

RCW SECTIONS ON CRITICAL AREA REQUIREMENTS

36.70A.050

Guidelines to classify agriculture, forest, and mineral lands and critical areas.

(1) Subject to the definitions provided in RCW 36.70A.030, the department shall adopt guidelines, under chapter 34.05 RCW, no later than September 1, 1990, to guide the classification of: (a) Agricultural lands; (b) forest lands; (c) mineral resource lands; and (d) critical areas. The department shall consult with the department of agriculture regarding guidelines for agricultural lands, the department of natural resources regarding forest lands and mineral resource lands, and the department of ecology regarding critical areas.

(2) In carrying out its duties under this section, the department shall consult with interested parties, including but not limited to: (a) Representatives of cities; (b) representatives of counties; (c) representatives of developers; (d) representatives of builders; (e) representatives of owners of agricultural lands, forest lands, and mining lands; (f) representatives of local economic development officials; (g) representatives of environmental organizations; (h) representatives of special districts; (i) representatives of the governor's office and federal and state agencies; and (j) representatives of Indian tribes. In addition to the consultation required under this subsection, the department shall conduct public hearings in the various regions of the state. The department shall consider the public input obtained at such public hearings when adopting the guidelines.

(3) The guidelines under subsection (1) of this section shall be minimum guidelines that apply to all jurisdictions, but also shall allow for regional differences that exist in Washington state. The intent of these guidelines is to assist counties and cities in designating the classification of agricultural lands, forest lands, mineral resource lands, and critical areas under RCW 36.70A.170.

(4) The guidelines established by the department under this section regarding classification of forest lands shall not be inconsistent with guidelines adopted by the department of natural resources.

36.70A.060

Natural resource lands and critical areas — Development regulations.

(1)(a) Except as provided in *RCW 36.70A.1701, each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(b) Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for mineral resource lands shall also inform that an application might be made for mining-related activities, including

mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170. For counties and cities that are required or choose to plan under RCW 36.70A.040, such development regulations shall be adopted on or before September 1, 1991. For the remainder of the counties and cities, such development regulations shall be adopted on or before March 1, 1992.

(3) Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may alter such designations and development regulations to insure consistency.

(4) Forest land and agricultural land located within urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights.

[2005 c 423 § 3; 1998 c 286 § 5; 1991 sp.s. c 32 § 21; 1990 1st ex.s. c 17 § 6.]

Notes:

***Reviser's note:** RCW 36.70A.1701 expired June 30, 2006.

Intent -- Effective date -- 2005 c 423: See notes following RCW 36.70A.030.

36.70A.160

Identification of open space corridors — Purchase authorized.

Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify open space corridors within and between urban growth areas. They shall include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Identification of a corridor under this section by a county or city shall not restrict the use or management of lands within the corridor for agricultural or forest purposes. Restrictions on the use or management of such lands for agricultural or forest purposes imposed after identification solely to maintain or enhance the value of such lands as a corridor may occur only if the county or city acquires sufficient interest to prevent development of the lands or to control the resource development of the lands. The requirement for acquisition of sufficient interest does not include those corridors regulated by the interstate commerce commission, under provisions of 16 U.S.C. Sec. 1247(d), 16 U.S.C. Sec. 1248, or 43 U.S.C. Sec. 912. Nothing in this section shall be interpreted to alter the authority of the state, or a county or city, to regulate land use activities.

The city or county may acquire by donation or purchase the fee simple or lesser interests in these open space corridors using funds authorized by RCW 84.34.230 or other sources.

36.70A.165

Property designated as greenbelt or open space — Not subject to adverse possession.

The legislature recognizes that the preservation of urban greenbelts is an integral part of comprehensive growth management in Washington. The legislature further recognizes that certain greenbelts are subject to adverse possession action which, if carried out, threaten the comprehensive nature of this chapter. Therefore, a party shall not acquire by adverse possession property that is designated as a plat greenbelt or open space area or that is dedicated as open space to a public agency or to a bona fide homeowner's association.

Notes:

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

36.70A.170**Natural resource lands and critical areas — Designations.**

(1) On or before September 1, 1991, each county, and each city, shall designate where appropriate:

(a) Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products;

(b) Forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber;

(c) Mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals; and

(d) Critical areas.

(2) In making the designations required by this section, counties and cities shall consider the guidelines established pursuant to RCW 36.70A.050.

36.70A.172**Critical areas — Designation and protection — Best available science to be used.**

(1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

(2) If it determines that advice from scientific or other experts is necessary or will be of substantial assistance in reaching its decision, a growth management hearings board may retain scientific or other expert advice to assist in reviewing a petition under RCW 36.70A.290 that involves critical areas.

[1995 c 347 § 105.]

Notes:

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

36.70A.175**Wetlands to be delineated in accordance with manual.**

Wetlands regulated under development regulations adopted pursuant to this chapter shall be delineated in accordance with the manual adopted by the department pursuant to RCW 90.58.380.

36.70A.560**Viability of agricultural lands — Deferral requirements — Definition. (Expires December 1, 2011.)**

(1) For the period beginning May 1, 2007, and concluding July 1, 2010, counties and cities may not amend or adopt critical area ordinances under RCW 36.70A.060(2) as they specifically apply to agricultural activities.

Nothing in this section:

(a) Nullifies critical area ordinances adopted by a county or city prior to May 1, 2007, to comply with RCW 36.70A.060(2);

(b) Limits or otherwise modifies the obligations of a county or city to comply with the requirements of this chapter pertaining to critical areas not associated with agricultural activities; or

(c) Limits the ability of a county or city to adopt or employ voluntary measures or programs to protect or enhance critical areas associated with agricultural activities.

(2) Counties and cities subject to deferral requirements under subsection (1) of this section:

(a) Should implement voluntary programs to enhance public resources and the viability of agriculture. Voluntary programs implemented under this subsection (2)(a) must include measures to evaluate the successes of these programs; and

(b) Must review and, if necessary, revise critical area ordinances as they specifically apply to agricultural activities to comply with the requirements of this chapter by December 1, 2011.

(3) For purposes of this section and RCW 36.70A.5601, "agricultural activities" means agricultural uses and practices currently existing or legally allowed on rural land or agricultural land designated under RCW 36.70A.170 including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, when the replacement facility is no closer to a critical area than the original facility; and maintaining agricultural lands under production or cultivation.

[2007 c 353 § 2.]

Notes:

Finding -- Intent -- 2007 c 353: "(1) The legislature finds that the goal of preserving Washington's agricultural lands is shared by citizens throughout the state. The legislature recognizes that efforts to achieve a balance between the productive use of these resource lands and associated regulatory requirements have proven difficult, but that good faith efforts to seek solutions have yielded successes. The legislature believes that this willingness to find and pursue common ground will enable Washingtonians to enjoy the benefits of a successful agricultural economy and a healthy environment, while also preventing the unnecessary conversion of valuable agricultural lands.

(2) The legislature, therefore, intends this act, the temporary delays it establishes for amending or adopting provisions of certain critical area ordinances, and the duties and requirements it prescribes for the William D. Ruckelshaus Center, to be expressions of progress in resolving, harmonizing, and advancing commonly held environmental protection and agricultural viability goals.

(3) The legislature fully expects the duties and requirements it is prescribing for the Ruckelshaus Center to be successful. If, however, the efforts of the center do not result in agreement on how to best address the conflicts between agricultural activities and certain regulatory requirements as they apply to agricultural activities, the legislature intends, upon the expiration of the delay, to require jurisdictions that have delayed amending or adopting certain regulatory measures to promptly complete all regulatory amendments or adoptions necessary to comply with the growth management act.

(4) The legislature does not intend this act to reduce or otherwise diminish existing critical area ordinances that apply to agricultural activities during the deferral period established in RCW 36.70A.560." [2007 c 353 § 1.]

Effective date -- 2007 c 353: "This act is necessary for the immediate preservation of the public peace,

health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 8, 2007]." [2007 c 353 § 5.]

Expiration date -- 2007 c 353: "This act expires December 1, 2011." [2007 c 353 § 6.]

36.70A.5601

Viability of agricultural lands — Ruckelshaus Center examination, report. (Expires December 1, 2011.)

(1) Subject to the availability of amounts appropriated for this specific purpose, the William D. Ruckelshaus Center must conduct an examination of the conflicts between agricultural activities and critical area ordinances adopted under chapter 36.70A RCW. The examination required by this section must commence by July 1, 2007.

(2) In fulfilling the requirements of this section, the center must: (a) Work and consult with willing participants including, but not limited to, agricultural, environmental, tribal, and local government interests; and (b) involve and apprise legislators and legislative staff of its efforts.

(3) The examination conducted by the center must be completed in two distinct phases in accordance with the following:

(a) In the first phase, the center must conduct fact-finding and stakeholder discussions with stakeholders identified in subsection (2) of this section. These discussions must identify stakeholder concerns, desired outcomes, opportunities, and barriers. The fact-finding must identify existing regulatory, management, and scientific information related to agricultural activities and critical areas including, but not limited to: (i) Critical area ordinances adopted under chapter 36.70A RCW; (ii) acreage enrolled in the conservation reserve enhancement program; (iii) acreage protected by conservation easements; (iv) buffer widths; (v) requirements of federally approved salmon recovery plans; (vi) the impacts of agricultural activities on Puget Sound recovery efforts; and (vii) compliance with water quality requirements. The center must issue two reports of its fact-finding efforts and stakeholder discussions to the governor and the appropriate committees of the house of representatives and the senate by December 1, 2007, and December 1, 2008; and

(b)(i) In the second phase, the center must facilitate discussions between the stakeholders identified in subsection (2) of this section to identify policy and financial options or opportunities to address the issues and desired outcomes identified by stakeholders in the first phase of the center's examination efforts.

(ii) In particular, the stakeholders must examine innovative solutions including, but not limited to, outcome-based approaches that incorporate, to the maximum extent practicable, voluntary programs or approaches. Additionally, stakeholders must examine ways to modify statutory provisions to ensure that regulatory constraints on agricultural activities are used as a last resort if desired outcomes are not achieved through voluntary programs or approaches.

(iii) The center must work to achieve agreement among participating stakeholders and to develop a coalition that can be used to support agreed upon changes or new approaches to protecting critical areas during the 2010 legislative session.

(4) The center must issue a final report of findings and legislative recommendations to the governor and the appropriate committees of the house of representatives and the senate by September 1, 2009.

[2007 c 353 § 3.]

Notes:

Finding -- Intent -- Effective date -- Expiration date -- 2007 c 353: See notes following RCW 36.70A.560.

WAC SECTIONS ON CRITICAL AREA REQUIREMENTS (effective 2-19-2010)

365-190-010

Authority.

This chapter is established pursuant to RCW 36.70A.050.

365-190-020

Purpose.

(1) The intent of this chapter is to establish minimum guidelines to assist all counties and cities in classifying and designating agricultural lands, forest lands, mineral resource lands, and critical areas.

(2) Growth management, natural resource land conservation, and critical areas protection share problems related to governmental costs and efficiency. The unwise development of natural resource lands or areas susceptible to natural hazards may lead to inefficient use of limited public resources, jeopardize environmental resource functions and values, subject persons and property to unsafe conditions, and affect the perceived quality of life. It is more costly to remedy the loss of natural resource lands or critical areas than to conserve and protect them from loss or degradation. The inherent economic, ecological, social, and cultural values of natural resource lands and critical areas should be considered in the development of strategies designed to conserve and protect these lands.

(3) In recognition of these common concerns, classification and designation of natural resource lands and critical areas is intended to assure the long-term conservation of natural resource lands and the protection of critical areas, and to preclude land uses and developments which are incompatible with natural resource lands and critical areas. When classifying and designating natural resource lands and critical areas, counties and cities should integrate regulatory and nonregulatory approaches together in a comprehensive program that relates to existing local, state, and federal efforts. An integrated approach should also consider other applicable planning requirements, including the need to identify open space corridors in RCW 36.70A.160, and the need to include the best available science in policies and regulations protecting critical areas in RCW 36.70A.172.

(4) There are qualitative differences between and among critical areas. Not all areas and ecosystems are critical for the same reasons. Some are critical because of the hazard they present to public health and safety, some because of the values they represent to the public welfare. In some cases, the risk posed to the public by use or development of a critical area can be mitigated or reduced by engineering or design; in other cases that risk cannot be effectively reduced except by avoidance of the critical area. Classification and designation of critical areas is intended to lead counties and cities to recognize the differences among these areas, and to develop appropriate regulatory and nonregulatory actions in response.

(5) There are also qualitative differences between and among natural resource lands. The three types of natural resource lands (agricultural, forest, and mineral) vary widely in their use, location, and size. One type may overlap another type. For example, designated forest resource lands may also include designated mineral resource lands. Agricultural resource lands vary based on the types of crops produced, their location on the landscape, and their relationship to sustaining agricultural industries in an identified geographic area.

(6) Counties and cities required or opting to plan under the act should consider the definitions and guidelines in this chapter when preparing development regulations that preclude uses and development incompatible with natural resource lands and critical areas (see RCW 36.70A.060). Precluding incompatible uses and development does not mean a prohibition of all uses or development. Rather, it means governing changes in land uses, new activities, or development that could adversely affect natural resource lands or critical areas. For each type of natural resource land and critical area, counties and cities planning under the act should define classification schemes and prepare development regulations that govern changes in land uses and new activities by prohibiting clearly inappropriate actions and restricting, allowing, or conditioning other activities as appropriate.

(7) It is the intent of these guidelines that critical areas designations overlay other land uses including designated natural resource lands. For example, if both critical area and natural resource land use designations apply to a given parcel or a portion of a parcel, both or all designations must be made. Regarding natural

resource lands, counties and cities should allow existing and ongoing resource management operations, that have long-term commercial significance, to continue. Counties and cities should encourage resource land managers to use the best management practices of their industry, especially where existing and ongoing resource management operations that have long-term commercial significance include designated critical areas. Future operations or expansion of existing operations should be done in consideration of protecting critical areas, and with special consideration for conservation or protection measures needed to preserve or enhance anadromous fisheries.

365-190-030

Definitions.

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

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

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

(4) "Critical areas" include the following:

(a) Wetlands;

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

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

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

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

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

(7) "Forest land" is land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. These lands are referred to in this chapter as forest resource lands to distinguish between formally designated lands, and other lands used for forestry purposes.

(8) "Frequently flooded areas" are lands in the flood plain subject to at least a one percent or greater chance

of flooding in any given year, or within areas subject to flooding due to high ground water. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and areas where high ground water forms ponds on the ground surface.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

construction of a road, street, or highway. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate conversion of wetlands, if permitted by the county or city.

365-190-040

Process.

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

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

(3) Under RCW 36.70A.130, all counties and cities must review, and if needed, update their natural resource lands and critical areas designations. Counties and cities fully planning under the act must also review and, if needed, update their natural resource lands conservation provisions, comprehensive plans and development regulations. Legal challenges to some updates have led to clarifications of the ongoing review and update requirements in RCW 36.70A.130, and the process for implementing those requirements. The process description and recommendations in this section incorporate those clarifications and describe both the initial designation and conservation or protection of natural resource lands and critical areas, as well as subsequent local actions to amend those designations and provisions.

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

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

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

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

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

(i) The classification scheme;

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

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

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

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

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

(e) Mineral resource lands especially should be designated as close as possible to their likely end use areas, to avoid losing access to those valuable minerals by development, and to minimize the costs of production and transport. It is expected that mineral resource lands will be depleted of minerals over time, and that subsequent land uses may occur on these lands after mining is completed.

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

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

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

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

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

(a) Public participation program:

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

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

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

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

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

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

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

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

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

(vi) Adopt definitions, classifications, and standards;

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

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

(c) Intergovernmental coordination.

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

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

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

(ii) Counties or cities may begin with the notification option in (c)(i)(A) of this subsection and choose to change to the interlocal agreement method in (c)(i)(B) of this subsection prior to completion of the classification and designations within their jurisdictions. Approaches to intergovernmental coordination may vary between natural resource land and critical area designation. It is intended that state and federal agencies with land ownership or management responsibilities, special purpose districts, and Indian tribes with interests within the counties or cities adopting classification and designation be consulted and their input considered in the development and adoption of designations and classifications. The department may provide mediation services to help resolve disputes between counties and cities that are using either the notification or interlocal agreement method of coordinating between jurisdictions.

(d) Mapping natural resource lands. Mapping should be done to identify designated natural resource lands. For counties and cities fully planning under the act, natural resource lands designations must be incorporated into the comprehensive plan land use element and should be shown on the future land use map required under

RCW 36.70A.070.

(9) Evaluation. When counties and cities adopt a comprehensive plan, the act requires them to evaluate their designations and development regulations to assure that they are consistent with and implement the comprehensive plan. When considering changes to the designations or development regulations, counties and cities should seek interjurisdictional coordination and must include public participation.

(10) Designation amendment process.

(a) Land use planning is a dynamic process. Designation procedures should provide a rational and predictable basis for accommodating change.

(b) Reviewing natural resource lands designation. In classifying and designating natural resource lands, counties must approach the effort as a county-wide or regional process. Counties and cities should not review natural resource lands designations solely on a parcel-by-parcel process. Designation amendments should be based on consistency with one or more of the following criteria:

(i) A change in circumstances pertaining to the comprehensive plan or public policy related to designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);

(ii) A change in circumstances to the subject property, which is beyond the control of the landowner and is related to designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);

(iii) An error in designation or failure to designate;

(iv) New information on natural resource land or critical area status related to the designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3); or

(v) A change in population growth rates, or consumption rates, especially of mineral resources.

(11) Use of innovative land use management techniques.

(a) Natural resource uses have preferred and primary status in designated natural resource lands. Counties and cities must determine if and to what extent other uses will be allowed. If other uses are allowed, counties and cities should consider using innovative land management techniques that minimize land use incompatibilities and most effectively maintain current and future natural resource lands.

(b) Techniques to conserve and protect agricultural, forest lands, and mineral resource lands include the purchase or transfer of development rights, fee simple purchase of the land, less than fee simple purchase, purchase with leaseback, buffering, land trades, conservation easements, current use assessments, innovative zoning, or other innovations which maintain current uses and assure the conservation of these natural resource lands.

(12) Development in and adjacent to agricultural, forest, and mineral resource lands shall assure the continued management of these lands for natural resource production. Uses that would convert natural resource lands to other uses or would interfere with the allowed natural resource uses must be prohibited except as authorized in accessory uses under RCW 36.70A.177 or other applicable statutes. Any uses adjacent to agricultural, forest, and mineral resource lands of long-term commercial significance must not interfere with their continued use for the production of agricultural, forest, or mineral products respectively. Counties and cities should consider the adoption of right-to-farm provisions, and may also adopt measures to conserve and enhance marine aquaculture. Covenants or easements recognizing that farming, forestry, and mining activities will occur should be imposed on new development in or adjacent to agricultural, forest, or mineral resource lands. Where buffering is used it should be on land within the adjacent development unless an alternative is mutually agreed on by adjacent landowners.

365-190-050
Agricultural resource lands.

(1) In classifying and designating agricultural resource lands, counties must approach the effort as a county-wide or area-wide process. Counties and cities should not review resource lands designations solely on a parcel-by-parcel process. Counties and cities must have a program for the transfer or purchase of development rights prior to designating agricultural resource lands in urban growth areas. Cities are encouraged to coordinate their agricultural resource lands designations with their county and any adjacent jurisdictions.

(2) Once lands are designated, counties and cities planning under the act must adopt development regulations that assure the conservation of agricultural resource lands. Recommendations for those regulations are found in WAC 365-196-815.

(3) Lands should be considered for designation as agricultural resource lands based on three factors:

(a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should use the criteria contained in WAC 365-196-310.

(b) The land is used or capable of being used for agricultural production. This factor evaluates whether lands are well suited to agricultural use based primarily on their physical and geographic characteristics. Some agricultural operations are less dependent on soil quality than others, including some livestock production operations.

(i) Lands that are currently used for agricultural production and lands that are capable of such use must be evaluated for designation. The intent of a landowner to use land for agriculture or to cease such use is not the controlling factor in determining if land is used or capable of being used for agricultural production. Land enrolled in federal conservation reserve programs is recommended for designation based on previous agricultural use, management requirements, and potential for reuse as agricultural land.

(ii) In determining whether lands are used or capable of being used for agricultural production, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Natural Resources Conservation Service as defined in relevant Field Office Technical Guides. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys, and are based on the growing capacity, productivity and soil composition of the land.

(c) The land has long-term commercial significance for agriculture. In determining this factor, counties and cities should consider the following nonexclusive criteria, as applicable:

(i) The classification of prime and unique farmland soils as mapped by the Natural Resources Conservation Service;

(ii) The availability of public facilities, including roads used in transporting agricultural products;

(iii) Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW and whether the optional public benefit rating system is used locally, and whether there is the ability to purchase or transfer land development rights;

(iv) The availability of public services;

(v) Relationship or proximity to urban growth areas and to markets and suppliers;

(vi) Predominant parcel size;

(vii) Land use settlement patterns and their compatibility with agricultural practices;

(viii) Intensity of nearby land uses;

(ix) History of land development permits issued nearby; and

(x) Land values under alternative uses.

(4) When designating agricultural resource lands, counties and cities may consider food security issues, which may include providing local food supplies for food banks, schools and institutions, vocational training opportunities in agricultural operations, and preserving heritage or artisanal foods.

(5) When applying the criteria in subsection (3)(c) of this section, the process should result in designating at least the minimum amount of agricultural resource lands needed to maintain economic viability for the agricultural industry and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities. Economic viability in this context is that amount of designated agricultural resource land needed to maintain the economic viability of the agricultural sector in the county over the long term.

(6) Counties and cities may further classify additional agricultural lands of local importance. Classifying additional agricultural lands of local importance should include, in addition to general public involvement, consultation with the board of the local conservation district and the local committee of the farm service agency. It may also be useful to consult with any existing local organizations marketing or using local produce, including the boards of local farmers markets, school districts, other large institutions, such as hospitals, correctional facilities, or existing food cooperatives.

These additional lands may include designated critical areas, such as bogs used to grow cranberries or farmed wetlands. Where these lands are also designated critical areas, counties and cities planning under the act must weigh the compatibility of adjacent land uses and development with the continuing need to protect the functions and values of critical areas and ecosystems.

365-190-060

Forest resource lands.

(1) In classifying and designating forest resource lands, counties must approach the effort as a county-wide or regional process. Cities are encouraged to coordinate their forest resource lands designations with their county and any adjacent jurisdictions. Counties and cities should not review forest resource lands designations solely on a parcel-by-parcel basis.

(2) Lands should be designated as forest resource lands of long-term commercial significance based on three factors:

(a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should use the criteria contained in WAC 365-196-310.

(b) The land is used or capable of being used for forestry production. To evaluate this factor, counties and cities should determine whether lands are well suited for forestry use based primarily on their physical and geographic characteristics.

Lands that are currently used for forestry production and lands that are capable of such use must be evaluated for designation. The landowner's intent to either use land for forestry or to cease such use is not the controlling factor in determining if land is used or capable of being used for forestry production.

(c) The land has long-term commercial significance. When determining whether lands are used or capable of being used for forestry production, counties and cities should determine which land grade constitutes forest land of long-term commercial significance, based on local physical, biological, economic, and land use considerations. Counties and cities should use the private forest land grades of the department of revenue (WAC 458-40-530). This system incorporates consideration of growing capacity, productivity, and soil composition of the land. Forest land of long-term commercial significance will generally have a predominance of the higher private forest land grades. However, the presence of lower private forest land grades within the areas of predominantly higher grades need not preclude designation as forest land.

(3) Counties and cities may also consider secondary benefits from retaining commercial forestry operations. Benefits from retaining commercial forestry may include protecting air and water quality, maintaining adequate aquifer recharge areas, reducing forest fire risks, supporting tourism and access to recreational opportunities, providing carbon sequestration benefits, and improving wildlife habitat and connectivity for upland species.

These are only potential secondary benefits from retaining commercial forestry operations, and should not be used alone as a basis for designating or dedesignating forest resource lands.

(4) Counties and cities must also consider the effects of proximity to population areas and the possibility of more intense uses of the land as indicated by the following criteria as applicable:

(a) The availability of public services and facilities conducive to the conversion of forest land;

(b) The proximity of forest land to urban and suburban areas and rural settlements: Forest lands of long-term commercial significance are located outside the urban and suburban areas and rural settlements;

(c) The size of the parcels: Forest lands consist of predominantly large parcels;

(d) The compatibility and intensity of adjacent and nearby land use and settlement patterns with forest lands of long-term commercial significance;

(e) Property tax classification: Property is assessed as open space or forest land pursuant to chapter 84.33 or 84.34 RCW;

(f) Local economic conditions which affect the ability to manage timberlands for long-term commercial production; and

(g) History of land development permits issued nearby.

(5) When applying the criteria in subsection (4) of this section, counties or cities should designate at least the minimum amount of forest resource lands needed to maintain economic viability for the forestry industry and to retain supporting forestry businesses, such as loggers, mills, forest product processors, equipment suppliers, and equipment maintenance and repair facilities. Economic viability in this context is that amount of designated forestry resource land needed to maintain economic viability of the forestry industry in the region over the long term.

365-190-070

Mineral resource lands.

(1) In designating mineral resource lands, counties and cities must approach the effort as a county-wide or regional process, with the exception of owner-initiated requests for designation. Counties and cities should not review mineral resource lands designations solely on a parcel-by-parcel basis.

(2) Counties and cities must identify and classify mineral resource lands from which the extraction of minerals occurs or can be anticipated. Counties and cities may consider the need for a longer planning period specifically to address mineral resource lands, based on the need to assure availability of minerals for future uses, and to not inadvertently preclude access to available mineral resources due to incompatible development. Other proposed land uses within these areas may require special attention to ensure future supply of aggregate and mineral resource material, while maintaining a balance of land uses.

(3) Classification criteria.

(a) Counties and cities classify mineral resource lands based on geologic, environmental, and economic factors, existing land uses, and land ownership. It is expected that mineral resource lands will be depleted of minerals over time, and that subsequent land uses may occur on these lands after mining is completed. Counties and cities may approve and permit land uses on these mineral resource lands to occur after mining is completed.

(b) Counties and cities should classify lands with potential long-term commercial significance for extracting at least the following minerals: Sand, gravel, and valuable metallic substances. Other minerals may be classified as appropriate.

(c) When classifying these areas, counties and cities should use maps and information on location and

extent of mineral deposits provided by the department of natural resources, the United States Geological Service and any relevant information provided by property owners. Counties and cities may also use all or part of a detailed minerals classification system developed by the department of natural resources.

(d) Classifying mineral resource lands should be based on the geology and the distance to market of potential mineral resource lands, including:

(i) Physical and topographic characteristics of the mineral resource site, including the depth and quantity of the resource and depth of the overburden;

(ii) Physical properties of the resource including quality and type;

(iii) Projected life of the resource;

(iv) Resource availability in the region; and

(v) Accessibility and proximity to the point of use or market.

(e) Other factors to consider when classifying potential mineral resource lands should include three aspects of mineral resource lands:

(i) The ability to access needed minerals may be lost if suitable mineral resource lands are not classified and designated; and

(ii) The effects of proximity to population areas and the possibility of more intense uses of the land in both the short and long-term, as indicated by the following:

(A) General land use patterns in the area;

(B) Availability of utilities, including water supply;

(C) Surrounding parcel sizes and surrounding uses;

(D) Availability of public roads and other public services; and

(E) Subdivision or zoning for urban or small lots.

(iii) Energy costs of transporting minerals.

(4) Designation of mineral resource lands.

(a) Counties and cities must designate known mineral deposits so that access to mineral resources of long-term commercial significance is not knowingly precluded. Priority land use for mineral extraction should be retained for all designated mineral resource lands.

(b) In designating mineral resource lands, counties and cities should determine if adequate mineral resources are available for projected needs from currently designated mineral resource lands.

(c) Counties and cities may consult with the department of transportation and the regional transportation planning organization to determine projected future mineral resource needs for large transportation projects planned in their area.

(d) In designating mineral resource lands, counties and cities must also consider that mining may be a temporary use at any given mine, depending on the amount of minerals available and the consumption rate, and that other land uses can occur on the mine site after mining is completed, subject to approval.

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

designated lands.

365-190-080

Critical areas.

(1) Counties and cities must protect critical areas. Counties and cities required or opting to plan under the act must consider the definitions and guidelines in this chapter when designating critical areas and when preparing development regulations that protect the function and values of critical areas. The department provides additional recommendations for adopting critical areas regulations in WAC [365-196-485](#).

(2) Counties and cities must include the best available science as described in chapter [365-195 WAC](#), when designating critical areas and when developing policies and regulations that protect critical areas. Counties and cities must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Counties and cities are encouraged to also protect both surface and ground water resources, because these waters often recharge wetlands, streams and lakes.

(3) Counties and cities are encouraged to develop a coordinated regional critical areas protection program that combines interjurisdictional cooperation, public education, incentives to promote voluntary protective measures, and regulatory standards that serve to protect these critical areas.

(4) Counties and cities should designate critical areas by using maps and performance standards.

(a) Maps may benefit the public by increasing public awareness of critical areas and their locations. County and city staff may also benefit from maps which provide a useful tool for determining whether a particular land use permit application may affect a critical area. However, because maps may be too inexact for regulatory purposes, counties and cities should rely primarily on performance standards to protect critical areas. Counties and cities should apply performance standards to protect critical areas when a land use permit decision is made.

(b) Counties and cities should clearly state that maps showing known critical areas are only for information or illustrative purposes.

365-190-090

Wetlands.

(1) The wetlands of Washington state are fragile ecosystems that serve a number of important beneficial functions. Wetlands assist in reducing erosion, siltation, flooding, ground and surface water pollution, and provide wildlife, plant, and fisheries habitats. Wetlands destruction or impairment may result in increased public and private costs and property losses.

(2) In designating wetlands for regulatory purposes, counties and cities must use the definition of wetlands in RCW [36.70A.030](#). Counties and cities are requested and encouraged to make their actions consistent with the intent and goals of "protection of wetlands," Executive Orders 89-10 and 90-04 as they existed on September 1, 1990. Additionally, counties and cities should consider wetlands protection guidance provided by the department of ecology, including the management recommendations based on the best available science, mitigation guidance, and provisions addressing the option of using wetland mitigation banks.

(3) Wetlands rating systems. Wetland functions vary widely.

(a) When designating wetlands, counties and cities should use a rating system that evaluates the existing wetland functions and values to determine what functions must be protected.

(b) In developing wetlands rating systems, counties and cities should consider using the wetland rating system developed jointly by the department of ecology and the United States Army Corps of Engineers.

(c) If a county or city chooses to use an alternative rating system, it must include the best available science.

(d) A rating system should evaluate, at a minimum, the following factors:

(i) Wetlands functions and values;

(ii) Degree of sensitivity to disturbance;

(iii) Rarity;

(iv) The degree to which a wetland contributes to functions and values of a larger ecosystem. Rating systems should generally rate wetlands higher when they are well-connected to adjacent or nearby habitats, are part of an intact ecosystem or function in a network of critical areas; and

(v) The ability to replace the functions and values through compensatory mitigation.

(4) Counties and cities may use the National Wetlands Inventory and a landscape-scale watershed characterization as information sources for determining the approximate distribution and extent of wetlands. The National Wetlands Inventory is an inventory providing maps of wetland areas according to the definition of wetlands issued by the United States Department of Interior Fish and Wildlife Service. A landscape-scale watershed characterization may identify areas that are conducive to forming wetlands based on topography, soils and geology, and hydrology. Any potential locations of wetlands based on the National Wetlands Inventory or landscape-scale watershed characterization should be confirmed by field visits, either before or as part of permitting activities, and identified wetlands should have their boundaries delineated for regulation consistent with the wetlands definition in RCW 36.70A.030.

(5) Counties and cities must use the methodology for regulatory delineations in the adopted state manual identified in RCW 36.70A.175.

365-190-100

Critical aquifer recharge areas.

(1) Potable water is an essential life sustaining element for people and many other species. Much of Washington's drinking water comes from ground water. Once ground water is contaminated it is difficult, costly, and sometimes impossible to clean up. Preventing contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people and ecosystems.

(2) The quality and quantity of ground water in an aquifer is inextricably linked to its recharge area. Where aquifers and their recharge areas have been studied, affected counties and cities should use this information as the basis for classifying and designating these areas. Where no specific studies have been done, counties and cities may use existing soil and surficial geologic information to determine where recharge areas exist. To determine the threat to ground water quality, existing land use activities and their potential to lead to contamination should be evaluated.

(3) Counties and cities must classify recharge areas for aquifers according to the aquifer vulnerability. Vulnerability is the combined effect of hydrogeological susceptibility to contamination and the contamination loading potential. High vulnerability is indicated by land uses that contribute directly or indirectly to contamination that may degrade ground water, and hydrogeologic conditions that facilitate degradation. Low vulnerability is indicated by land uses that do not contribute contaminants that will degrade ground water, and by hydrogeologic conditions that do not facilitate degradation. Hydrological conditions may include those induced by limited recharge of an aquifer. Reduced aquifer recharge from effective impervious surfaces may result in higher concentrations of contaminants than would otherwise occur.

(a) To characterize hydrogeologic susceptibility of the recharge area to contamination, counties and cities may consider the following physical characteristics:

(i) Depth to ground water;

(ii) Aquifer properties such as hydraulic conductivity, gradients, and size;

(iii) Soil (texture, permeability, and contaminant attenuation properties);

(iv) Characteristics of the vadose zone including permeability and attenuation properties; and

(v) Other relevant factors.

(b) The following may be considered to evaluate vulnerability based on the contaminant loading potential:

(i) General land use;

(ii) Waste disposal sites;

(iii) Agriculture activities;

(iv) Well logs and water quality test results;

(v) Proximity to marine shorelines; and

(vi) Other information about the potential for contamination.

(4) A classification strategy for aquifer recharge areas should be to maintain the quality, and if needed, the quantity of the ground water, with particular attention to recharge areas of high susceptibility.

(a) In recharge areas that are highly vulnerable, studies should be initiated to determine if ground water contamination has occurred. Classification of these areas should include consideration of the degree to which the aquifer is used as a potable water source, feasibility of protective measures to preclude further degradation, availability of treatment measures to maintain potability, and availability of alternative potable water sources.

(b) Examples of areas with a critical recharging effect on aquifers used for potable water may include:

(i) Recharge areas for sole source aquifers designated pursuant to the Federal Safe Drinking Water Act;

(ii) Areas established for special protection pursuant to a ground water management program, chapters 90.44, 90.48, and 90.54 RCW, and chapters 173-100 and 173-200 WAC;

(iii) Areas designated for wellhead protection pursuant to the Federal Safe Drinking Water Act;

(iv) Areas near marine waters where aquifers may be subject to saltwater intrusion; and

(v) Other areas meeting the definition of "areas with a critical recharging effect on aquifers used for potable water" in these guidelines.

(c) Some aquifers may also have critical recharging effects on streams, lakes, and wetlands that provide critical fish and wildlife habitat. Protecting adequate recharge of these aquifers may provide additional benefits in maintaining fish and wildlife habitat conservation areas.

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 tsunamis, 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.

365-190-120

Geologically hazardous areas.

(1) Geologically hazardous areas. Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard.

(2) Some geological hazards can be reduced or mitigated by engineering, design, or modified construction or mining practices so that risks to public health and safety are minimized. When technology cannot reduce risks to acceptable levels, building in geologically hazardous areas must be avoided. The distinction between avoidance and compensatory mitigation should be considered by counties and cities that do not currently classify geological hazards, as they develop their classification scheme.

(3) Areas that are susceptible to one or more of the following types of hazards shall be classified as a geologically hazardous area:

(a) Erosion hazard;

(b) Landslide hazard;

(c) Seismic hazard; or

(d) Areas subject to other geological events such as coal mine hazards and volcanic hazards including: Mass wasting, debris flows, rock falls, and differential settlement.

(4) Counties and cities should assess the risks and classify geologically hazardous areas as either:

(a) Known or suspected risk;

(b) No known risk; or

(c) Risk unknown - data are not available to determine the presence or absence of risk.

(5) Erosion hazard areas include areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils. Erosion hazard areas may also include coastal erosion areas: This information can be found in the Washington state coastal atlas available from the department of ecology. Counties and cities may consult with the United States Department of Agriculture Natural Resources Conservation Service for data to help identify erosion hazard areas.

(6) Landslide hazard areas include areas subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include any areas susceptible to landslide because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors, and include, at a minimum, the following:

(a) Areas of historic failures, such as:

(i) Those areas delineated by the United States Department of Agriculture Natural Resources Conservation Service as having a significant limitation for building site development;

(ii) Those coastal areas mapped as class u (unstable), uos (unstable old slides), and urs (unstable recent slides) in the department of ecology Washington coastal atlas; or

(iii) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geological Survey or Washington department of natural resources.

(b) Areas with all three of the following characteristics:

(i) Slopes steeper than fifteen percent;

(ii) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

(iii) Springs or ground water seepage.

(c) Areas that have shown movement during the holocene epoch (from ten thousand years ago to the present) or which are underlain or covered by mass wastage debris of this epoch;

(d) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

(e) Slopes having gradients steeper than eighty percent subject to rockfall during seismic shaking;

(f) Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action, including stream channel migration zones;

(g) Areas that show evidence of, or are at risk from snow avalanches;

(h) Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and

(i) Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of bedrock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief.

(7) Seismic hazard areas must include areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, surface faulting, or tsunamis. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow ground water table. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington, and ground settlement may occur with shaking. The strength of ground shaking is primarily affected by:

(a) The magnitude of an earthquake;

(b) The distance from the source of an earthquake;

(c) The type or thickness of geologic materials at the surface; and

(d) The type of subsurface geologic structure.

(8) Other geological hazard areas:

(a) Volcanic hazard areas must include areas subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

(b) Mine hazard areas are those areas underlain by, adjacent to, or affected by mine workings such as adits, gangways, tunnels, drifts, or air shafts. Factors which should be considered include: Proximity to development, depth from ground surface to the mine working, and geologic material.

365-190-130

Fish and wildlife habitat conservation areas.

(1) "Fish and wildlife habitat conservation" means land management for maintaining populations of species in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term and isolated subpopulations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean not degrading or reducing populations or habitats so that they are no longer viable over the long term. Counties and cities should engage in cooperative planning and coordination to help assure long term population viability.

Fish and wildlife habitat conservation areas contribute to the state's biodiversity and occur on both publicly and privately owned lands. Designating these areas is an important part of land use planning for appropriate development densities, urban growth area boundaries, open space corridors, and incentive-based land conservation and stewardship programs.

(2) Fish and wildlife habitat conservation areas that must be considered for classification and designation include:

- (a) Areas where endangered, threatened, and sensitive species have a primary association;
- (b) Habitats and species of local importance, as determined locally;
- (c) Commercial and recreational shellfish areas;
- (d) Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;
- (e) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;
- (f) Waters of the state;
- (g) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and
- (h) State natural area preserves, natural resource conservation areas, and state wildlife areas.

(3) When classifying and designating these areas, counties and cities must include the best available science, as described in chapter 365-195 WAC.

- (a) Counties and cities should consider the following:
 - (i) Creating a system of fish and wildlife habitat with connections between larger habitat blocks and open spaces, integrating with open space corridor planning where appropriate;
 - (ii) Level of human activity in such areas including presence of roads and level of recreation type (passive or active recreation may be appropriate for certain areas and habitats);
 - (iii) Protecting riparian ecosystems including salmonid habitat, which also includes marine nearshore areas;
 - (iv) Evaluating land uses surrounding ponds and fish and wildlife habitat conservation areas that may negatively impact these areas, or conversely, that may contribute positively to their function;
 - (v) Establishing buffer zones around these areas to separate incompatible uses from habitat areas;
- (b) Counties and cities may also consider the following:

(i) Potential for restoring lost and impaired salmonid habitat;

(ii) Potential for designating areas important for local and ecoregional biodiversity; and

(iii) Establishing or enhancing nonregulatory approaches in addition to regulatory methods to protect fish and wildlife habitat conservation areas.

(4) Sources and methods.

(a) Endangered, threatened and sensitive species. Counties and cities should identify and classify seasonal ranges and habitat elements where federal and state listed endangered, threatened and sensitive species have a primary association and which, if altered, may reduce the likelihood that the species will persist over the long term. Counties and cities should consult current information on priority habitats and species identified by the Washington state department of fish and wildlife. Recovery plans and management recommendations for many of these species are available from the United States Fish and Wildlife Service, the National Marine Fisheries Service and the Washington state department of fish and wildlife. Additional information is also available from the Washington state department of natural resources, natural heritage program, and aquatic resources program.

(b) Habitats and species areas of local importance. Counties and cities should identify, classify and designate locally important habitats and species. Counties and cities should consult current information on priority habitats and species identified by the Washington state department of fish and wildlife. Priority habitat and species information includes endangered, threatened and sensitive species, but also includes candidate species and other vulnerable and unique species and habitats. While these priorities are those of the Washington state department of fish and wildlife, they should be considered by counties and cities as they include the best available science. The Washington state department of fish and wildlife can also provide assistance with identifying and mapping important habitat areas at various landscape scales. Similarly, the Washington state department of natural resources' natural heritage program can provide a list of high quality ecological communities and systems and rare plants.

(c) Shellfish areas. All public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas. Counties and cities should consider both commercial and recreational shellfish areas. Counties and cities should consider the Washington state department of health classification of commercial and recreational shellfish growing areas to determine the existing condition of these areas. Further consideration should be given to the vulnerability of these areas to contamination. Shellfish protection districts established pursuant to chapter 90.72 RCW shall be included in the classification of critical shellfish areas.

(d) Kelp and eelgrass beds; herring, smelt and other forage fish spawning areas. Counties and cities must classify kelp and eelgrass beds, identified by the Washington state department of natural resources and the department of ecology. Though not an inclusive inventory, locations of kelp and eelgrass beds are compiled in the Washington coastal atlas published by the department of ecology. Herring, smelt and other forage fish spawning times and locations are outlined in WAC 220-110-240 through 220-110-271.

(e) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farmponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority.

(f) Waters of the state.

(i) Waters of the state are defined in RCW 90.48.020 and include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and water courses in Washington. Stream types are classified in Title 222 WAC, the forest practices regulations. Counties and cities may use the classification system established in WAC 222-16-030 to classify waters of the state. Counties and cities using the water types defined in WAC 222-16-030 or 222-16-031 (interim) should not rely solely on Washington state department of natural resources maps of these stream types for purposes of regulating land uses or establishing

stream buffers.

(ii) Counties and cities that use the stream typing system developed by the department of natural resources should develop a process to verify actual stream conditions, identify flow alterations, and locate fish passage barriers by conducting a field visit. Field verification of all intermittent or nonfish bearing streams should occur during the wet season months of October to March or as determined locally.

(iii) Counties and cities may consider the following factors when classifying waters of the state as fish and wildlife habitat conservation areas:

- (A) Species present which are endangered, threatened or sensitive, and other species of concern;
- (B) Species present which are sensitive to habitat manipulation (e.g., priority habitats and species program);
- (C) Historic presence of species of local importance;
- (D) Existing surrounding land uses that are incompatible with salmonid habitat;
- (E) Presence and size of riparian ecosystems;
- (F) Existing water rights; and
- (G) The intermittent nature of some waters of the state.

(g) Lakes, ponds, streams, and rivers planted with game fish. This includes game fish planted in these water bodies under the auspices of a federal, state, local, or tribal program or which supports priority fish species as identified by the Washington state department of fish and wildlife.

(h) State natural area preserves, natural resource conservation areas, and state wildlife areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the department of natural resources. State wildlife areas are defined, established, and managed by the Washington state department of fish and wildlife, which provides information about state wildlife areas for each county.

(i) Salmonid habitat. Counties and cities should consider recommendations found in salmon recovery plans (see the governor's salmon recovery office). Counties and cities may use information prepared by the United States Department of the Interior Fish and Wildlife Service, National Marine Fisheries Service, the Washington state department of fish and wildlife, the state recreation and conservation office, and the Puget Sound partnership to designate, protect and restore salmonid habitat.

365-195-900

Background and purpose.

(1) Counties and cities planning under RCW 36.70A.040 are subject to continuing review and evaluation of their comprehensive land use plan and development regulations. Every five years they must take action to review and revise their plans and regulations, if needed, to ensure they comply with the requirements of the Growth Management Act. RCW 36.70A.130.

(2) Counties and cities must include the "best available science" when developing policies and development regulations to protect the functions and values of critical areas and must give "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries. RCW 36.70A.172(1). The rules in WAC 365-195-900 through 365-195-925 are intended to assist counties and cities in identifying and including the best available science in newly adopted policies and regulations and in this periodic review and evaluation and in demonstrating they have met their statutory obligations under RCW 36.70A.172(1).

(3) The inclusion of the best available science in the development of critical areas policies and regulations is especially important to salmon recovery efforts, and to other decision-making affecting threatened or endangered species.

(4) These rules are adopted under the authority of RCW 36.70A.190 (4)(b) which requires the department of community, trade, and economic development (department) to adopt rules to assist counties and cities to comply with the goals and requirements of the Growth Management Act.

365-195-905

Criteria for determining which information is the "best available science."

(1) This section provides assessment criteria to assist counties and cities in determining whether information obtained during development of critical areas policies and regulations constitutes the "best available science."

(2) Counties and cities may use information that local, state or federal natural resource agencies have determined represents the best available science consistent with criteria set out in WAC 365-195-900 through 365-195-925. The department will make available a list of resources that state agencies have identified as meeting the criteria for best available science pursuant to this chapter. Such information should be reviewed for local applicability.

(3) The responsibility for including the best available science in the development and implementation of critical areas policies or regulations rests with the legislative authority of the county or city. However, when feasible, counties and cities should consult with a qualified scientific expert or team of qualified scientific experts to identify scientific information, determine the best available science, and assess its applicability to the relevant critical areas. The scientific expert or experts may rely on their professional judgment based on experience and training, but they should use the criteria set out in WAC 365-195-900 through 365-195-925 and any technical guidance provided by the department. Use of these criteria also should guide counties and cities that lack the assistance of a qualified expert or experts, but these criteria are not intended to be a substitute for an assessment and recommendation by a qualified scientific expert or team of experts.

(4) Whether a person is a qualified scientific expert with expertise appropriate to the relevant critical areas is determined by the person's professional credentials and/or certification, any advanced degrees earned in the pertinent scientific discipline from a recognized university, the number of years of experience in the pertinent scientific discipline, recognized leadership in the discipline of interest, formal training in the specific area of expertise, and field and/or laboratory experience with evidence of the ability to produce peer-reviewed publications or other professional literature. No one factor is determinative in deciding whether a person is a qualified scientific expert. Where pertinent scientific information implicates multiple scientific disciplines, counties and cities are encouraged to consult a team of qualified scientific experts representing the various disciplines to ensure the identification and inclusion of the best available science.

(5) Scientific information can be produced only through a valid scientific process. To ensure that the best available science is being included, a county or city should consider the following:

(a) **Characteristics of a valid scientific process.** In the context of critical areas protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government's regulatory decisions and in developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas. To determine whether information received during the public participation process is reliable scientific information, a county or city should determine whether the source of the information displays the characteristics of a valid scientific process. The characteristics generally to be expected in a valid scientific process are as follows:

1. **Peer review.** The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The criticism of the peer reviewers has been addressed by the proponents of the information. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed.

2. **Methods.** The methods that were used to obtain the information are clearly stated and able to be replicated. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to assure their reliability and validity.

3. **Logical conclusions and reasonable inferences.** The conclusions presented are based on reasonable

assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained.

4. **Quantitative analysis.** The data have been analyzed using appropriate statistical or quantitative methods.

5. **Context.** The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.

6. **References.** The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information.

(b) **Common sources of scientific information.** Some sources of information routinely exhibit all or some of the characteristics listed in (a) of this subsection. Information derived from one of the following sources may be considered scientific information if the source possesses the characteristics in Table 1. A county or city may consider information to be scientifically valid if the source possesses the characteristics listed in (a) of this subsection. The information found in Table 1 provides a general indication of the characteristics of a valid scientific process typically associated with common sources of scientific information.

	CHARACTERISTICS					
Table 1			Logical conclusions & reasonable inferences	Quantitative analysis	Context	References
SOURCES OF SCIENTIFIC INFORMATION	Peer review	Methods				
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.	X	X	X	X	X	X

Models generally are used to understand and explain occurrences that cannot be directly observed.						
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.

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.

365-195-915

Criteria for including the best available science in developing policies and development regulations.

(1) To demonstrate that the best available science has been included in the development of critical areas policies and regulations, counties and cities should address each of the following on the record:

(a) The specific policies and development regulations adopted to protect the functions and values of the critical areas at issue.

(b) The relevant sources of best available scientific information included in the decision-making.

(c) Any nonscientific information -- including legal, social, cultural, economic, and political information -- used as a basis for critical area policies and regulations that depart from recommendations derived from the best available science. A county or city departing from science-based recommendations should:

(i) Identify the information in the record that supports its decision to depart from science-based recommendations;

(ii) Explain its rationale for departing from science-based recommendations; and

(iii) Identify potential risks to the functions and values of the critical area or areas at issue and any additional measures chosen to limit such risks. State Environmental Policy Act (SEPA) review often provides an opportunity to establish and publish the record of this assessment.

(2) Counties and cities should include the best available science in determining whether to grant applications for administrative variances and exemptions from generally applicable provisions in policies and development regulations adopted to protect the functions and values of critical areas. Counties and cities should adopt procedures and criteria to ensure that the best available science is included in every review of an application for an administrative variance or exemption.

365-195-920

Criteria for addressing inadequate scientific information.

Where there is an absence of valid scientific information or incomplete scientific information relating to a county's or city's critical areas, leading to uncertainty about which development and land uses could lead to harm of critical areas or uncertainty about the risk to critical area function of permitting development, counties and cities should use the following approach:

(1) A "precautionary or a no risk approach," in which development and land use activities are strictly limited until the uncertainty is sufficiently resolved; and

(2) As an interim approach, an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and nonregulatory actions achieve their objectives. Management, policy, and regulatory actions are treated as experiments that are purposefully monitored and evaluated to determine whether they are effective and, if not, how they should be improved to increase their effectiveness. An adaptive

management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. To effectively implement an adaptive management program, counties and cities should be willing to:

- (a) Address funding for the research component of the adaptive management program;
- (b) Change course based on the results and interpretation of new information that resolves uncertainties; and
- (c) Commit to the appropriate time frame and scale necessary to reliably evaluate regulatory and nonregulatory actions affecting critical areas protection and anadromous fisheries.

365-195-925

Criteria for demonstrating "special consideration" has been given to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

(1) RCW 36.70A.172(1) imposes two distinct but related requirements on counties and cities. Counties and cities must include the "best available science" when developing policies and development regulations to protect the functions and values of critical areas, and counties and cities must give "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Local governments should address both requirements in RCW 36.70A.172(1) when developing their records to support their critical areas policies and development regulations.

(2) To demonstrate compliance with RCW 36.70A.172(1), a county or city adopting policies and development regulations to protect critical areas should include in the record evidence that it has given "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries. The record should be developed using the criteria set out in WAC 365-195-900 through 365-195-925 to ensure that conservation or protection measures necessary to preserve or enhance anadromous fisheries are grounded in the best available science.

(3) Conservation or protection measures necessary to preserve or enhance anadromous fisheries include measures that protect habitat important for all life stages of anadromous fish, including, but not limited to, spawning and incubation, juvenile rearing and adult residence, juvenile migration downstream to the sea, and adult migration upstream to spawning areas. Special consideration should be given to habitat protection measures based on the best available science relevant to stream flows, water quality and temperature, spawning substrates, instream structural diversity, migratory access, estuary and nearshore marine habitat quality, and the maintenance of salmon prey species. Conservation or protection measures can include the adoption of interim actions and long-term strategies to protect and enhance fisheries resources.

365-196-200

Statutory definitions.

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

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

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

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

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

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

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of wetlands.

365-196-405

Land use element.

(1) Requirements. The land use element must contain the following features:

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

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

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

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

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

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

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

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

(c) Counties and cities should conduct an inventory of vacant, partially used and underutilized land to determine the extent to which existing buildings and housing, together with vacant, partially used and underutilized land, can support anticipated growth over the planning period. Growth anticipated through redevelopment of developed lands should also be considered. This information should be provided through a land capacity analysis as part of a county-wide process described in WAC 365-196-305 and 365-196-310 or, as applicable, WAC 365-196-315.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Counties and cities must obtain twenty-year population allocations for their planning area as part of a county-wide process described in WAC 365-196-305(4) and 365-196-310. Using information from the housing needs analysis, identify the amount of land suitable for development at a variety of densities consistent with the number and type of residential units likely to be needed over the planning period. At a minimum, cities must plan for the population allocated to them, but may plan for additional population within incorporated areas.

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

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

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

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

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

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

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

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

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

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

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

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

(vii) Opportunities for promoting physical activity through these and other policies should be sought in existing as well as newly developing areas. Regulatory or policy barriers to promoting physical activity for new or existing development should also be removed or lessened where feasible.

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

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

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

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

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

365-196-485

Critical areas.

(1) Relationship to the comprehensive plan.

(a) The act requires that the planning goals in RCW 36.70A.020 guide the development and adoption of comprehensive plans and development regulations. These goals include retaining open space; enhancing recreation opportunities; conserving fish and wildlife habitat; protecting the environment and enhancing the state's high quality of life, including air and water quality, and the availability of water.

(b) Jurisdictions are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas.

(c) Counties and cities are required to identify open space corridors within and between urban growth areas for multiple purposes, including those areas needed as critical habitat by wildlife.

(d) RCW 36.70A.070(1) requires counties and cities to provide for protection of the quality and quantity of ground water used for public water supplies in the land use element. Where applicable, the land use element must review drainage, flooding, and storm water runoff in the area and in nearby jurisdictions, and provide guidance to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(e) Because the critical areas regulations must be consistent with the comprehensive plan, each comprehensive plan should set forth the underlying policies for the jurisdiction's critical areas program.

(f) In pursuing the environmental protection and open space goals of the act, such policies should identify nonregulatory measures for protecting critical areas as well as regulatory approaches. Nonregulatory measures include but are not limited to: Incentives, public education, and public recognition, and could include innovative programs such as the purchase or transfer of development rights. When such policies are incorporated into the plan (either in a separate element or as a part of the land use element), the consistency of the regulations can be readily assessed.

(2) Requirements. Prior to the original development of comprehensive plans under the act, counties and cities were required to designate critical areas and adopt development regulations protecting them. Any previous designations and regulations must be reviewed in the comprehensive plan process to ensure consistency between previous designations and the comprehensive plan. Critical areas include the following areas and ecosystems:

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

(3) Recommendations for meeting requirements.

(a) In the initial period following adoption of the act, much of the analysis which was the basis for the comprehensive plan came later than the initial identification and regulation of critical areas. Upon the adoption of the initial comprehensive plans, such designations and regulations were to be reviewed and, where necessary, altered to achieve consistency with the comprehensive plan. Subsequently, jurisdictions updating local critical areas ordinances are required to include the best available science.

(b) The department has issued guidelines for the classification and designation of critical areas which are contained in chapter 365-190 WAC.

(c) Critical areas should be designated and protected wherever the applicable environmental conditions exist, whether within or outside of urban growth areas. Critical areas may overlap each other, and requirements to protect critical areas apply in addition to the requirements of the underlying zoning.

(d) The review of existing designations during the comprehensive plan adoption process should, in most cases, be limited to the question of consistency with the comprehensive plan, rather than a revisiting of the entire prior designation and regulation process. However, counties and cities must address the requirements to include the best available science in developing policies and development regulations to protect the functions and values of critical areas, and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. To the extent that new information is available or errors have been discovered, the review process should take this information into account.

(e) The department recommends that planning jurisdictions identify the policies by which decisions are made on when and how regulations will be used and when and how other means will be employed (purchases, development rights, etc.). See WAC 365-196-855.

(4) Avoiding impacts through appropriate land use designations.

(a) Many existing data sources can identify, in advance of the development review process, the likely presence of critical areas. When developing and reviewing the comprehensive plan and future land use designations, counties and cities should use available information to avoid directing new growth to areas with a high probability of conflicts between new development and protecting critical areas. Identifying areas with a high probability of critical areas conflicts can help identify lands that are likely to be unsuitable for development and help a county or city better provide sufficient capacity of land that is suitable for development as required by RCW 36.70A.115. Impacts to these areas could be minimized through measures such as green infrastructure planning, open space acquisition, open space zoning, and the purchase or transfer of development rights.

(b) When considering expanding the urban growth area, counties and cities should avoid including lands that contain large amounts of mapped critical areas. Counties and cities should not designate new urban areas within the one hundred year flood plain unless no other alternatives exist, and if included, impacts on the flood plain must be mitigated, including the provisions in RCW 36.70A.110(8).

(c) If critical areas are included in urban growth areas, they still must be designated and protected. See WAC 365-196-310.

365-196-830

Protection of critical areas.

(1) The act requires the designation of critical areas and the adoption of regulations for the protection of such areas by all counties and cities, including those that do not plan under RCW 36.70A.040. The department has adopted minimum guidelines in chapter 365-190 WAC detailing the process involved in establishing a program to protect critical areas.

(2) Critical areas that must be protected include the following areas and ecosystems:

(a) Wetlands;

(b) Areas of critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(3) "Protection" in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety.

(4) Although counties and cities may protect critical areas in different ways or may allow some localized impacts to critical areas, or even the potential loss of some critical areas, development regulations must preserve the existing functions and values of critical areas. If development regulations allow harm to critical areas, they must require compensatory mitigation of the harm. Development regulations may not allow a net loss of the functions and values of the ecosystem that includes the impacted or lost critical areas.

(5) Counties and cities must include the best available science in developing policies and development regulations to protect functions and values of critical areas. See chapter 365-195 WAC.

(6) Functions and values must be evaluated at a scale appropriate to the function being evaluated. Functions are the conditions and processes that support the ecosystem. Conditions and processes operate on varying geographic scales ranging from site-specific to watershed and even regional scales. Some critical areas, such as wetlands and fish and wildlife habitat conservation areas, may constitute ecosystems or parts of ecosystems that transcend the boundaries of individual parcels and jurisdictions, so that protection of their function, and values should be considered on a larger scale.

(7) Protecting some critical areas may require using both regulatory and nonregulatory measures. When impacts to critical areas are from development beyond jurisdictional control, counties and cities are encouraged to use regional approaches to protect functions and values. It is especially important to use a regional approach when giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Conservation and protection measures may address land uses on any lands within a jurisdiction, and not only lands with designated critical areas.

(8) Local government may develop and implement alternative means of protecting critical areas from some activities using best management practices or a combination of regulatory and nonregulatory programs. When developing alternative means of protection, counties and cities must assure no net loss of functions and values and must include the best available science.

(9) In designing development regulations and nonregulatory programs to protect designated critical areas, counties and cities should endeavor to make such regulations and programs fit together with regional, state and federal programs directed to the same environmental, health, safety and welfare ends. Local plans and policies may in some respects be adequately implemented by adopting the provisions of such other programs as part of the local regulations.

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