date the services were provided.

(ii) That are not listed as covered in one or both of the following:

(A) Washington Administrative Code (WAC).

(B) The agency's current published documents.

(2) The agency does not cover dental-related services listed under the following categories of service (see subsection (1)(a) of this section for services provided under the EPSDT program):

(a) **Diagnostic services.** The agency does not cover:

(i) Detailed and extensive oral evaluations or reevaluations.

(ii) Posterior-anterior or lateral skull and facial bone survey films.

(iii) Any temporomandibular joint films.

(iv) Tomographic surveys/3-D imaging.

(v) Comprehensive periodontal evaluations.

(vi) Viral cultures, genetic testing, caries susceptibility tests, or adjunctive prediagnostic tests.

(b) **Preventive services.** The agency does not cover:

(i) Nutritional counseling for control of dental disease.

(ii) Removable space maintainers of any type.

(iii) Sealants placed on a tooth with the same-day occlusal restoration, preexisting occlusal restoration, or a tooth with occlusal decay.

(iv) Custom fluoride trays of any type.

(v) Bleach trays.

(c) **Restorative services.** The agency does not cover:

(i) Restorations for wear on any surface of any tooth without evidence of decay through the dentinoenamel junction (DEJ) or on the root surface.

(ii) Preventative restorations.

(iii) Labial veneer resin or porcelain laminate restorations.

(iv) Sedative fillings.

(v) Crowns and crown related services.

(A) Gold foil restorations.

(B) Metallic, resin-based composite, or porcelain/ceramic inlay/onlay restorations.

(C) Crowns for cosmetic purposes (e.g., peg laterals and tetracycline staining).

(D) Permanent indirect crowns for posterior teeth.

(E) Permanent indirect crowns on permanent anterior teeth for clients age ((~~fourteen~~)) 14 and younger.

(F) Temporary or provisional crowns (including ion crowns).

(G) Any type of coping.

(H) Crown repairs.

(I) Crowns on teeth one, ((~~sixteen, seventeen, and thirty-two~~)) 16, 17, and 32.

(vi) Polishing or recontouring restorations or overhang removal for any type of restoration.

(vii) Any services other than extraction on supernumerary teeth.

(d) **Endodontic services.** The agency does not cover:

(i) Indirect or direct pulp caps.

(ii) Any endodontic treatment on primary teeth, except as described in WAC 182-535-1086(3).

(e) **Periodontic services.** The agency does not cover:

(i) Surgical periodontal services including, but not limited to:

(A) Gingival flap procedures.

(B) Clinical crown lengthening.

(C) Osseous surgery.

(D) Bone or soft tissue grafts.

(E) Biological material to aid in soft and osseous tissue regeneration.

(F) Guided tissue regeneration.

(G) Pedicle, free soft tissue, apical positioning, subepithelial connective tissue, soft tissue allograft, combined connective tissue and double pedicle, or any other soft tissue or osseous grafts.

(H) Distal or proximal wedge procedures.

(ii) Nonsurgical periodontal services including, but not limited to:

(A) Intracoronal or extracoronal provisional splinting.

(B) Full mouth or quadrant debridement (except for clients of the developmental disabilities administration).

(C) Localized delivery of chemotherapeutic agents.

(D) Any other type of surgical periodontal service.

(f) **Removable prosthodontics.** The agency does not cover:

(i) Removable unilateral partial dentures.

(ii) Any interim complete or partial dentures.

(iii) Flexible base partial dentures.

(iv) Any type of permanent soft reline (e.g., molloplast).

(v) Precision attachments.

(vi) Replacement of replaceable parts for semi-precision or precision attachments.

(vii) Replacement of second or third molars for any removable prosthesis.

(viii) Immediate dentures.

(ix) Cast-metal framework partial dentures.

((~~(x) Replacement of agency-purchased removable prosthodontics that have been lost, broken, stolen, sold, or destroyed as a result of the client's carelessness, negligence, recklessness, deliberate intent, or misuse as described in WAC 182-501-0050.~~))

(g) **Implant services.** The agency does not cover:

(i) Any type of implant procedures, including, but not limited to, any tooth implant abutment (e.g., periosteal implants, eposteal implants, and transosteal implants), abutments or implant supported crowns, abutment supported retainers, and implant supported retainers.

(ii) Any maintenance or repairs to procedures listed in (g)(i) of this subsection.

(iii) The removal of any implant as described in (g)(i) of this subsection.

(h) **Fixed prosthodontics.** The agency does not cover any type of:

(i) Fixed partial denture pontic.

(ii) Fixed partial denture retainer.

(iii) Precision attachment, stress breaker, connector bar, coping, cast post, or any other type of fixed attachment or prosthesis.

(i) **Oral maxillofacial prosthetic services.** The agency does not cover any type of oral or facial prosthesis other than those listed in WAC 182-535-1092.

(j) **Oral and maxillofacial surgery.** The agency does not cover:

(i) Any oral surgery service not listed in WAC 182-535-1094.

(ii) Vestibuloplasty.

(k) **Adjunctive general services.** The agency does not cover:

(i) Anesthesia, including, but not limited to:

(A) Local anesthesia as a separate procedure.

(B) Regional block anesthesia as a separate procedure.

(C) Trigeminal division block anesthesia as a separate procedure.

(D) Medication for oral sedation, or therapeutic intramuscular (IM) drug injections, including antibiotic and injection of sedative.

(E) Application of any type of desensitizing medicament or resin.

(ii) Other general services including, but not limited to:

(A) Fabrication of an athletic mouthguard.

(B) Sleep apnea devices or splints.

(C) Occlusion analysis.

(D) Occlusal adjustment, tooth or restoration adjustment or smoothing, or odontoplasties.

(E) Enamel microabrasion.

(F) Dental supplies such as toothbrushes, toothpaste, floss, and other take home items.

(G) Dentist's or dental hygienist's time writing or calling in prescriptions.

(H) Dentist's or dental hygienist's time consulting with clients on the phone.

(I) Educational supplies.

(J) Nonmedical equipment or supplies.

(K) Personal comfort items or services.

(L) Provider mileage or travel costs.

(M) Fees for no-show, canceled, or late arrival appointments.

(N) Service charges of any type, including fees to create or copy charts.

(O) Office supplies used in conjunction with an office visit.

(P) Teeth whitening services or bleaching, or materials used in whitening or bleaching.

(Q) Botox or dermal fillers.

(3) The agency does not cover the following dental-related services for clients age ((~~twenty-one~~)) 21 and older:

(a) The following diagnostic services:

(i) Occlusal intraoral radiographs;

(ii) Diagnostic casts;

(iii) Sealants (for clients of the developmental disabilities administration, see WAC 182-535-1099);

(iv) Pulp vitality tests.

(b) The following restorative services:

(i) Prefabricated resin crowns;

(ii) Any type of core buildup, cast post and core, or prefabricated post and core.

(c) The following endodontic services:

(i) Endodontic treatment on permanent bicuspids or molar teeth;

(ii) Any apexification/recalcification procedures;

(iii) Any apicoectomy/periradicular surgical endodontic procedures including, but not limited to, retrograde fillings (except for anterior teeth), root amputation, reimplantation, and hemisections.

(d) The following adjunctive general services:

(i) Occlusal guards, occlusal orthotic splints or devices, bruxing or grinding splints or devices, or temporomandibular joint splints or devices; and

(ii) Analgesia or anxiolysis as a separate procedure except for administration of nitrous oxide.

(4) The agency evaluates a request for any dental-related services listed as noncovered in this chapter under the provisions of WAC 182-501-0160.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-20-097, § 182-535-1100, filed 10/3/17, effective 11/3/17; WSR 15-10-043, § 182-535-1100, filed 4/29/15, effective 5/30/15. Statutory Authority: RCW 41.05.021 and 2013 2nd sp.s. c 4 § 213. WSR 14-08-032, § 182-535-1100, filed 3/25/14, effective 4/30/14. Statutory Authority: RCW 41.05.021. WSR 12-09-081, § 182-535-1100, filed 4/17/12, effective 5/18/12. WSR 11-14-075, recodified as § 182-535-1100, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.520. WSR 07-06-042, § 388-535-1100, filed 3/1/07, effective 4/1/07. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. WSR 03-19-078, § 388-535-1100, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225. WSR 02-13-074, § 388-535-1100, filed 6/14/02, effective 7/15/02. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520 and 74.09.700, 42 USC 1396d(a), C.F.R. 440.100 and 440.225. WSR 99-07-023, § 388-535-1100, filed 3/10/99, effective 4/10/99. Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. WSR 96-01-006 (Order 3931), § 388-535-1100, filed 12/6/95, effective 1/6/96.]

WSR 23-08-081
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed April 5, 2023, 8:41 a.m., effective May 6, 2023]

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

Purpose: The department of revenue is updating WAC 458-20-101 and 458-20-104 to recognize 2022 legislation updates to RCW 82.32.045 to increase the tax registration/reporting threshold, and RCW 82.04.4451 to increase small business tax credits.

Citation of Rules Affected by this Order: Amending WAC 458-20-101 Tax registration and tax reporting and 458-20-104 Small business tax relief based on income of business.

Statutory Authority for Adoption: RCW 82.32.045, 82.04.4451, 82.01.060.

Adopted under notice filed as WSR 23-04-069 on January 30, 2023.

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 the 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 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 0, Repealed 0.

Date Adopted: April 4, 2023.

Atif Aziz
Rules Coordinator

OTS-4332.1

AMENDATORY SECTION (Amending WSR 17-22-027, filed 10/23/17, effective 11/23/17)

WAC 458-20-101 Tax registration and tax reporting. (1) **Introduction.** This rule explains tax registration and tax reporting requirements for the Washington state department of revenue (department) as established in RCW 82.32.030 and 82.32.045. This rule discusses who is required to be registered, and who must file excise tax returns. This rule also discusses changes in ownership requiring a new registration, the administrative closure of taxpayer accounts, and the revocation and reinstatement of a tax account with the department. Persons required to file tax returns should also refer to WAC 458-20-104 (Small business tax relief based on income of business). Persons with certain ownership structures (e.g., corporations, limited liability companies, limited partnerships, limited liability partnerships, and limited liability limited partnerships) must also register with the office of the secretary of state.

Examples. Examples found in this rule identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(2) **Persons required to obtain tax registration endorsements.** Except as provided in (a) of this subsection, every person who is engaged in any business activity for which the department is responsible for administering and/or collecting a tax or fee, must apply for and obtain a tax registration endorsement with the department. (See RCW 82.32.030.) This endorsement is printed on the face of the business person's business license document. The tax registration endorsement is nontransferable, and valid for as long as that person continues in business.

(a) **When registration is not required.** Registration under this rule is not required if all of the following conditions are met:

(i) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW (business and occupation (B&O) tax), is less than ((~~twelve thousand dollars~~)) $12,000 per year;

(ii) A person's gross income from all business activities taxable under chapter 82.16 RCW (public utility tax), is less than ((~~twelve thousand dollars~~)) $12,000 per year;

(iii) The person is not required to collect or pay to the department retail sales tax or any other tax or fee which the department is authorized to administer and/or collect; and

(iv) The person is not otherwise required to obtain a business license subject to the business license application procedure provided in chapter 19.02 RCW. For the purposes of this rule, the term "business license" means any agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency rule, to engage in any activity.

(b) **Tax registration endorsement.** The term "tax registration endorsement," as used in this rule, has the same meaning as the term "tax registration" or "certificate of registration" used in Title 82 RCW and other rules in chapter 458-20 WAC.

(c) **Person.** The term "person" has the meaning given in RCW 82.04.030 and WAC 458-20-203.

(d) **Tax account ID.** The term "tax account ID" as used in this rule, is the ID number used to identify persons registered with the department.

(3) **Requirement to file tax returns.** Persons registered with the department must file tax returns and remit the appropriate taxes to the department, unless they are placed on an "active nonreporting" status by the department.

(a) **Active nonreporting status requirements.** The department may relieve any person of the requirement to file returns by placing the person in an active nonreporting status if all of the following conditions are met:

(i) The person's value of products (RCW 82.04.450), gross proceeds of sales (RCW 82.04.070), or gross income of the business (RCW 82.04.080), from all business activities taxable under chapter 82.04 RCW (B&O tax), is less than((~~:~~

~~(A) Twenty-eight thousand dollars per year; or~~

~~(B) Forty-six thousand six hundred sixty-seven dollars per year for persons generating at least fifty percent of their gross amount from activities taxable under RCW 82.04.255 (real estate brokerage services), RCW 82.04.290 (2)(a) (service and other activities B&O tax~~

~~classification), and RCW 82.04.285 (operating contests of chance)~~)) $125,000;

(ii) The person's gross income (RCW 82.16.010) from all business activities taxable under chapter 82.16 RCW (public utility tax) is less than ((~~twenty-four thousand dollars~~)) $24,000 per year; and

(iii) The person is not required to collect or pay to the department retail sales tax or any other tax or fee the department is authorized to collect.

(b) **Notification of active nonreporting status.** The department will notify those persons it places on an active nonreporting status. A person may request to be placed on an active nonreporting status if the conditions of (a) of this subsection are met.

(c) **Responsibility to notify department about change in status.** Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities do not meet any of the conditions explained in (a) of this subsection. These persons will be removed from an active nonreporting status, and must file tax returns and remit appropriate taxes to the department, beginning with the first period in which they do not qualify for an active nonreporting status.

(d) **Obligation to file a tax return.** Persons that have not been placed on an active nonreporting status by the department must continue to file tax returns and remit the appropriate taxes.

(4)(a) **Example 1.** Bob Brown is starting a bookkeeping service. Income generated from this activity is taxable under the service and other activities B&O tax classification. The gross income of the business is expected to be less than ((~~twelve thousand dollars~~)) $12,000 per year. Bob's only income is earned from his bookkeeping activity. Due to the nature of the business activities, Bob is not required to pay or collect any other tax or fee which the department is authorized to collect. Bob has no other need to file a business license application.

Bob Brown is not required to apply for and obtain a tax registration endorsement with the department. The conditions under which a business person may engage in business activities without obtaining the tax registration endorsement have been met. However, if Bob Brown in some future period has gross income exceeding ((~~twelve thousand dollars~~)) $12,000 per year, he will be required to obtain a tax registration endorsement. If Bob's gross income exceeds ((~~forty-six thousand six hundred sixty-seven dollars~~)) $125,000 per year ((~~(because Bob generates all of his gross income under the service and other activities B&O tax classification)~~)), he will be required to file tax returns and remit the appropriate taxes.

(b) **Example 2.** Cindy Smith is opening a business to sell children's books to local customers at retail. The gross proceeds of sales are expected to be less than ((~~twelve thousand dollars~~)) $12,000 per year.

Cindy Smith must apply for and obtain a tax registration endorsement with the department. While gross income is expected to be less than ((~~twelve thousand dollars~~)) $12,000 per year, Cindy Smith is required to collect and remit retail sales tax.

(c) **Example 3.** Alice Smith operates a taxicab service with an average gross income of ((~~eighteen thousand dollars~~)) $18,000 per year. She also owns a management consulting service with an average gross income of ((~~fifteen thousand dollars~~)) $15,000 per year. Assume that Alice is not required to collect or pay to the department any other tax or fee the department is authorized to collect. Alice quali-

fies for an active nonreporting status because her taxicab income is less than the ((~~twenty-four thousand dollar~~)) $24,000 threshold for the public utility tax and her consulting income is less than the ((~~forty-six thousand six hundred sixty-seven dollar~~)) $125,000 threshold for the B&O tax. If the department does not first place her on an active nonreporting status, she may request the department to do so.

(5) **Out-of-state businesses.** Out-of-state businesses may have to obtain a tax registration endorsement with the department.

(a) **B&O and public utility taxes.** The B&O and public utility taxes are imposed on the act or privilege of engaging in business activity within Washington. RCW 82.04.220 and 82.16.020. Out-of-state persons who have established sufficient nexus in Washington to be subject to Washington's B&O or public utility taxes must obtain a tax registration endorsement with this department if they do not satisfy the conditions expressed in subsection (2)(a) of this rule.

(b) **Retail sales and use taxes.** Out-of-state persons required to collect Washington's retail sales or use tax under RCW 82.04.067 must obtain a tax registration endorsement. Out-of-state persons who are not statutorily required to collect Washington's use tax, may elect to obtain a tax registration endorsement.

(c) **Other relevant rules for out-of-state persons.** Out-of-state persons making sales into or doing business within Washington should also refer to the following rules in chapter 458-20 WAC for a discussion of their tax reporting responsibilities:

(i) WAC 458-20-193 Interstate sales of tangible personal property;

(ii) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce;

(iii) WAC 458-20-194 Doing business inside and outside the state;

(iv) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities; and

(v) WAC 458-20-221 Collection of use tax by retailers and selling agents.

(6) **Registration procedure.** The state of Washington initiated the combined licensing program of the business licensing service, and later the unified business identifier (UBI) program to simplify the registration and licensing requirements imposed on the state's business community. Completion of the business license application and payment of the applicable fee(s) enables a person to register or license with several state agencies and cities, including the department of revenue, using a single form. The person will be assigned one unified business identifier number, which is used by all state agencies and cities participating in the UBI program. The department may use the unified business identifier number as the taxpayer's department of revenue tax account ID, or it may assign a different or additional ID as the revenue tax account ID.

(a) **Business license application.** Persons completing the business license application will be issued a business license document if at least one registration or license endorsement was issued. The face of this document will list the registrations and licenses (endorsements) which have been obtained.

(b) **Fees.** The department does not charge a separate registration fee for issuing a tax registration endorsement. Persons required to complete a business license application are subject to other fees.

(c) **Forms and submission.** Business license applications are available online from the department's business licensing service website at bls.dor.wa.gov.

(7) **Registration application.** The department requires the following items to be provided on a business license application in order to obtain a tax registration endorsement:

(a) Purpose or reason for application.

(b) The registration endorsement(s) that are needed, including any information required by the respective regulating agency specific to the endorsement requested.

(c) Business information which includes, but is not limited to:

(i) Type of business entity ownership structure;

(ii) Business activities;

(iii) Business name and open date;

(iv) Business contact information, including the physical and mailing address of the business;

(v) Estimated gross annual income of business;

(vi) Business identification number as follows:

(A) Social Security number of the business owner(s) if the business ownership structure is a sole proprietorship or general partnership; or

(B) Federal employer identification number (FEIN) for all other business ownership structures other than those listed in (c)(vi)(A) of this subsection including, but not limited to, corporations, limited liability companies, limited liability partnerships, and joint ventures; or

(C) For those business entities that have not been issued a Social Security number or FEIN, the department may request the business entity provide an alternative federally issued identification number.

(vii) Full legal name(s) and contact information of all governing persons of the business entities identified in (c)(vi)(B) of this subsection.

(d) All license and administrative fees due for the application filing and endorsements requested.

(e) Additional information other than the items identified in this subsection may also be required to satisfy the specific licensing requirements of other agencies.

(8) **Temporary revenue registration certificate.** A temporary revenue registration certificate may be issued to any person who operates a business of a temporary nature.

(a) Temporary businesses, for the purposes of registration, are those with definite, predetermined dates of operation for no more than two events each year with each event lasting no longer than one month.

(b) Each temporary registration certificate is valid for a single event. Persons that subsequently make sales into Washington may incur additional tax liability. Refer to WAC 458-20-193 (Interstate sales of tangible personal property) for additional information on tax reporting requirements. It may be required that a tax registration endorsement be obtained, in lieu of a temporary registration certificate. See subsection (2) of this rule.

(c) Temporary revenue registration certificates may be obtained by following registration instructions on the department's website at dor.wa.gov.

(9) **Display of business license document.** The taxpayer is required to display the business license document in a conspicuous place at the business location for which it is issued.

(10) **Multiple locations.** A business license document is required for each place of business where a taxpayer engages in business activities for which the department is responsible for administering and/or collecting a tax or fee, and any main office or principal place of

business from which excise tax returns are to be filed. This requirement applies to locations both within and without the state of Washington.

(a) **Place of business.** For the purposes of this subsection, the term "place of business" means:

(i) Any separate establishment, office, stand, cigarette vending machine, or other fixed location; or

(ii) Any vessel, train, or the like, where the taxpayer solicits or makes sales of tangible personal property, or contracts for or renders services in this state or otherwise transacts business with customers.

(b) **Multiple locations with a single excise tax return.** A taxpayer may report all tax liability for multiple business locations on a single excise tax return, but must maintain a separate business license document for each location. All business license documents will reflect the same tax account ID.

(c) **Multiple locations with separate excise tax returns.** A taxpayer desiring to file a separate excise tax return covering a branch location, or a specific construction contract, may request on the business license application a separate department of revenue tax account ID for each location to be reported separately.

(d) **Application required for each location.** A business license application must be completed for each business location to obtain a separate business license document.

(11) **Change in ownership.** When a change in ownership of a business occurs, the new owner must submit a business license application(s) to receive a new business license document for each business location acquired that is endorsed with the appropriate licenses needed for the business. If the new owner has never been registered for business, it will be issued a new unified business identifier number. The previous business owner's license document must be destroyed, and any further use of the previous owner's tax account ID for tax purposes is prohibited.

(a) **Change in ownership.** A "change in ownership," for purposes of registration, occurs when, but is not limited to:

(i) The sale of a business by one individual, firm or corporation to another individual, firm or corporation;

(ii) The dissolution of a partnership;

(iii) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the partners is equal to or greater than ((~~fifty~~)) 50 percent. For example, a general partnership currently has two partners and a third partner is added. The addition of one partner is considered a "change in ownership" for purposes of registration because it is equal to or greater than a ((~~fifty~~)) 50 percent change in the original number of partners;

(iv) Incorporation of a business previously operated as a partnership or sole proprietorship;

(v) Changing from a corporation to a partnership or sole proprietorship; or

(vi) Changing from a corporation, partnership or sole proprietorship to a limited liability company or a limited liability partnership.

(b) **Situations that are not a change in ownership.** For the purposes of registration, a "change in ownership" does not occur upon:

(i) The sale of all or part of the common stock of a corporation;

(ii) The transfer of assets to an assignee for the benefit of creditors or upon the appointment of a receiver or trustee in bankruptcy;

(iii) The death of a sole proprietor where there will be a continuous operation of the business by the executor, administrator, or trustee of the estate or, where the business was owned by a marital community or registered domestic partnership, by the surviving spouse or surviving domestic partner of the deceased owner;

(iv) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the partners is less than ((~~fifty~~)) 50 percent. For example, a general partnership currently has three partners. One partner is removed and immediately replaced by another partner. The removal and replacement of one partner is not considered a "change in ownership" for purposes of registration because it results in less than a ((~~fifty~~)) 50 percent change in the original number of partners; or

(v) A change in the trade name under which the business is conducted.

(c) **Situations where a new business license application may still be required.** While changes in a business entity may not result in a "change in ownership," the completion of a new business license application may be required to reflect the changes in the registered account.

(12) **Change in location.** Whenever the place of business is moved to a new location, the taxpayer must notify the department of the change. Although a new business license application may not be required to notify the department of a location change, some endorsements and licenses will require a new business license and reapproval of the license endorsements at the new location. A new business license document will be issued to reflect the change in location.

(13) **Lost business license documents.** If any business license document is lost, destroyed or defaced as a result of accident or of natural wear and tear, a new document will be issued upon request.

(14) **Administrative closure of taxpayer accounts.** The department may, upon written notification to the taxpayer, close the taxpayer's tax account and rescind its tax registration endorsement whenever the taxpayer has reported no gross income and there is no indication of taxable activity for two consecutive years.

The taxpayer may request, within ((~~thirty~~)) 30 days of notification of closure, that the account remain open. A taxpayer may also request that the account remain open on an "active nonreporting" status if the requirements of subsection (3)(a) of this rule are met. The request will be reviewed by the department and if found to be warranted, the department will immediately reopen the account. The following are acceptable reasons for continuing as an active account:

(a) The taxpayer is engaging in business activities in Washington which may result in tax liability.

(b) The taxpayer is required to collect or pay to the department a tax or fee which the department is authorized to administer and/or collect.

(c) The taxpayer has in fact been liable for excise taxes during the previous two years.

(15) **Reopening of taxpayer accounts.** A business person choosing to resume business activities where the department is responsible for administering and/or collecting a tax or fee, may request a previously closed account be reopened. The business person must complete a new

business license application. When an account is reopened a new business license document, reflecting a current tax registration endorsement, will be issued. Persons requesting the reopening of an account that had previously been closed due to a revocation action should refer to subsection (16) of this rule.

(16) **Revocation and reinstatement of tax registration endorsements.** Actions to revoke tax registration endorsements must be conducted by the department pursuant to the provisions of chapter 34.05 RCW, the Administrative Procedure Act, and the taxpayers bill of rights of chapter 82.32A RCW. Persons should refer to WAC 458-20-10001 Adjudicative proceedings—Brief adjudicative proceedings—Wholesale and retail cigarette license revocation/suspension—Certificate of registration (tax registration endorsement) revocation, for an explanation of the procedures and processes pertaining to the revocation of tax registration endorsements.

(a) The department may, by order, revoke a tax registration endorsement if:

(i) Any tax warrant issued under the provisions of RCW 82.32.210 is not paid within ((~~thirty~~)) 30 days after it has been filed with the clerk of the superior court; or

(ii) The taxpayer is delinquent, for three consecutive reporting periods, in the transmission to the department of retail sales tax collected by the taxpayer; or

(iii) Either:

(A) The taxpayer was convicted of violating RCW 82.32.290(4) and continues to engage in business without fully complying with RCW 82.32.290 (4)(b)(i) through (iii); or

(B) A person convicted of violating RCW 82.32.290(4) is an owner, officer, director, partner, trustee, member, or manager of the taxpayer, and the person and taxpayer have not fully complied with RCW 82.32.290 (4)(b)(i) through (iii).

For purposes of (a)(iii) of this subsection, the terms "manager," "member," and "officer" mean the same as defined in RCW 82.32.145.

(b) The revocation order will be, if practicable, posted in a conspicuous place at the main entrance to the taxpayer's place of business. The department may also post a copy of the revocation order in any public facility, as may be allowed by the public entity that owns or occupies the facility. The revocation order posted at the taxpayer's place of business must remain posted until the tax registration endorsement has been reinstated or the taxpayer has abandoned the premises. A revoked endorsement will not be reinstated until:

(i) The amount due on the warrant has been paid, or satisfactory arrangements for payment have been approved by the department, and the taxpayer has posted with the department a bond or other security in an amount not exceeding one-half the estimated average annual liability of the taxpayer; or

(ii) The taxpayer and, if applicable, the owner, officer, director, partner, trustee, member, or manager of the taxpayer who was convicted of violating RCW 82.32.290(4) are in full compliance with RCW 82.32.290 (4)(b)(i) through (iii), if the tax registration endorsement was revoked as described in (a)(iii) of this subsection.

(c) It is unlawful for any taxpayer to engage in business after its tax registration endorsement has been revoked, regardless of whether other licensing endorsements may exist on the business license document.

(17) **Penalties for noncompliance.** The law provides that any person engaging in any business activity, for which registration with the department is required, must obtain a tax registration endorsement.

(a) The failure to obtain a tax registration endorsement prior to engaging in any taxable business activity constitutes a gross misdemeanor.

(b) Engaging in business after a tax registration endorsement has been revoked by the department constitutes a Class C felony.

(c) Any tax found to have been due, but delinquent, and any tax unreported as a result of fraud or misrepresentation, may be subject to penalty as provided in chapter 82.32 RCW, WAC 458-20-228 and 458-20-230.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 17-22-027, § 458-20-101, filed 10/23/17, effective 11/23/17; WSR 16-10-104, § 458-20-101, filed 5/4/16, effective 6/6/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.24.550(2), and 82.26.220(2). WSR 15-15-025, § 458-20-101, filed 7/7/15, effective 8/7/15. Statutory Authority: RCW 82.32.300, 82.01.060(2) and 82.32.215. WSR 14-13-093, § 458-20-101, filed 6/17/14, effective 7/18/14. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 08-16-073, § 458-20-101, filed 7/31/08, effective 8/31/08; WSR 07-03-031, § 458-20-101, filed 1/8/07, effective 2/8/07. Statutory Authority: RCW 82.32.300. WSR 00-01-069, § 458-20-101, filed 12/13/99, effective 1/13/00; WSR 97-08-050, § 458-20-101, filed 3/31/97, effective 5/1/97; WSR 95-07-089, § 458-20-101, filed 3/17/95, effective 4/17/95; WSR 93-13-126, § 458-20-101, filed 6/22/93, effective 7/23/93; WSR 86-12-015 (Order ET 86-11), § 458-20-101, filed 5/27/86; WSR 83-07-032 (Order ET 83-15), § 458-20-101, filed 3/15/83; Order ET 73-1, § 458-20-101, filed 11/2/73; Order ET 71-1, § 458-20-101, filed 7/22/71; Order ET 70-3, § 458-20-101 (Rule 101), filed 5/29/70, effective 7/1/70.]

OTS-4331.1

AMENDATORY SECTION (Amending WSR 10-23-058, filed 11/12/10, effective 12/13/10)

WAC 458-20-104 Small business tax relief based on income of business. (1) **Introduction.** This rule explains the business and occupation (B&O) tax credit for small businesses provided by RCW 82.04.4451. This credit is commonly referred to as the small business B&O tax credit or small business credit (SBC). The amount of small business B&O tax credit available on a tax return can increase or decrease, depending on the reporting frequency of the account and the net B&O tax liability for that return. This rule also explains the public utility tax income exemption provided by RCW 82.16.040. The public utility tax exemption is a fixed amount, or threshold, based on the reporting frequency assigned to the account. Readers should refer to WAC 458-20-22801 (Tax reporting frequency—Forms) for an explanation of how the department of revenue (department) assigns a particular reporting frequency to each account. Readers may also want to re-

fer to WAC 458-20-101 for an explanation of Washington's tax registration and tax reporting requirements.

This rule provides examples that identify a number of facts and then state a conclusion regarding the applicability of the income exemption for the public utility tax or small business B&O tax credit. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **The public utility tax income exemption.** Persons subject to public utility tax (PUT) are exempt from payment of this tax for any reporting period in which the gross taxable amount reported under the combined total of all public utility tax classifications does not equal or exceed the maximum exemption for the assigned reporting period. Per RCW 82.16.040, the public utility tax exemption amounts are:

for taxpayers reporting monthly.....	$2,000 per month
for taxpayers reporting quarterly.....	$6,000 per quarter
for taxpayers reporting annually.....	$24,000 per annum

(a) **What if the taxable income equals or exceeds the maximum exemption?** If the taxable income for a reporting period equals or exceeds the maximum exemption, tax must be remitted on the full taxable amount.

(b) **How does the exemption apply if a business does not operate for the entire tax reporting period?** The public utility tax maximum exemptions apply to the entire tax reporting period, even though the business may not have operated during the entire period.

(c) **Do taxable amounts for B&O tax or other taxes affect this exemption?** The public utility tax exemption is not affected by taxable amounts reported in the B&O tax section or any of the other tax sections of the tax return.

(d) **Example - How is the public utility tax exemption applied?** Taxpayer registers with the department and is assigned a quarterly tax reporting frequency. Taxpayer begins business activities on February 1st. During the two months of the first quarter that the taxpayer is in business, taxpayer's public utility gross income is ((~~seven thousand dollars~~)) $7,000. After deductions provided by chapter 82.16 RCW (Public utility tax) are computed, the total taxable amount is ((~~five thousand dollars~~)) $5,000. In this case, the taxpayer does not owe any public utility tax because the taxable amount of ((~~five thousand dollars~~)) $5,000 is less than the ((~~six thousand dollar~~)) $6,000 exemption threshold for quarterly taxpayers. The fact that the taxpayer was in business during only two months out of the three months in the quarter has no effect on the threshold amount. However, if there were no deductions available to the taxpayer, the taxable amount would have been ((~~seven thousand dollars~~)) $7,000. The public utility tax would then have been due on the full taxable amount of ((~~seven thousand dollars~~)) $7,000.

(3) **The small business B&O tax credit.** Persons subject to the B&O tax may be eligible to claim a small business B&O tax credit against the amount of B&O tax otherwise due. The small business B&O tax credit operates completely independent of the public utility tax exemption described above in subsection (2) of this rule. RCW 82.04.4451 authorizes the department to create a tax credit table for use by all taxpayers when determining the amount of their small business B&O tax

credit. Taxpayers must use the tax credit table to determine the appropriate amount of their small business B&O tax credit. A tax credit table for each of the monthly, quarterly, and annual reporting frequencies can be found on the department's internet site at ((~~http://dor.wa.gov; or by contacting:~~)) dor.wa.gov.

((~~Taxpayer Services~~
~~Department of Revenue~~
~~P.O. Box 47478~~
~~Olympia, WA 98504-7478~~
~~800-647-7706~~))

The statute provides that taxpayers who use the tables will not owe any more tax than if they used the statutory credit formula to determine the amount of the credit. For taxpayers that file electronically, the department will automatically calculate the small business credit when the taxpayer completes the online return.

Effective ((~~May 1, 2010~~)) January 1, 2023, section ((~~1102~~)) 1, chapter ((~~23~~)) 295, Laws of ((~~2010 1st sp. sess.~~)) 2022 amended RCW 82.04.4451. Prior to that amendment the small business credit was calculated at a maximum of ((~~thirty-five dollars~~)) $70 multiplied by the number of months in the reporting period for all eligible taxpayers. As a result of the amendment, taxpayers ((~~who~~)) that report at least ((~~fifty~~)) 50 percent (i.e., ((~~fifty~~)) 50 percent or greater) of their total B&O taxable amount under RCW 82.04.255 (real estate brokers), RCW 82.04.290 (2)(a) (service and other activities), and RCW 82.04.285 (contests of chance) have their maximum credit increased to ((~~seventy dollars~~)) $160 multiplied by the number of months in the reporting period. (((~~Just~~)) A few examples of businesses that generally have taxable amounts to report under RCW 82.04.290 (2)(a) are for-profit hospitals, for-profit research and development, accountants, attorneys, dentists, janitors, and landscape architects. Please see WAC 458-20-224, Service and other business activities for information and more examples of who should report under the service and other classification of the B&O tax.)

For taxpayers that do not report at least 50 percent of their B&O taxable amount under RCW 82.04.255, 82.04.290, and 82.04.285, prior to the amendment the small business credit was calculated at a maximum of $35 multiplied by the number of months in the reporting period. As a result of the amendment, the maximum credit increased to $55 multiplied by the number of months in the reporting period.

(a) **How is the credit applied if a business does not operate during the entire tax reporting period?** The small business B&O tax credit applies to the entire reporting period, even though the business may not have been operating during the entire period.

(b) **Can a husband and wife or partners in a state registered domestic partnership both take the credit?** Spouses or state registered domestic partners operating distinct and separate businesses are each eligible for the small business B&O tax credit. For both spouses or both domestic partners to qualify, each must have a separate tax reporting number and file his or her own business tax returns.

(c) **How do I determine the amount of the credit?** Taxpayers eligible for the small business B&O tax credit must follow the steps outlined in subsection (5) of this rule to determine the amount of credit available. Taxpayers who have other B&O tax credits to apply on a tax return, in addition to the small business B&O tax credit, may use the multiple B&O tax credit worksheet in subsection (4) of this rule be-

fore determining the amount of small business B&O tax credit available.

(d) **Can I carryover the small business B&O tax credit to future tax reporting periods?** Use of the small business B&O tax credit may not result in a B&O tax liability of less than zero, and thus there will be no unused credit.

(e) **Do I have to report and pay retail sales tax even if I do not owe any B&O tax?** Persons making retail sales must collect and pay all applicable retail sales taxes even if B&O tax is not due. There is no comparable retail sales tax exemption.

(4) **Multiple business and occupation tax credit worksheet.** The small business B&O tax credit should be computed after claiming any other B&O tax credits available under Title 82 RCW (Excise taxes). Examples of other B&O tax credits to be taken before computing the small business B&O tax credit include the multiple activities tax credit((~~, high technology credit,~~)) and commute trip reduction credit((~~, pollution control credit, and cogeneration fee credit~~)). The following multiple B&O tax credit worksheet describes the process taxpayers must follow to apply credits in the appropriate order. Refer to subsection (6) of this rule for an example illustrating the use of the multiple B&O tax credit worksheet.

MULTIPLE B&O TAX CREDIT WORKSHEET

1.	Determine the total Business and Occupation (B&O) tax due from the B&O section of your excise tax return.		$ _____
2.	Add together the credit amounts taken for:		
	Multiple Activities Tax Credit from Schedule C (if applicable).		$ _____
	(Add any other B&O tax credits from Title 82 RCW that will be applied to this return period.)	+	$ _____
	Total (Enter 0 if none of these credits are being taken.)		$ _____
3.	Subtract line 2 from line 1. This is the total B&O tax allowable for the Small Business Credit.		$ _____
4.	Find the specific tax credit table (Table 1 or Table 2) appropriate for the business activities and B&O taxable amounts on your excise tax return. Next, find the tax credit table which matches the reporting frequency assigned to the account. Then find the range of amounts which includes your total B&O tax due (see line three above).		
5.	Read across to the next column. This is the amount of the Small Business Credit to be used on the excise tax return.		$ _____

(5) **Using the tax credit table to determine your small business B&O tax credit.** The following steps explain how to use the small business B&O tax credit table:

(a) **Step one.** Determine the total B&O tax amount due from the excise tax return. This amount will normally be the total of the tax amounts due calculated for each classification in the B&O tax section of the excise tax return. However, if additional B&O tax credits will be taken on the return, refer to subsection (4) of this rule and the multiple B&O tax credit worksheet before going to step two.

(b) **Step two.** Find the B&O taxable amounts on the return reported under RCW 82.04.255 (real estate brokers), RCW 82.04.290 (2)(a) (service and other activities), and RCW 82.04.285 (contests of chance) then add them together. Divide that sum result by the total amount of all B&O taxable amounts reported on the return. If the result indicates 50 percent or greater of the total of all B&O taxable amounts came from activities reported under RCW 82.04.255, 82.04.290 (2)(a), and 82.04.285 combined, use Table 1 of the small business B&O tax credit table. If the result indicates less than ((~~fifty~~)) 50 percent of the

total of all B&O taxable amounts came from activities reported under RCW 82.04.255, 82.04.290 (2)(a), and 82.04.285 combined, use Table ((~~1~~)) 2 of the small business B&O tax credit table. ((~~If the result indicates fifty percent or greater of the total of all B&O taxable amounts came from activities reported under RCW 82.04.255, 82.04.290 (2)(a), and 82.04.285 combined, use Table 2 of the small business B&O tax credit table.~~))

(c) **Step three.** Find the small business B&O tax credit table that matches the assigned reporting frequency, monthly, quarterly, or annual.

(d) **Step four.** Find the "If ((~~Your Total Business and Occupation Tax~~)) your net B&O tax is" column of the tax credit table and come down the column until you find the range of amounts which includes the total B&O tax due figure obtained from the excise tax return or multiple B&O tax credit worksheet.

(e) **Step five.** Read across to the "Your ((~~Small Business Credit~~)) SBC is" column. The figure shown is the amount of the small business B&O tax credit that can be claimed on the "Small Business B&O Tax Credit" line in the "Credits" section of the excise tax return.

(6) **Examples - Using the "Multiple B&O Tax Credit Worksheet" and the tax credit tables.**

(a) **Using the "Multiple B&O Tax Credit Worksheet."** Assume that ABC reports quarterly. This quarter, ABC reports ((~~one hundred ninety dollars~~)) $190 under the wholesaling classification and ((~~seventy dollars~~)) $70 under the manufacturing classification for a total B&O tax liability of ((~~two hundred sixty dollars~~)) $260. ABC completes Schedule C, and determines it is entitled to a multiple activities tax credit (MATC) of ((~~seventy dollars~~)) $70. Using the multiple B&O tax credit worksheet, ABC enters ((~~two hundred sixty dollars~~)) $260 on line one, enters ((~~seventy dollars~~)) $70 on line two, and enters ((~~one hundred ninety dollars~~)) $190 on line three (line two subtracted from line one). Line three, ((~~one hundred ninety dollars~~)) $190 is the total B&O tax. ABC will use this amount to determine whether it is eligible for a small business B&O tax credit.

(b) **Using the small business B&O tax credit tables.** Assume the facts are the same as in the previous example in subsection (6)(a) of this rule. After completing the multiple B&O tax credit worksheet, ABC has ((~~one hundred ninety dollars~~)) $190 of B&O tax liability left for potential application of the small business B&O tax credit. ABC does not have any business activity taxable under RCW 82.04.255 (real estate brokers), RCW 82.04.290 (2)(a) (service and other activities), ((~~and~~)) or RCW 82.04.285 (contests of chance), so the ratio of those combined taxable amounts compared to the total of all B&O taxable amounts on the return is not ((~~fifty~~)) 50 percent or greater. ABC will refer to Table ((~~1~~)) 2 of the quarterly small business B&O tax credit table to find the "If ((~~Your Total Business and Occupation Tax~~)) your net B&O tax is" column. Following down that column, ABC finds the tax range of ((~~one hundred eighty-six to one hundred ninety-one dollars and comes over~~)) at least $190 but less than $195 and follows the row to the "Your ((~~Small Business Credit~~)) SBC is" column on the right, which ((~~shows that~~)) indicates a credit in the amount of ((~~twenty-five dollars is available~~)) $140. Before calculating the total amount of tax due for the return, ABC enters its small business B&O tax credit of ((~~twenty-five dollars~~)) $140 in the "Credits" section of the return.

For taxpayers that file electronically, the department will automatically calculate the small business credit when the taxpayer completes the online return.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 10-23-058, § 458-20-104, filed 11/12/10, effective 12/13/10. Statutory Authority: 2009 c 521. WSR 10-09-050, § 458-20-104, filed 4/15/10, effective 5/16/10. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 04-14-052, § 458-20-104, filed 6/30/04, effective 7/31/04. Statutory Authority: RCW 82.32.300. WSR 98-16-019, § 458-20-104, filed 7/27/98, effective 8/27/98; WSR 97-08-050, § 458-20-104, filed 3/31/97, effective 5/1/97; WSR 95-07-088, § 458-20-104, filed 3/17/95, effective 4/17/95; WSR 83-07-034 (Order ET 83-17), § 458-20-104, filed 3/15/83; Order ET 70-3, § 458-20-104 (Rule 104), filed 5/29/70, effective 7/1/70.]

WSR 23-08-082
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed April 5, 2023, 8:50 a.m., effective May 6, 2023]

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

Purpose: The department is adopting amendments to WAC 388-61-001 How does the Family Violence Amendment affect me if I am getting TANF/SFA?, to update an incorrect statutory reference for the definition of "family or household member."

Citation of Rules Affected by this Order: Amending WAC 388-61-001.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.250.

Adopted under notice filed as WSR 23-04-073 on January 30, 2023.

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 the 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 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: April 5, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4967.1

AMENDATORY SECTION (Amending WSR 04-21-028, filed 10/13/04, effective 12/1/04)

WAC 388-61-001 How does the Family Violence Amendment affect me if I am getting TANF/SFA? The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), also known as the Welfare Reform Act, allowed every state to create a program addressing family violence for temporary assistance for needy families (TANF) recipients.

(1) For TANF/state funded assistance (SFA), family violence is when a recipient, or family member or household member has been subjected by another family member or household member as defined in RCW ((~~26.50.010(2)~~)) 7.105.010 to any of the following:

(a) Physical acts that resulted in, or threatened to result in, physical injury;

(b) Sexual abuse;

(c) Sexual activity involving a dependent child;

(d) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;

(e) Threats of or attempts at, physical sexual abuse;

(f) Mental abuse;

(g) Neglect or deprivation of medical care; or

(h) Stalking.

(2) DSHS must:

(a) Screen and identify adults, minor teen parents, or emancipated teens getting TANF/SFA for a history of family violence;

(b) Notify in writing and verbally adults, minor teen parents, or emancipated teens getting TANF/SFA about the Family Violence Amendment;

(c) Maintain confidentiality as stated in RCW 74.04.060;

(d) Refer individuals needing counseling to supportive services;

(e) Waive WorkFirst requirements in cases where the requirements would make it more difficult to escape family violence, unfairly penalize victims of family violence, or place victims at further risk of family violence. This may include:

(i) Time limits for TANF/SFA recipients, for as long as necessary (after ((~~fifty-two~~)) 52 months of receiving TANF/SFA);

(ii) Cooperation with the division of child support.

(f) Develop specialized work activities for family violence clients, as defined in subsection (1) of this section if participation in work activities would place the recipients at further risk of family violence.

[Statutory Authority: RCW 74.04.050, 74.08.090, and 74.08A.010. WSR 04-21-028, § 388-61-001, filed 10/13/04, effective 12/1/04. Statutory Authority: Public Law 104-193, Section 103, Subsection 408 (a)(7)(c)(iii), HB 3901, section 103(4), RCW 74.08A.010, 74.04.050 and 74.08.090. WSR 98-07-040, § 388-61-001, filed 3/12/98, effective 4/12/98. Statutory Authority: RCW 74.04.050, 74.08.090 and 74.04.057. WSR 97-20-124, § 388-61-001, filed 10/1/97, effective 11/1/97.]

WSR 23-08-085
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed April 5, 2023, 10:10 a.m., effective May 6, 2023]

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

Purpose: The health care authority (HCA) is amending WAC 182-550-4400 to change a reference to the chemical-using pregnant (CUP) women program to the substance-using pregnant people (SUPP) program in subsection (2)(b). HCA is also amending subsection (2)(g) to reflect that HCA no longer denies payment for claims grouped to diagnosis-related group 469 or 470.

Citation of Rules Affected by this Order: Amending WAC 182-550-4400.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-06-056 on February 27, 2023.

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 the 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 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: April 5, 2023.

Wendy Barcus
Rules Coordinator

OTS-4326.3

AMENDATORY SECTION (Amending WSR 21-15-128, filed 7/21/21, effective 8/21/21)

WAC 182-550-4400 Services—Exempt from DRG payment. (1) Inpatient services are exempt from the diagnosis-related group (DRG) payment method only if they qualify for payment methods specifically mentioned in other sections of this chapter or in this section.

(2) Subject to the restrictions and limitations in this section, the agency exempts the following services for medicaid and CHIP clients from the DRG payment method. This policy also applies to covered services paid through medical care services (MCS) and any other state-administered program, except when otherwise indicated in this section. The exempt services are:

(a) Withdrawal management services when provided in a hospital having a withdrawal management provider agreement with the agency to perform these services.

(b) Hospital-based intensive inpatient withdrawal management, medical stabilization, and drug treatment services provided to ((~~chem-~~

~~ical-using pregnant (CUP) women by a certified~~)) substance-using pregnant people (SUPP) clients by an agency-approved hospital. These are medicaid program services and are not covered or funded by the agency through MCS or any other state-administered program.

(c) Acute physical medicine and rehabilitation (acute PM&R) services.

(d) Psychiatric services. An agency designee that arranges to pay a hospital directly for psychiatric services may use the agency's payment methods or contract with the hospital to pay using different methods.

(e) Chronic pain management treatment provided in a hospital approved by the agency to provide that service.

(f) Administrative day services. The agency pays administrative days for one or more days of a hospital stay in which an acute inpatient or observation level of care is not medically necessary, and a lower level of care is appropriate. The administrative day rate is based on the statewide average daily medicaid nursing facility rate, which is adjusted annually. The agency may designate part of a client's stay to be paid an administrative day rate upon review of the claim or the client's medical record, or both.

(g) Inpatient services recorded on a claim grouped by the agency to a DRG for which the agency has not published an all-patient DRG (AP-DRG) or all-patient refined DRG (APR-DRG) relative weight. The agency will deny payment for claims grouped to ((~~DRG 469, DRG 470,~~)) APR DRG 955((~~,~~)) or APR DRG 956.

(h) Organ transplants that involve heart, intestine, kidney, liver, lung, allogeneic bone marrow, autologous bone marrow, pancreas, or simultaneous kidney/pancreas. The agency pays hospitals for these organ transplants using the ratio of costs-to-charges (RCC) payment method. The agency maintains a list of DRGs which qualify as transplants on the agency's website.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-15-128, § 182-550-4400, filed 7/21/21, effective 8/21/21; WSR 19-04-004, § 182-550-4400, filed 1/23/19, effective 3/1/19; WSR 16-04-051, § 182-550-4400, filed 1/28/16, effective 3/1/16. Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-12-047, § 182-550-4400, filed 5/29/14, effective 7/1/14. WSR 11-14-075, recodified as § 182-550-4400, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500 and 2005 c 518. WSR 07-14-051, § 388-550-4400, filed 6/28/07, effective 8/1/07. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-12-022, § 388-550-4400, filed 5/20/05, effective 6/20/05. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652. WSR 01-16-142, § 388-550-4400, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-4400, filed 12/18/97, effective 1/18/98.]