



Chapter 365-196 WAC – Preliminary Draft Comment Summary and Response to Comments

GROWTH MANAGEMENT ACT (GMA) —PROCEDURAL CRITERIA FOR ADOPTING COMPREHENSIVE PLANS AND DEVELOPMENT REGULATIONS

WAC 365-196-060		
Stakeholder	Comment	Response
Ann Aagaard	<i>Page 8 Futurewise 1.19.2022. Chapter 365-196 WAC page 3 of 38.(9) <u>Protect critical areas.</u> means to ensure the long-term protection of critical areas and <u>their functions and values, including ecosystem functions and values and...</u></i>	Commerce removed the definition “Conservation of critical areas...” from the preliminary draft. WAC 365-196-830 provides guidance, including a definition of protection for the purposes of this chapter, on what it means to protect the functions and values of critical areas.
Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network	<i>We support the clarification to WAC 365-196-060 that balancing goals cannot be used to justify a violation of the GMA. Current law provides that goal balancing cannot undermine GMA goals and cannot be used to justify a violation of the GMA though sometime folks do try to do that. Therefore, this is a good clarification.</i>	Thank you for your comment.

WAC 365-196-210		
Stakeholder	Comment	Response
Washington State Department of Fish and Wildlife	<i>Replace the proposed definition of “Ecosystem Functions and Values” with two distinct definitions, one for “Ecosystem Functions” and one for “Ecosystem Values.”</i>	Commerce amended this definition based on this comment, feedback during the public listening sessions, and

	<p><i>We recommend replacing the proposed definition of “ecosystem functions and values” in WAC 365-196-210(16) with two definitions as follows:</i></p> <p><i>(16) “Ecosystem functions” are the products, physical and biological conditions, and environmental qualities of an ecosystem that result from interactions among ecosystem processes and ecosystem structures. Ecosystem functions include, but are not limited to, carbon sequestration, attenuated peak streamflows, recharged aquifers, reduced pollutant concentrations in surface and ground waters, cool summer in-stream water temperatures, and fish and wildlife habitats such as shrubsteppe habitat, elk migration corridors, and raptor foraging habitats.</i></p> <p><i>(17) “Ecosystem values” are the cultural, social, economic, and ecological benefits attributed to ecosystem functions by society.</i></p>	<p>consultation with other state agencies.</p>
<p>American Planning Association – Washington Chapter</p>	<p><i>Add a new term and associated definition for wildfire prone areas. Commerce, in conjunction with other state agencies, should work on identifying and mapping these areas in each jurisdiction and develop guidance for significantly reducing risks in these areas.</i></p>	<p>Commerce does not intend to define this term as part of this update. WA Dept. of Natural Resources provides mapping and guidance for wildfire prone areas, and our agency intends to expand on guidance for this issue as we focus more directly on local planning and climate change.</p>
<p>Pierce County Planning and Public Works</p>	<p><i>In a cursory review of the WAC 365-195 it is not evident that the phrase “Conservation of resource lands” is used. Additionally, this definition may not be accurate. The “conservation of resource lands” should be focused on the preservation of the unique resources that are valuable. Furthermore, there may be an opportunity, not availability, of the land to be use for commercial production.</i></p>	<p>Conservation of natural resource lands is the title and subject of 365-196-815. Commerce removed the definition from 365-196-210 because WAC 365-196-815 provides guidance, including a detailed definition, on the conservation of resource lands.</p>

<p>Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network</p>	<p><i>We support the addition of the definition of conservation of resource lands, but recommend it also address the requirement to protect resource lands from adjacent incompatible uses.</i></p> <p><i>As the Washington Supreme Court held in the Soccer Fields decision, counties and cities are “required to assure the conservation of agricultural lands and to assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products.” We appreciate that the definition of conservation of resource lands includes the conservation of the land element, but it should also include the element of assuring that the use of adjacent lands does not interfere with the production of food and agricultural products on those lands. Our recommended additions are double underlined and our recommended deletions are double struck through.</i></p> <p><i><u>(8) “Conservation of resource lands” means to ensure that the natural resource lands will remain available to be used for commercial production of the natural resources designated and to assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products.</u></i></p>	<p>Commerce removed the definition from 365-196-210 because WAC 365-196-815 provides guidance, including a detailed definition, on the conservation of resource lands. WAC 365-196-815 includes details regarding operational interference and incompatible uses.</p>
<p>Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network</p>	<p><i>We support the addition of the definition of conservation of critical areas, but recommend that it be modified to reflect the that the GMA term is protect and the functions and values include functions and values in addition to ecosystem functions and values.</i></p>	<p>Commerce removed the definition “Conservation of critical areas...” from the preliminary draft.</p> <p>WAC 365-196-830 provides guidance, including a definition of protection for the purposes of this chapter, on what it</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(1). This means all functions and values.” 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. We support the addition of the definition of conservation of critical areas, but recommend that it be modified to reflect that the GMA requirement is to protect, including functions and values in addition to ecosystem functions and values. Our additions are double underlined and our deletions are double struck through.</i></p> <p><i>(9) “Protect-Conservation of critical areas” means to ensure the long-term protection of critical areas and their associated ecosystem functions and values, <u>including ecosystem functions and values, and maintaining populations of species and not creating isolated subpopulations.</u></i></p>	<p>means to protect the functions and values of critical areas.</p>
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WAC 365-196-305		
Stakeholder	Comment	Response
Puget Sound Regional Council	<p><i>Edits to WAC 365-196-305 are important to encourage regular review and monitoring of the countywide planning policies across the state. However, the draft edits focus exclusively on tracking actual growth. We recommend updating this language to consider periodic review of the broader set of goals and policies that are covered by countywide planning policies.</i></p>	<p>Commerce revised this language to focus less specifically on tracking growth, and to encourage local governments to review the effectiveness of relevant countywide planning policies.</p>
Puget Sound Regional Council	<p><i>The WAC uses different terms to refer to disaggregation of countywide growth projections. PSRC uses the term “growth target” to refer to the specific allocation of growth to an individual city or unincorporated area through countywide</i></p>	<p>Commerce adjusted the language regarding growth targets and allocation of growth in WAC 365-196-305. We reviewed other sections, including 365-196-310 and 365-</p>

	<i>coordination, though other parts of state may use different terminology. We recommend reviewing the preliminary draft WAC to improve consistency in terminology regarding the use of terms like growth targets, projections, and allocations to the extent feasible.</i>	196-315, for consistent terminology.
Pierce County Planning and Public Works	<i>Local comprehensive plans are supposed to be consistent with the countywide planning policies. If through a review of the comprehensive plans and the countywide planning policies there is an inconsistency, the local plans are to be amended, not vis versa.</i>	Commerce revised this section to clarify that a review of countywide planning policies is encouraged to determine whether the policies are effectively achieving their objectives. WAC 365-196-305(7) addresses a forum for ongoing communication and coordination on countywide planning policies. During the project scoping process, the Local Government TAG encouraged Commerce to elaborate on recommendations for reviewing, updating, and amending policies. In some cases, policies need to be updated or amended to reflect new information or changing circumstances.

WAC 365-196-310		
Stakeholder	Comment	Response
Whidbey Environmental Action Network	Any UGA expansion review should also consider the impacts of sea level rise (SLR) and attendant magnification of storm surges compared to present conditions. The rationale for including SLR is precisely the same as for wildfire. Since urbanization follows UGA expansion, failing to include SLR as a decision factor risks putting many more people and property at risk, as well as creating future pollution and clean up costs that may well be unaffordable when	WAC 365-196-310(1) includes detailed requirements and recommendations on prohibited expansions into the 100-year flood plain and in flood hazard areas as described in WAC 173-158-040. Counties and cities should also consider the following when designating frequently flooded areas per WAC 365-190-110: the potential

	<p>infrastructure, including residential development, are later abandoned. We suggest this language:</p> <p><i>“Counties and cities should also consider the potential impacts of wildfires when expanding the urban growth area in the wildland urban interface <u>and sea level rise when expanding the urban growth area in the shoreline management area.</u>”</i></p>	<p>effects of tsunami, high tides with strong winds, sea level rise, and extreme weather events, including those potentially resulting from global climate change. The Department of Ecology has not requested additional clarification on this issue. Commerce does not intend to make additional changes regarding sea level rise at this time.</p>
<p>Whidbey Environmental Action Network</p>	<p><i>Similarly, the addition in §(4)(d)(i) of language requiring demonstration that "probable funding" be adequate "to maintain and operate public facilities, public services, and open space" needs to also recognize the funding needs that will arise due to SLR impacts on coastal residential development. We suggest this language:</i></p> <p><i>“Counties and cities should develop revenue projections for the twenty-year planning period to ensure consistency between the land use element and the capital facilities plan, and to demonstrate that probable funding does not fall short of the projected needs to maintain and operate public facilities, public services, and open space, <u>and to remove structures likely to be abandoned due to sea level rise.</u>”</i></p>	<p>The requirement to develop a multi-year financing plan is based primarily on 36.70A.070(3). Jurisdictions must adopt at least a six-year plan, and should identify funding or revenue sources for the twenty-year planning period to ensure for internal consistency in the plan. The proposed changes elaborate on the fiscal impact analysis required by all local governments fully planning under the GMA. Local governments do not have a specific requirement to plan for sea level rise when developing six or twenty year financing plans; but may choose to do so when conducting the environmental review and fiscal analysis associated with proposed UGA amendments.</p>
<p>Puget Sound Regional Council</p>	<p><i>The WAC uses different terms to refer to disaggregation of countywide growth projections. PSRC uses the term “growth target” to refer to the specific allocation of growth to an individual city or unincorporated area through countywide coordination, though other parts of the state may use different terminology. We</i></p>	<p>Commerce reviewed 365-196-305, 365-196-310 and 365-196-315, for consistent terminology regarding growth allocation, projections and growth targets and adjusted proposed language in WAC 365-196-305. The rule uses the term forecast</p>

	<p><i>recommend reviewing the preliminary draft WAC to improve consistency in terminology regarding the use of terms like growth targets, projections, and allocations to the extent feasible.</i></p>	<p>and projection synonymously. Use of projection reflects terminology in the underlying statute. In cases where the rule uses target, it reflects language in the statute – RCW 36.70A.215.</p>
<p>Puget Sound Regional Council</p>	<p><i>Edits to WAC 365-196-510 (Interjurisdictional Consistency), WAC 365-196-315 (Buildable Lands Review and Evaluation), and WAC 365-196-310 (Urban Growth Areas) provide additional clarity around the 20-year plan horizon. In the central Puget Sound, the most significant inconsistencies have arisen from countywide growth targets that do not include the 20-year plan horizon specified by the adoption date, that is, targets that fall short of the shared plan horizon date. Please consider edits to WAC 365-196-310 (Urban Growth Areas) to better clarify that growth assigned to individual jurisdictions should encompass at least a 20-year planning horizon based on the relevant deadline specified in RCW 36.70A.130(5).</i></p>	<p>Commerce adjusted the proposed change to WAC 365-196-310 to clarify that the planning horizon starts on the relevant deadline specified in RCW 36.70A.130(5) and should encompass at a minimum of twenty years.</p>
<p>American Planning Association – Washington Chapter</p>	<p><i>WAC 365-196-310(4)(d)(i): Add after “... public services and open space” “and to prevent any net loss of critical areas functions and values”.</i></p> <p><i>Reason: Monitoring and adaptive management of critical areas is mandatory under the Washington Supreme Court’s rulings in Swinomish and is an expensive undertaking that should be properly budgeted and accounted for.</i></p>	<p>This section speaks specifically to financing public facilities, public services, and open space. This corresponds with recommendations for meeting Capital Facilities Elements requirements outlined in WAC 365-196-415. Commerce does not agree with Washington APA’s interpretation of the Swinomish case.</p>
<p>Pierce County Planning and Public Works</p>	<p><i>It may be more appropriate to state as “Consideration of critical areas and wildland urban interface” as a wildfire is not a landscape characteristic. It would also be beneficial to define “wildland urban interface” and guidance on how to map this area. Also, in an urban setting, often times wildfire risk is related to homeless</i></p>	<p>Commerce adjusted the language regarding wildfires and removed the term “wildland urban interface.” The definition of WUI varies by state and federal agencies. We encourage local governments to coordinate with the</p>

	<p><i>encampments. Furthermore, when considering expansion of the UGA into the wildland urban interface, design standards should be considered to decrease or mitigate impacts to the natural and built environment from potential wildfires.</i></p>	<p>Department of Natural Resources for mapping the WUI. We encourage local communities to adopt design standards to mitigate impacts from potential wildfires; however, part of the rationale for addressing this issue within the context of UGA boundaries is that design standards are not necessarily sufficient to mitigate the size and scale of current wildland fires.</p>
<p>Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network</p>	<p><i>We support adding additional guidance and recommendations regarding the Wildland Urban Interface (WUI) to the procedural criteria on page 5 of 38 and page 11 of 38.</i></p> <p><i>We strongly support adding additional guidance and recommendations regarding the Wildland Urban Interface (WUI) to the procedural criteria. Washington has experienced “immense” wildfires in recent years. According to a recent peer-reviewed journal:</i></p> <p><i>Large and severe fires in the Pacific Northwest are associated with warm and dry conditions, and such conditions will likely occur with increasing frequency in a warming climate. According to projections based on historical records, current trends, and simulation modeling, protracted warmer and drier conditions will drive lower fuel moisture and longer fire seasons in the future, likely increasing the frequency and extent of fires compared to the twentieth century.</i></p> <p><i>Recent trends and future projections show a need to more effectively plan for wildfires especially in the WUI. WUI affects more than rural areas as recent wildfires threatening and damaging towns and cities</i></p>	<p>Thank you for the comment. Commerce is recommending local governments consider wildland fires when establishing rural densities and amending urban growth area boundaries. We may elaborate on recommendations in the procedural criteria in subsequent updates as the growth management services climate change program develops guidance on mitigation and resiliency.</p>

	<i>has shown. We strongly support the guidance for urban growth area expansions, rural areas, natural resource lands, and critical areas as proposed in the update.</i>	
Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network	<p><i>We support the recommendation that cities and counties should prepare 20-year revenue projections.</i></p> <p><i>Capital facility planning is one of the important innovations of the Growth Management Act to reduce costs for taxpayers and ratepayers. It also ensures that new development has the capital facilities and services needed to support growth. We strongly support adding the provision that “[c]ounties and cities should develop revenue projections for the twenty-year planning period to ensure consistency between the land use element and the capital facilities plan, and to demonstrate that probable funding does not fall short of the projected needs to maintain and operate public facilities, public services, and open space.”</i></p>	Thank you for the comment.

WAC 365-196-315		
Stakeholder	Comment	Response
American Planning Association – Washington Chapter	<p><i>WAC 365-196-315(5)(vii): Change wording as follows: “Evaluation under RCW 36.70A.215(3)(e) should, based on the actual density, along with current trends and other relevant factors of development as determined under RCW36.70A.215(3)(b), review commercial, industrial, and housing needs by type and density range, to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the twenty-year planning period used in the most recently adopted comprehensive plan.</i></p> <p><i>Reason: Clarification. The existing language speaks only to density, but basing</i></p>	Commerce adjusted the proposed change to WAC 365-196-315(5)... <u>documented factors relevant to patterns of actual growth</u> to emphasize the need for jurisdictions to show their work.

	<p><i>evaluation only on existing density implies that the only option for meeting land needs is to expand current land area without considering that more development may already be underway from recent zoning changes or other factors.</i></p>	
<p>Pierce County Planning and Public Works</p>	<p><i>This new section is a significant requirement for new counties and cities added to the Buildable Lands list. The proposed language requires counties/cities to collect data since adoption of its comprehensive plan. This may result in the need to gather information for over 20 years. Over a 20-year planning cycle, assumptions, methods and analysis including permitting systems may have changed so may not result in available trends or an apples-to-apples comparison. Also, it is not clear as to the benefit of the older information as a jurisdiction may have completed numerous amendments over the years. It may be appropriate to state that at least 10 years of development data may be sufficient or since the jurisdictions last periodic update.</i></p>	<p>Commerce does not agree that the jurisdictions must look back to the originally adopted plans as suggested by this comment. The statute requires a 20-year planning horizon looking forward, but for evaluating past trends/development densities/patterns of development the RCW states:</p> <p>RCW 360.70A.215 (3) (d) “...since the adoption of a comprehensive plan under this chapter or since the last periodic evaluation as required by subsection”;</p> <p>additionally, the statute allows flexibility for jurisdictions’ data collection methodology as agreed to by the program established in the CWPPs.</p>
<p>Pierce County Planning and Public Works</p>	<p><i>The RCW states “Determine <u>whether</u> there is sufficient suitable land...” not “where” there is sufficient land...” Proposed agency rulemaking is inconsistent with guiding state law.</i></p>	<p>Commerce revised the WAC as noted.</p>
<p>Black Hills Audubon Society</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 365-196- (4) (a) – (i) Good additions and clarifications, especially in updating and using the Buildable Lands Reports</i></p>	<p>Thank you for the comment.</p>



<p>Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network</p>	<p><i>Please substitute “alone” for “along” in the proposed addition to WAC 365-196-315(5)(a)(i).</i></p> <p><i>The proposed addition to WAC 365-196-315(5)(a)(i) provides that the “zoned capacity of land along is not a sufficient standard to deem land suitable for development or redevelopment within the twenty-year planning period.” We think “alone” is intended for “along.”</i></p>	<p>Commerce revised the WAC as noted.</p>
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WAC 365-196-320		
Stakeholder	Comment	Response
<p>Pierce County Planning and Public Works</p>	<p><i>This language does not reflect a public water system’s ability to purchase water from a wholesaler. It may be appropriate to amend the language so that when a public water system does not have the water rights to serve the existing and projected development that it documents how the system will be addressing the deficit.</i></p>	<p>Commerce revised the language to recommend that cities and counties develop strategies to obtain sufficient water to meet projected demand.</p>
<p>Black Hills Audubon Society</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 365-196-320 Addition of consideration of potable water availability when planning development</i></p>	<p>Thank you for the comment. Commerce revised the language to recommend that cities and counties develop strategies to obtain sufficient water to meet projected demand.</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 365-196-320 is proposed to provide that potable water demand for development within the service area of a public water system should not exceed the system’s available water rights.</i></p> <p><i>We agree that WAC 365-196-320 should be updated to provide that potable water demand from the development the comprehensive plan and development</i></p>	<p>Thank you for the comment. Commerce revised the language to recommend that cities and counties develop strategies to obtain sufficient water to meet projected demand. Washington State Water law and implementing WACs will determine if agricultural water</p>

	<p><i>regulations authorize should not exceed the water system’s available water rights at the time of plan adoption. Given the limited availability of new water, the plan needs to reflect legal and physical water availability. This requirement should also extend to Group B systems too to the extent a plan relies on them for providing potable water. We also strongly recommend that WAC 365-196-320 not allow the use of agricultural water rights for rural residential development where their acquisition will lead to the conversion of agricultural lands of long-term commercial significance.</i></p>	<p>rights can be transferred to domestic uses.</p>
<p>Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network</p>	<p><i>We support the addition to 365-196-320 that public facilities and services must comply with state and federal law.</i></p> <p><i>We support the addition to WAC 365-196-320(1)(d) clarifying that public facilities and services must comply with state and federal law. This is consistent with the GMA. For example, local government comprehensive plans must take into account the requirements that state and federal laws place on the public facilities and services such as water availability. The addition to WAC 365-196-320(1)(d) will help local governments address these requirements as they update their comprehensive plans and development regulations.</i></p>	<p>Thank you for the comment.</p>

WAC 365-196-410		
Stakeholder	Comment	Response
<p>Pierce County Planning and Public Works</p>	<p><i>HB 1220 mandates significant changes to local jurisdictions housing element. This WAC update should incorporate changes from this legislation.</i></p>	<p>Commerce determined early in the scoping process that changes regarding the Housing Element and HB 1220 warrant a separate rulemaking process. Developing guidance to comply</p>

		with HB 1220 requires extensive outreach to affected stakeholders and communities, and could not be reasonably completed as part of this project. We are undertaking work on guidance to implement HB 1220.
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WAC 365-196-425		
Stakeholder	Comment	Response
Whidbey Environmental Action Network	<p><i>Finally, the proposed addition to rural densities needs to state the obvious, that residential density may need to be reduced to protect lives; the proposed language is ambiguous in this regard. This should also recognize sea level rise as a similar threat. We suggest this language:</i></p> <p><i>“(3)(b) Counties should consider the adverse impact of wildfires <u>and sea level rise</u> when establishing rural densities. Counties may reduce rural densities in the Wildland Urban Interface <u>or areas subject to the Shoreline Management Act</u>, or in other areas at risk of wildfire <u>or sea level rise</u>, to protect <u>public safety</u>, natural resource lands, critical areas, water quality, or rural character.”</i></p>	Sea level rise is beyond the scope of this update. Commerce may elaborate on recommendations in subsequent updates as the growth management services climate change program develops guidance on mitigation and resiliency.
Pierce County Planning and Public Works	<p><i>Counties should also consider design standards to decrease or mitigate impacts to the natural and built environment from potential wildfires.</i></p>	Commerce agrees that local communities should adopt design standards to mitigate impacts from potential wildfires. The new language refers specifically to guidance on establishing rural densities, and nothing precludes counties from adopting design standards or Firewise principles.
Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources,	<p><i>We support adding additional guidance and recommendations regarding the Wildland Urban Interface (WUI) to the procedural criteria on page 5 of 38 and page 11 of 38.</i></p>	Thank you for the comment. Commerce is recommending local governments consider wildland fires when establishing

<p>Whidbey Environmental Action Network</p>	<p><i>We strongly support adding additional guidance and recommendations regarding the Wildland Urban Interface (WUI) to the procedural criteria. Washington has experienced “immense” wildfires in recent years. According to a recent peer-reviewed journal:</i></p> <p><i>Large and severe fires in the Pacific Northwest are associated with warm and dry conditions, and such conditions will likely occur with increasing frequency in a warming climate. According to projections based on historical records, current trends, and simulation modeling, protracted warmer and drier conditions will drive lower fuel moisture and longer fire seasons in the future, likely increasing the frequency and extent of fires compared to the twentieth century.</i></p> <p><i>Recent trends and future projections show a need to more effectively plan for wildfires especially in the WUI. WUI affects more than rural areas as recent wildfires threatening and damaging towns and cities has shown. We strongly support the guidance for urban growth area expansions, rural areas, natural resource lands, and critical areas as proposed in the update.</i></p>	<p>rural densities and amending urban growth area boundaries. We may elaborate on recommendations in the procedural criteria in subsequent updates as the growth management services climate change program develops guidance on mitigation and resiliency.</p>
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WAC 365-196-430		
Stakeholder	Comment	Response
<p>Puget Sound Regional Council</p>	<p><i>WAC 365-196-430 includes multiple changes to improve clarity regarding the Transportation element. Addition considerations for this section:</i></p> <ul style="list-style-type: none"> <i>• The updated section includes references to the Washington State Department of Transportation Secretary’s Executive Order Number: E 1090.01 on practical solutions. Consider removing this reference, as</i> 	<p>Commerce removed references to Executive Orders, added language to subsection (j)(ii), and added language to section (g)(vi) and (j)(i) in response to this comment.</p>

	<p><i>executive orders may change over time, and it is unclear why this order would be referenced in particular.</i></p> <ul style="list-style-type: none"> • <i>Encourage jurisdictions to consider demographic groups that may have special transportation needs, such as older adults, youth, people with low incomes, people with disabilities, and people with limited English proficiency</i> • <i>Many local transportation elements do not include reference to ADA Transition Plans to improve access for people with disabilities. The WAC should encourage jurisdictions to consider ADA requirements as part of transportation project lists and in financing needs.</i> 	
American Planning Association – Washington Chapter	<p><i>WAC 365-196-430(I)(iii)(D) (page 21): Add “this action cannot be used to either designate a new Local Area of More Intensive Rural Development (LAMIRD) or to expand the boundaries of an existing LAMIRDs”.</i></p> <p><i>Reason: Clarification.</i></p>	WAC 365-196-425 provides guidance on the rural element and does not allow for the designation of new Type 1 LAMIRDs, or the expansion of existing boundaries.
Pierce County Planning and Public Works	<i>It is not clear as to the expectation for a feedback loop related to the local implementation.</i>	Commerce included new language in response to this comment and to clarify that the transportation element should support the desired land uses and forms established in the land use element.
Pierce County Planning and Public Works	<i>The categorization of routes by frequency can become quickly outdated as a transit district continually evaluates routes and demand.</i>	Commerce added language for strengthening requirements relating to the use of modal performance measures within urban growth areas.
Pierce County Planning and Public Works	<i>It may be beneficial to define “comfort levels”, how that interrelates to local level of service standards and provide guidance on how to determine a “comfort” level.” It is</i>	Commerce specified language in response to this comment.

	<i>also unclear as to the type of user it should be addressing; for example a casual bicycle rider or an experienced bicycle commuter.</i>	
Pierce County Planning and Public Works	<p><i>What is the expectation if a State facility that is within a long urban growth area is already beyond capacity? This language suggests local governments are responsible for state facility capacity needs:</i></p> <p><i>“Cities and counties should work with the Washington State Department of Transportation to understand the limits of state facilities throughout the planning period and should avoid increasing vehicle demand beyond planned capacity of state facilities.”</i></p>	Local governments should work with the WSDOT to reevaluate growth plans and assumptions about where and how growth will occur.
Pierce County Planning and Public Works	<i>It may be beneficial to define “traffic stress.” It is unclear if this stress is related to the pedestrian’s emotional experience or to the ability of the facility to accommodate the level of traffic. It also does not address, how that relates to local level of service standards</i>	Commerce added a definition for level of traffic stress
Black Hills Audubon Society	<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 365-196-430 New inclusions of multimodal transportation for updates to transportation plans</i></p>	Thank you for the comment.
Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network	<i>We support updating WAC 365-196-430 to call for including active transportation in transportation elements and to plan and implement sustainable transportation solutions. These transportation solutions can help address mobility needs for all.</i>	Thank you for the comment.

WAC 365-196-475		
Stakeholder	Comment	Response

<p>Whidbey Environmental Action Network</p>	<p><i>We oppose the proposed addition to WAC 365-196-475(1). The proposed wording endorses the ongoing military takeover of civilian public and private lands. Commerce is doubtless aware of the continued controversial expansion of Navy air training in northwest Washington, rendering portions of this region well nigh uninhabitable and degrading the lives and economy of hundreds of thousands of people. The latest effort of the Navy to conduct covert military training in nearly every coastal state park in Washington is simply the latest military incursion in this regard. WEAN currently has a lawsuit to reverse the State Parks and Recreation Commission approval of this incursion on publicly owned recreational lands. The military owns 40 miles of coastline and tens of thousands of acres in Washington. It does not need to take over our public recreational lands. Please strike this:</i></p> <p><i>Military training, testing, and operating areas are also critical to the mission viability of Washington's military installations.</i></p>	<p>Commerce believes the proposed language better implements RCW 36.70A.530 and RCW 36.01.320.</p>
<p>Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network</p>	<p><i>We support amending WAC 365-196-475 to improve compatibility with military installations by improving compliance with RCW 36.01.320</i></p>	<p>Thank you for the comment.</p>

WAC 365-196-480		
Stakeholder	Comment	Response
<p>American Farmland Trust</p>	<p><i>More clarification is needed on how local governments should ensure that energy facilities do not result in conversion of natural resource lands. The WAC should identify factors to be considered in evaluating the risk of the conversion of</i></p>	<p>Commerce added language to reinforce protections on resource lands from conversion by energy facilities and added language that encourages dual-</p>

	<p><i>farmland, such as the impacts to the regional agricultural economy, the implications for water rights, and the protection of valuable soils in design, construction, and decommissioning. It is encouraging to see that Governor Inslee included funding for agrivoltaic research in his climate package. Looking forward, the GMA will need to be responsive to changes that involve dual-use solar on the land, supporting best practices to keep farmland in production.</i></p>	<p>use strategies to preserve or enhance resource lands.</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.</i></p>	<p>Commerce amended WAC 365-196-480 to clarify that a county-wide analysis should be performed in the consideration of de-designation of resource lands and should be deferred until an appropriate analysis can occur. This is consistent with changes in WAC 365-190. WAC 365-190-040(10)(c) provides guidance when minor adjustments may be appropriate.</p>
<p>Pierce County Planning and Public Works</p>	<p><i>This assumes that all designated resource lands are in production. It should be written to prevent irreversible impacts to the natural resource from energy facilities:</i></p> <p>“(h) When siting energy facilities on or adjacent to natural resource lands, counties and cities must ensure that development does not result in conversion to a use that removes the land from resource production, or interferes with the usual and accustomed operations of the natural resource lands. Counties and cities are encouraged to adopt policies and regulations regarding the appropriate location for siting energy facilities on or adjacent to natural resource lands.”</p>	<p>Commerce added language to reinforce protections on resource lands from conversion by energy facilities and added language that encourages dual-use strategies to preserve or enhance resource lands.</p>

<p>Black Hills Audubon Society</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 365-196-480 (h) When siting energy facilities on or adjacent to natural resource lands must ensure that the natural resource lands' function is not impacted</i></p>	<p>Thank you for the comment. This language has been adjusted to provide better clarification.</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 rule that discourages dedesignation of agricultural, forest, and mineral resource lands on a parcel-by-parcel basis.</i></p> <p><i>Agricultural and forest land are very sensitive to nearby uses and nearby conversions of agricultural land. 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 impermanence syndrome (Plaut 1976)." So when dedesignating agricultural land, it is necessary to consider the impacts on other nearby farmland. So, 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, 30 others have seemed confused focusing on whether the "process" considered amendments from throughout the county, not whether the dedesignation process considered</i></p>	<p>WAC 365-196-480 has been amended to provide clarity that a county-wide analysis should be performed in the consideration of de-designation of resource lands and should be deferred until an appropriate analysis can occur. This is consistent with changes in WAC 365-190.</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 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>

	<p><i>agricultural lands designations on a countywide or regional basis.³¹ It would be helpful to all to clarify that the dedesignation must consider the farmland on a countywide basis and consider the impacts on the remaining farmland.</i></p>	
<p>Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network</p>	<p><i>We support the addition requiring counties and cities to consider the impacts of energy facilities on agricultural land and nearby agricultural operations.</i></p> <p><i>As the Washington Supreme Court held in the Soccer Fields decision counties and cities are “required to assure the conservation of agricultural lands and to assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products.” We support adding the requirement that when siting energy facilities on or adjacent to natural resource lands, counties and cities must ensure that development does not result in conversion to a use that removes the land from resource production, or interferes with the usual and accustomed operations of the natural resource lands. This is required by the Growth Management Act. We also support recommending that counties and cities adopt policies and regulations regarding the appropriate locations for siting energy facilities.</i></p>	<p>Thank you for the comment.</p>
<p>Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network</p>	<p><i>We support amending WAC 365-196-480 to better conserve agricultural, forest, and mineral resource lands natural resource lands.</i></p> <p><i>We also support amending WAC 365-196-480 to better conserve agricultural, forest, and mineral resource lands natural resource lands. In the Soccer Fields decision, the Washington State Supreme Court has held that [t]he County was required to assure the conservation of agricultural lands and to assure that the use of adjacent lands does</i></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.</p>

	<p><i>not interfere with their continued use for the production of food or agricultural products.</i></p> <p><i>Most agricultural and forest zones and even some mineral resource land zones allow residential uses albeit at low densities. This has led to estate development on agricultural, forest, and mineral resource lands, even resource lands for which the development rights have been purchased. But even low-density residential uses and agricultural, forestry, and mineral uses are incompatible.</i></p> <p><i>Allowing residential uses in these zones also leads to poorly planned sprawl. Professor Nelson analyzed agricultural land preservation techniques and concluded that “[m]inimum lot sizing at up to forty-acre densities merely causes rural sprawl—a more insidious form of urban sprawl.” The American Farmland Trust concluded that to “make substantial progress protecting farmland in the Puget Sound region, minimum parcel size would be at least 40 acres and preferably larger.”</i></p> <p><i>Skagit County has directly addressed this problem by using siting criteria for residential uses in its agriculture of long-term commercial significance zone to residential uses that have an association to the agricultural use. WAC 365-196-480 should limit residential uses allowed in agricultural zones to those occupied by those who own or work on the farm and their relatives.</i></p> <p><i>Whatcom County prohibits residential uses in its zone that applies to forest land of long-term commercial significance except for living quarters for those who are engaged in forest management activities on</i></p>	<p>Both of these are covered by WAC 365-196-815.</p>
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	<p><i>the property, such as fire crews and logging crews, and watchpersons. These uses are reviewed as conditional uses. WAC 365-196-480 should include these requirements to conserve forest lands of long-term commercial significance.</i></p> <p><i>Some agricultural zones also allow other incompatible uses. Clark County Issue Paper 9, prepared for the county's last update documents that the county's primary agricultural zone was not conserving agricultural land because it allowed "non-productive rural uses"</i></p> <p><i>In the Soccer Fields decision the Washington Supreme Court held that "[i]n order to constitute an innovative zoning technique [authorized by RCW 36.70A.177] consistent with the overall meaning of the Act, a development regulation must satisfy the Act's mandate to conserve agricultural lands for the maintenance and enhancement of the agricultural industry." Outdoor recreational facilities failed this test and cannot be allowed on agricultural lands because they will remove "designated agricultural land from its availability for agricultural production."</i></p> <p><i>In the Lewis County decision, the State Supreme Court built on the Soccer Fields decision and again upheld a Board order that concluded the "County's ordinance allowing residential subdivisions and other non-farm uses within designated agricultural lands undermined the GMA conservation requirement." In addition to residential subdivisions, the illegal uses were public facilities; public and semipublic buildings, structures, and uses; and schools, shops, and airports.</i></p>	
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	<p><i>In the Kittitas County decision, the state Supreme Court again upheld a Board decision finding that a variety of conditional uses allowed on agricultural lands of long-term commercial significance violated the GMA. The conditional uses violated the GMA because “the County has no protections in place to protect agricultural land from harmful conditional uses.” The conditional uses that violated the GMA included “kennels, day care centers, community clubhouses, governmental uses essential to residential neighborhoods, and schools with no limiting criteria or standards.”</i></p> <p><i>Consistent with these decisions, WAC 365-196-480 should clarify that nonagricultural uses that can increase the cost of agricultural lands by outspending farmers for the land or that interfere with agricultural uses cannot be allowed on agricultural lands of long-term commercial significance. Similar uses that outspend foresters and miners or are incompatible with these uses cannot be allowed on forest or mineral resource lands of long-term commercial significance.</i></p>	
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WAC 365-196-485		
Stakeholder	Comment	Response
American Planning Association – Washington Chapter	<p><i>WAC 365-196-485: Expand the “Source of Change” with “and the rulings in Swinomish and in (e) change the “recommendation” to a “must”.</i></p> <p><i>Reason: Case law; required by Swinomish.</i></p>	Commerce disagrees with this interpretation of the Swinomish decision. See our response to comments regarding this issue in WAC 365-195.
Pierce County Planning and Public Works	Proposed updates to WAC 365-196-310 Urban growth areas are not reflected in WAC 365-196-485 Critical areas.	Commerce did not include language regarding wildfires in this section as they are not considered a critical area. We

	<p>(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. RCW 36.70.110(8) prohibits expansion of the urban growth area into the one hundred-year flood plain in some cases. See WAC 365-196-310.</p> <p><i>For consistency purposes the language proposed to be added to WAC 365-196-310 should be incorporated into this language. This includes reference to consideration of wildfires and adding “Counties and cities should also consider the potential impacts of wildfires when expanding the urban growth area in the wildland urban interface.”</i></p>	<p>believe the sections are still consistent without further adjustments to WAC 365-196-485.</p>
<p>Pierce County Planning and Public Works</p>	<p><i>This proposed amendment is inconsistent with proposed WAC 365-195-905(3) as it states a BAS “should” be conducted rather than “must.”</i></p> <p>(3) Recommendations for meeting requirements: (c) Critical areas should must be designated and protected wherever the applicable environmental conditions exist, whether within or outside of urban growth areas. Critical areas may overlap each other, and requirements to protect critical areas apply in addition to the requirements of the underlying zoning. (d) The review of existing designations during the comprehensive plan adoption process should, in most cases, be limited to the question of consistency with the</p>	<p>Commerce changed “should” to “must” in 365-196-485(3)(c) for consistency throughout WACs.</p>

	<p>comprehensive plan, rather than a revisiting of the entire prior designation and regulation process. However, counties and cities must address the requirements to include the best available science in reviewing designations and developing policies and development regulations to protect the functions and values of critical areas, and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. To the extent that new information is available or errors have been discovered, the review process should must take this information into account unless the jurisdiction provides a reasoned, science-based justification for departure.</p>	
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WAC 365-196-600		
Stakeholder	Comment	Response
Puget Sound Regional Council	<p><i>We appreciate the edits to WAC 365-196-600 (Public participation) to encourage equitable community engagement. The language could be more inclusive to broadly recognize groups that have been historically excluded from the planning process. In addition, the list of demographic factors to consider may also include language, (dis)ability, and age.</i></p>	<p>Commerce revised this section to reflect this recommendation.</p>
American Planning Association – Washington Chapter	<p>WAC 365-196-600: Change “should” to “must”.</p> <p><i>Reason: Clarification</i></p>	<p>Mandatory requirements are reflected in WAC 365-196-600(1). The following subsections include our recommendations for meeting the public participation requirements of the GMA.</p>

WAC 365-196-610		
Stakeholder	Comment	Response

Ann Aagaard	<p><i>Page 14 Futurewise 1.19.2022 letter. 365-196 WAC Page 27 and 31 of 38. (b)... no net loss of <u>functions and values including...</u> that <u>the regulations and individual projects do not result in impacts to critical area functions or values that they fully replace impacted functions and values...</u></i></p>	Commerce addresses this issue in WAC 365-196-830.
American Planning Association – Washington Chapter	<p><i>WAC 365-196-610: Expand the “Source of Change” with “and the rulings of Swinomish, and in (2)(b)(ii)(B) change the “recommendation” to a “must”.</i></p> <p><i>Reason: Case law; required by Swinomish.</i></p>	No change. See Commerce’s position on the Swinomish case in WAC 365-195 Response to Comments.
Pierce County Planning and Public Works	<p><i>This proposed amendment is inconsistent with proposed WAC 365-195-905(3) as it states a BAS “should” be conducted rather than “must.”</i></p> <p>WAC 365-196-610 Periodic review and update of comprehensive plans and development regulations. This review must include at least the following: (1)(e)(i) Consideration of the critical areas ordinance, including a best available science review (see WAC 365-195);</p>	Commerce changed “should” to “must” for consistency throughout all GMA WACs regarding including BAS in review of critical areas policies and regulations.
Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network	<p><i>We support the addition providing that counties and cities should implement innovative techniques that support meaningful and inclusive engagement for people of color and low-income people.</i></p> <p><i>One of the hallmarks of the Growth Management Act is the requirements for effective public participation for all in the community. So, we support the requirement that counties and cities should implement innovative techniques that support meaningful and inclusive engagement for people of color and low-income people and should consider potential barriers to</i></p>	Thank you for the comment.

	<i>participation that may arise due to race, color, ethnicity, religion, income, or education level and to address those barriers.</i>	
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WAC 365-196-630		
Stakeholder	Comment	Response
American Planning Association – Washington Chapter	<p><i>WAC 365-196-630(2): Remove the reference to PlanView, so that the subsection reads: “Notice to the department may be in digital format through a web-based portal provided by the department.</i></p> <p><i>Reason: Clarification. Specific technologies and programs may change in the future.</i></p>	Commerce is maintaining the reference to PlanView based on recommendations from our Managing Director. We believe the specific reference will better clarify where and how to submit documents to the State as part of the local legislative process.

WAC 365-196-660		
Stakeholder	Comment	Response
American Planning Association – Washington Chapter	<p><i>WAC 365-196-660: Expand the “Source of Change” with “and the rulings of Swinomish and in 2(b) change the “recommendation” to a “must”.</i></p> <p><i>Reason: Case law; required by Swinomish.</i></p>	No change. See Commerce’s position on the Swinomish case in WAC 365-195 Response to Comments.
Black Hills Audubon Society	<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>	These issues are beyond scope of this update.
Futurewise, Friends of Clark County, Friends of the San	<p><i>While we strongly support monitoring and adaptive management programs, we recommend that their purpose be</i></p>	No change. “Mitigation” is featured throughout this chapter and a new definition is

<p>Juans, RE Sources, Whidbey Environmental Action Network</p>	<p><i>clarified to ensuring that impacts to critical areas functions and values are avoided or fully mitigated.</i></p> <p><i>As noted above, critical areas regulations must protect functions and values of critical areas. We agree that monitoring and adaptive management can help achieve this requirement, so we support the recommendations to call for monitoring and adaptive management in proposed WAC 365-196-610(2)(b)(ii)(B) and WAC 365-196-660(2)(b). We recommend that the purposes of this program be clarified to ensuring that impacts to critical areas functions and values are avoided or fully mitigated. Our recommended additions are double underlined and our recommended deletions are double struck through.</i></p> <p><i>(b) The department recommends critical areas regulations be reviewed to ensure they are achieving no net loss of <u>functions and values, including ecosystem functions and values</u>. This review should include an analysis of monitoring plans, regulations and permits to ensure <u>that the regulations and individual projects do not result in cumulative impacts to critical area functions or values or that they fully replace impacted functions and values</u> they are efficient and effective at achieving protection goals and implementation benchmarks.</i></p>	<p>proposed. Recommendations on mitigation are also detailed in Commerce’s Critical Areas Handbook.</p>
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WAC 365-196-730		
Stakeholder	Comment	Response
<p>Black Hills Audubon Society</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 365-196-730 Include in federal regulations that cities and counties must</i></p>	<p>Thank you for the comment.</p>

	<p><i>take into consideration in planning:</i></p> <p><i>(l) Habitat alteration restrictions arising from the Bald and Golden Eagle Protection Act administered by the U.S. Fish and Wildlife Service;</i></p> <p><i>(m) Habitat alteration restrictions arising from the Migratory Bird Treaty Act administered by the U.S. Fish and Wildlife Service.</i></p>	
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WAC 365-196-815		
Stakeholder	Comment	Response
<p>Whidbey Environmental Action Network</p>	<p><i>At one of the public comment meetings in December the issue of the cross-land designation threat of wildfire was discussed. Per GMA's current structure and requirements, there are two directions to address this from. The first is the rural lands requirements. The proposed addition to WAC 365-196-425(3)(b) provides direction to possibly reduce development density due to wildfire danger. Whether this direction is sufficient to reduce economic and political pressure for development is questionable, but beyond the scope of these comments. The second direction this issue can be addressed from is the compatibility requirement for rural development adjacent to forest resource lands. We suggest expanding the required notice for rural lands in the vicinity of resource lands. This requires both expanding the subjects in the notice and the distance from resource lands. We suggest this language:</i></p> <p><i>Existing:</i></p> <p>WAC 365-196-815</p> <p><i>(1)(e) Plats and permits. 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 designated</i></p>	<p>The noticing requirements are found in Section 36.70A.060 RCW. This rulemaking cannot impose requirements above and beyond the existing law.</p>

	<p><i>natural 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.</i></p> <p><i>Proposed:</i></p> <p><i>“(1)(e) Plats and permits. Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities contain a notice for property near designated resource lands as follows:</i></p> <p style="padding-left: 40px;"><i>(i) On, or within five hundred feet of all designated natural resource lands: a variety of commercial activities may occur on nearby resource lands that are not compatible with residential development for certain periods of limited duration; and</i></p> <p style="padding-left: 40px;"><i>(ii) On or within one mile of designated forest resource lands: this property is near designated commercial forest land and may be subject to smoke from periodic prescribed burning; and</i></p> <p style="padding-left: 40px;"><i>(iii) On or within three miles of designated forest resource lands: this property is near designated commercial forest land and may be subject to uncontrolled wildfire.</i></p> <p style="padding-left: 40px;"><i>(iv) Counties and cities should include all of the above notice statements that apply to a given property and may add to these statements.”</i></p>	
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	<p><i>We realize that the distances proposed here (one and three miles) are somewhat arbitrary and that any specific distance will be inadequate in some cases and overkill in others. However, these seem like reasonable distances for the hazards involved and can be revised later if warranted.</i></p>	
<p>American Farmland Trust</p>	<p><i>WAC 365-196-480 and 365-196-815 should address the development of energy facilities to consider agricultural productivity, decommissioning, and farm viability.</i></p> <p><i>Another threat to farmland has been quietly building as Washington takes on the challenge of climate change. On Badger Mountain overlooking Wenatchee, 5,000 acres of land is being pursued for solar energy to meet renewable energy goals, much of which is actively farmed. The total number of solar projects being proposed on farmland across the state is unknown. AFT wants to advance the renewable energy goals of the state – and we want to ensure that agriculture will also play its vital role in the climate response. We believe it is possible to develop solar while also maintaining viable agricultural operations, enhancing conservation practices, and preserving farmland - now and for the future. Research is needed to determine the best practices for dual-use solar in Washington so that solar energy can be permitted as an accessory use to agricultural land.</i></p> <p><i>In the meantime, counties have been required to preserve agriculture through local land use decisions. However, with the option for solar developers to site energy facilities through the Energy Facilities Site Evaluation Council (EFSEC), counties have been disempowered from protecting</i></p>	<p>Language has been added in WAC 365-196-480 to reinforce protections on resource lands from conversion by energy facilities and added language that encourages dual-use strategies to preserve or enhance resource lands.</p> <p>The Energy Facilities Site Evaluation Council process is outside the scope of this rulemaking.</p>



	<p><i>farmland they have been required to preserve, which has caused confusion and resentment. Commerce should address the issue of solar siting in the WAC to give clear guidelines on how to permit solar installation in ways that do not remove agricultural lands from production.</i></p> <p><i>EFSEC recommended that the Governor approve the Columbia Solar Project in Kittitas County, informed by an analysis from Commerce on the consistency and compliance with the county's Comprehensive Plan. Commerce determined that removing agricultural land for 30 years meets the intent of preserving the land long-term if it can be returned to agricultural production. Commerce also considered the cumulative impacts of solar production on agricultural land, including the market demand for solar energy: "If the demand for solar energy were persistent and growing, these lands would not be available for agricultural use for a long period. This would effectively remove lands from agricultural production and would be conversion, unless farming can coexist with solar energy production on the site." With the developing market for solar energy, fueled by the Clean Energy Transformation Act, Commerce must now reevaluate whether the removal of agriculture from the land for energy production will indeed be temporary.</i></p> <p><i>Funded by the Legislature last session, a process will be carried out through Washington State University to determine areas of least conflict for siting solar in the Columbia River Basin. This will provide more information on where solar should be prioritized, where dual-use solar should be considered on agricultural land, and where solar should not be developed at all. Until</i></p>	
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	<p><i>that process is complete and new policies are in place, we will lose a significant acreage of commercially significant agricultural land - unless we choose to protect it. The WAC should contain guidance for counties to site energy facilities so they can preserve agricultural productivity, require provisions for design and decommissioning, and support the viability of farm operations.</i></p> <p><i>Commerce posed three questions in the report to EFSEC that are considered critical for agricultural resource lands:</i></p> <ul style="list-style-type: none"> <i>• Does the proposed project remove agricultural resource lands from agricultural production?</i> <i>• Can the project be designed in a way that retains the ability to use the land for agricultural production?</i> <i>• Will the operation of the facility create any operational interference with agricultural production on any surrounding resource lands?</i> <p><i>These questions can help guide an update to the WAC that will support counties in advancing clean energy goals and protecting vital agricultural land.</i></p>	
<p>American Farmland Trust</p>	<p><i>WAC 365-196-815(1)(b)(i) should explicitly exclude nonagricultural uses as a primary use of long-term commercially significant lands.</i></p> <p><i>Nonagricultural uses have been inflating the cost of productive farmland to the point where the value of food production can no longer compete for the land. In our Farms Under Threat analysis, we found that agricultural land in Washington is largely being lost to low density residential development, which AFT has defined as large-lot housing development on the</i></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><i>agricultural land base. These areas in Washington are 70 times more likely to be converted to urban development over time.</i></p> <p><i>The WAC states, "Development regulations must not allow a primary use of agricultural resource lands that would convert those lands to nonresource purposes." This should be clarified to exclude uses that will drive up the value of the land and erode the commercial viability of agriculture. These uses will impact the long-term commercial significance of agricultural lands, which will ultimately lead to conversion.</i></p> <p><i>Skagit County recognized this issue in 2009 when they amended their code to only allow residential uses on farmland for those who are farming the land. Other counties should require the residential use of farmland to be occupied by those supporting agricultural productivity and their families.</i></p>	<p>This rulemaking cannot impose requirements above and beyond the existing law.</p>
<p>American Farmland Trust</p>	<p><i>WAC 365-196-815(3)(c)(ii)(B) should define "size, scale, and intensity" of nonagricultural accessory uses.</i></p> <p><i>Accessory uses not related to agricultural production also threaten the commercial viability of farmland on the parcel and region. RCW 36.70a.177 states: "Accessory uses shall be located, designed, and operated so as to not interfere with, and to support the continuation of, the overall agricultural use of the property and neighboring properties." Nonagricultural uses are currently permitted through the RCW, but only "as long as they are consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site."</i></p>	<p><i>WAC 365-196-815(3)(c)(ii)(B) reads: "Nonagricultural accessory uses and activities as long as they are consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site."</i></p> <p>The rule is phrased this way as it is context specific to the existing use and development. Commerce believes this language is sufficient as is.</p>

	<p><i>The WAC has not defined “size, scale, and intensity.” Size and scale are addressed in the recommendation below. Intensity needs to be defined in the context of impact from nonagricultural activities that limit the commercial viability of the farmland. Impacts on farmland include traffic, flooding, land value, fragmentation, wildfire risk, the regional agricultural economy that makes farming commercially viable, and others.</i></p>	
<p>American Farmland Trust</p>	<p><i>WAC 365-196-815(3)(c)(ii)(B) should restrict the area of accessory uses to be relative to the size of the parcel.</i></p> <p><i>RCW 36.70a.177 states that nonagricultural accessory units “shall not otherwise convert more than one acre of agricultural land to nonagricultural uses.” This law establishes a maximum of allowable loss of agriculture lands per parcel, but not a minimum. The WAC should clarify the situations where less than an acre of land should be permitted to convert from agriculture relative to the size of the parcel.</i></p> <p><i>One acre is a significant contribution to commercial productivity for small farms. In Sammamish Valley Agricultural District in King County, the average parcel size is 18 acres, with many farms closer to 5 acres in size. Development of non-agricultural uses on those smaller parcels removes up to 20% of their agricultural productivity. The allowable loss of production should be relative to the size of the parcel, up to a maximum of one acre.</i></p>	<p>This rulemaking cannot impose requirements above and beyond the existing law.</p>
<p>Futurewise, Friends of Clark County, Friends of the San Juans, RE Sources, Whidbey Environmental Action Network</p>	<p><i>WAC 365-196-815(1)(b)(i) should explicitly exclude nonagricultural uses as a primary use of long-term commercially significant lands.</i></p> <p><i>Nonagricultural uses have inflated the cost of productive farmland to the point where</i></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</p>

	<p><i>the value of food production can no longer compete for the land. The American Farmland Trust’s Farms Under Threat study found that agricultural land in Washington is largely being lost to low density residential development, which the Trust has defined as large-lot housing development on agricultural land. These areas in Washington are 70 times more likely to be converted to urban development over time.</i></p> <p><i>WAC 365-196-815(1)(b)(i) states “[d]evelopment regulations must not allow a primary use of agricultural resource lands that would convert those lands to nonresource purposes.” This provision should be clarified to also exclude uses that will drive up the value of the land and erode the commercial viability of agriculture. These uses will impact the long-term commercial significance of agricultural lands, which will ultimately lead to conversion.</i></p> <p><i>Skagit County has directly addressed this problem by using siting criteria limiting residential uses in its agriculture of long-term commercial significance zone to residential uses that have an association to the agricultural use.⁴⁸ WAC 365-196-815 should also limit residential uses allowed in agricultural zones to those occupied by those who own or work on the farm and their relatives.</i></p>	<p>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>This rulemaking cannot impose requirements above and beyond the existing law.</p>
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Stakeholder	Comment	Response
<p>Washington State Department of Fish and Wildlife</p>	<p><i>For internal consistency, we recommend modifying existing language in WAC 365-196-830(6) to reflect these new definitions.</i></p> <p><i>“(6) <u>Ecosystem</u> fFunctions and <u>ecosystem</u> values must be evaluated at a scale appropriate to the function <u>or value</u> being evaluated. <u>Ecosystem</u> functions <u>and ecosystem values</u> 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 <u>ecosystem</u> functions; and <u>ecosystem</u> values should be considered on a larger scale.”</i></p>	<p>Commerce adjusted language in this section to reflect new definitions for ecosystem functions and ecosystem values.</p>