



Chapter 365-190 WAC – Preliminary Draft Comment Summary and Response to Comments

MINIMUM GUIDELINES TO CLASSIFY AGRICULTURE, FOREST, MINERAL LANDS AND CRITICAL AREAS

WAC 365-190-040		
Stakeholder	Comment	Response
American Farmland Trust	<p><i>WAC 365-190-040(10)(b) should clarify that a regional process includes an assessment of the impacts on farmland in the region.</i></p> <p><i>The 63-acre Riverstone Ranch in Leavenworth is an example of how a narrow interpretation can undermine the intent of the GMA. Chelan County attempted to rezone pear orchards into low-density residential, a decision overturned by the Growth Management Hearings Board (GMHB) and that now faces appeal. While the decision was overturned because the parcel in question is both commercially significant and not characterized by urban growth, the GMHB has asked for clarification of the terms process and analysis.</i></p> <p><i>The WAC states, “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.” The regional process has been interpreted to not include a regional analysis of impact. A clear understanding of this rule is essential to protecting farmland, especially considering the impacts on neighboring farms as individual parcels are removed from agricultural uses.</i></p>	<p>Subsection 10 is not specific to any one type of resource lands, therefore it would be inappropriate to specify only agricultural lands in this subsection. This issue is addressed in amendments made to section 365-190-050 WAC. The department will consider adding language regarding an “analysis” to this subsection.</p>

<p>American Planning Association – Washington Chapter</p>	<p><i>WAC 365-190-040(b): Change “guidance” to “direction”.</i></p> <p><i>Reason: Case law; to comply with appellate rulings in Swinomish and WEAN.</i></p>	<p>Commerce has decided to retain the existing language. We disagree with APA’s interpretation of the Swinomish and WEAN decisions. See the response to comments in Chapter 365-195 for additional details.</p>
<p>Pierce County Planning and Public Works</p>	<p><i>Pierce County recognizes the potential to undermine the purpose of a resource land designation through a piecemeal de-designation approach; however, the WAC should acknowledge instances where it may be appropriate to consider such de-designations outside of required periodic reviews. Examples include when 1) an error has been made by a County in the application of the adopted criteria for an individual parcel, and 2) when a mineral resource mine has been exhausted and is in process of remediation. This comment is also pertinent to proposed changes to WAC 365-190-050 Agricultural resource lands, WAC 365-190-060 Forest Resource lands, and WAC 365-190-070 Mineral Resource lands</i></p>	<p>Commerce has amended WAC 365-190-040 and excluded specific references to the periodic update.</p> <p>WAC 365-190-050, WAC 365-190-060, and WAC 365-190-070 have all been amended to provide clarity that a county-wide analysis must be performed in the consideration of de-designation of resource lands.</p> <p>WAC 365-190-070 has been amended to allow for de-designation when the mining activity has ceased and the site has been reclaimed.</p>
<p>Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network</p>	<p><i>We support clarifying the parts of WAC 365-190-040, WAC 365-190-050, WAC 365-190-060, and WAC 365-190-070 that discourage dedesignation of agricultural, forest, and mineral resource lands on a parcel-by-parcel basis.</i></p> <p><i>Agricultural, forest, and mineral resource lands are very sensitive to nearby uses and nearby conversions of natural resource lands. The “impermanence syndrome” is a “belief among farmers that agriculture in their area has limited or no future and that urbanization will absorb the farm in the not-too distant future.” “[F]or every acre of prime farmland that is urbanized, up to another acre becomes idled due to the</i></p>	<p>WAC 365-190-050, WAC 365-190-060, and WAC 365-190-070 have been amended to provide clarity that a county-wide analysis must be performed in the consideration of de-designation of resource lands.</p> <p>There are always a portion of agricultural resource lands that lie fallow and the amount regularly fluctuates. This is factored in to WAC 365-190-050(5) when analyzing the economic viability of the agricultural industry. The purpose of the designation is to</p>

	<p><i>impermanence syndrome (Plaut 1976).” So when dedesignating agricultural land, it is necessary to consider the impacts on other nearby farmland. WAC 365-190-040(10)(b)’s requirement that “[i]n 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” is well grounded in the science.</i></p> <p><i>While some Growth Management Hearings Board decisions have correctly interpreted this and related provisions, others have seemed confused focusing on whether the “process” considered amendments from throughout the county, not whether the dedesignation process considered agricultural lands designations on a countywide or regional basis.⁴ It would be helpful to all to clarify that the dedesignation must consider the farmland on a countywide or regional basis and consider the impacts on any remaining farmland. Similar rules should be adopted for similar reasons for forest and mineral resource lands and we support these proposed amendments.</i></p>	<p>prevent a conversion to another use which would preclude agricultural activity.</p> <p>Land use patterns and intensity are two of the criteria under WAC 365-190-050(3)(c) that should be considered when analyzing resource lands designation and should be included in proposed changes.</p>
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WAC 365-190-050 - 070		
Stakeholder	Comment	Response
American Farmland Trust	<p><i>Other comments we submitted did not receive a response, including clarification for the evaluation of livestock and rangelands, protection of small farms by addressing the criterion of “predominant parcel size,” and strengthening protections from non-agricultural uses on farmland. These are issues we will continue to track. The proliferation of non-agricultural uses of</i></p>	<p>The process of balancing the designation criteria is at the discretion of the local government.</p> <p>Neither the law nor rule has specified the types of agriculture (other than what falls under the broad definition)</p>

	<p><i>farmland is especially concerning, given that competing interests are driving up the real estate market and pricing farmers off of the land.</i></p>	<p>to be considered and it would be inconsistent to introduce some types while being silent on others. This is intentional to give deference to locals with expertise.</p> <p>Nonagricultural uses on designated resource lands are limited, but not prohibited, by RCW 36.70A.177(3)(b)(ii). However, counties and cities are required to adopt development regulations assuring that the development on resource lands and on adjacent lands will not interfere with operation on the resource lands per RCW 36.70A.060. Both of these are covered by WAC 365-196-815.</p> <p>Addressing the conversion of agricultural land that has not been designated as resource lands of long-term commercial significance is outside the scope of this update.</p>
<p>American Farmland Trust</p>	<p><i>WAC 365-190-050(3)(c)(i) should include farmland of statewide importance.</i></p> <p><i>The GMA protects the natural resources of the state. The minimum criteria should require the consideration of resources that are specifically important to Washington. The WAC only identifies prime and unique soils identified by the National Resource Conservation Services as a priority for protection, excluding farmland of statewide importance. Washington has nearly 2 million acres of prime farmland along with 8.9 thousand acres of unique farmland. That leaves almost 9 million acres of farmland of statewide importance out of</i></p>	<p>Commerce added farmland of statewide importance.</p>

	<p><i>specific consideration for protection based on its commercial significance.</i></p> <p><i>While most counties accept this minimum guidance and limit their analysis to prime and unique farmland, others already include farmland of statewide importance. Spokane protects farmland of statewide importance from de-designation in their zoning code: “No parcel of land shall be rezoned if 50% or greater of its soils are USDA-NRCS Class I, Class II, Class III or any class of soil which is designated as a farmland of statewide importance.” Pend Oreille, in their current process to update their Comprehensive Plan, also included an assessment of farmland of statewide importance: “Prime, statewide important and unique important farmland are reviewed with previous elements listed to determine if any areas should be designated as agricultural resource land.” This consideration of farmland of statewide importance should be the standard - not the exception - for the designation of natural resource lands across the state.</i></p>	
<p>American Farmland Trust</p>	<p><i>WAC 365-190-050(3)(b) should clarify how livestock production should be evaluated. As livestock production is displaced from grazing in open spaces, the market for beef and other products will drive demand towards confined animal feeding operations, which are difficult to manage for their impacts on water, public health, animal wellbeing, and the climate. While WAC 365-190-050(3)(b) states that the needs of livestock production are less dependent on soil quality, rangeland is not afforded any specific consideration for commercial significance. The criteria for determination of long-term commercial significance should specifically include the productivity of rangeland for livestock.</i></p>	<p>The process of balancing the designation criteria is at the discretion of the local government.</p> <p>Neither the law nor rule has specified the types of agriculture (other than what falls under the broad definition) to be considered and it would be inconsistent in to introduce some types while being silent on others. This is intentional to give deference to locals with expertise.</p>

<p>American Farmland Trust</p>	<p><i>WAC 365-190-050(3)(c)(vi) should clarify how smaller parcel sizes relate to long-term commercial significance, including the role of unique soils, high-value crops, and contiguous lots. The number of small farms is trending upwardly in Washington. In the 2017 Census of Agriculture, the number of farms of less than 10 acres grew to 11,523, rising 54% since 2002. Because these smaller parcels tend to be lower in cost and closer to urban services, access to this land provides unique opportunities for beginning and socially disadvantaged farmers. Preserving smaller parcels, especially along the edges of urban boundaries, will help more small and mid-sized farms thrive.</i></p> <p><i>These farms need to be protected from conflicting uses that can threaten their viability. However, they are easy to exclude from agricultural designation based on the interpretation of “predominant parcel size,” which is sometimes seen as a need to establish minimum lot sizes. While large lot zoning is inappropriate in areas well-suited for large-scale agriculture, this should not be the standard applied across all farmland in a county. The WAC should encourage flexibility for counties to designate small farms as commercially significant, which would support local economies and create more opportunities for the much-needed next generation of farmers.</i></p>	<p>The process of balancing the designation criteria is at the discretion of the local government. Counties are not precluded from including smaller parcel sizes in the current rule.</p>
<p>Pierce County Planning and Public Works</p>	<p><i>Pierce County recognizes the potential to undermine the purpose of a resource land designation through a piecemeal de-designation approach; however, the WAC should acknowledge instances where it may be appropriate to consider such de-designations outside of required periodic reviews. Examples include when 1) an error has been made by a County in the application of the adopted criteria for an individual parcel, and 2) when a mineral</i></p>	<p>Commerce revised the language to provide more flexibility in the timing of the resource lands review so that the items identified can be addressed through a countywide analysis.</p>

	<p><i>resource mine has been exhausted and is in process of remediation. This comment is also pertinent to proposed changes to WAC 365-190-050 Agricultural resource lands, WAC 365-190-060 Forest Resource lands, and WAC 365-190-070 Mineral Resource lands</i></p>	
<p>Black Hills Audubon Society</p>	<p><i>In general, BHAS commends the department on the updated codes in the preliminary drafts to enforce the Growth Management Act (GMA). Please see below a list of the code changes that we recognize are especially important for environmental protection.</i></p> <p><i>BHAS highlights the following code changes as being particularly helpful to protect our environment for current and future generations:</i></p> <p><i>WAC 365-190-040, -050, -060 and -070 clarify that de-designation of natural resources lands – agricultural, forest, and mineral—cannot be on a parcel-by-parcel basis, must be part of a county-wide analysis, and must be included in periodic comprehensive plan review, and that counties and cities should “maintain and enhance natural resource-based industries and discourage incompatible uses”.</i></p>	<p>Discouraging incompatible uses falls under the development regulation guidance in WAC 365-196-815. These sections are solely related to designation and changes to the designation.</p>
<p>Black Hills Audubon Society</p>	<p><i>However, we are disappointed to see that, despite the recognition in the call for scoping comments that uses of mineral resource lands are “not regenerative”, there are no proposed code changes that recognize the special problems of designating mineral resource lands.</i></p>	<p>Comment noted.</p>
<p>Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network</p>	<p><i>We support that WAC 365-190-050(3)(c)(i) calls for the consideration of prime farmland, unique farmland, and farmland of statewide importance when determining long-term commercial significance. It should also call for considering good grazing land in</i></p>	<p>Commerce added farmland of statewide importance.</p>

	<p><i>designating agricultural lands of long-term commercial significance.</i></p> <p><i>We support the proposed amendment to WAC 365-190-050(3)(c)(i) that now calls for considering prime farmland, unique farmland, and farmland of statewide importance when determining long-term commercial significance. According to the 2017 Census of Agriculture, Washington State has 14,679,857 acres of land in farms. Unfortunately this is down from 14,748,107 acres in 2012.</i></p> <p><i>However, all areas of prime farmland in Washington State total 1,801,317 acres according to the U.S. Department of Agriculture. There are an additional 888,182 acres of farmland of unique importance in the state. So only requiring the conservation of prime and unique farmland soils will allow the conversion of 11,990,358 acres of land in farms. The conversion of almost 12,000,000 acres of existing farmland will not “[m]aintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries” as RCW 36.70A.020(8) requires.</i></p> <p><i>That is why WAC 365-190-050(3)(c)(i) should call for the consideration of prime farmland, unique farmland, and farmland of statewide importance when determining long-term commercial I significance. Designating farmland of statewide importance as soils with long-term commercial significance has the potential to conserve much of 9,229,028 acres in that category.</i></p> <p><i>Farmland of statewide importance is land, in addition to prime and unique farmlands, that is of</i></p>	
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	<p><i>statewide importance for the production of food, feed, fiber, forage, and oil seed crops. Criteria for defining and de-lineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law.</i></p> <p><i>Farmland of statewide importance is highly productive and valuable farmland that for this reason has long-term commercial significance. Farmland of statewide importance should be conserved to comply with the RCW 36.70A.020(8) and the “legislative mandate for the conservation of agricultural land” in RCW 36.70A.020(8), .060(1), and .170.8</i></p> <p><i>Farmland of statewide importance also has a significant overlap with the American Farmland Trust’s “Nationally Significant Agricultural Land.”⁹ The American Farmland Trust developed this rating system in consultation with experts. The American Farmland Trust states that “[s]pecial effort should be made to protect Nationally Significant agricultural land, which is critical for long-term food security and environmental quality. Policy action is needed both to stop development on Nationally Significant land and to protect it in perpetuity.” Again, this underlines the need for WAC 365-190-050(3)(c)(i) to identify prime farmland, unique farmland,</i></p>	
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	<p><i>and farmland of statewide importance as soils with long-term commercial significance.</i></p> <p><i>The regulations should also be updated to recognize that high quality range land is necessary to maintain the agricultural industry. WAC 365-190-050(3)(c)(i) or another regulation should be amended to reflect that high quality rangeland that is not prime farmland, unique farmland, or farmland of statewide importance soils still has long-term commercial significance.</i></p>	
<p>Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network</p>	<p><i>WAC 365-190-050(3)(c)(i) should clarify the predominate parcel size criterion when determining long-term commercial significance.</i></p> <p><i>WAC 365-190-050(3)(c)(vi) calls for considering the “[p]redominant parcel size” when determining if land has long-term commercial significance. We recommend that this criterion be clarified in two ways. First, a few jurisdictions have ignored “predominant” and set a hard minimum size for parcels designated as agricultural lands of long-term commercial significance. This has resulted in excluding from designation parts of multi-lot fields where some of the lots are lower than the minimum. It has also excluded farm dwellings on small lots from being designated as agricultural lands of long-term commercial significance. These holes the designation of agricultural lands can lead to incompatible uses locating with agricultural areas and interfering with agricultural uses.</i></p> <p><i>Second, the criterion should clarify that smaller lots can have long-term commercial significance. These smaller lots can be used to produce higher value agricultural products. They can also serve as a starter farm, helping beginning and socially</i></p>	<p>The rule as currently written does not preclude a county from including small lots when reviewing the criteria.</p>

	<p><i>disadvantaged farmers to get started in agriculture because smaller parcels are easier to buy or lease. Allowing the designation and conservation of these smaller lots improves access to land and can increase equity for beginning and socially disadvantaged farmers.</i></p>	
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WAC 365-190-080		
Stakeholder	Comment	Response
Ann Aagaard	<p><i>Recommends additional language to emphasize that cities and counties protect all of the functions and values of critical areas.</i></p>	<p>No change. The current WAC does not infer that counties and cities may choose which functions and values to protect.</p>
Ann Aagaard	<p><i>Commerce should incorporate the recommendations from the SR530 Landslide commission.</i></p>	<p>This WAC chapter is not specific to individual critical areas. It would be inappropriate to add specific information for one type of critical area in the section.</p> <p>The recommendation from the Commission says, “The Commission recommends to the Washington State Department of Commerce that the WACs related to Critical Area Regulations be updated to require counties and cities to identify, classify, and regulate land uses in geologic hazard areas based on up-to-date and available geologic information and risk mapping”. Mapped geohazard areas would be considered as best available science and should be included in local critical areas regulations.</p>

<p>Black Hills Audubon Society</p>	<p><i>In general, BHAS commends the department on the updated codes in the preliminary drafts to enforce the Growth Management Act (GMA). Please see below a list of the code changes that we recognize are especially important for environmental protection.</i></p> <p><i>BHAS highlights the following code changes as being particularly helpful to protect our environment for current and future generations:</i></p> <p><i>WAC 365-190-080 – Adds that to protect Critical Areas, the standard is “no net loss of ecological function” when doing planning. (This requirement is repeated in WAC 365-195 and -196)</i></p>	<p>Thank you for your comment.</p>
<p>Black Hills Audubon Society</p>	<p><i>Also, while the standard of “no net loss” is mandated by law, the updated codes for WAC 365 -190, -195 and -196 do not include any explicit recognition that over the long term the “no net loss” standard will actually result in loss of ecological function due to natural disasters, climate change, and unplanned consequences of development on or near the area in question. A recommendation that jurisdictions seek out habitat restoration project funding from state and federal sources to repair these inevitable losses would be helpful but is not included in these code updates.</i></p>	<p>This request is outside of scope of this project.</p>
<p>Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network</p>	<p><i>The Growth Management Act “requires that the regulations for critical areas must protect the ‘functions and values’ of those designated areas. RCW 36.70A.172. This means all functions and values.”¹² This requires protecting all functions and values which include ecological values, but goes beyond them to include such functions as flood storage or slope stability.</i></p>	<p>No change. The current WAC does not infer that counties and cities may choose which functions and values to protect.</p>

	<p><i>Consistent with this holding we recommend that WAC 365-190-080(1) we revised to provide as follows with our addition double underlined and our deletion double struck through:</i></p> <p><i>(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 <u>all of the functions and values of critical areas including to ensure no net loss of ecological functions and values.</u> The department provides additional recommendations for adopting critical areas regulations in WAC 365-196-485.</i></p>	
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WAC 365-190-090		
Stakeholder	Comment	Response
<p>American Planning Association – Washington Chapter</p>	<p><i>WAC 365-190-090(4): Current language reads, “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” and “Any potential locations of wetlands based on the National Wetlands Inventory or landscape-scale watershed characterization should be confirmed by field visits”. Suggest amending this section to be consistent with the guidance in WAC 365-190-080(4) (“[...] 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.”).</i></p>	<p>Commerce revised this section based on these comments after consulting with the Department of Ecology.</p>

	<p><i>Reason: Case law. NWI maps may severely understate the presence of wetlands. If nosite-specific study is triggered, this could lead to development within wetlands and be inconsistent with the precautionary approach required by WEAN.</i></p>	
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WAC 365-190-110		
Stakeholder	Comment	Response
<p>Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network</p>	<p><i>We recommend updating the minimum criteria for designating and protecting critical areas including flood plains in WAC 365-190-110.</i></p> <p><i>RCW 36.70A.030(6), RCW 36.70A.060(2), and RCW 36.70A.170 require counties and cities to designate and protect “frequently flooded areas[.]” WAC 365-190-110 attempts to implement this requirement but currently only provides that counties and cities “should consider the following when designating and classifying frequently flooded areas ... sea level rise, and extreme weather events, including those potentially resulting from global climate change[.]” Areas subject to flooding by sea level rise and more intense coastal storms are frequently flooded areas no less than properties in Federal Emergency Management Agency 100-year flood plain.</i></p> <p><i>The State of Washington Department of Ecology writes that “[s]ea level rise and storm surge[s] will increase the frequency and severity of flooding, erosion, and seawater intrusion—thus increasing risks to vulnerable communities, infrastructure, and coastal ecosystems.”¹⁴ “More frequent extreme storms are likely to cause river and coastal flooding, leading to increased injuries and loss of life.” Further, An important consequence of higher sea level will be increased frequency</i></p>	<p>Commerce agrees that coastal communities should adopt policies and development regulations to address sea level rise. Current WAC language addresses this issue. Further, there are no court cases to support stronger language and the Department of Ecology did not recommend any changes to this section.</p>

	<p><i>of high-tide flooding and the potential for storm damage. A rise in sea level of one foot might lead to as much as a tenfold increase in the frequency of any particular flood event. This means that events that currently occur only once every decade may become annual events, increasing the severity and frequency of flood and storm-related damages to coastal development (Shipman, 2009). These events could pose an increasing threat to coastal development and infrastructure.</i></p> <p><i>Washington’s coastal communities may see one foot or more of sea level rise by 2040. Annual events cause more frequent flooding than areas within the 100-year flood plain. Failing to plan and regulate coastal development now sets the stage for more far-reaching disasters, greater economic impacts, and long-term environmental problems caused by abandoned structures. WAC 365-190-110 needs to be updated to require the designation and protection of areas subject to sea level rise and more extreme storms. Local governments should plan for the life of the structure. The California Coastal Commission recommends analyzing intermediate and long-term projections when planning for sea level rise because “development constructed today is likely to remain in place over the next 75-100 years, or longer.”</i></p> <p><i>Commerce should also identify the current version of the Projected Sea Level Rise for Washington State – A 2018 Assessment p. 8 of 24 (A collaboration of Washington Sea Grant, University of Washington Climate Impacts Group, Oregon State University, University of Washington, and US Geological Survey. Prepared for the Washington Coastal Resilience Project: updated 07/2019) as best available science.</i></p>	
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	<i>The Commerce’s list of best available science should include “as updated” language to capture additional scientific information as it becomes available.</i>	
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WAC 365-190-120		
Stakeholder	Comment	Response
Ann Aagaard	Commerce should incorporate the recommendations from the SR530 Landslide commission.	The Department of Natural Resources did not recommend any additional revisions to this section. The SR 530 Landslide Commission study states that the WAC should be updated, but does not provide specific language. It does reference using up-to-date mapping tools. We identify these tools in our Critical Areas Handbook and the report will be referenced as well.
Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network	<i>The SR 530 Landslide Commission “recommends to the Washington State Department of Commerce that the WACs related to Critical Area Regulations be updated to require counties and cities to identify, classify, and regulate land uses in geologic hazard areas based on up-to-date and available geologic information and risk mapping. (Note: amend WAC 365[-]190[-]080 and [-]120).” The Washington State Department of Natural Resources is updating geologic hazard maps for Washington State. Now is the time to carry out the SR 530 Landslide Commission recommendation.</i>	The Department of Natural Resources did not recommend any additional revisions to this section. The SR 530 Landslide Commission study states that the WAC should be updated, but does not provide specific language. It does reference using up-to-date mapping tools. We identify these tools in our Critical Areas Handbook and the report will be referenced as well.

WAC 365-190-130		
Stakeholder	Comment	Response

<p>Washington State Department of Fish and Wildlife</p>	<p><i>Recommend amending the definition of Fish and Wildlife Habitat Conservation Areas to include the following: (2) "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company. Fish and wildlife habitat conservation areas include marine waterbodies, freshwaterwaterbodies, watercourses, riparian areas, upland areas, and the airspace above such waters and land.</i></p>	<p>WAC 365-190-130 includes a comprehensive list of FWHCA's that must be considered for classification and designation, which is more specific than the proposed definition. The proposal does not clarify what must be considered for classification and designation and is problematic as all land and air could be considered a Fish and Wildlife Habitat Conservation Area that must be considered for protection, regardless of whether actual habitat is present.</p> <p>Commerce included the language concerning artificial features or constructs consistent with RCW 36.70A.030 (Definitions) in this WAC section. We also agree to include the definition of "watercourse" as that is a term used in this chapter.</p>
<p>Whidbey Environmental Action Network</p>	<p><i>The WDFW PHS program and WNHP rare plant lists address elements of biodiversity that are of (at least) statewide importance. Listing these as discrete entities that must be considered for designation makes it clear that they are not simply of "local importance." The effect is to both elevate their significance and require that state agency guidance must be sought in any permitting process. This addition is long overdue.</i></p>	<p>Commerce initially included these as recommended by WDFW. The local government Technical Advisory Group noted that Fish and Wildlife Habitat Conservation Areas (FWHCA's) identified in subsection 365-190-130(2) are <u>areas</u> while PHS and Natural Heritage Program Rare Plants are <u>sources of information</u> that local governments must consult when classifying FWHCA's.</p> <p>WAC 365-190-130 (4)(a) and (b) lists sources and methods to be used to classify and designate FWHCA's. Both sections</p>

		<p>reference WDFW’s PHS information and DNR’s WNHP rare plant lists. Commerce changed “should” to “shall consult current information on priority habitats and species...” for consistency with Court decisions regarding these sources as Best Available Science.</p>
<p>Black Hills Audubon Society</p>	<p><i>In general, BHAS commends the department on the updated codes in the preliminary drafts to enforce the Growth Management Act (GMA). Please see below a list of the code changes that we recognize are especially important for environmental protection.</i></p> <p><i>BHAS highlights the following code changes as being particularly helpful to protect our environment for current and future generations:</i></p> <p><i>WAC 365-190-130 Includes in fish and wildlife conservation areas:(i) Areas designated by Washington Department of Fish and Wildlife Priority Habitats and Species; and (j) Washington Department of Natural Resources Natural Heritage Program Rare Plants.</i></p>	<p>Comment Noted – See comments above and below.</p>
<p>Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network</p>	<p><i>We support the amendment to WAC 365-190-130 to clarify that fish and wildlife habitats include Priority Habitats and Species and Natural Heritage Program Rare Plants.</i></p> <p><i>Fish and wildlife habitat conservation areas include areas where State of Washington Department of Wildlife Priority Habitats and Species and Washington State Department of Natural Resources Rare Plants occur. So, we strongly support adding Priority Habitats and Species and Natural Heritage Program</i></p>	<p>Commerce initially included these as recommended by WDFW. The local government Technical Advisory Group noted that Fish and Wildlife Habitat Conservation Areas (FWHCA’s) identified in subsection WAC 365-190-130(2) are <u>areas</u> while PHS and Natural Heritage Program Rare Plants are <u>sources of information</u> that local governments must consult when classifying FWHCA’s.</p>



	<p><i>Rare Plants to the list of fish and wildlife habitat conservation areas in WAC 365-190-130. This is required by and consistent with current law.</i></p>	<p>WAC 365-190-130 (4)(a) and (b) lists sources and methods to be used to classify and designate FWHCA's. Both sections reference WDFW's PHS information and DNR's WNHP rare plant lists. Commerce changed "should" to "shall consult current information on priority habitats and species..." for consistency with Court decisions regarding these sources as Best Available Science.</p>
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