



## Growth Management Act - 2022 Washington Administrative Code Update

### Draft Scope

#### **Scope of the GMA**

Washington adopted the Growth Management Act (GMA) in 1990 to provide a new framework for land use planning and regulating development. The act responded to problems with uncoordinated and unplanned growth, and a lack of common goals in conservation and land use. Problems included increased traffic congestion, pollution, school overcrowding, urban sprawl, a loss of resource lands and rural character. The GMA contains goals to guide local government planning and specific requirements governing comprehensive plans and development regulations. The GMA calls on local governments to meet these requirements through a sequence of steps. Cities and counties undertake some steps individually, and some jointly. After adopting initial comprehensive plans and development regulations, local governments must complete periodic updates to ensure ongoing compliance with the statute.

#### **Statutory Authority for Rulemaking**

The GMA directs The Department of Commerce (Commerce) to establish a technical and financial assistance program for local governments to support GMA implementation. RCW 36.70A.050 directs Commerce to adopt guidelines for the classification of 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 GMA goals and requirements. These rules are codified in Chapter 365-196 WAC.

#### **The Role of GMA Rules**

The rules advise local governments on GMA compliance. The Growth Management Hearings Board must consider these rules when interpreting the GMA and determining compliance. Local governments must consider the minimum guidelines when designating critical areas and resource lands. Local governments may use the procedural criteria 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, the Growth Management Hearings Board, Courts, Tribes, or other public entities who participate in the local planning process.

## Background and Project History

Our agency originally adopted GMA rules in 1991 and 1992. Commerce designed these to help local governments through the initial sequence of steps mandated by the GMA. Commerce completed the first comprehensive update to the original rules in 2010. Commerce developed a broad scope for the 2010 update due to a range of statutory amendments following the GMA's initial adoption. A number of court cases also clarified and interpreted the act. During the 2010 update, Commerce updated and reformatted all the existing rules except two chapters that were adopted more recently – Chapter 365-197 WAC, Project Consistency (2001), and Chapter 365-195 WAC, Best Available Science (2000). Commerce completed smaller amendments to the WAC in 2015 and 2017 to address a new process for voluntary reversion for small and slow growing counties, and new guidelines for the Voluntary Stewardship Program (VSP).

Commerce is preparing for another broad update to the GMA rules. Commerce will complete this project by June 30, 2022 to provide cities and counties clear guidance before the next round of periodic updates. This represents the second comprehensive review and will likely result in a smaller scope than the 2010 update. Commerce is considering changes based on the following criteria:

- New Legislation
- New Case Law
- Clarification of Existing Guidance Consistent with Underlying GMA Requirements

Commerce does not plan on a major restructuring or reorganization of the rules. The Attorney General's office did not identify any court cases since the last WAC update that found our rule invalid or that required mandatory revisions. The administrative rules under consideration include:

- [Chapter 365-190 WAC](#), Minimum Guidelines to Classify Agricultural, Forest and Mineral Lands and Critical Areas
- [Chapter 365-195 WAC](#), Best Available Science
- [Chapter 365-196 WAC](#), Procedural Criteria for Adopting Comprehensive Plans and Development Regulations

## Housing Issues

The Legislature recently passed a number of bills regarding housing requirements for local governments. Some changes would require relatively simple updates to the administrative rules, such as new statutory definitions. Other legislation requires substantive updates. As a result, Commerce will initiate a separate rulemaking process to address housing issues and allow for more focused outreach on housing and equity.

In the 2021 legislative session, the Legislature passed [E2SHB 1220](#). This bill represents an important shift in Commerce's role to support local planning for housing and requirements to incorporate equity into local housing policies and regulations. Commerce must provide local governments with data on existing and projected housing needs, and will develop recommendations for working with the data. Local governments must identify policies and regulations that result in racially disparate impacts,

displacement, and exclusion in housing. This includes a specific focus on zoning and the potential for discriminatory effects, and a review of areas of disinvestment and lacking infrastructure availability. Local governments must establish new anti-displacement policies that consider equitable development, investments in affordable housing, inclusionary zoning and preservation of historical and cultural communities.

E2SHB 1220 represents an important step in addressing systemic racism and unjust governmental policies related to housing, economics, and infrastructure. Commerce believes that creating a separate rulemaking process to address this legislation will allow for more extensive outreach to affected communities and stakeholders, and more time to collect, synthesize and develop best practices and recommendations.

### **WAC Chapters and Section Proposed for Amendments**

#### [Chapter 365-190 – Minimum guidelines to classify agricultural, forest, and mineral lands and critical areas](#)

Commerce is considering changes to this entire chapter. The Minimum Guidelines provide extensive substantive guidance to local governments as to how to identify, classify, and designate critical areas and natural resource lands. They include expanded definitions, procedural recommendations, and references to pertinent statutes and rules adopted by other agencies. Potential changes address two general policy areas and recommendations for meeting the underlying GMA requirements:

1. The classification and designation of agricultural, forest and mineral lands
2. The requirements and guidelines for designating and protecting critical areas.

#### *Agricultural, forest, and mineral lands:*

Commerce intends to clarify the process for amending resource lands designations, which is commonly referred to as de-designation among local governments. De-designation is most common for timber and agricultural resource lands. Individual applications to de-designate resource lands results in a piecemeal reduction of the resource lands base. This adversely impacts industries relying on productive timber and agricultural lands.

The GMA goal for natural resource industries states:

“Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forestlands and productive agricultural lands, and discourage incompatible uses.”

Periodic de-designations undermine the original designation process. Cumulative impacts from de-designations can adversely affect the ability of natural resource-based industries to operate. De-designations also pose a threat through increased operational interference with other uses. The current rule discourages designation amendments on a parcel-by-parcel basis, but we intend to clarify the existing language and terminology.

Commerce may review and update guidance on mineral resource lands. Mineral resource lands are different than agricultural and timber lands. They are not regenerative. Proximity of mineral resource

lands to urban centers is important. Adequately designating mineral resource lands is critical to support development and construction.

*Critical areas:*

All appropriate critical areas in all counties and cities must be designated. The GMA permits no exemptions, exclusions, or limitations on applicability that would result in some critical areas not being designated.

Commerce will consider adding new definitions based on agency recommendations. The Departments of Health and Fish and Wildlife recommended changes to sections on critical aquifer recharge areas and fish and wildlife habitat conservation areas. Commerce may amend other sections to clarify the need to protect the functions and values of critical areas through a no-net loss standard.

[Chapter 365-195 – Best available science](#)

Commerce plans to review this entire chapter. The best available science rule provides guidance to local governments on implementing requirements to include best available science in developing and adopting critical areas regulations. Multiple agencies encouraged us to update the guidance on monitoring and adaptive management. The approach to monitoring and adaptive management in this chapter is obsolete. New recommendations will reflect Commerce's 2018 guidance and provide a rationale for establishing and maintaining feedback loop systems. Monitoring and adaptive management will help ensure ongoing implementation is fair, transparent, efficient and effective. Commerce may also clarify when agency guidance constitutes best available science in response to concerns expressed by local governments.

[Chapter 365-196 WAC – Growth Management Act – Procedural criteria for adopting comprehensive plans and development regulations](#)

The Procedural Criteria provide extensive substantive guidance to local governments on adopting comprehensive plans and development regulations. They describe the process for adopting plans and regulations and explain how to review and incorporate development regulations adopted before the comprehensive plan. They elucidate the elements of a comprehensive plan, and clarify the relationship between the GMA and other state and federal laws such as the federal Clean Water Act and the State Environmental Policy Act.

Commerce is considering changes to the following sections:

[WAC 365-196-210 – Definitions of terms as used in this chapter](#)

Commerce plans on adding and amending definitions based on legislative changes and recommendations from other agencies and subject matter experts.

#### [WAC 365-196-315 – Buildable lands review and evaluation](#)

Commerce intends to make minor updates based on E2SSB 5254 which the Governor signed in 2017. This includes new participants in the program, and changes to reporting timelines. Commerce will consult with the Buildable Lands Advisory Committee on any recommended changes.

#### [WAC 365-196-320 – Providing urban services](#)

Commerce plans to update guidance for Group A water systems based on recommendations from the Department of Health. Potable water demand for development within the service area of a public water system should not exceed the system's available water rights at the time of the plan. (JZ Knight v. Yelm, 173 Wn.2d 325 (2011))

#### [WAC 365-196-405 – Land use element](#)

Commerce may add a recommendation to identify any known critical area restoration sites or mitigation banks.

#### [WAC 365-196-425 – Rural element](#)

Commerce is considering additional guidance and recommendations regarding the Wildland Urban Interface (WUI) when developing the rural element. Commerce plans to elaborate on compatibility between rural densities and fish and wildlife habitat based on agency recommendations.

#### [WAC 365-196-430 – Transportation element](#)

Commerce is considering changes to the Transportation element based on recommendations from the Washington State Department of Transportation (WSDOT). Changes may include new recommendations on planning for active transportation, and elaborating on recommendations for pedestrian and bicycle planning throughout the section. WSDOT is reviewing the section to ensure consistency with Chapters 47.06 and 47.80, 90.58, 77.55 and 36.70A RCW. Recommendations may reflect agency policy changes expressed in WSDOT Secretary's Executive Orders E 1090.01 (Advancing Practical Solutions), E 1087.01 (Title VI Policy) and E 1113.00 (Sustainability).

#### [WAC 365-196-475 - Land use compatibility with military installations](#)

Commerce intends to add additional guidance to implement RCW 36.01.320. New guidance will ensure local governments notify the US Department of Defense when siting alternative energy facilities such as wind turbines or solar farms. Commerce will consult with US Department of Defense representatives on recommended changes.

#### [WAC 365-196-480 – Natural resource lands](#)

Commerce will make necessary changes to this section to reflect changes in Chapter 365-190 WAC. Commerce may add recommendations to avoid operational interference with designated resource lands. Commerce is also considering recommendations for siting renewable energy projects on resource lands.

#### [WAC 365-196-485 – Critical areas](#)

Commerce may include new recommendations for developing and maintaining ongoing monitoring and adaptive management program to ensure critical areas regulations are achieving desired goals. It may clarify that adaptive management includes changes to the way codes are implemented, use of administrative interpretations, education approaches, improved pre-application processes, and other activities, including but not limited to changes to actual code language.

#### [WAC 365-196-510 – Inter-jurisdictional consistency](#)

Commerce may add recommendations to cities and counties on using the same twenty-year planning horizon. The planning horizon begins on the statutory deadline for comprehensive plan adoption in RCW 36.70A.130.

#### [WAC 365-196-600 – Public participation](#)

Commerce may add recommendations for early collaboration with agencies with expertise on particular subjects.

#### [WAC 365-196-610 – Periodic review and update of comprehensive plans and development regulations](#)

Commerce plans to update the periodic update schedule to reflect ESHB 2342, passed in 2020. Commerce may make additional adjustments regarding monitoring and adaptive management recommendations, and emphasize that critical areas reviews must incorporate best available science.

#### [WAC 365-196-630 – Submitting Notice to the State](#)

Commerce plans to update the procedures to reflect current practice and include use of the Planview data system.

#### [WAC 365-196-660 – Supplementing, amending, and monitoring](#)

Commerce may adjust this section to reflect recommendations on monitoring and adaptive management of critical areas.

#### [WAC 365-196-730 – Federal authorities](#)

Commerce may amend this section based on recommendations from other resource agencies.

#### [WAC 365-196-735 – State and regional authorities](#)

Commerce is considering changes regarding fish habitat enhancement projects to reflect RCW 36.70A.460(2) and RCW 77.55.181. Commerce may also add to the examples of state and regional plans based on recommendations from resource agencies.

#### [WAC 365-196-815 – Conservation of natural resource lands](#)

Commerce will make necessary changes to this section to reflect any changes in Chapter 365-190 WAC. Commerce may add recommendations to avoid operational interference with designated resource lands. Commerce is also considering recommendations for siting renewable energy projects on resource lands.

#### [WAC 365-196-825 - Potable water](#)

Commerce intends to adjust this section reflecting 2018 ESSB 6091. Changes reflect recommendations from the Department of Ecology's Water Resources Program. Commerce is also considering language recommended by the Department of Health regarding a water system's ability to serve new growth.

#### [WAC 365-196-830 – Protection of Critical Areas](#) (DOH, WDFW,)

Commerce may amend this section to reflect changes in Chapter 365-190 and 365-195 WAC. Commerce may elaborate on compensatory mitigation. Commerce may add language regarding no-net loss requirements to ensure for the protection of functions and values of critical area ecosystems.

#### *WAC 365-196-XXX – School siting in rural areas*

The Legislature passed two bills during the 2017 legislative session. These bills affect how certain new schools may be sited outside urban growth areas and how public facilities and utilities may serve those schools. ESHB 1017 and HB 2243 were codified as RCW 36.70A.211 and .212, specifically for Pierce County, and RCW 36.70A.213 applies to all counties planning under the GMA.

RCW 36.70A.213 allows counties to authorize the extension of public facilities and utilities, specifically sewer service, beyond urban growth area boundaries to serve a school in a rural area serving rural and urban area students. These extensions are only authorized if the requirements in the statute are met and there is agreement among the school district, the county, affected cities, and if required, utility

providers. Such school proposals must comply with local comprehensive planning and project approval processes. Commerce intends to develop a new section to provide guidance on the implementation of RCW 36.70A.213.

*WAC 365-196-XXX – Impact on grants and loans*

Commerce will develop a new section to describe how GMA compliance and completion of the periodic update impact access to grants and loans.

**Additional Changes and Cleanup**

Commerce anticipates additional changes to the Chapters 365-190, 365-195, and 365-196 WAC beyond those identified in the scope. These are largely minor, non-substantive cleanup efforts to ensure the WAC is current and language is consistent throughout the guidelines.

**Comments, Final Scope, and Draft Rules:**

Commerce appreciates your comments on the proposed scope of changes to the GMA administrative rules. Please email comments to [gmarulemaking@commerce.wa.gov](mailto:gmarulemaking@commerce.wa.gov) by August 13, 2021.

Commerce will release proposed changes to specific sections or chapters for public comment prior to a formal hearing on the rules. We intend to file a CR-102 in April 2022.