



Concise Explanatory Statement and Response to Comments for the Adoption of Amendments to Growth Management Act rules

- Guidance for development regulations pertaining to the protection of critical areas functions and values where agricultural activities take place (WAC 365-196)
- Guidance for the Voluntary Stewardship Program (WAC 365-196)
- Clarification on the relationship between the Shoreline Master Program and the Voluntary Stewardship Program.
- Housekeeping Amendment to comply with new definitions in RCW 82.02.090 Impact Fees – Public Facilities – Fire Protection Facilities. (WAC 365-196)

August, 2017

Introduction

The Washington State Department of Commerce (Commerce) prepared this *Concise Explanatory Statement and Responsiveness Summary* to meet requirements of the Washington State Administrative Procedures Act, the law that guides agency rule-making (RCW 34.05.325).

Section I provides a general description of the process and the scope of work on the proposed rule.

Section II responds to the comments received regarding the proposed rule, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

Section III summarizes differences between the proposed and adopted rule.

This document is available on the Commerce website at <http://www.commerce.wa.gov/about-us/rulemaking/gma-laws-rules/>

I: Concise Explanatory Statement

Scope of the GMA

The Growth Management Act (GMA) was adopted in 1990 to provide a new framework for land use planning and the regulation of development in Washington State. The act is a response to problems associated with uncoordinated and unplanned growth and a lack of common goals in the conservation and the use of our land. The problems included increased traffic congestion, pollution, school overcrowding, urban sprawl, and the loss of rural lands. The GMA contains a set of goals to guide local government planning, as well as more specific requirements governing comprehensive plans and development regulations. The GMA calls on local governments to meet these requirements through a sequence of steps, some undertaken individually and some undertaken jointly between cities and counties. Once comprehensive plans and development regulations are adopted, the GMA calls on local governments to periodically review and update those plans to ensure ongoing compliance with the act.

Statutory Authority

The GMA directs Commerce to establish a program of technical and financial assistance for local governments, to assist in implementation of the GMA. RCW 36.70A.050 directs Commerce to adopt guidelines for the classification of resource lands (agricultural, forest and mineral resource lands) and critical areas. These rules

are codified in Washington Administrative Code (WAC), under Chapter 365-190 WAC. RCW 36.70A.190 directs Commerce to adopt by rule “procedural criteria” to help counties and cities adopt comprehensive plans and development regulations that meet the goals and requirements of the GMA. These procedural criteria are found in Chapter 365-196 WAC.

The role of GMA rules

The rules are advisory to local governments. The Growth Management Hearings Boards determine compliance and must consider these rules to assist in interpreting the GMA. Local governments must consider the Minimum Guidelines (Chapter 365-190-WAC) when designating critical areas and resource lands. Local governments may use the procedural criteria (Chapter 365-196 WAC) to guide their implementation of the GMA. The primary audiences for the rules are local governments with statutory obligations under the GMA, members of the public, state agencies, tribes or other governments who participate in the local planning process. The Growth Management Hearings Boards also consult the rules to help interpret the goals and requirements of the GMA.

Reasons for amending GMA rules

Reasons supporting amendment of Chapter 365-196 WAC:

- To bring rules into conformance with the legislative changes to the Growth Management Act, namely the GMA amendment to include the Voluntary Stewardship Program that occurred in 2011. The amendments also reflect Growth Management Hearings Board and Washington State Supreme Court decisions regarding the protection of critical areas where agricultural activities take place.

How the rules were developed

Initial Scoping and Petition

Commerce initiated this GMA rule update on June 22, 2017 by filing the CR-101, published in the State Register as WSR 16-13-134. WAC Chapters listed for potential rulemaking included 365-190 and 365-196. On January 10, 2017, Commerce filed an amended CR-101, published in the State Register as WSR 17-03-065, adding WAC Chapter 365-191 for possible rulemaking.

Commerce took the following outreach steps:

- Summarized research on development regulations pertaining to agricultural activities conducted in critical areas in a report. Report was circulated to stakeholders and posted on project web site. The report served as the foundation for rule amendment recommendations.

- Formed an advisory committee as the primary stakeholder group to develop the proposed rule language. The advisory committee consisted of representatives from the Washington State Conservation Commission, Washington State Farm Bureau, Washington State Association of Counties, multiple State agencies, planners from Yakima and Snohomish counties, the City of Burlington, and environmental groups. Multiple meetings were conducted to develop the draft rules.
- Generated a large list of interested parties including a wide range of stakeholder interests. This list was used as the primary audience for receipt of all rule making announcements.
- Sent announcements to WAC Update email Listserv that kept interested parties updated on progress throughout the rule development process.
- Developed a rule update web page on the Growth Management Services web site <http://www.commerce.wa.gov/about-us/rulemaking/gma-laws-rules/>
- Established a project web site at https://www.ezview.wa.gov/site/alias__1948/overview/36867/overview.aspx.
- Sent project updates via articles in Growth Management Services Division newsletter.
- Developed a descriptive guide with a complete list of proposed rules. The guide was circulated to interested parties and posted on GMS web page and project web site.
- Hosted an information webinar on proposed rule updates on June 8, 2017. Twenty-five people participated in the webinar.
- Distributed a preliminary draft rule to all stakeholders and interested parties for review and comment.

Proposed Rules

Commerce filed the CR-102 on July 17, 2017 in the Washington State Register as WSR 17-15-084, initiating the formal review process. Although three WAC Chapters were identified in the CR-101 for potential amendments, only WAC 365-196 was included in the CR-102 filing. Commerce posted the CR-102 and the proposed rules on GMS web page and the project website. A guide with a full description of the proposed rules was sent to interested parties and reviewed during an informational webinar. Commerce held one public hearing on August 23, 2017, in Olympia, Washington, at the Department of Commerce’s Olympia office. No one attended the hearing in person and only one participant called in by telephone.

Commerce received five emailed comments, two of which were substantive and three confirmed “no concerns”.

Adopted rules

Commerce adopted and filed the final rule in October, 2017. As required by the Washington State Administrative Procedures Act (RCW 34.05.325), Commerce prepared this Concise Explanatory Statement and Responsive to Comments Summary to identify the reasons for adopting the rules, describe differences between the proposed and adopted rule, and respond to all comments received regarding the proposed rule, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

Docket of Proposed Rule Amendments

Issue	Description	Source of Change	Rules Affected
1	Adding definition for 'Agricultural Activities' to statutory definitions list.	ESHB 1886, 2011 RCW 36.70A.700 RCW 90.58.065	WAC 365-196-200
2	Adding references to the Voluntary Stewardship Program	RCW 36.70A.700 RCW 90.58.065	WAC 365-196-580
3	Adding references to the Voluntary Stewardship Program	RCW 36.70A.700 RCW 36.70A.040	WAC 365-196-610
4	Adding language regarding the protection of critical areas functions and values as they relate to agricultural activities	RCW 36.70A.190	WAC 365-196-830
5	New section created to provide guidance for the implementation of the Voluntary Stewardship Program	RCW 36.70A.700	New section: WAC 365-196-832
6	Updating 'Impact Fee' definition to comply with Legislation	HB 1080, 2010 RCW 82.02.090	WAC 365-196-850

II: Responsiveness Summary

General Comments

Commerce received five comments on the proposal, summarized as follows:

1. Bryce Yadon, Statue Policy Director, Futurewise

Thanked Commerce for the work on the rule update and for incorporating their comments on the preliminary draft rules; recommend adopting the rule as proposed.

Commerce Response: Comments noted

2. Gerald Steele, Attorney at Law:

No concerns.

Commerce Response: Comment noted

3. Tom Glover, Director, Walla Walla Community Development Director:

No concerns.

Commerce Response: Comment noted

4. Erik Johansen and Adam Cares, Stevens County

Concerned that the Voluntary Stewardship Program (VSP) would be considered an “alternative means of protection” under WAC 365-196-830(8) (a) and therefore is subject to best available science (BAS). It is their understanding that the VSP is not required to include best available science and they suggest inserting language that clearly removes VSP from the BAS requirement.

Commerce Response: The VSP Statute (RCW 36.70a.700-760) does not take a position on the issue of best available science. Further, this issue was not discussed as part of the rule amendment process and Commerce would exceed its legislative authority by addressing the BAS as it relates to the VSP. The new language in WAC 365-196-830(d) specifies that counties choosing to utilize regulations as part of their VSP must review and, if necessary, revise those regulations consistent with RCW 36.70A.130(8).

5. Troy Holbrook, Principal Planner, Snohomish County

Concerned that new language in WAC 365-196-830(8)(b) will require a separate monitoring program that applies only to agricultural activities.

Commerce Response: The new language in WAC 365-196-830(8)(b) has been changed for consistency with the language in RCW 36.70A.710(6), from “review and evaluate” to “review and, if needed, revise”. This is not considered to be a substantive change. RCW 36.70A.710(6)(c) specifies that critical area regulations, as they specifically apply to agricultural activities, must be reviewed as part of the GMA periodic update process under RCW 36.70A.130.

III: Differences between proposed and adopted rule

This section summarizes differences between the proposed rules and the final adopted rules. You can also find more about the comments and detail on changes in the relevant section under *II: Responsiveness Summary*.

Chapter 365-196 WAC

Minor, non-substantive changes were made to WAC 365-196-610(1)(a) and (3)(b), WAC-365-196-830(8)(b), WAC 365-196-832(4) and (5)(d), for consistency with language used in the underlying statute, changing “if necessary” to “if needed” for consistency throughout the rules.