



## Chapter 365-190 WAC – Preliminary Draft

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

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

*The rules advise local governments on GMA compliance. The Growth Management Hearings Board must consider these rules when interpreting the GMA and determining compliance. Local governments must consider the minimum guidelines when designating critical areas and resource lands. Local governments may use the procedural criteria to guide their implementation of the GMA. The primary audiences for the rules are local governments with statutory obligations under the GMA, members of the public, state agencies, the Growth Management Hearings Board, Courts, Tribes, or other public entities who participate in the local planning process.*

Commerce released a [project scope](#) on October 7, 2021. Our authority to make changes to the WAC is limited, and potential changes primarily reflect the following criteria:

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

*Commerce is releasing a preliminary draft to encourage early feedback on proposed changes to our administrative rules. This allows us to work with stakeholders early in the rulemaking process to address your concerns and incorporate feedback before initiating the formal adoption process. Please submit written comments to [gmarulemaking@commerce.wa.gov](mailto:gmarulemaking@commerce.wa.gov) by January 19<sup>th</sup>, 2022.*

*This document provides an overview of the proposed changes. [Click here for a full copy of the recommended amendments to Chapter 365-190 WAC.](#)*

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<b>PART TWO - GENERAL REQUIREMENTS</b> <b>WAC 365-190-030</b>	<b>Source of Change:</b> Agency Recommendation
<b>Proposed Change:</b> Commerce is adding a definition for wellhead protection area based on recommendations from Department of Health. These areas are referred to in WAC 365-190-100 - Critical Aquifer Recharge Areas.	
<b>WAC 365-190-030 Definitions.</b> *** <u>(22) "Wellhead protection area (WHPA)" means protective areas associated with public drinking water sources established by water systems and approved or assigned by the state department of health.</u> ***	

<b>PART THREE – GUIDELINES</b> <b>WAC 365-190-040</b>	<b>Source of Change:</b> Agency Recommendation
<b>Proposed Change:</b> Commerce is Cross-referencing the Best Available Science (BAS) rule in WAC 365-195, which includes guidance for counties and cities to follow when choosing to depart from science-based recommendations while classifying critical areas.	
<b>WAC 365-190-040 Process.</b> *** (b) State agency classification schemes are available for specific critical area types, including the wetlands rating systems for eastern and western Washington from the Washington state department of ecology, the priority habitats and species categories and recommendations from the Washington state department of fish and wildlife, and the high quality ecosystem and rare plant categories and listings from the department of natural resources, natural heritage program. The Washington state department of natural resources provides significant information on geologic hazards and aquatic resources that may be useful in classifying these critical areas. Not all areas classified by state agencies must be designated, but such areas may be likely candidates for designation. <u>WAC 365-195-915 provides guidance when departing from science-based recommendations.</u> ***	
<b>Proposed Change:</b> These sections reference the classification and designation of both natural resource lands and critical areas, not just natural resource lands.	

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

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

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**Proposed Change:**

Commerce is clarifying the process to amend resource lands designations, commonly referred to as “de-designation” by counties. De-designation is most common for forest and agricultural resource lands. Individual applications to de-designate resource lands results in a piecemeal reduction of the resource lands base. This adversely impacts industries relying on productive timber and agricultural lands. The current rule discourages designation amendments on a parcel-by-parcel basis, but the proposal clarifies the existing language and terminology.

Resource lands designation should be reviewed on a countywide basis. Current language contemplates designations conducted on a regional basis. We propose to delete “or regional” as resource lands are typically designated countywide. The proposal would not eliminate the ability for counties to conduct a regional analysis.

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(10) Designation amendment process.

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

(b) Periodic de-designations of natural resource lands can undermine the original designation process. De-designations threaten the viability of natural resource lands and associated industries as conversion to incompatible land uses leads to operational interference. Cumulative impacts from de-designations can adversely affect the ability of natural resource-based industries to operate.

(i) Counties and cities should maintain and enhance natural resource-based industries and discourage incompatible uses. Because of the significant amount of time needed to review natural resource lands and potential impacts from incompatible uses, frequent, piecemeal de-designations of resource lands should be avoided. Site-specific proposals to de-designate natural resource lands should be deferred until the next periodic review of the comprehensive plan and development regulations (see RCW 36.70A.130).

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

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<p><b>WAC 365-190-050, WAC 365-190-060, WAC 365-190-070</b> Resource Lands (Agricultural, Forest, and Mineral)</p>	<p><b>Source of Change:</b> Agency recommendation.</p>
<p><b>Proposed Change:</b> Commerce is clarifying the process to amend resource lands designations, commonly referred to as “de-designation” by counties. De-designation is most common for forest and agricultural resource lands. Individual applications to de-designate resource lands results in a piecemeal reduction of the resource lands base. This adversely impacts industries relying on productive timber and agricultural lands. The current rule discourages designation amendments on a parcel-by-parcel basis, but the proposal clarifies the existing language and terminology.</p> <p>Proposal also adds “farmland of statewide significance” to prime and unique farmlands to consider when classifying agricultural resource lands of long-term commercial significance.</p>	
<p><b>WAC 365-190-050 Agricultural resource lands.</b> (1) In classifying and designating agricultural resource lands, counties must approach the effort as a county-wide or area-wide process. Counties and cities should not review resource lands designations solely on a parcel-by-parcel <del>process</del><u>basis</u>. <u>Counties should not de-designate agricultural resource lands without a comprehensive countywide analysis consistent with WAC 365-190-040(10).</u> Counties and cities must have a program for the transfer or purchase of development rights prior to designating agricultural resource lands in urban growth areas. Cities are encouraged to coordinate their agricultural resource lands designations with their county and any adjacent jurisdictions. ***</p>	
<p>(ii) In determining whether lands are used or capable of being used for agricultural production, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Natural Resources Conservation Service as defined in relevant Field Office Technical Guides. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys, and are based on the growing capacity, productivity and soil composition of the land.</p> <p>(c) The land has long-term commercial significance for agriculture. In determining this factor, counties and cities should consider the following nonexclusive criteria, as applicable:</p> <ul style="list-style-type: none"> <li>(i) The classification of prime and unique farmland soils, <u>and farmlands of statewide importance</u>, as mapped by the Natural Resources Conservation Service;</li> <li>(ii) The availability of public facilities, including roads used in transporting agricultural products;</li> <li>(iii) Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW and whether the optional public benefit rating system is used locally, and whether there is the ability to purchase or transfer land development rights;</li> <li>(iv) The availability of public services;</li> <li>(v) Relationship or proximity to urban growth areas;</li> <li>(vi) Predominant parcel size;</li> <li>(vii) Land use settlement patterns and their compatibility with agricultural practices;</li> <li>(viii) Intensity of nearby land uses;</li> </ul>	

- (ix) History of land development permits issued nearby;
- (x) Land values under alternative uses; and
- (xi) Proximity to markets.

**WAC 365-190-060 Forest Resource lands.**

(1) In classifying and designating forest resource lands, counties must approach the effort as a county-wide-~~or regional~~ process. Cities are encouraged to coordinate their forest resource lands designations with their county and any adjacent jurisdictions. Counties and cities should not review forest resource lands designations solely on a parcel-by-parcel basis. Counties should not de-designate forest resource lands without a comprehensive countywide analysis consistent with WAC 365-190-040(10).

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**WAC 365-190-070 Mineral Resource lands.**

(1) In classifying and designating forest resource lands, counties must approach the effort as a county-wide-~~or regional~~ process. Cities are encouraged to coordinate their forest resource lands designations with their county and any adjacent jurisdictions. Counties and cities should not review forest resource lands designations solely on a parcel-by-parcel basis. Counties should not de-designate forest resource lands without a comprehensive countywide analysis consistent with WAC 365-190-040(10).

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<p><b>WAC 365-190-080</b> Critical Areas</p>	<p><b>Source of Change:</b> Agency recommendation</p>
<p><b>Proposed Change:</b> No net loss of ecological functions and values is the minimum requirement to project critical areas. This is consistent with the statutory definition in RCW 36.70A.030(6).</p>	
<p><b>WAC 365-190-080 Critical areas.</b></p> <p>(1) Counties and cities must protect critical areas. Counties and cities required or opting to plan under the act must consider the definitions and guidelines in this chapter when designating critical areas and when preparing development regulations that protect the functions and values of critical areas <u>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.</p> <p>***</p>	

<p><b>WAC 365-190-100</b> Critical aquifer recharge areas</p>	<p><b>Source of Change:</b> Agency Recommendation</p>
<p><b>Proposed Change:</b> Commerce is providing more clarity and detail on classifying critical aquifer recharge areas based on vulnerability and susceptibility. This is consistent with Department of Health guidance.</p>	
<p><b>WAC 365-190-100 Critical aquifer recharge areas.</b> ***</p> <p>(3) Counties and cities must classify recharge areas for aquifers according to the aquifer vulnerability. Vulnerability is the combined effect of hydrogeological susceptibility to contamination and the contamination loading potential. High vulnerability <del>may be</del> is indicated by <u>hydrogeological conditions that facilitate degradation, particularly where combined with</u> land uses that contribute, <u>or may potentially contribute</u>, directly or indirectly to contamination that may degrade groundwater, <del>and hydrogeologic conditions that facilitate degradation</del>. Low vulnerability <del>is may be</del> is indicated by <u>the combination of hydrogeological conditions that do not facilitate degradation and</u> land uses that do not contribute, <u>or are not likely to contribute</u>, contaminants that will degrade groundwater, <del>and by hydrogeologic conditions that do not facilitate degradation</del>. Hydrological conditions may include those induced by limited recharge of an aquifer. Reduced aquifer recharge from effective impervious surfaces may result in higher concentrations of contaminants than would otherwise occur.</p> <p>***</p>	

<p><b>WAC 365-190-130</b> Fish and wildlife habitat conservation areas</p>	<p><b>Source of Change:</b> Agency Recommendation</p>
<p><b>Proposed Change:</b> Commerce is adding WDFW’s Priority Habitats and Species and DNR’s Natural Heritage Program Rare Plants to ensure local governments consider these habitats for classification and designation.</p>	
<p><b>WAC 365-190-130 Fish and wildlife habitat conservation areas.</b> ***</p> <p>(2) Fish and wildlife habitat conservation areas that must be considered for classification and designation include:</p> <ul style="list-style-type: none"> <li>(a) Areas where endangered, threatened, and sensitive species have a primary association;</li> <li>(b) Habitats and species of local importance, as determined locally;</li> <li>(c) Commercial and recreational shellfish areas;</li> <li>(d) Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;</li> <li>(e) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;</li> <li>(f) Waters of the state;</li> </ul>	

- (g) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; ~~and~~  
(h) State natural area preserves, natural resource conservation areas, and state wildlife areas; ~~and~~  
(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.  
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