Washington Land Surveying

Legal Reference Manual

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RCW 4.16.020
Actions to be commenced within ten years -- Exception.

The period prescribed for the commencement of actions shall be as follows:

Within ten years:

(1) For actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appears that the plaintiff, his or her ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action.

(2) For an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or of any territory or possession of the United States outside the boundaries thereof, or of any extraterritorial court of the United States, unless the period is extended under RCW 6.17.020 or a similar provision in another jurisdiction.

(3) Of the eighteenth birthday of the youngest child named in the order for whom support is ordered for an action to collect past due child support that has accrued under an order entered after July 23, 1989, by any of the above-named courts or that has accrued under an administrative order as defined in RCW 74.20A.020(6), which is issued after July 23, 1989.

[2002 c 261 § 2; 1994 c 189 § 2; 1989 c 360 § 1; 1984 c 76 § 1; 1980 c 105 § 1; Code 1881 § 26; 1877 p 7 § 26; 1854 p 363 § 2; RRS § 156.]

NOTES:

Application -- 1980 c 105: "This act shall apply to all judgments which have not expired before June 12, 1980." [1980 c 105 § 7.]

Adverse possession
limitation tolled when personal disability: RCW 7.28.090.
recovery of realty, limitation: RCW 7.28.050.

RCW 4.16.080
Actions limited to three years.

The following actions shall be commenced within three years:

(1) An action for waste or trespass upon real property;

(2) An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;

(3) Except as provided in RCW 4.16.040(2), an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;

(4) An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

(5) An action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution; but this subdivision shall not apply to action for an escape;

(6) An action against an officer charged with misappropriation or a failure to properly account for public funds intrusted to his custody; an action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribed a different limitation: PROVIDED, HOWEVER, The cause of action for such misappropriation, penalty or forfeiture, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statutes of limitations, or the bar thereof, even though complete, shall not be deemed to accrue or to have accrued until discovery by the aggrieved party of the act or acts from which such liability has arisen or shall arise, and such liability, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statute of limitation, or the bar thereof, even though complete, shall exist and be enforceable for three years after discovery by aggrieved party of the act or acts from which such liability has arisen or shall arise.

[1989 c 38 § 2; 1937 c 127 § 1; 1923 c 28 § 1; Code 1881 § 28; 1869 p 8 § 28; 1854 p 363 § 4; RRS § 159.]

NOTES:

Reviser's note: Transitional proviso omitted from subsection (6). The proviso reads: "PROVIDED, FURTHER, That no action heretofore barred under the provisions of this paragraph shall be commenced after ninety days from the time this act becomes effective;".

RCW 4.16.300
Actions or claims arising from construction, alteration, repair, design, planning, survey, engineering, etc., of improvements upon real property.

RCW 4.16.300 through 4.16.320 shall apply to all claims or causes of action of any kind against any person, arising from such person having constructed, altered or repaired any improvement upon real property, or having performed or furnished any design, planning, surveying, architectural or construction or engineering services, or supervision or observation of construction, or administration of construction contracts for any construction, alteration or repair of any improvement upon real property. This section is specifically intended to benefit persons having performed work for which the persons must be registered or licensed under RCW 18.08.310, 18.27.020, 18.43.040, 18.96.020, or 19.28.041, and shall not apply to claims or causes of action against persons not required to be so registered or licensed.

[2004 c 257 § 1; 1986 c 305 § 703; 1967 c 75 § 1.]

NOTES:

Severability -- 2004 c 257: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 257 § 2.]

Preamble -- Report to legislature -- Applicability -- Severability -- 1986 c 305: See notes following RCW 4.16.160.

RCW 4.16.310
Actions or claims arising from construction, alteration, repair, design, planning, survey, engineering, etc., of improvements upon real property -- accrual and limitations of actions or claims.

All claims or causes of action as set forth in RCW 4.16.300 shall accrue, and the applicable statute of limitation shall begin to run only during the period within six years after substantial completion of construction, or during the period within six years after the termination of the services enumerated in RCW 4.16.300, whichever is later. The phrase "substantial completion of construction" shall mean the state of completion reached when an improvement upon real property may be used or occupied for its intended use. Any cause of action which has not accrued within six years after such substantial completion of construction, or within six years after such termination of services, whichever is later, shall be barred: PROVIDED, That this limitation shall not be asserted as a defense by any owner, tenant or other person in possession and control of the improvement at the time such cause of action accrues. The limitations prescribed in this section apply to all claims or causes of action as set forth in RCW 4.16.300 brought in the name or for the benefit of the state which are made or commenced after June 11, 1986.

If a written notice is filed under RCW 64.50.020 within the time prescribed for the filing of an action under this chapter, the period of time during which the filing of an action is barred under RCW 64.50.020 plus sixty days shall not be a part of the period limited for the commencement of an action, nor for the application of this section.

[2002 c 323 § 9; 1986 c 305 § 702; 1967 c 75 § 2.]

NOTES:

Preamble -- Report to legislature -- Applicability -- Severability -- 1986 c 305: See notes following RCW 4.16.160.

Chapter 7.28 RCW Ejectment, Quieting Title

RCW SECTIONS

7.28.010 Who may maintain actions -- Service on nonresident defendant.

7.28.050 Limitation of actions for recovery of real property -- Adverse possession under title deducible of record.

7.28.060 Rights inhere to heirs, devisees and assigns.

7.28.070 Adverse possession under claim and color of title -- Payment of taxes.

7.28.080 Color of title to vacant and unoccupied land.

7.28.085 Adverse possession -- Forest land -- Additional requirements -- Exceptions.

7.28.090 Adverse possession -- Public lands -- Adverse title in infants, etc.

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7.28.300 Quieting title against outlawed mortgage or deed of trust.

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7.28.320 Possession no defense.

NOTES:

Forcible and unlawful entry, detainer: Chapters 59.12, 59.16 RCW.

Liens: Title 60 RCW.

Real property: Title 64 RCW.

Rent default, less than forty dollars: Chapter 59.08 RCW.

Tenancies: Chapter 59.04 RCW.

RCW 7.28.010
Who may maintain actions -- Service on nonresident defendant.

Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title; an action

to quiet title may be brought by the known heirs of any deceased person, or of any person presumed in law to be deceased, or by the successors in interest of such known heirs against the unknown heirs of such deceased person or against such person presumed to be deceased and his unknown heirs, and if it shall be made to appear in such action that the plaintiffs are heirs of the deceased person, or the person presumed in law to be deceased, or the successors in interest of such heirs, and have been in possession of the real property involved in such action for ten years preceding the time of the commencement of such action, and that during said time no person other than the plaintiff in the action or his grantors has claimed or asserted any right or title or interest in said property, the court may adjudge and decree the plaintiff or plaintiffs in such action to be the owners of such real property, free from all claims of any unknown heirs of such deceased person, or person presumed in law to be deceased; and an action to quiet title may be maintained by any person in the actual possession of real property against the unknown heirs of a person known to be dead, or against any person where it is not known whether such person is dead or not, and against the unknown heirs of such person, and if it shall thereafter transpire that such person was at the time of commencing such action dead the judgment or decree in such action shall be as binding and conclusive on the heirs of such person as though they had been known and named; and in all actions, under this section, to quiet or remove a cloud from the title to real property, if the defendant be absent or a nonresident of this state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, service may be made upon such defendant by publication of summons as provided by law; and the court may appoint a trustee for such absent or nonresident defendant, to make or cancel any deed or conveyance of whatsoever nature, or do any other act to carry into effect the judgment or the decree of the court.

[1911 c 83 § 1; 1890 c 72 § 1; Code 1881 § 536; 1879 p 134 § 1; 1877 p 112 § 540; 1869 p 128 § 488; 1854 p 205 § 398; RRS § 785. Formerly RCW 7.28.010, 7.28.020, 7.28.030, and 7.28.040.]

NOTES:

Process, publication, etc.: Chapter 4.28 RCW.

Publication of legal notices: Chapter 65.16 RCW.

RCW 7.28.050
Limitation of actions for recovery of real property -- Adverse possession under title deducible of record.

That all actions brought for the recovery of any lands, tenements or hereditaments of which any person may be possessed by actual, open and notorious possession for seven successive years, having a connected title in law or equity deducible of record from this state or the United States, or from any public officer, or other person authorized by the laws of this state to sell such land for the nonpayment of taxes, or from any sheriff, marshal or other person authorized to sell such land on execution or under any order, judgment or decree of any court of record, shall be brought within seven years next after possession being taken as aforesaid, but when the possessor shall acquire title after taking such possession, the limitation shall begin to run from the time of acquiring title.

[1893 c 11 § 1; RRS § 786.]

RCW 7.28.060
Rights inhere to heirs, devisees and assigns.

The heirs, devisees and assigns of the person having such title and possession shall have the same benefit of RCW 7.28.050 as the person from whom the possession is derived.

[1893 c 11 § 2; RRS § 787.]

RCW 7.28.070
Adverse possession under claim and color of title -- Payment of taxes.

Every person in actual, open and notorious possession of lands or tenements under claim and color of title, made in good faith, and who shall for seven successive years continue in possession, and shall also during said time pay all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owner of said lands or tenements, to the extent and according to the purport of his or her

paper title. All persons holding under such possession, by purchase, devise or descent, before said seven years shall have expired, and who shall continue such possession and continue to pay the taxes as aforesaid, so as to complete the possession and payment of taxes for the term aforesaid, shall be entitled to the benefit of this section.

[1893 c 11 § 3; RRS § 788.]

RCW 7.28.080
Color of title to vacant and unoccupied land.

Every person having color of title made in good faith to vacant and unoccupied land, who shall pay all taxes legally assessed thereon for seven successive years, he or she shall be deemed and adjudged to be the legal owner of said vacant and unoccupied land to the extent and according to the purport of his or her paper title. All persons holding under such taxpayer, by purchase, devise or descent, before said seven years shall have expired, and who shall continue to pay the taxes as aforesaid, so as to complete the payment of said taxes for the term aforesaid, shall be entitled to the benefit of this section: PROVIDED, HOWEVER, If any person having a better paper title to said vacant and unoccupied land shall, during the said term of seven years, pay the taxes as assessed on said land for any one or more years of said term of seven years, then and in that case such taxpayer, his heirs or assigns, shall not be entitled to the benefit of this section.

[1893 c 11 § 4; RRS § 789.]

RCW 7.28.085
Adverse possession -- Forest land -- Additional requirements -- Exceptions.

(1) In any action seeking to establish an adverse claimant as the legal owner of a fee or other interest in forest land based on a claim of adverse possession, and in any defense to an action brought by the holder of record title for recovery of title to or possession of a fee or other interest in forest land where such defense is based on a claim of adverse possession, the adverse claimant shall not be deemed to have established open and notorious possession of the forest lands at issue unless, as a minimum requirement, the adverse claimant establishes by clear and convincing evidence that the adverse claimant has made or erected substantial improvements, which improvements have remained entirely or partially on such lands for at least ten years. If the interests of justice so require, the making, erecting, and continuous presence of substantial improvements on the lands at issue, in the absence of additional acts by the adverse claimant, may be found insufficient to establish open and notorious possession.

(2) This section shall not apply to any adverse claimant who establishes by clear and convincing evidence that the adverse claimant occupied the lands at issue and made continuous use thereof for at least ten years in good faith reliance on location stakes or other boundary markers set by a registered land surveyor purporting to establish the boundaries of property to which the adverse claimant has record title.

(3) For purposes of this section:

(a) "Adverse claimant" means any person, other than the holder of record title, occupying the lands at issue together with any prior occupants of the land in privity with such person by purchase, devise, or decent [descent];

(b) "Claim of adverse possession" does not include a claim asserted under RCW 7.28.050, 7.28.070, or 7.28.080;

(c) "Forest land" has the meaning given in *RCW 84.33.100; and

(d) "Substantial improvement" means a permanent or semipermanent structure or enclosure for which the costs of construction exceeded fifty thousand dollars.

(4) This section shall not apply to any adverse claimant who, before June 11, 1998, acquired title to the lands in question by adverse possession under the law then in effect.

(5) This section shall not apply to any adverse claimant who seeks to assert a claim or defense of adverse possession in an action against any person who, at the time such action is commenced, owns less than twenty acres of forest land in the state of Washington.

[1998 c 57 § 1.]

NOTES:

***Reviser's note:** RCW 84.33.100 was repealed by 2001 c 249 § 16.

RCW 7.28.090
Adverse possession -- Public lands -- Adverse title in infants, etc.

RCW 7.28.070 and 7.28.080 shall not extend to lands or tenements owned by the United States or this state, nor to school lands, nor to lands held for any public purpose. Nor shall they extend to lands or tenements when there shall be an adverse title to such lands or tenements, and the holder of such adverse title is a person under eighteen years of age, or incompetent within the meaning of RCW 11.88.010: PROVIDED, Such persons as aforesaid shall commence an action to recover such lands or tenements so possessed as aforesaid, within three years after the several disabilities herein enumerated shall cease to exist, and shall prosecute such action to judgment, or in case of vacant and unoccupied land shall, within the time last aforesaid, pay to the person or persons who have paid the same for his or her betterments, and the taxes, with interest on said taxes at the legal rate per annum that have been paid on said vacant and unimproved land.

[1977 ex.s. c 80 § 7; 1971 ex.s. c 292 § 7; 1893 c 11 § 5; RRS § 790.]

NOTES:

Purpose -- Intent -- Severability -- 1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability -- 1971 ex.s. c 292: See note following RCW 26.28.010.

RCW 7.28.100
Construction.

That the provisions of RCW 7.28.050 through 7.28.100 shall be liberally construed for the purposes set forth in those sections.

[1893 c 11 § 6; RRS § 791.]

RCW 7.28.110
Substitution of landlord in action against tenant.

A defendant who is in actual possession may, for answer, plead that he is in possession only as a tenant of another, naming him and his place of residence, and thereupon the landlord, if he applies therefor, shall be made defendant in place of the tenant, and the action shall proceed in all respects as if originally commenced against him. If the landlord does not apply to be made defendant within the time the tenant is allowed to answer, thereafter he shall not be allowed to, but he shall be made defendant if the plaintiff require it. If the landlord be made defendant on motion of the plaintiff he shall be required to appear and answer within ten days from notice of the pendency of the action and the order making him defendant, or such further notice as the court or judge thereof may prescribe.

[Code 1881 § 537; 1877 p 112 § 541; 1869 p 128 § 489; RRS § 792.]

RCW 7.28.120
Pleadings -- Superior title prevails.

The plaintiff in such action shall set forth in his complaint the nature of his estate, claim or title to the property, and the defendant may set up a legal or equitable defense to plaintiff's claims; and the superior title, whether legal or equitable, shall prevail. The property shall be described with such certainty as to enable the possession thereof to be delivered if a recovery be had.

[Code 1881 § 538; 1879 p 134 § 2; 1877 p 113 § 542; 1869 p 128 § 490; RRS § 793.]

RCW 7.28.130
Defendant must plead nature of his estate or right to possession.

The defendant shall not be allowed to give in evidence any estate in himself or another in the property, or any license or right to the possession thereof unless the same be pleaded in his answer. If so pleaded, the nature and duration of such estate, or license or right to the possession, shall be set forth with the certainty and particularity

required in a complaint. If the defendant does not defend for the whole of the property, he shall specify for what particular part he does defend. In an action against a tenant, the judgment shall be conclusive against a landlord who has been made defendant in place of the tenant, to the same extent as if the action had been originally commenced against him.

[Code 1881 § 539; 1877 p 113 § 543; 1869 p 129 § 491; RRS § 794.]

RCW 7.28.140
Verdict of jury.

The jury by their verdict shall find as follows:

(1) If the verdict be for the plaintiff, that he is entitled to the possession of the property described in the complaint, or some part thereof, or some undivided share or interest in either, and the nature and duration of his estate in such property, part thereof, or undivided share or interest, in either, as the case may be.

(2) If the verdict be for the defendant, that the plaintiff is not entitled to the possession of the property described in the complaint, or to such part thereof as the defendant defends for, and the estate in such property or part thereof, or license, or right to the possession of either established on the trial by the defendant, if any, in effect as the same is required to be pleaded.

[Code 1881 § 540; 1877 p 113 § 544; 1869 p 129 § 492; RRS § 795.]

NOTES:

Rules of court: CR 49.

General, special verdicts: RCW 4.44.410 through 4.44.440.

RCW 7.28.150
Damages -- Limitation -- Permanent improvements.

The plaintiff shall only be entitled to recover damages for withholding the property for the term of six years next preceding the commencement of the action, and for any period that may elapse from such commencement, to the time of giving a verdict therein, exclusive of the use of permanent improvements made by the defendant. When permanent improvements have been made upon the property by the defendant, or those under whom he claims holding under color of title adversely to the claim of the plaintiff, in good faith, the value thereof at the time of trial shall be allowed as a setoff against such damages.

[Code 1881 § 541; 1877 p 113 § 545; 1869 p 129 § 493; RRS § 796.]

NOTES:

Reviser's note: Compare the last sentence of this section with RCW 7.28.160 through 7.28.180.

RCW 7.28.160
Defendant's counterclaim for permanent improvements and taxes paid.

In an action for the recovery of real property upon which permanent improvements have been made or general or special taxes or local assessments have been paid by a defendant, or those under whom he claims, holding in good faith under color or claim of title adversely to the claim of plaintiff, the value of such improvements and the amount of such taxes or assessments with interest thereon from date of payment must be allowed as a counterclaim to the defendant.

[1903 c 137 § 1; RRS § 797.]

RCW 7.28.170
Defendant's counterclaim for permanent improvements and taxes paid -- Pleadings, issues and trial on counterclaim.

The counterclaim shall set forth the value of the land apart from the improvements, and the nature and value of the improvements apart from the land and the amount of said taxes and assessments so paid, and the date of payment. Issues shall be joined and tried as in other actions, and the value of the land and the amount of said taxes and assessments apart from the improvements, and the value of the improvements apart from the land must be specifically found by the verdict of the jury,

report of the referee, or findings of the court as the case may be.

[1903 c 137 § 2; RRS § 798.]

RCW 7.28.180
Defendant's counterclaim for permanent improvements and taxes paid -- Judgment on counterclaim -- Payment.

If the judgment be in favor of the plaintiff for the recovery of the realty, and of the defendant upon the counterclaim, the plaintiff shall be entitled to recover such damages as he may be found to have suffered through the withholding of the premises and waste committed thereupon by the defendant or those under whom he claims, but against this recovery shall be offset pro tanto the value of the permanent improvements and the amount of said taxes and assessments with interest found as above provided. Should the value of improvements or taxes or assessments with interest exceed the recovery for damages, the plaintiff, shall, within two months, pay to the defendant the difference between the two sums and upon proof, after notice, to the defendant, that this has been done, the court shall make an order declaring that fact, and that title to the improvements is vested in him. Should the plaintiff fail to make such payment, the defendant may at any time within two months after the time limited for such payment to be made, pay to the plaintiff the value of the land apart from the improvements, and the amount of the damages awarded against him, and he thereupon shall be vested with title to the land, and, after notice to the plaintiff, the court shall make an order reciting the fact and adjudging title to be in him. Should neither party make the payment above provided, within the specified time, they shall be deemed to be tenants in common of the premises, including the improvements, each holding an interest proportionate to the value of his property determined in the manner specified in RCW 7.28.170: PROVIDED, That the interest of the owner of the improvements shall be the difference between the value of the improvements and the amount of damages recovered against him by the plaintiff.

[1903 c 137 § 3; RRS § 799.]

RCW 7.28.190
Verdict where plaintiff's right to possession expires before trial.

If the right of the plaintiff to the possession of the property expire, after the commencement of the action and before the trial, the verdict shall be given according to the fact, and judgment shall be given only for the damages.

[Code 1881 § 542; 1877 p 114 § 546; 1869 p 130 § 494; RRS § 800.]

RCW 7.28.200
Order for survey of property.

The court or judge thereof, on motion, and after notice to the adverse party, may, for cause shown, grant an order allowing the party applying therefor to enter upon the property in controversy and make survey and admeasurement thereof, for the purposes of the action.

[Code 1881 § 543; 1877 p 114 § 547; 1869 p 130 § 495; RRS § 801.]

RCW 7.28.210
Order for survey of property -- Contents of order -- Service.

The order shall describe the property, and a copy thereof shall be served upon the defendant, and thereupon the party may enter upon the property and make such survey and admeasurement; but if any unnecessary injury be done to the premises, he shall be liable therefor.

[Code 1881 § 544; 1877 p 114 § 548; 1869 p 130 § 496; RRS § 802.]

RCW 7.28.220
Alienation by defendant, effect of.

An action for the recovery of the possession of real property against a person in possession, cannot be prejudiced by any alienation made by such person either before or after the commencement of the action; but if such alienation be made after the commencement of

the action, and the defendant do not satisfy the judgment recovered for damages for withholding the possession, such damages may be recovered by action against the purchaser.

[Code 1881 § 545; 1877 p 114 § 549; 1869 p 130 § 497; RRS § 803.]

RCW 7.28.230
Mortgagee cannot maintain action for possession -- Possession to collect mortgaged, pledged, or assigned rents and profits -- Perfection of security interest.

(1) A mortgage of any interest in real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property, without a foreclosure and sale according to law: PROVIDED, That nothing in this section shall be construed as any limitation upon the right of the owner of real property to mortgage, pledge or assign the rents and profits thereof, nor as prohibiting the mortgagee, pledgee or assignee of such rents and profits, or any trustee under a mortgage or trust deed either contemporaneously or upon the happening of a future event of default, from entering into possession of any real property, other than farm lands or the homestead of the mortgagor or his successor in interest, for the purpose of collecting the rents and profits thereof for application in accordance with the provisions of the mortgage or trust deed or other instrument creating the lien, nor as any limitation upon the power of a court of equity to appoint a receiver to take charge of such real property and collect such rents and profits thereof for application in accordance with the terms of such mortgage, trust deed or assignment.

(2) Until paid, the rents and profits of real property constitute real property for the purposes of mortgages, trust deeds or assignments whether or not said rents and profits have accrued. The provisions of RCW 65.08.070 as now or hereafter amended shall be applicable to such rents and profits, and such rents and profits are excluded from *Article 62A.9 RCW.

(3) The recording of an assignment, mortgage, or pledge of unpaid rents and profits of real property, intended as security, in accordance with RCW 65.08.070, shall immediately perfect the security interest in the assignee, mortgagee, or pledgee and shall not require any further action by the holder of the security interest to be perfected as to any subsequent purchaser, mortgagee, or assignee. Any lien created by such assignment, mortgage, or pledge shall, when recorded, be deemed specific, perfected, and choate even if recorded prior to July 23, 1989.

[1991 c 188 § 1; 1989 c 73 § 1; 1969 ex.s. c 122 § 1; Code 1881 § 546; 1877 p 114 § 550; 1869 p 130 § 498; RRS § 804.]

NOTES:

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

RCW 7.28.240
Action between cotenants.

In an action by a tenant in common, or a joint tenant of real property against his cotenant, the plaintiff must show, in addition to his evidence of right, that the defendant either denied the plaintiff's right or did some act amounting to such denial.

[Code 1881 § 547; 1877 p 114 § 551; 1869 p 130 § 499; RRS § 805.]

RCW 7.28.250
Action against tenant on failure to pay rent.

When in the case of a lease of real property and the failure of tenant to pay rent, the landlord has a subsisting right to reenter for such failure; he may bring an action to recover the possession of such property, and such action is equivalent to a demand of the rent and a reentry upon the property. But if at any time before the judgment in such action, the lessee or his successor in interest as to the whole or a part of the property, pay to the plaintiff, or bring into court the amount of rent then in arrear, with interest and cost of action, and perform the other covenants or agreements on the part of the lessee, he shall be entitled to continue in the possession according to the terms of the lease.

[Code 1881 § 548; 1877 p 114 § 552; 1869 p 131 § 500; No RRS.]

NOTES:

Forcible entry, detainer: Chapter 59.12 RCW.

Rent default, less than forty dollars: Chapter 59.08 RCW.

Tenancies: Chapter 59.04 RCW.

RCW 7.28.260
Effect of judgment -- Lis pendens -- Vacation.

In an action to recover possession of real property, the judgment rendered therein shall be conclusive as to the estate in such property and the right of possession thereof, so far as the same is thereby determined, upon all persons claiming by, through, or under the party against whom the judgment is rendered, by title or interest passing after the commencement of the action, if the party in whose favor the judgment is rendered shall have filed a notice of the pendency of the action as required by RCW 4.28.320. When service of the notice is made by publication, and judgment is given for failure to answer, at any time within two years from the entry thereof, the defendant or his successor in interest as to the whole or any part of the property, shall, upon application to the court or judge thereof, be entitled to an order, vacating the judgment and granting him a new trial, upon the payment of the costs of the action.

[1909 c 35 § 1; Code 1881 § 549; 1877 p 114 § 553; 1869 p 131 § 501; RRS § 806.]

NOTES:

Rules of court: Cf. CR 58, 60(e).

New trials: Chapter 4.76 RCW.

Vacation of judgments: Chapter 4.72 RCW.

RCW 7.28.270
Effect of vacation of judgment.

If the plaintiff has taken possession of the property before the judgment is set aside and a new trial granted, as provided in RCW 7.28.260, such possession shall not be thereby affected in any way; and if judgment be given for defendant in the new trial, he shall be entitled to restitution by execution in the same manner as if he were plaintiff.

[Code 1881 § 550; 1877 p 115 § 554; 1869 p 131 § 502; RRS § 807.]

NOTES:

Rules of court: Cf. CR 58, 60(e).

RCW 7.28.280
Conflicting claims, donation law, generally -- Joinder of parties.

In an action at law, for the recovery of the possession of real property, if either party claims the property as a donee of the United States, and under the act of congress approved September 27th, 1850, commonly called the "Donation law," or the acts amendatory thereof, such party, from the date of his settlement thereon, as provided in said act, shall be deemed to have a legal estate in fee, in such property, to continue upon condition that he perform the conditions required by such acts, which estate is unconditional and indefeasible after the performance of such conditions. In such action, if both plaintiff and defendant claim title to the same real property, by virtue of settlement, under such acts, such settlement and performance of the subsequent condition shall be prima facie presumed in favor of the party having or claiming under the elder certificate, or patent, as the case may be, unless it appears upon the face of such certificate or patent that the same is absolutely void. Any person in possession, by himself or his tenant, of real property, and any private or municipal corporation in possession by itself or its tenant of any real property, or when such real property is not in the actual possession of anyone, any person or private or municipal corporation claiming title to any real property under a patent from the United States, or during his or its claim of title to such real property under a patent from the United States for such real estate, may maintain a civil action against any person or persons, corporations or associations claiming an interest in said real property or any part thereof, or any right thereto adverse to him, them, or it, for the purpose of determining such claim, estate, or interest; and where several persons, or private or municipal corporations are in possession of, or claim as

aforesaid, separate parcels of real property, and an adverse interest is claimed or claim made in or to any such parcels, by any other person, persons, corporations or associations, arising out of a question, conveyance, statute, grant, or other matter common to all such parcels of real estate, all or any portion of such persons or corporations so in possession, or claiming such parcel of real property may unite as plaintiffs in such suit to determine such adverse claim or interest against all persons, corporations or associations claiming such adverse interest.

[Code 1881 § 551; 1877 p 116 § 556; 1869 p 132 § 504; RRS §§ 808, 809. Formerly RCW 7.28.280 and 7.28.290.]

RCW 7.28.300
Quieting title against outlawed mortgage or deed of trust.

The record owner of real estate may maintain an action to quiet title against the lien of a mortgage or deed of trust on the real estate where an action to foreclose such mortgage or deed of trust would be barred by the statute of limitations, and, upon proof sufficient to satisfy the court, may have judgment quieting title against such a lien.

[1998 c 295 § 17; 1937 c 124 § 1; RRS § 785-1.]

NOTES:

Limitation of actions, generally: Chapter 4.16 RCW.

Real estate mortgages, foreclosure: Chapter 61.12 RCW.

RCW 7.28.310
Quieting title to personal property.

Any person or corporation claiming to be the owner of or interested in any tangible or intangible personal property may institute and maintain a suit against any person or corporation also claiming title to or any interest in such property for the purpose of adjudicating the title of the plaintiff to such property, or any interest therein, against any and all adverse claims; removing all such adverse claims as clouds upon the title of the plaintiff and quieting the title of the plaintiff against any and all such adverse claims.

[1929 c 100 § 1; RRS § 809-1.]

RCW 7.28.320
Possession no defense.

The fact that any person or corporation against whom such action may be brought is in the possession of such property, or evidence of title to such property, shall not prevent the maintenance of such suit.

[1929 c 100 § 2; RRS § 809-2.]

Chapter 8.20 RCW Eminent Domain By Corporations

RCW SECTIONS

8.20.010 Petition for appropriation -- Contents.

8.20.020 Notice -- Contents -- Service -- Publication.

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8.20.180 Appointment of guardian ad litem for minors, alleged incapacitated persons -- Protection of interests.

NOTES:

Additional provisions relating to eminent domain proceedings: Chapter 8.25 RCW.

Corporations, certain types: RCW 81.36.010.

Corporations conveying water: RCW 90.16.100.

Easements over public lands: Chapter 79.36 RCW.

Electric light and power companies: RCW 80.32.060 through 80.32.080.

Eminent domain affecting corporations other than municipal: State Constitution Art. 12 § 10.

Gas and oil pipelines: RCW 81.88.020.

Grade crossing eliminations, appropriation for: RCW 81.53.180.

Mining companies: RCW 78.04.010.

Railroad companies, appropriation by: RCW 81.36.010.

Railroads, rights of way: RCW 81.52.040, 81.53.180.

State university -- Rights-of-way to railroads: RCW 28B.20.330.

Street and electric railroads: RCW 81.64.040.

Telecommunications companies: RCW 80.36.010, State Constitution Art. 12 § 19.

Underground natural gas storage: RCW 80.40.030, 80.40.040.

Water power companies: RCW 90.16.030.

RCW 8.20.010
Petition for appropriation -- Contents.

Any corporation authorized by law to appropriate land, real estate, premises or other property for right-of-way or any other corporate purposes, may present to the superior court of the county in which any land, real estate, premises or other property sought to be appropriated shall be situated, or to the judge of such superior court in any county where he has jurisdiction or is holding court, a petition in which the land, real estate, premises or other property sought to be appropriated shall be described with reasonable certainty, and setting forth the name of each and every owner, encumbrancer or other person or party interested in the same, or any part thereof, so far as the same can be ascertained from the public records,

the object for which the land is sought to be appropriated, and praying that a jury be impaneled to ascertain and determine the compensation to be made in money, irrespective of any benefit from any improvement proposed by such corporation, to such owner or owners, respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such lands, real estate, premises or other property, or in case a jury be waived as in other civil cases in courts of record in the manner prescribed by law, then that the compensation to be made, as aforesaid, be ascertained and determined by the court, or judge thereof.

[1890 p 294 § 1. Prior: 1888 p 58 § 1; RRS § 921.]

RCW 8.20.020
Notice -- Contents -- Service -- Publication.

A notice, stating briefly the objects of the petition, and containing a description of the land, real estate, premises or property sought to be appropriated, and stating the time and place, when and where the same will be presented to the court, or the judge thereof, shall be served on each and every person named therein as owner, encumbrancer, tenant, or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of such petition. Such service shall be made by delivering a copy of such notice to each of the persons or parties so named therein, if a resident of the state; or, in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode; or, in case of a foreign corporation, at its principal place of business in this state, with some person of more than sixteen years of age. In case of domestic corporations, such service shall be made upon the president, secretary or other director or trustee of such corporation. In case of persons under the age of eighteen years, on their guardians, or in case no guardian shall have been appointed, then on the person who has the care and custody of such person; in case of idiots, lunatics or distracted persons, on their guardian, or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. In case the land, real estate, premises or other property sought to be appropriated is state, school or county land, the notice shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be appropriated is situated. In all cases where the owner or person claiming an interest in such real or other property, is a nonresident of this state, or where the residence of such owner or person is unknown, and an affidavit of the agent or attorney of the corporation shall be filed that such owner or person is a nonresident of this state, or that after diligent inquiry his residence is unknown, or cannot be ascertained by such deponent, service may be made by publication thereof in any newspaper published in the county where such lands are situated once a week for two successive weeks; and in case no newspaper is published in said county, then such publication may be had in a newspaper published in the county nearest to the county in which lies the land sought to be appropriated. And such publication shall be deemed service upon each of such nonresident person or persons whose residence is unknown. Such notice shall be signed by the president, manager, secretary or attorney of the corporation; and in case the proceedings provided for in RCW 8.20.010 through 8.20.140 are instituted by the owner or any other person or party interested in the land, real estate, or other property sought to be appropriated, then such notice shall be signed by such owner, person or party interested, or his, her or its attorney. Such notice may be served by any competent person eighteen years of age or over. Due proof of the service of such notice by affidavit of the person serving the same, or by the printer's affidavit of publication, shall be filed with the clerk of such superior court before or at the time of the presentation of such petition. Want of service of such notice shall render the subsequent proceedings void as to the person not served, but all persons or parties having been served with notice as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all other cases not otherwise provided for, service of notices, orders and other papers in the proceedings authorized by RCW 8.20.010 through 8.20.140 may be made as the superior court or the judge thereof may direct.

[1971 ex.s. c 292 § 9; 1890 p 295 § 2; RRS § 922. Prior: 1888 p 58 § 2. Formerly RCW 8.20.020, 8.20.030, 8.20.040, 8.20.050.]

NOTES:

Severability -- 1971 ex.s. c 292: See note following RCW 26.28.010.

Publication of
legal notices: Chapter 65.16 RCW.
notice in eminent domain proceedings: RCW 4.28.120.

Service of process where state land is involved: RCW 8.28.010.

RCW 8.20.060
Adjournment of proceedings -- Further notice.

The court or judge may, upon application of the petitioner or of any owner or party interested, for reasonable cause, adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interest may be affected.

[1890 p 297 § 3; RRS § 924. Prior: 1888 p 60 § 3.]

RCW 8.20.070
Adjudication of public use or private way of necessity.

At the time and place appointed for hearing said petition, or to which the same may have been adjourned, if the court or judge thereof shall have satisfactory proof that all parties interested in the land, real estate, premises, or other property described in said petition, have been duly served with said notice as above prescribed, and shall be further satisfied by competent proof that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really a public use, or is for a private use for a private way of necessity, and that the public interest requires the prosecution of such enterprise, or the private use is for a private way of necessity, and that the land, real estate, premises or other property sought to be appropriated are required and necessary for the purposes of such enterprise, the court or judge thereof may make an order, to be recorded in the minutes of said court, directing that a jury be summoned, or called, in the manner provided by law, to ascertain the compensation which shall be made for the land, real estate, premises or other property sought to be appropriated, unless a jury be waived as in other civil cases in courts of record, in the manner prescribed by law.

[1927 c 88 § 1; 1897 c 46 § 1; 1890 p 297 § 4; RRS § 925. Prior: 1888 p 60 § 4.]

NOTES:

Juries, civil actions, selection, impaneling and swearing of: Chapters 2.36, 4.44 RCW.

Private ways of necessity: Chapter 8.24 RCW.

RCW 8.20.080
Trial, how conducted.

A judge of the superior court shall preside at the trial which shall be held at such time as the court or the judge thereof may direct, at the courthouse in the county where the land, real estate, premises or other property sought to be appropriated is situated, and the jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to the state, or to any county, by reason of the appropriation and use of such land, real estate, premises or other property by such corporation as aforesaid for any and all corporate purposes, and shall ascertain, determine and award the amount of damages to be paid to said owner or owners respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property for the purpose of such enterprise, irrespective of any benefit from any improvement proposed by such corporation. Upon the trial, witnesses may be examined in behalf of either party to the proceedings as in civil actions; and a witness served with a subpoena in such proceedings shall be punished for failure to appear at such trial, or for perjury, as upon a trial of a civil action. Upon the verdict of the jury, judgment shall be entered for the amount of the damages awarded to such owner or owners respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property. In case a jury is waived as in civil cases in courts of record in the manner prescribed by law, the compensation to be paid for the property sought to be appropriated shall be ascertained and determined by the court or the judge thereof, and the proceedings shall be the same as in trials of an issue of fact by the court.

[1890 p 297 § 5; RRS § 926.]

NOTES:

Witnesses in civil actions
compelling attendance: Chapter 5.56 RCW.
examination: Title 5 RCW.

RCW 8.20.090
Judgment -- Decree of appropriation -- Recording.

At the time of rendering judgment for damages, whether upon default or trial, if the damages awarded be then paid, or upon their payment, if not paid at the time of rendering such judgment, the court or judge thereof shall also enter a judgment or decree of appropriation of the land, real estate, premises, right-of-way or other property sought to be appropriated, thereby vesting the legal title to the same in the corporation seeking to appropriate such land, real estate, premises, right-of-way or other property for corporate purposes. Whenever said judgment or decree of appropriation shall affect lands, real estate or other premises, a certified copy of such judgment or decree of appropriation may be filed for record in the office of the auditor of the county where the said land, real estate or other premises are situated, and shall be recorded by said auditor like a deed of real estate and with like effect. If the title to said land, real estate, premises or other property attempted to be acquired is found to be defective from any cause, the corporation may again institute proceedings to acquire the same, as in RCW 8.20.010 through 8.20.140 provided.

[1891 c 46 § 1; 1890 p 298 § 6; RRS § 927.]

NOTES:

Rules of court: CR 54, 58.

Recording of deeds of real estate: Title 65 RCW.

RCW 8.20.100
Payment of damages -- Effect -- Appellate review.

Upon the entry of judgment upon the verdict of the jury or the decision of the court or judge thereof, awarding damages as hereinbefore prescribed, the petitioner, or any officer of, or other person duly appointed by said corporation, may make payment of the damages assessed to the parties entitled to the same, and of the costs of the proceedings, by depositing the same with the clerk of said superior court, to be paid out under the direction of the court or judge thereof; and upon making such payment into the court of the damages assessed and allowed, and of the costs, to any land, real estate, premises or other property mentioned in said petition, such corporation shall be released and discharged from any and all further liability therefor, unless upon appellate review the owner or other person or party interested shall recover a greater amount of damages; and in that case only for the amount in excess of the sum paid into said court, and the costs of appellate review: PROVIDED, That in case of review by the supreme court or the court of appeals of the state by any party to the proceedings, the money so paid into the superior court by such corporation as aforesaid, shall remain in the custody of said court until the final determination of the proceedings by the said supreme court or the court of appeals.

[1988 c 202 § 13; 1971 c 81 § 42; 1890 p 299 § 7; RRS § 929.]

NOTES:

Severability -- 1988 c 202: See note following RCW 2.24.050.

RCW 8.20.110
Claimants, payment of -- Conflicting claims.

Any person, corporation, state or county, claiming to be entitled to any money paid into court, as provided in RCW 8.20.010 through 8.20.140 may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he or it is entitled to the same, the court shall make an order directing the payment to such claimant the portion of such money as he or it shall be found entitled to; but if, upon application, the court or judge thereof shall decide that the title to the land, real estate, premises or other property specified in the application of such claimant was in such condition as to require that an action be commenced to determine the conflicting claims thereto, he shall refuse such order until such action is commenced and the conflicting claims to such land, real estate, premises or other property be determined according to law.

[1890 p 299 § 8; RRS § 930. Prior: 1888 p 61 § 8.]

RCW 8.20.120
Appellate review.

Either party may seek appellate review of the judgment for damages entered in the superior court within thirty days after the entry of judgment as aforesaid and such review shall bring before the supreme court or the court of appeals the propriety and justness of the amount of damages in respect to the parties to the review: PROVIDED, HOWEVER, That no bond shall be required of any person interested in the property sought to be appropriated by such corporation, but in case the corporation appropriating such land, real estate, premises or other property is appellant, it shall give a bond like that prescribed in RCW 8.20.130, to be executed, filed and approved in the same manner: AND PROVIDED FURTHER, That if the owner of the land, real estate, premises or other property accepts the sum awarded by the jury, the court or the judge thereof, he shall be deemed thereby to have waived conclusively appellate review, and final judgment by default may be rendered in the superior court as in other cases.

[1988 c 202 § 14; 1971 c 81 § 43; 1890 p 300 § 9; RRS § 931. Prior: 1888 p 61 § 9.]

NOTES:

Severability -- 1988 c 202: See note following RCW 2.24.050.

RCW 8.20.130
Prosecution of work pending appeal -- Bond.

The construction of any railway surface tramway, elevated cable tramway, or canal, or the prosecution of any works or improvements by any corporation as aforesaid shall not be hindered, delayed or prevented by the prosecution of the appeal of any party to the proceedings: PROVIDED, The corporation aforesaid shall execute and file with the clerk of the court in which the appeal is pending a bond to be approved by said clerk, with sufficient sureties, conditioned that the persons executing the same shall pay whatever amount may be required by the judgment of the court therein, and abide any rule or order of the court in relation to the matter in controversy.

[1897 c 46 § 2; 1890 p 300 § 10; RRS § 932. Prior: 1888 p 62 § 10.]

RCW 8.20.140
Appropriation of railway right-of-way through canyon, pass, or defile.

Any railroad company whose right-of-way passes through any canyon, pass or defile shall not prevent any other railroad company from the use and occupancy of said canyon, pass or defile for the purpose of its road in common with the road first located or the crossing of other railroads at grade, and any railroad company authorized by law to appropriate land, real estate, premises or other property for right-of-way or any other corporate purpose may present a petition, in the manner and form hereinbefore provided, for the appropriation of a right-of-way through any canyon, pass or defile for the purpose of its road where right-of-way has already been located, condemned or occupied by some other railroad company through such canyon, pass or defile for the purpose of its road, and thereupon, like proceedings shall be had upon such petition as herein provided in other cases; and at the time of rendering judgment for damages, whether upon default or trial, the court or judge thereof shall enter a judgment or decree authorizing said railroad company to occupy and use said right-of-way, roadbed and track, if necessary, in common with the railroad company or companies already occupying or owning the same, and defining the terms and conditions upon which the same shall be so occupied and used in common.

[1890 p 301 § 12; RRS § 933.]

RCW 8.20.150
Prior entry with consent -- Condemnation avoids ouster.

No corporation authorized by law to condemn property for public use, which has heretofore entered or shall hereafter enter upon property for a public use with the consent of the record owner or the person or corporation in possession, shall be ousted from such possession or prevented from continuing the putting of such property to public use if before entry of judgment of ouster it shall institute proceedings in condemnation to acquire such property for public use, and shall

thereafter prosecute the same in good faith and pay any compensation which may be awarded therein.

[1927 c 219 § 1; RRS § 921-1.]

NOTES:

Severability -- 1927 c 219: "If any section, provision or clause in this act be adjudged invalid the remainder of the act shall nevertheless remain valid." [1927 c 219 § 4.] This applies to RCW 8.20.150 through 8.20.170.

RCW 8.20.160
Three-year occupancy -- Condemnation avoids ouster.

No corporation which shall have been or shall be in possession of property put to public use for three or more years, and while continuing to put such property to public use shall be ousted therefrom or prevented from continuing such use if prior to the entry of any judgment of ouster it shall institute condemnation proceedings to acquire such property for public use, and shall thereafter prosecute the same in good faith and pay any compensation awarded therein.

[1927 c 219 § 2; RRS § 921-2.]

RCW 8.20.170
Suit for compensation by owner equivalent to condemnation.

Nothing in RCW 8.20.150 through 8.20.170 shall prevent the owner of any such property suing for and recovering compensation for such property without instituting suit or proceedings to oust such corporation therefrom, and upon payment of the amount awarded such owner title to the property shall vest in such corporation as effectually as if acquired by proceedings in condemnation.

[1927 c 219 § 3; RRS § 921-3.]

RCW 8.20.180
Appointment of guardian ad litem for minors, alleged incapacitated persons -- Protection of interests.

See RCW 8.25.270.

Chapter 8.24 RCW Private Ways Of Necessity

RCW SECTIONS

8.24.010 Condemnation authorized -- Private way of necessity defined.

8.24.015 Joinder of surrounding property owners authorized.

8.24.025 Selection of route -- Criteria.

8.24.030 Procedure for condemnation--Fees and costs.

8.24.040 Logging road must carry products of condemnees.

8.24.050 Appointment of guardian ad litem for minors, alleged incapacitated persons -- Protection of interests.

NOTES:

Additional provisions relating to eminent domain proceedings: Chapter 8.25 RCW.

Adjudication of public use or private way of necessity: RCW 8.20.070.

RCW 8.24.010
Condemnation authorized -- Private way of necessity defined.

An owner, or one entitled to the beneficial use, of land which is so situate with respect to the land of another that it is necessary for its proper use and enjoyment to have and maintain a private way of necessity or to construct and maintain any drain, flume or ditch, on, across, over or through the land of such other, for agricultural, domestic or sanitary purposes, may condemn and take lands of such other sufficient in area for the construction and maintenance of such private way of necessity, or for the construction and maintenance of such drain, flume or ditch, as the case may be. The term "private way of necessity," as used in this chapter, shall mean and include a right of way on, across, over or through the land of another for means of ingress and egress, and the construction and maintenance thereon of roads, logging roads, flumes, canals, ditches, tunnels, tramways and other structures upon, over and through which timber, stone, minerals or other valuable materials and products may be transported and carried.

[1913 c 133 § 1; RRS § 936-1. Prior: 1895 c 92 § 1. Formerly RCW 8.24.020, part.]

RCW 8.24.015
Joinder of surrounding property owners authorized.

In any proceeding for the condemnation of land for a private way of necessity, the owner of any land surrounding and contiguous to the property which land might contain a site for the private way of necessity may be joined as a party.

[1988 c 129 § 1.]

RCW 8.24.025
Selection of route -- Criteria.

If it is determined that an owner, or one entitled to the beneficial use of land, is entitled to a private way of necessity and it is determined that there is more than one possible route for the private way of necessity, the selection of the route shall be guided by the following priorities in the following order:

(1) Nonagricultural and nonsilvicultural land shall be used if possible.

(2) The least-productive land shall be used if it is necessary to cross agricultural land.

(3) The relative benefits and burdens of the various possible routes shall be weighed to establish an equitable balance between the benefits to the land for which the private way of necessity is sought and the burdens to the land over which the private way of necessity is to run.

[1988 c 129 § 2.]

RCW 8.24.030
Procedure for condemnation -- Fees and costs.

The procedure for the condemnation of land for a private way of necessity or for drains, flumes or

ditches under the provisions of this chapter shall be the same as that provided for the condemnation of private property by railroad companies, but no private property shall be taken or damaged until the compensation to be made therefor shall have been ascertained and paid as provided in the case of condemnation by railroad companies.

In any action brought under the provisions of this chapter for the condemnation of land for a private way of necessity, reasonable attorneys' fees and expert witness costs may be allowed by the court to reimburse the condemnee.

[1988 c 129 § 3; 1913 c 133 § 2; RRS § 936-2. Prior: 1895 c 92 § 2.]

NOTES:

Condemnation by corporations: Chapter 8.20 RCW.

Railroads -- Corporate powers and duties: RCW 81.36.010.

Special railroad eminent domain proceedings:
appropriation of railway right-of-way through canyon, pass or defile: RCW 8.20.140.
extensions, branch lines: RCW 81.36.060.
railroad crossings: RCW 81.53.180.
spur tracks -- Limit as to eminent domain: RCW 81.52.040.
state university -- Rights-of-way to railroads: RCW 28B.20.330.

RCW 8.24.040
Logging road must carry products of condemnees.

That any person or corporation availing themselves of the provisions of this chapter for the purpose of acquiring a right-of-way for a logging road, as a condition precedent, contract and agree to carry and convey over such roads to either termini thereof any of the timber or other produce of the lands through which such right is acquired at any and all times, so long as said road is maintained and operated, and at reasonable prices; and a failure so to do shall terminate such right-of-way. The reasonableness of the rate shall be subject to determination by the utilities and transportation commission.

[1913 c 133 § 3; RRS § 936-3. Prior: 1895 c 92 § 3.]

RCW 8.24.050
Appointment of guardian ad litem for minors, alleged incapacitated persons -- Protection of interests.

See RCW 8.25.270.

Chapter 18.43 RCW Engineers And Land Surveyors

RCW SECTIONS

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NOTES:

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Public contracts for engineering services: Chapter 39.80 RCW.

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RCW 18.43.010
General provisions.

In order to safeguard life, health, and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or land surveying, shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to practice or to offer to practice in this state, engineering or land surveying, as defined in the provisions of this chapter, or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a professional engineer or a land surveyor, unless such a person has been duly registered under the provisions of this chapter.

[1947 c 283 § 1; Rem. Supp. 1947 § 8306-21. Prior: 1935 c 167 § 2; RRS § 8306-2.]

NOTES:

False advertising: Chapter 9.04 RCW.

RCW 18.43.020
Definitions.

(1) Engineer: The term "engineer" as used in this chapter shall mean a professional engineer as hereinafter defined.

(2) Professional engineer: The term "professional engineer" within the meaning and intent of this chapter, shall mean a person who, by reason of his or her special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as hereinafter defined, as attested by his or her legal registration as a professional engineer.

(3) Engineer-in-training: The term "engineer-in-training" as used in this chapter means a candidate who has: (a) Satisfied the experience requirements in RCW 18.43.040 for registration; (b) successfully passed the examination in the fundamental engineering subjects; and (c) is enrolled by the board as an engineer-in-training.

(4) Engineering: The term "engineering" as used in this chapter shall mean the "practice of engineering" as hereinafter defined.

(5) Practice of engineering: The term "practice of engineering" within the meaning and intent of this chapter shall mean any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself or herself to be a professional engineer, or through the use of some other title implies that he or she is a professional engineer; or who holds himself or herself out as able to perform, or who does perform, any engineering service or work or any other professional service designated by the practitioner or recognized by educational authorities as engineering.

The practice of engineering shall not include the work ordinarily performed by persons who operate or maintain machinery or equipment.

(6) Land surveyor: The term "land surveyor" as used in this chapter shall mean a professional land surveyor.

(7) Professional land surveyor: The term "professional land surveyor" as used in this chapter means a person who, by reason of his or her special knowledge of the mathematical and physical sciences and principles and practices of land surveying, which is acquired by professional education and practical experience, is qualified to practice land surveying and as attested to by his or her legal registration as a professional land surveyor.

(8) Land-surveyor-in-training: The term "land-surveyor-in-training" as used in this chapter means a candidate who: (a) Has satisfied the experience requirements in RCW 18.43.040 for registration; (b) successfully passes the examination in the fundamental land surveying subjects; and (c) is enrolled by the board as a land-surveyor-in-training.

(9) Practice of land surveying: The term "practice of land surveying" within the meaning and intent of this chapter, shall mean assuming responsible charge of the surveying of land for the establishment of corners, lines, boundaries, and monuments, the laying out and subdivision of land, the defining and locating of corners, lines, boundaries and monuments of land after they have been established, the survey of land areas for the purpose of determining the topography thereof, the making of topographical delineations and the preparing of maps and accurate records thereof, when the proper performance of such services requires technical knowledge and skill.

(10) Board: The term "board" as used in this chapter shall mean the state board of registration for professional engineers and land surveyors, provided for by this chapter.

[1995 c 356 § 1; 1991 c 19 § 1; 1947 c 283 § 2; Rem. Supp. 1947 § 8306-22. Prior: 1935 c 167 § 1; RRS § 8306-1.]

NOTES:

Effective date -- 1995 c 356: "This act shall take effect July 1, 1996." [1995 c 356 § 6.]

RCW 18.43.030
Board of registration -- Members -- Terms -- Qualifications -- Compensation and travel expenses.

A state board of registration for professional engineers and land surveyors is hereby created which shall exercise all of the powers and perform all of the duties conferred upon it by this chapter. After July 9, 1986, the board shall consist of seven members, who shall be appointed by the governor and shall have the qualifications as hereinafter required. The terms of board members in office on June 11, 1986, shall not be affected. The first additional member shall be appointed for a four-year term and the second additional member shall be appointed for a three-year term. On the expiration of the term of any member, the governor shall appoint a successor for a term of five years to take the place of the member whose term on said board is about to expire. However, no member shall serve more than two consecutive terms on the board. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been duly appointed and shall have qualified.

Five members of the board shall be registered professional engineers licensed under the provisions of this chapter. Two members shall be registered professional land surveyors licensed under this chapter. Each of the members of the board shall have been actively engaged in the practice of engineering or land surveying for at least ten years subsequent to registration, five of which shall have been immediately prior to their appointment to the board.

Each member of the board shall be a citizen of the United States and shall have been a resident of this state for at least five years immediately preceding his appointment.

Each member of the board shall be compensated in accordance with RCW 43.03.240 and, in addition thereto, shall be reimbursed for travel expenses incurred in carrying out the provisions of this chapter in accordance with RCW 43.03.050 and 43.03.060.

The governor may remove any member of the board for misconduct, incompetency, or neglect of duty. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor as hereinabove provided.

[1986 c 102 § 1; 1984 c 287 § 35; 1975-'76 2nd ex.s. c 34 § 37; 1947 c 283 § 3; Rem. Supp. 1947 § 8306-23.]

NOTES:

Legislative findings -- Severability -- Effective date -- 1984 c 287: See notes following RCW 43.03.220.

Effective date -- Severability -- 1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

RCW 18.43.033
Pro tem board members -- Limits -- Duties.

Upon request of the board, and with approval of the director, the board chair shall appoint up to two individuals to serve as pro tem members of the board. The appointments are limited, as defined by the board chair, for the purpose of participating as a temporary member of the board on any combination of one or more committees or formal disciplinary hearing panels. An appointed individual must meet the same qualifications as a regular member of the board. While serving as a board member pro tem, an appointed person has all the powers, duties, and immunities of a regular member of the board and is entitled to the same compensation, including travel expenses, in accordance with RCW 18.43.030. A pro tem appointment may not last for more than one hundred eighty days unless approved by the director.

[1997 c 247 § 1.]

RCW 18.43.035
Bylaws -- Employees -- Rules -- Periodic reports and roster.

The board may adopt and amend bylaws establishing its organization and method of operation, including but not limited to meetings,

maintenance of books and records, publication of reports, code of ethics, and rosters, and adoption and use of a seal. Four members of the board shall constitute a quorum for the conduct of any business of the board. The board may employ such persons as are necessary to carry out its duties under this chapter. It may adopt rules reasonably necessary to administer the provisions of this chapter. The board shall submit to the governor such periodic reports as may be required. A roster, showing the names and places of business of all registered professional engineers and land surveyors may be published for distribution, upon request, to professional engineers and land surveyors registered under this chapter and to the public.

[2002 c 86 § 224; 1997 c 247 § 2; 1986 c 102 § 2; 1977 c 75 § 10; 1961 c 142 § 1; 1959 c 297 § 1.]

NOTES:

Effective dates -- 2002 c 86: See note following RCW 18.08.340.

Part headings not law -- Severability -- 2002 c 86: See RCW 18.235.902 and 18.235.903.

RCW 18.43.040
Registration requirements.

The following will be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer, engineer-in-training, professional land surveyor, or land-surveyor-in-training, respectively:

As a professional engineer: A specific record of eight years or more of experience in engineering work of a character satisfactory to the board and indicating that the applicant is competent to practice engineering; and successfully passing a written or oral examination, or both, in engineering as prescribed by the board.

Graduation in an approved engineering curriculum of four years or more from a school or college approved by the board as of satisfactory standing shall be considered equivalent to four years of such required experience. The satisfactory completion of each year of such an approved engineering course without graduation shall be considered as equivalent to a year of such required experience. Graduation in a curriculum other than engineering from a school or college approved by the board shall be considered as equivalent to two years of such required experience: PROVIDED, That no applicant shall receive credit for more than four years of experience because of undergraduate educational qualifications. The board may, at its discretion, give credit as experience not in excess of one year, for satisfactory postgraduate study in engineering.

Structural engineering is recognized as a specialized branch of professional engineering. To receive a certificate of registration in structural engineering, an applicant must hold a current registration in this state in engineering and have at least two years of structural engineering experience, of a character satisfactory to the board, in addition to the eight years' experience required for registration as a professional engineer. An applicant for registration as a structural engineer must also pass an additional examination as prescribed by the board. Applicants for a certificate of registration in structural engineering who have had their application approved by the board prior to July 1, 2001, are not required to have an additional two years of structural engineering experience if the applicant passes the additional structural examination before January 30, 2002.

As an engineer-in-training: An applicant for registration as a professional engineer shall take the prescribed examination in two stages. The first stage of the examination may be taken upon submission of his or her application for registration as an engineer-in-training and payment of the application fee prescribed in RCW 18.43.050 at any time after the applicant has completed four years of the required engineering experience, as defined in this section, or has achieved senior standing in a school or college approved by the board. The first stage of the examination shall test the applicant's knowledge of appropriate fundamentals of engineering subjects, including mathematics and the basic sciences.

At any time after the completion of the required eight years of engineering experience, as defined in this section, the applicant may take

the second stage of the examination upon submission of an application for registration and payment of the application fee prescribed in RCW 18.43.050. This stage of the examination shall test the applicant's ability, upon the basis of his or her greater experience, to apply his or her knowledge and experience in the field of his or her specific training and qualifications.

As a professional land surveyor: A specific record of eight years or more of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to practice land surveying, and successfully passing a written or oral examination, or both, in surveying as prescribed by the board.

Graduation from a school or college approved by the board as of satisfactory standing, including the completion of an approved course in surveying, shall be considered equivalent to four years of the required experience. Postgraduate college courses approved by the board shall be considered for up to one additional year of the required experience.

As a land-surveyor-in-training: An applicant for registration as a professional land surveyor shall take the prescribed examination in two stages. The first stage of the examination may be taken upon submission of his or her application for registration as a land-surveyor-in-training and payment of the application fee prescribed in RCW 18.43.050 at any time after the applicant has completed four years of the required land surveying experience, as defined in this section, or has achieved senior standing in a school or college approved by the board. The first stage of the examination shall test the applicant's knowledge of appropriate fundamentals of land surveying subjects, including mathematics and the basic sciences.

At any time after the completion of the required eight years of land surveying experience, as defined in this section, the applicant may take the second stage of the examination upon submission of an application for registration and payment of the application fee prescribed in RCW 18.43.050. This stage of the examination shall test the applicant's ability, upon the basis of greater experience, to apply knowledge and experience in the field of land surveying.

The first stage shall be successfully completed before the second stage may be attempted. Applicants who have been approved by the board to take the examination based on the requirement for six years of experience under this section before July 1, 1996, are eligible to sit for the examination.

No person shall be eligible for registration as a professional engineer, engineer-in-training, professional land surveyor, or land-surveyor-in-training, who is not of good character and reputation.

Teaching, of a character satisfactory to the board shall be considered as experience not in excess of two years for the appropriate profession.

The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent shall not be deemed to be practice of engineering.

Any person having the necessary qualifications prescribed in this chapter to entitle him or her to registration shall be eligible for such registration although the person may not be practicing his or her profession at the time of making his or her application.

[2000 c 172 § 1; 1995 c 356 § 2; 1991 c 19 § 2; 1947 c 283 § 7; Rem. Supp. 1947 § 8306-24. Prior: 1935 c 167 § 2; RRS § 8306-2.]

NOTES:

Effective date -- 1995 c 356: See note following RCW 18.43.020.

RCW 18.43.050
Application -- Registration fees.

Application for registration shall be on forms prescribed by the board and furnished by the director, shall contain statements made under oath, showing the applicant's education and detail summary of his or her technical work and shall contain not less than five references, of whom three or more shall be engineers having personal knowledge of the applicant's engineering experience.

The registration fee for professional engineers shall be determined by the director as provided in RCW 43.24.086, which shall accompany the application and shall include the cost of examination and issuance of certificate. The fee for engineer-in-training shall be determined by the director as provided in RCW 43.24.086, which shall accompany the application and shall include the cost of examination and issuance of certificate.

The registration fee for professional land surveyors shall be determined by the director as provided in RCW 43.24.086, which shall accompany the application and shall include the cost of examination and issuance of certificate. The fee for land-surveyor-in-training shall be determined by the director as provided in RCW 43.24.086, which shall accompany the application and shall include the cost of examination and issuance of certificate.

Should the board find an applicant ineligible for registration, the registration fee shall be retained as an application fee.

[1995 c 356 § 3; 1991 c 19 § 3; 1985 c 7 § 42; 1975 1st ex.s. c 30 § 46; 1947 c 283 § 8; Rem. Supp. 1947 § 8306-25. Prior: 1935 c 167 § 6; RRS § 8306-6.]

NOTES:

Effective date -- 1995 c 356: See note following RCW 18.43.020.

RCW 18.43.060
Examinations.

When oral or written examinations are required, they shall be held at such time and place as the board shall determine. If examinations are required on fundamental engineering subjects (such as ordinarily given in college curricula) the applicant shall be permitted to take this part of the professional examination prior to his or her completion of the requisite years of experience in engineering work. The board shall issue to each applicant upon successfully passing the examination in fundamental engineering subjects a certificate stating that the applicant has passed the examination in fundamental engineering subjects and that his or her name has been recorded as an engineer-in-training.

The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability to design and supervise engineering works so as to insure the safety of life, health and property. Examinations shall be given for the purpose of determining the qualifications of applicants for registration separately in engineering and in land surveying. A candidate failing an examination may apply for reexamination. Subsequent examinations will be granted upon payment of a fee to be determined by the director as provided in RCW 43.24.086.

[1991 c 19 § 4; 1961 c 142 § 2; 1947 c 283 § 9; Rem. Supp. 1947 § 8306-26. Prior: 1935 c 167 § 7; RRS § 8306-7.]

RCW 18.43.070
Certificates and seals.

The director of licensing shall issue a certificate of registration upon payment of a registration fee as provided for in this chapter, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this chapter. In case of a registered engineer, the certificate shall authorize the practice of "professional engineering" and specify the branch or branches in which specialized, and in case of a registered land surveyor, the certificate shall authorize the practice of "land surveying".

In case of engineer-in-training, the certificate shall state that the applicant has successfully passed the examination in fundamental engineering subjects required by the board and has been enrolled as an "engineer-in-training". In case of land-surveyor-in-training, the certificate shall state that the applicant has successfully passed the examination in fundamental surveying subjects required by the board and has been enrolled as a "land-surveyor-in-training." All certificates of registration shall show the full name of the registrant, shall have a serial number, and shall be signed by the chairman and the secretary of the board and by the director of licensing.

The issuance of a certificate of registration by the director of licensing shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered

professional engineer or a registered land surveyor, while the said certificate remains unrevoked and unexpired.

Each registrant hereunder shall upon registration obtain a seal of the design authorized by the board, bearing the registrant's name and the legend "registered professional engineer" or "registered land surveyor". Plans, specifications, plats and reports prepared by the registrant shall be signed, dated, and stamped with said seal or facsimile thereof. Such signature and stamping shall constitute a certification by the registrant that the same was prepared by or under his or her direct supervision and that to his or her knowledge and belief the same was prepared in accordance with the requirements of the statute. It shall be unlawful for anyone to stamp or seal any document with said seal or facsimile thereof after the certificate of registrant named thereon has expired or been revoked, unless said certificate shall have been renewed or reissued.

[1995 c 356 § 4; 1991 c 19 § 5; 1959 c 297 § 4; 1947 c 283 § 10; Rem. Supp. 1947 § 8306-27. Prior: 1935 c 167 §§ 8, 13; RRS § 8306-8, 13.]

NOTES:

Effective date -- 1995 c 356: See note following RCW 18.43.020.

RCW 18.43.075
Retired status certificate.

The board may adopt rules under this section authorizing a retired status certificate. An individual certificated under this chapter who has reached the age of sixty-five years and has retired from the active practice of engineering and land surveying may, upon application and at the discretion of the board, be exempted from payment of annual renewal fees thereafter.

[1995 c 356 § 5.]

NOTES:

Effective date -- 1995 c 356: See note following RCW 18.43.020.

RCW 18.43.080

Expiration and renewals of certificates -- Fees.

Certificates of registration, and certificates of authorization and renewals thereof shall expire on the last day of the month of December following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the administrator of the division of professional licensing to notify every person, firm or corporation registered under this chapter, of the date of the expiration of his certificate and the amount of the renewal fee that shall be required for its renewal for one year. Such notice shall be mailed at least thirty days before the end of December of each year. Renewal may be effected during the month of December by the payment of a fee determined by the director as provided in RCW 43.24.086. In case any professional engineer and/or land surveyor registered under this chapter shall fail to pay the renewal fee hereinabove provided for, within ninety days from the date when the same shall become due, the renewal fee shall be the current fee plus an amount equal to one year's fee.

[1985 c 7 § 43; 1981 c 260 § 4. Prior: 1975 1st ex.s. c 30 § 47; 1975 c 23 § 1; 1965 ex.s. c 126 § 1; 1961 c 142 § 3; 1959 c 297 § 5; 1947 c 283 § 11; Rem. Supp. 1947 § 8306-28; prior: 1935 c 167 § 10; RRS § 8306-10.]

RCW 18.43.100
Registration of out-of-state applicants.

The board may, upon application and the payment of a fee determined by the director as provided in RCW 43.24.086, issue a certificate without further examination as a professional engineer or land surveyor to any person who holds a certificate of qualification of registration issued to the applicant following examination by proper authority, of any state or territory or possession of the United States, the District of Columbia, or of any foreign country, provided: (1) That the applicant's qualifications meet the requirements of the chapter and the rules established by the board, and (2) that the applicant is in good standing with the licensing agency in said state, territory, possession, district, or foreign country.

[1991 c 19 § 7; 1985 c 7 § 44; 1975 1st ex.s. c 30 § 48; 1959 c 297 § 6; 1947 c 283 § 13; Rem. Supp. 1947 § 8306-30. Prior: 1935 c 167 § 5; RRS § 8306-5.]

RCW 18.43.105
Disciplinary action -- Prohibited conduct, acts, conditions.

In addition to the unprofessional conduct described in RCW 18.235.130, the board may take disciplinary action for the following conduct, acts, or conditions:

(1) Offering to pay, paying or accepting, either directly or indirectly, any substantial gift, bribe, or other consideration to influence the award of professional work;

(2) Being willfully untruthful or deceptive in any professional report, statement or testimony;

(3) Attempting to injure falsely or maliciously, directly or indirectly, the professional reputation, prospects or business of anyone;

(4) Failure to state separately or to charge separately for professional engineering services or land surveying where other services or work are also being performed in connection with the engineering services;

(5) Violation of any provisions of this chapter;

(6) Conflict of interest -- Having a financial interest in bidding for or performance of a contract to supply labor or materials for or to construct a project for which employed or retained as an engineer except with the consent of the client or employer after disclosure of such facts; or allowing an interest in any business to affect a decision regarding engineering work for which retained, employed, or called upon to perform;

(7) Nondisclosure -- Failure to promptly disclose to a client or employer any interest in a business which may compete with or affect the business of the client or employer;

(8) Unfair competition -- Reducing a fee quoted for prospective employment or retainer as an engineer after being informed of the fee quoted by another engineer for the same employment or retainer;

(9) Improper advertising -- Soliciting retainer or employment by advertisement which is undignified, self-laudatory, false or misleading, or which makes or invites comparison between the advertiser and other engineers;

(10) Committing any other act, or failing to act, which act or failure are customarily regarded as being contrary to the accepted professional conduct or standard generally expected of those practicing professional engineering or land surveying.

[2002 c 86 § 225; 1961 c 142 § 4; 1959 c 297 § 2.]

NOTES:

Effective dates -- 2002 c 86: See note following RCW 18.08.340.

Part headings not law -- Severability -- 2002 c 86: See RCW 18.235.902 and 18.235.903.

RCW 18.43.110
Discipline of registrant -- Board's power -- Unprofessional conduct -- Reissuance of certificate of registration.

The board shall have the exclusive power to discipline the registrant and sanction the certificate of registration of any registrant.

Any person may file a complaint alleging unprofessional conduct, as set out in RCW 18.235.130 and 18.43.105, against any registrant. The complaint shall be in writing and shall be sworn to in writing by the person making the allegation. A registrant against whom a complaint was made must be immediately informed of such complaint by the board.

The board, for reasons it deems sufficient, may reissue a certificate of registration to any person whose certificate has been revoked or suspended, providing a majority of the board vote in favor of such issuance. A new certificate of registration to replace any certificate revoked, lost, destroyed, or mutilated may be issued,

subject to the rules of the board, and a charge determined by the director as provided in RCW 43.24.086 shall be made for such issuance.

In addition to the imposition of disciplinary action under RCW 18.235.110, the board may refer violations of this chapter to the appropriate prosecuting attorney for charges under RCW 18.43.120.

[2002 c 86 § 226; 1997 c 247 § 3; 1989 c 175 § 62; 1986 c 102 § 3; 1985 c 7 § 45; 1982 c 37 § 1; 1975 1st ex.s. c 30 § 49; 1947 c 283 § 14; Rem. Supp. 1947 § 8306-31. Prior: 1935 c 167 § 11; RRS § 8306-11.]

NOTES:

Effective dates -- 2002 c 86: See note following RCW 18.08.340.

Part headings not law -- Severability -- 2002 c 86: See RCW 18.235.902 and 18.235.903.

Effective date -- 1989 c 175: See note following RCW 34.05.010.

RCW 18.43.120
Violations and penalties.

Any person who shall practice, or offer to practice, engineering or land surveying in this state without being registered in accordance with the provisions of the chapter, or any person presenting or attempting to use as his own the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of registration, or any person who shall falsely impersonate any other registrant, or any person who shall attempt to use the expired or revoked certificate of registration, or any person who shall violate any of the provisions of this chapter shall be guilty of a gross misdemeanor.

It shall be the duty of all officers of the state or any political subdivision thereof, to enforce the provisions of this chapter. The attorney general shall act as legal adviser of the board, and render such legal assistance as may be necessary in carrying out the provisions of this chapter.

[1986 c 102 § 4; 1947 c 283 § 15; Rem. Supp. 1947 § 8306-32. Prior: 1935 c 167 § 14; RRS § 8306-14.]

NOTES:

Forgery: RCW 9A.60.020.
RCW 18.43.130
Excepted services -- Fees.

This chapter shall not be construed to prevent or affect:

(1) The practice of any other legally recognized profession or trade; or

(2) The practice of a person not a resident and having no established place of business in this state, practicing or offering to practice herein the profession of engineering or land surveying, when such practice does not exceed in the aggregate more than thirty days in any calendar year: PROVIDED, Such person has been determined by the board to be legally qualified by registration to practice the said profession in his or her own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this chapter. The person shall request such a determination by completing an application prescribed by the board and accompanied by a fee determined by the director. Upon approval of the application, the board shall issue a permit authorizing temporary practice; or

(3) The practice of a person not a resident and having no established place of business in this state, or who has recently become a resident thereof, practicing or offering to practice herein for more than thirty days in any calendar year the profession of engineering or land surveying, if he or she shall have filed with the board an application for a certificate of registration and shall have paid the fee required by this chapter: PROVIDED, That such person is legally qualified by registration to practice engineering or land surveying in his or her own state or country in which the requirements and qualifications of obtaining a certificate of registration are not lower than those specified in this chapter. Such practice shall continue only for such time as the board requires for the

consideration of the application for registration; or

(4) The work of an employee or a subordinate of a person holding a certificate of registration under this chapter, or an employee of a person practicing lawfully under provisions of this section: PROVIDED, That such work does not include final design or decisions and is done under the direct responsibility, checking, and supervision of a person holding a certificate of registration under this chapter or a person practicing lawfully under the provisions of this section; or

(5) The work of a person rendering engineering or land surveying services to a corporation, as an employee of such corporation, when such services are rendered in carrying on the general business of the corporation and such general business does not consist, either wholly or in part, of the rendering of engineering services to the general public: PROVIDED, That such corporation employs at least one person holding a certificate of registration under this chapter or practicing lawfully under the provisions of this chapter; or

(6) The practice of officers or employees of the government of the United States while engaged within the state in the practice of the profession of engineering or land surveying for the government of the United States; or

(7) Nonresident engineers employed for the purpose of making engineering examinations; or

(8) The practice of engineering or land surveying, or both, in this state by a corporation or joint stock association: PROVIDED, That

(a) The corporation has filed with the board an application for certificate of authorization upon a form to be prescribed by the board and containing information required to enable the board to determine whether such corporation is qualified in accordance with this chapter to practice engineering or land surveying, or both, in this state;

(b) For engineering, the corporation has filed with the board a certified copy of a resolution of the board of directors of the corporation that shall designate a person holding a certificate of registration under this chapter as responsible for the practice of engineering by the corporation in this state and shall provide that full authority to make all final engineering decisions on behalf of the corporation with respect to work performed by the corporation in this state shall be granted and delegated by the board of directors to the person so designated in the resolution. For land surveying, the corporation has filed with the board a certified copy of a resolution of the board of directors of the corporation which shall designate a person holding a certificate of registration under this chapter as responsible for the practice of land surveying by the corporation in this state and shall provide full authority to make all final land surveying decisions on behalf of the corporation with respect to work performed by the corporation in this state be granted and delegated by the board of directors to the person so designated in the resolution. If a corporation offers both engineering and land surveying services, the board of directors shall designate both a licensed engineer and a licensed land surveyor. If a person is licensed in both engineering and land surveying, the person may be designated for both professions. The resolution shall further state that the bylaws of the corporation shall be amended to include the following provision: "The designated engineer or land surveyor, respectively, named in the resolution as being in responsible charge, or an engineer or land surveyor under the designated engineer or land surveyor's direct supervision, shall make all engineering or land surveying decisions pertaining to engineering or land surveying activities in the state of Washington." However, the filing of the resolution shall not relieve the corporation of any responsibility or liability imposed upon it by law or by contract;

(c) If there is a change in the designated engineer or designated land surveyor, the corporation shall notify the board in writing within thirty days after the effective date of the change. If the corporation changes its name, the corporation shall submit a copy of its amended certificate of authority or amended certificate of incorporation as filed with the secretary of state within thirty days of the filing;

(d) Upon the filing with the board the application for certificate for authorization, certified copy of resolution and an affidavit, the designation of a designated engineer or designated land surveyor, or both, specified in (b) of this subsection, a certificate of incorporation or certificate of authorization as filed with the secretary of state, and a copy of the

corporation's current Washington business license, the board shall issue to the corporation a certificate of authorization to practice engineering or land surveying, or both, in this state upon a determination by the board that:

(i) The designated engineer or designated land surveyor, or both, hold a certificate of registration in this state in accordance with this chapter and the certificate is in force;

(ii) The designated engineer or designated land surveyor, or both, are not designated in responsible charge for another corporation or a limited liability company; and

(iii) The corporation is licensed with the secretary of state and holds a current unified business identification number and the board determines, based on evaluating the findings and information in this section, that the applicant corporation possesses the ability and competence to furnish engineering or land surveying services, or both, in the public interest.

The board may exercise its discretion to take any of the actions under RCW 18.235.110 with respect to a certificate of authorization issued to a corporation if the board finds that any of the officers, directors, incorporators, or the stockholders holding a majority of stock of such corporation has engaged in unprofessional conduct as defined in RCW 18.43.105 or 18.235.130 or has been found personally responsible for unprofessional conduct under (f) and (g) of this subsection.

(e) Engineers or land surveyors organized as a professional service corporation under chapter 18.100 RCW are exempt from applying for a certificate of authorization under this chapter.

(f) Any corporation authorized to practice engineering under this chapter, together with its directors and officers for their own individual acts, are responsible to the same degree as an individual registered engineer, and must conduct its business without unprofessional conduct in the practice of engineering as defined in this chapter and RCW 18.235.130.

(g) Any corporation that is certified under this chapter is subject to the authority of the board as provided in RCW 18.43.035, 18.43.105, 18.43.110, 18.43.120, and chapter 18.235 RCW.

(h) All plans, specifications, designs, and reports when issued in connection with work performed by a corporation under its certificate of authorization shall be prepared by or under the direct supervision of and shall be signed by and shall be stamped with the official seal of a person holding a certificate of registration under this chapter.

(i) For each certificate of authorization issued under this subsection (8) there shall be paid an initial fee determined by the director as provided in RCW 43.24.086 and an annual renewal fee determined by the director as provided in RCW 43.24.086.

(9) The practice of engineering and/or land surveying in this state by a partnership if the partnership employs at least one person holding a valid certificate of registration under this chapter to practice engineering or land surveying, or both. The board shall not issue certificates of authorization to partnerships after July 1, 1998. Partnerships currently registered with the board are not required to pay an annual renewal fee after July 1, 1998.

(10) The practice of engineering or land surveying, or both, in this state by limited liability companies: Provided, That

(a) The limited liability company has filed with the board an application for certificate of authorization upon a form to be prescribed by the board and containing information required to enable the board to determine whether the limited liability company is qualified under this chapter to practice either or both engineering or land surveying in this state.

(b) The limited liability company has filed with the board a certified copy of a resolution by the company manager or managers that shall designate a person holding a certificate of registration under this chapter as being responsible for the practice of engineering or land surveying, or both, by the limited liability company in this state and that the designated person has full authority to make all final engineering or land surveying decisions on behalf of the limited liability company with respect to work performed by the limited liability company in this state. The resolution shall further state that the limited liability company agreement shall be amended to include the following provision: "The designated engineer or

land surveyor, respectively, named in the resolution as being in responsible charge, or an engineer or land surveyor under the designated engineer or land surveyor's direct supervision, shall make all engineering or land surveying decisions pertaining to engineering or land surveying activities in the state of Washington." However, the filing of the resolution shall not relieve the limited liability company of responsibility or liability imposed upon it by law or by contract.

(c) The designated engineer for the limited liability company must hold a current professional engineer license issued by this state.

The designated land surveyor for the limited liability company must hold a current professional land surveyor license issued by this state.

If a person is licensed as both a professional engineer and as a professional land surveyor in this state, then the limited liability company may designate the person as being in responsible charge for both professions.

If there is a change in the designated engineer or designated land surveyor, the limited liability company shall notify the board in writing within thirty days after the effective date of the change. If the limited liability company changes its name, the company shall submit to the board a copy of the certificate of amendment filed with the secretary of state's office.

(d) Upon the filing with the board the application for certificate of authorization, a certified copy of the resolution, an affidavit from the designated engineer or the designated land surveyor, or both, specified in (b) and (c) of this subsection, a copy of the certificate of formation as filed with the secretary of state, and a copy of the company's current business license, the board shall issue to the limited liability company a certificate of authorization to practice engineering or land surveying, or both, in this state upon determination by the board that:

(i) The designated engineer or designated land surveyor, or both, hold a certificate of registration in this state under this chapter and the certificate is in force;

(ii) The designated engineer or designated land surveyor, or both, are not designated in responsible charge for another limited liability company or a corporation;

(iii) The limited liability company is licensed with the secretary of state and has a current unified business identification number and that the board determines, based on evaluating the findings and information under this subsection, that the applicant limited liability company possesses the ability and competence to furnish either or both engineering or land surveying services in the public interest.

The board may exercise its discretion to take any of the actions under RCW 18.235.110 with respect to a certificate of authorization issued to a limited liability company if the board finds that any of the managers or members holding a majority interest in the limited liability company has engaged in unprofessional conduct as defined in RCW 18.43.105 or 18.235.130 or has been found personally responsible for unprofessional conduct under the provisions of (f) and (g) of this subsection.

(e) Engineers or land surveyors organized as a professional limited liability company are exempt from applying for a certificate of authorization under this chapter.

(f) Any limited liability company authorized to practice engineering or land surveying, or both, under this chapter, together with its manager or managers and members for their own individual acts, are responsible to the same degree as an individual registered engineer or registered land surveyor, and must conduct their business without unprofessional conduct in the practice of engineering or land surveying, or both.

(g) A limited liability company that is certified under this chapter is subject to the authority of the board as provided in RCW 18.43.035, 18.43.105, 18.43.110, 18.43.120, and chapter 18.235 RCW.

(h) All plans, specifications, designs, and reports when issued in connection with work performed by a limited liability company under its certificate of authorization shall be prepared by or under the direct supervision of and shall be signed by and shall be stamped with the official seal of a person holding a certificate of registration under this chapter.

(i) For each certificate of authorization issued under this subsection (10) there shall be paid an initial fee determined by the director as provided in RCW 43.24.086 and an annual renewal fee determined by the director as provided in RCW 43.24.086.

[2002 c 86 § 227; 1997 c 247 § 4; 1991 c 19 § 6; 1985 c 7 § 46; 1975 1st ex.s. c 30 § 50; 1965 ex.s. c 126 § 2; 1961 c 142 § 5; 1959 c 297 § 7; 1947 c 283 § 16; Rem. Supp. 1947 § 8306-33. Prior: 1935 c 167 § 2; RRS § 8306-2.]

NOTES:

Effective dates -- 2002 c 86: See note following RCW 18.08.340.

Part headings not law -- Severability -- 2002 c 86: See RCW 18.235.902 and 18.235.903.

Effective date -- 1997 c 247 § 4: "Section 4 of this act takes effect July 1, 1998." [1997 c 247 § 5.]

RCW 18.43.150
Disposition of fees.

All fees collected under the provisions of RCW 18.43.050, 18.43.060, 18.43.080, 18.43.100, and 18.43.130 and fines collected under RCW 18.43.110 shall be paid into the professional engineers' account, which account is hereby established in the state treasury to be used to carry out the purposes and provisions of RCW 18.43.050, 18.43.060, 18.43.080, 18.43.100, 18.43.110, 18.43.120, 18.43.130, *18.43.140 and all other duties required for operation and enforcement of this chapter.

[1991 c 277 § 2; 1985 c 57 § 5; 1965 ex.s. c 126 § 3.]

NOTES:

***Reviser's note:** RCW 18.43.140 was repealed by 2002 c 86 § 401, effective January 1, 2003.

Effective date -- 1991 c 277: See note following RCW 18.85.220.

Effective date -- 1985 c 57: See note following RCW 18.04.105.

RCW 18.43.160
Certificate of registration or license suspension -- Nonpayment or default on educational loan or scholarship.

The board shall suspend the certificate of registration or license of any person who has been certified by a lending agency and reported to the board for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's certificate of registration or license shall not be reissued until the person provides the board a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for registration or licensure during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the board may impose.

[1996 c 293 § 10.]

NOTES:

Severability -- 1996 c 293: See note following RCW 18.04.420.

RCW 18.43.170
Registration suspension -- Noncompliance with support order -- Reissuance.

The board shall immediately suspend the registration of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for membership during the suspension, reissuance of

the certificate of registration shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

[1997 c 58 § 821.]

NOTES:

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title -- Part headings, captions, table of contents not law -- Exemptions and waivers from federal law -- Conflict with federal requirements -- Severability -- 1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates -- Intent -- 1997 c 58: See notes following RCW 74.20A.320.

RCW 18.43.180
Uniform regulation of business and professions act.

The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

[2002 c 86 § 228.]

NOTES:

Effective dates -- 2002 c 86: See note following RCW 18.08.340.

Part headings not law -- Severability -- 2002 c 86: See RCW 18.235.902 and 18.235.903.

RCW 18.43.900
Short title.

This chapter shall be known and may be cited as the "Professional Engineers' Registration Act".

[1947 c 283 § 19.]

RCW 18.43.910
Severability -- 1947 c 283.

If any section of this chapter shall be declared unconstitutional or invalid, such adjudication shall not invalidate any other provision or provisions thereof.

[1947 c 283 § 17.]

RCW 18.43.920
Severability -- 1959 c 297.

If any section of this act or part thereof shall be declared unconstitutional or invalid, such adjudication shall not invalidate any other provision or provisions thereof.

[1959 c 297 § 8.]

RCW 18.43.930
Severability -- 1961 c 142.

If any section of this act or part thereof shall be adjudged unconstitutional or invalid, such adjudication shall not invalidate any other provision or provisions thereof.

[1961 c 142 § 6.]

Chapter 19.34 RCW Washington Electronic Authentication Act

RCW SECTIONS

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19.34.903 Part headings and section captions not law -- 1996 c 250.

NOTES:

Digital signature violations: RCW 9.38.060.

RCW 19.34.010
Purpose and construction.

This chapter shall be construed consistently with what is commercially reasonable under the circumstances and to effectuate the following purposes:

(1) To facilitate commerce by means of reliable electronic messages;

(2) To ensure that electronic signatures are not denied legal recognition solely because they are in electronic form;

(3) To provide a voluntary licensing mechanism for digital signature certification authorities by which businesses, consumers, courts, government agencies, and other entities can reasonably be assured as to the integrity, authenticity, and nonrepudiation of a digitally signed electronic communication;

(4) To establish procedures governing the use of digital signatures for official public business to provide reasonable assurance of the integrity, authenticity, and nonrepudiation of an electronic communication;

(5) To minimize the incidence of forged digital signatures and fraud in electronic commerce;

(6) To implement legally the general import of relevant standards; and

(7) To establish, in coordination with states and other jurisdictions, uniform rules regarding the authentication and reliability of electronic messages.

[1999 c 287 § 1; 1996 c 250 § 102.]

NOTES:

Effective date -- 1999 c 287: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 1999]." [1999 c 287 § 20.]

RCW 19.34.020
Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Accept a certificate" means to manifest approval of a certificate, while knowing or having notice of its contents. Such approval may be manifested by the use of the certificate.

(2) "Accept a digital signature" means to verify a digital signature or take an action in reliance on a digital signature.

(3) "Asymmetric cryptosystem" means an algorithm or series of algorithms that provide a

secure key pair.

(4) "Certificate" means a computer-based record that:

(a) Identifies the certification authority issuing it;

(b) Names or identifies its subscriber;

(c) Contains the subscriber's public key; and

(d) Is digitally signed by the certification authority issuing it.

(5) "Certification authority" means a person who issues a certificate.

(6) "Certification authority disclosure record" means an on-line, publicly accessible record that concerns a licensed certification authority and is kept by the secretary.

(7) "Certification practice statement" means a declaration of the practices that a certification authority employs in issuing certificates.

(8) "Certify" means to declare with reference to a certificate, with ample opportunity to reflect, and with a duty to apprise oneself of all material facts.

(9) "Confirm" means to ascertain through appropriate inquiry and investigation.

(10) "Correspond," with reference to keys, means to belong to the same key pair.

(11) "Digital signature" means an electronic signature that is a transformation of a message using an asymmetric cryptosystem such that a person having the initial message and the signer's public key can accurately determine:

(a) Whether the transformation was created using the private key that corresponds to the signer's public key; and

(b) Whether the initial message has been altered since the transformation was made.

(12) "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that entails capabilities similar to these technologies.

(13) "Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

(14) "Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record, including but not limited to a digital signature.

(15) "Financial institution" means a national or state-chartered commercial bank or trust company, savings bank, savings association, or credit union authorized to do business in the state of Washington and the deposits of which are federally insured.

(16) "Forge a digital signature" means either:

(a) To create a digital signature without the authorization of the rightful holder of the private key; or

(b) To create a digital signature verifiable by a certificate listing as subscriber a person who either:

(i) Does not exist; or

(ii) Does not hold the private key corresponding to the public key listed in the certificate.

(17) "Hold a private key" means to be authorized to utilize a private key.

(18) "Incorporate by reference" means to make one message a part of another message by identifying the message to be incorporated and expressing the intention that it be incorporated.

(19) "Issue a certificate" means the acts of a certification authority in creating a certificate and notifying the subscriber listed in the certificate of the contents of the certificate.

(20) "Key pair" means a private key and its corresponding public key in an asymmetric cryptosystem, keys which have the property that the public key can verify a digital signature that the private key creates.

(21) "Licensed certification authority" means a certification authority to whom a license has been issued by the secretary and whose license is

in effect.

(22) "Message" means a digital representation of information.

(23) "Notify" means to communicate a fact to another person in a manner reasonably likely under the circumstances to impart knowledge of the information to the other person.

(24) "Official public business" means any legally authorized transaction or communication among state agencies, tribes, and local governments, or between a state agency, tribe, or local government and a private person or entity.

(25) "Operative personnel" means one or more natural persons acting as a certification authority or its agent, or in the employment of, or under contract with, a certification authority, and who have:

(a) Duties directly involving the issuance of certificates, or creation of private keys;

(b) Responsibility for the secure operation of the trustworthy system used by the certification authority or any recognized repository;

(c) Direct responsibility, beyond general supervisory authority, for establishing or adopting policies regarding the operation and security of the certification authority; or

(d) Such other responsibilities or duties as the secretary may establish by rule.

(26) "Person" means a human being or an organization capable of signing a document, either legally or as a matter of fact.

(27) "Private key" means the key of a key pair used to create a digital signature.

(28) "Public key" means the key of a key pair used to verify a digital signature.

(29) "Publish" means to make information publicly available.

(30) "Qualified right to payment" means an award of damages against a licensed certification authority by a court having jurisdiction over the certification authority in a civil action for violation of this chapter.

(31) "Recipient" means a person who has received a certificate and a digital signature verifiable with reference to a public key listed in the certificate and is in a position to rely on it.

(32) "Recognized repository" means a repository recognized by the secretary under RCW 19.34.400.

(33) "Recommended reliance limit" means the monetary amount recommended for reliance on a certificate under RCW 19.34.280(1).

(34) "Repository" means a system for storing and retrieving certificates and other information relevant to digital signatures.

(35) "Revoke a certificate" means to make a certificate ineffective permanently from a specified time forward. Revocation is effected by notation or inclusion in a set of revoked certificates, and does not imply that a revoked certificate is destroyed or made illegible.

(36) "Rightfully hold a private key" means the authority to utilize a private key:

(a) That the holder or the holder's agents have not disclosed to a person in violation of RCW 19.34.240(1); and

(b) That the holder has not obtained through theft, deceit, eavesdropping, or other unlawful means.

(37) "Secretary" means the secretary of state.

(38) "Subscriber" means a person who:

(a) Is the subject listed in a certificate;

(b) Applies for or accepts the certificate; and

(c) Holds a private key that corresponds to a public key listed in that certificate.

(39) "Suitable guaranty" means either a surety bond executed by a surety authorized by the insurance commissioner to do business in this state, or an irrevocable letter of credit issued by a financial institution authorized to do business in this state, which, in either event, satisfies all of the following requirements:

(a) It is issued payable to the secretary for the benefit of persons holding qualified rights of

payment against the licensed certification authority named as the principal of the bond or customer of the letter of credit;

(b) It is in an amount specified by rule by the secretary under RCW 19.34.030;

(c) It states that it is issued for filing under this chapter;

(d) It specifies a term of effectiveness extending at least as long as the term of the license to be issued to the certification authority; and

(e) It is in a form prescribed or approved by rule by the secretary.

A suitable guaranty may also provide that the total annual liability on the guaranty to all persons making claims based on it may not exceed the face amount of the guaranty.

(40) "Suspend a certificate" means to make a certificate ineffective temporarily for a specified time forward.

(41) "Time stamp" means either:

(a) To append or attach a digitally signed notation indicating at least the date, time, and identity of the person appending or attaching the notation to a message, digital signature, or certificate; or

(b) The notation thus appended or attached.

(42) "Transactional certificate" means a valid certificate incorporating by reference one or more digital signatures.

(43) "Trustworthy system" means computer hardware and software that:

(a) Are reasonably secure from intrusion and misuse; and

(b) Conform with the requirements established by the secretary by rule.

(44) "Valid certificate" means a certificate that:

(a) A licensed certification authority has issued;

(b) The subscriber listed in it has accepted;

(c) Has not been revoked or suspended; and

(d) Has not expired.

However, a transactional certificate is a valid certificate only in relation to the digital signature incorporated in it by reference.

(45) "Verify a digital signature" means, in relation to a given digital signature, message, and public key, to determine accurately that:

(a) The digital signature was created by the private key corresponding to the public key; and

(b) The message has not been altered since its digital signature was created.

[2000 c 171 § 50; 1999 c 287 § 2; 1997 c 27 § 30; 1996 c 250 § 103.]

NOTES:

Effective date -- 1999 c 287: See note following RCW 19.34.010.

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.030
Secretary -- Duties.

(1) The secretary must publish a certification authority disclosure record for each licensed certification authority, and a list of all judgments filed with the secretary, within the previous five years, under RCW 19.34.290.

(2) The secretary may adopt rules consistent with this chapter and in furtherance of its purposes:

(a) To license certification authorities, recognize repositories, certify operative personnel, and govern the practices of each;

(b) To determine the form and amount reasonably appropriate for a suitable guaranty, in light of the burden a suitable guaranty places upon licensed certification authorities and the assurance of quality and financial responsibility it provides to persons who rely on certificates

issued by licensed certification authorities;

(c) To specify reasonable requirements for information to be contained in or the form of certificates, including transactional certificates, issued by licensed certification authorities, in accordance with generally accepted standards for digital signature certificates;

(d) To specify reasonable requirements for recordkeeping by licensed certification authorities;

(e) To specify reasonable requirements for the content, form, and sources of information in certification authority disclosure records, the updating and timeliness of the information, and other practices and policies relating to certification authority disclosure records;

(f) To specify the form of and information required in certification practice statements, as well as requirements regarding the publication of certification practice statements;

(g) To specify the procedure and manner in which a certificate may be suspended or revoked, as consistent with this chapter;

(h) To specify the procedure and manner by which the laws of other jurisdictions may be recognized, in order to further uniform rules regarding the authentication and reliability of electronic messages; and

(i) Otherwise to give effect to and implement this chapter.

(3) The secretary may act as a certification authority, and the certificates issued by the secretary shall be treated as having been issued by a licensed certification authority.

[1999 c 287 § 4; 1997 c 27 § 1; 1996 c 250 § 104.]

NOTES:

Effective date -- 1999 c 287: See note following RCW 19.34.010.

Effective date -- 1997 c 27: "Sections 1 through 23, 25 through 27, and 29 through 34 of this act take effect January 1, 1998." [1997 c 27 § 35.]

Severability -- 1997 c 27: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 27 § 36.]

RCW 19.34.040
Secretary -- Fees -- Disposition.

The secretary may adopt rules establishing reasonable fees for all services rendered by the secretary under this chapter, in amounts that are reasonably calculated to be sufficient to compensate for the costs of all services under this chapter, but that are not estimated to exceed those costs in the aggregate. All fees recovered by the secretary must be deposited in the state general fund.

[1997 c 27 § 2; 1996 c 250 § 105.]

NOTES:

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.100
Certification authorities -- Licensure -- Qualifications -- Revocation and suspension.

(1) To obtain or retain a license, a certification authority must:

(a) Provide proof of identity to the secretary;

(b) Employ only certified operative personnel in appropriate positions;

(c) File with the secretary an appropriate, suitable guaranty, unless the certification authority is a city or county that is self-insured or the department of information services;

(d) Use a trustworthy system;

(e) Maintain an office in this state or have established a registered agent for service of process in this state; and

(f) Comply with all further licensing and practice requirements established by rule by the

secretary.

(2) The secretary may by rule create license classifications according to specified limitations, and the secretary may issue licenses restricted according to the limits of each classification.

(3) The secretary may impose license restrictions specific to the practices of an individual certification authority. The secretary shall set forth in writing and maintain as part of the certification authority's license application file the basis for such license restrictions.

(4) The secretary may revoke or suspend a certification authority's license, in accordance with the administrative procedure act, chapter 34.05 RCW, for failure to comply with this chapter or for failure to remain qualified under subsection (1) of this section. The secretary may order the summary suspension of a license pending proceedings for revocation or other action, which must be promptly instituted and determined, if the secretary includes within a written order a finding that the certification authority has either:

(a) Utilized its license in the commission of a violation of a state or federal criminal statute or of chapter 19.86 RCW; or

(b) Engaged in conduct giving rise to a serious risk of loss to public or private parties if the license is not immediately suspended.

(5) The secretary may recognize by rule the licensing or authorization of certification authorities by other governmental entities, in whole or in part, provided that those licensing or authorization requirements are substantially similar to those of this state. If licensing by another government is so recognized:

(a) RCW 19.34.300 through 19.34.350 apply to certificates issued by the certification authorities licensed or authorized by that government in the same manner as it applies to licensed certification authorities of this state; and

(b) The liability limits of RCW 19.34.280 apply to the certification authorities licensed or authorized by that government in the same manner as they apply to licensed certification authorities of this state.

(6) A certification authority that has not obtained a license is not subject to the provisions of this chapter, except as specifically provided.

[1999 c 287 § 5; 1998 c 33 § 1; 1997 c 27 § 3; 1996 c 250 § 201.]

NOTES:

Effective date -- 1999 c 287: See note following RCW 19.34.010.

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.101
Expiration of licenses -- Renewal -- Rules.

Licenses issued under this chapter expire one year after issuance, except that the secretary may provide by rule for a longer duration. The secretary shall provide, by rule, for a system of license renewal, which may include requirements for continuing education.

[1997 c 27 § 4.]

NOTES:

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.110
Compliance audits.

(1) A licensed certification authority shall obtain a compliance audit at such times and in such manner as directed by rule of the secretary. If the certification authority is also a recognized repository, the audit must include the repository.

(2) The certification authority shall file a copy of the audit report with the secretary. The secretary may provide by rule for filing of the report in an electronic format and may publish the report in the certification authority disclosure record it maintains for the certification authority.

[1999 c 287 § 6; 1997 c 27 § 5; 1996 c 250 § 202.]

NOTES:

Effective date -- 1999 c 287: See note following RCW 19.34.010.

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.111
Qualifications of auditor signing report of opinion -- Compliance audits under state auditor's authority.

(1) An auditor signing a report of opinion as to a compliance audit required by RCW 19.34.110 must:

(a) Be a certified public accountant, licensed under chapter 18.04 RCW or equivalent licensing statute of another jurisdiction; and

(b) Meet such other qualifications as the secretary may establish by rule.

(2) The compliance audits of state agencies and local governments who are licensed certification authorities, and the secretary, must be performed under the authority of the state auditor. The state auditor may contract with private entities as needed to comply with this chapter.

[1999 c 287 § 7; 1997 c 27 § 6.]

NOTES:

Effective date -- 1999 c 287: See note following RCW 19.34.010.

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.120
Licensed certification authorities -- Enforcement -- Suspension or revocation -- Penalties -- Rules -- Costs -- Procedure -- Injunctions.

(1) The secretary may investigate the activities of a licensed certification authority material to its compliance with this chapter and issue orders to a certification authority to further its investigation and secure compliance with this chapter.

(2) The secretary may suspend or revoke the license of a certification authority for its failure to comply with an order of the secretary.

(3) The secretary may by order impose and collect a civil penalty against a licensed certification authority for a violation of this chapter. The penalty shall not exceed ten thousand dollars per incident, or ninety percent of the recommended reliance limit of a material certificate, whichever is less. In case of a violation continuing for more than one day, each day is considered a separate incident. The secretary may adopt rules setting forth the standards governing the exercise of the secretary's discretion as to penalty amounts. In the case of a state agency authorized by law to be a licensed certification authority, the sole penalty imposed under this subsection shall consist of specific findings of noncompliance and an order requiring compliance with this chapter and the rules of the secretary. Any penalty imposed under this chapter and chapter 34.05 RCW shall be enforceable in any court of competent jurisdiction.

(4) The secretary may order a certification authority, which it has found to be in violation of this chapter, to pay the costs incurred by the secretary in prosecuting and adjudicating proceedings relative to the order, and enforcing it.

(5) The secretary must exercise authority under this section in accordance with the administrative procedure act, chapter 34.05 RCW, and a licensed certification authority may obtain judicial review of the secretary's actions as prescribed by chapter 34.05 RCW. The secretary may also seek injunctive relief to compel compliance with an order.

[1999 c 287 § 8; 1997 c 27 § 7; 1996 c 250 § 203.]

NOTES:

Effective date -- 1999 c 287: See note following RCW 19.34.010.

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.130
Certification authorities -- Prohibited activities -- Statement by secretary advising of certification authorities creating prohibited risks -- Protest -- Hearing -- Disposition -- Notice -- Procedure.

(1) No certification authority, whether licensed or not, may conduct its business in a manner that creates an unreasonable risk of loss to subscribers of the certification authority, to persons relying on certificates issued by the certification authority, or to a repository.

(2) The secretary may publish brief statements advising subscribers, persons relying on digital signatures, or other repositories about activities of a certification authority, whether licensed or not, that create a risk prohibited by subsection (1) of this section. The certification authority named in a statement as creating or causing such a risk may protest the publication of the statement by filing a written defense of ten thousand bytes or less. Upon receipt of such a protest, the secretary must publish the protest along with the secretary's statement, and must promptly give the protesting certification authority notice and an opportunity to be heard. Following the hearing, the secretary must rescind the advisory statement if its publication was unwarranted under this section, cancel it if its publication is no longer warranted, continue or amend it if it remains warranted, or take further legal action to eliminate or reduce a risk prohibited by subsection (1) of this section. The secretary must publish its decision in the repository it provides.

(3) In the manner provided by the administrative procedure act, chapter 34.05 RCW, the secretary may issue orders and obtain injunctions or other civil relief to prevent or restrain a certification authority from violating this section, regardless of whether the certification authority is licensed. This section does not create a right of action in a person other than the secretary.

[1999 c 287 § 9; 1996 c 250 § 204.]

NOTES:

Effective date -- 1999 c 287: See note following RCW 19.34.010.

RCW 19.34.200
Licensed certification authorities -- Requirements.

(1) A licensed certification authority shall use only a trustworthy system to issue, suspend, or revoke certificates. A licensed certification authority shall use a recognized repository to publish or give notice of the issuance, suspension, or revocation of a certificate.

(2) A licensed certification authority shall publish a certification practice statement in accordance with the rules established by the secretary. The secretary shall publish the certification practice statements of licensed certification authorities submitted as part of the licensing process in a manner similar to the publication of the certification authority disclosure record.

(3) A licensed certification authority shall knowingly employ as operative personnel only persons who have not been convicted within the past seven years of a felony and have never been convicted of a crime involving fraud, false statement, or deception. For purposes of this subsection, a certification authority knowingly employs such a person if the certification authority knew of a conviction, or should have known based on information required by rule of the secretary. Operative personnel employed by a licensed certification authority must also be persons who have demonstrated knowledge and proficiency in following the requirements of this chapter. The secretary may provide by rule for the certification of operative personnel, and provide by rule for the manner in which criminal background information is provided as part of the certification process, as well as the manner in which knowledge and proficiency in following the requirements of this chapter may be demonstrated.

[1999 c 287 § 10; 1997 c 27 § 8; 1996 c 250 § 301.]

NOTES:

Effective date -- 1999 c 287: See note following RCW 19.34.010.

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.210
Certificate -- Issuance--Confirmation of information -- Confirmation of prospective subscriber -- Standards, statements, plans, requirements more rigorous than chapter -- Revocation, suspension -- Investigation -- Notice -- Procedure.

(1) A licensed certification authority may issue a certificate to a subscriber only after all of the following conditions are satisfied:

(a) The certification authority has received a request for issuance signed by the prospective subscriber; and

(b) The certification authority has confirmed that:

(i) The prospective subscriber is the person to be listed in the certificate to be issued;

(ii) If the prospective subscriber is acting through one or more agents, the subscriber duly authorized the agent or agents to have custody of the subscriber's private key and to request issuance of a certificate listing the corresponding public key;

(iii) The information in the certificate to be issued is accurate;

(iv) The prospective subscriber rightfully holds the private key corresponding to the public key to be listed in the certificate;

(v) The prospective subscriber holds a private key capable of creating a digital signature;

(vi) The public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the prospective subscriber; and

(vii) The certificate provides information sufficient to locate or identify one or more repositories in which notification of the revocation or suspension of the certificate will be listed if the certificate is suspended or revoked.

(c) The requirements of this subsection may not be waived or disclaimed by either the licensed certification authority, the subscriber, or both.

(2) In confirming that the prospective subscriber is the person to be listed in the certificate to be issued, a licensed certification authority shall make a reasonable inquiry into the subscriber's identity in light of:

(a) Any statements made by the certification authority regarding the reliability of the certificate;

(b) The reliance limit of the certificate;

(c) Any recommended uses or applications for the certificate; and

(d) Whether the certificate is a transactional certificate or not.

(3) A certification authority shall be presumed to have confirmed that the prospective subscriber is the person to be listed in a certificate where:

(a) The subscriber appears before the certification authority and presents identification documents consisting of at least one of the following:

(i) A current identification document issued by or under the authority of the United States, or such similar identification document issued under the authority of another country;

(ii) A current driver's license issued by a state of the United States; or

(iii) A current personal identification card issued by a state of the United States; and

(b) Operative personnel certified according to law or a notary has reviewed and accepted the identification information of the subscriber.

(4) The certification authority may establish policies regarding the publication of certificates in its certification practice statement, which must be adhered to unless an agreement between the certification authority and the subscriber provides otherwise. If the certification authority does not establish such a policy, the certification authority must publish a signed copy of the certificate in a recognized repository.

(5) Nothing in this section precludes a licensed certification authority from conforming to standards, certification practice statements, security plans, or contractual requirements more

rigorous than, but nevertheless consistent with, this chapter.

(6) After issuing a certificate, a licensed certification authority must revoke it immediately upon confirming that it was not issued as required by this section. A licensed certification authority may also suspend a certificate that it has issued for a period not exceeding five business days as needed for an investigation to confirm grounds for revocation under this subsection. The certification authority must give notice to the subscriber as soon as practicable after a decision to revoke or suspend under this subsection.

(7) The secretary may order the licensed certification authority to suspend or revoke a certificate that the certification authority issued, if, after giving any required notice and opportunity for the certification authority and subscriber to be heard in accordance with the administrative procedure act, chapter 34.05 RCW, the secretary determines that:

(a) The certificate was issued without substantial compliance with this section; and

(b) The noncompliance poses a significant risk to persons relying on the certificate.

Upon determining that an emergency requires an immediate remedy, and in accordance with the administrative procedure act, chapter 34.05 RCW, the secretary may issue an order suspending a certificate for a period not to exceed five business days.

[1999 c 287 § 11; 1997 c 27 § 9; 1996 c 250 § 302.]

NOTES:

Effective date -- 1999 c 287: See note following RCW 19.34.010.

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.220
Licensed certification authorities -- Warranties, obligations upon issuance of certificate -- Notice.

(1) By issuing a certificate, a licensed certification authority warrants to the subscriber named in the certificate that:

(a) The certificate contains no information known to the certification authority to be false;

(b) The certificate satisfies all material requirements of this chapter; and

(c) The certification authority has not exceeded any limits of its license in issuing the certificate.

The certification authority may not disclaim or limit the warranties of this subsection.

(2) Unless the subscriber and certification authority otherwise agree, a certification authority, by issuing a certificate, promises to the subscriber:

(a) To act promptly to suspend or revoke a certificate in accordance with RCW 19.34.250 or 19.34.260; and

(b) To notify the subscriber within a reasonable time of any facts known to the certification authority that significantly affect the validity or reliability of the certificate once it is issued.

(3) By issuing a certificate, a licensed certification authority certifies to all who reasonably rely on the information contained in the certificate, or on a digital signature verifiable by the public key listed in the certificate, that:

(a) The information in the certificate and listed as confirmed by the certification authority is accurate;

(b) All information foreseeably material to the reliability of the certificate is stated or incorporated by reference within the certificate;

(c) The subscriber has accepted the certificate; and

(d) The licensed certification authority has complied with all applicable laws of this state governing issuance of the certificate.

(4) By publishing a certificate, a licensed certification authority certifies to the repository in which the certificate is published and to all

who reasonably rely on the information contained in the certificate that the certification authority has issued the certificate to the subscriber.

[1997 c 27 § 32; 1996 c 250 § 303.]

NOTES:

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.230
Subscribers -- Representations and duties upon acceptance of certificate.

(1) By accepting a certificate issued by a licensed certification authority, the subscriber listed in the certificate certifies to all who reasonably rely on the information contained in the certificate that:

(a) The subscriber rightfully holds the private key corresponding to the public key listed in the certificate;

(b) All representations made by the subscriber to the certification authority and material to the information listed in the certificate are true; and

(c) All material representations made by the subscriber to a certification authority or made in the certificate and not confirmed by the certification authority in issuing the certificate are true.

(2) By requesting on behalf of a principal the issuance of a certificate naming the principal as subscriber, the requesting person certifies in that person's own right to all who reasonably rely on the information contained in the certificate that the requesting person:

(a) Holds all authority legally required to apply for issuance of a certificate naming the principal as subscriber; and

(b) Has authority to sign digitally on behalf of the principal, and, if that authority is limited in any way, adequate safeguards exist to prevent a digital signature exceeding the bounds of the person's authority.

(3) No person may disclaim or contractually limit the application of this section, nor obtain indemnity for its effects, if the disclaimer, limitation, or indemnity restricts liability for misrepresentation as against persons reasonably relying on the certificate.

(4) By accepting a certificate, a subscriber undertakes to indemnify the issuing certification authority for loss or damage caused by issuance or publication of a certificate in reliance on:

(a) A false and material representation of fact by the subscriber; or

(b) The failure by the subscriber to disclose a material fact;

if the representation or failure to disclose was made either with intent to deceive the certification authority or a person relying on the certificate, or with negligence. If the certification authority issued the certificate at the request of one or more agents of the subscriber, the agent or agents personally undertake to indemnify the certification authority under this subsection, as if they were accepting subscribers in their own right. The indemnity provided in this section may not be disclaimed or contractually limited in scope. However, a contract may provide consistent, additional terms regarding the indemnification.

(5) In obtaining information of the subscriber material to issuance of a certificate, the certification authority may require the subscriber to certify the accuracy of relevant information under oath or affirmation of truthfulness and under penalty of perjury.

[1996 c 250 § 304.]

RCW 19.34.231
Signature of a unit of government required -- City or county as certification authority -- Unit of state government prohibited from being certification authority -- Exceptions.

(1) If a signature of a unit of state or local government, including its appropriate officers or employees, is required by statute, administrative rule, court rule, or requirement of the office of financial management, that unit of state or local government shall become a subscriber to a certificate issued by a licensed certification

authority for purposes of conducting official public business with electronic records.

(2) A city or county may become a licensed certification authority under RCW 19.34.100 for purposes of providing services to local government, if authorized by ordinance adopted by the city or county legislative authority.

(3) A unit of state government, except the secretary and the department of information services, may not act as a certification authority.

[1999 c 287 § 12; 1997 c 27 § 10.]

NOTES:

Effective date -- 1999 c 287: See note following RCW 19.34.010.

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.240
Private key -- Control -- Public disclosure exemption.

(1) By accepting a certificate issued by a licensed certification authority, the subscriber identified in the certificate assumes a duty to exercise reasonable care to retain control of the private key and prevent its disclosure to a person not authorized to create the subscriber's digital signature. The subscriber is released from this duty if the certificate expires or is revoked.

(2) A private key is the personal property of the subscriber who rightfully holds it.

(3) A private key in the possession of a state agency or local agency, as those terms are defined by RCW 42.17.020, is exempt from public inspection and copying under chapter 42.17 RCW.

[1997 c 27 § 11; 1996 c 250 § 305.]

NOTES:

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.250
Suspension of certificate -- Evidence -- Investigation -- Notice -- Termination -- Limitation or preclusion by contract -- Misrepresentation -- Penalty -- Contracts for regional enforcement by agencies -- Rules.

(1) Unless the certification authority provides otherwise in the certificate or its certification practice statement, the licensed certification authority that issued a certificate that is not a transactional certificate must suspend the certificate for a period not to exceed five business days:

(a) Upon request by a person whom the certification authority reasonably believes to be: (i) The subscriber named in the certificate; (ii) a person duly authorized to act for that subscriber; or (iii) a person acting on behalf of the unavailable subscriber; or

(b) By order of the secretary under RCW 19.34.210(7).

The certification authority need not confirm the identity or agency of the person requesting suspension. The certification authority may require the person requesting suspension to provide evidence, including a statement under oath or affirmation, regarding the requestor's identity, authorization, or the unavailability of the subscriber. Law enforcement agencies may investigate suspensions for possible wrongdoing by persons requesting suspension.

(2) Unless the certification authority provides otherwise in the certificate or its certification practice statement, the secretary may suspend a certificate issued by a licensed certification authority for a period not to exceed five business days, if:

(a) A person identifying himself or herself as the subscriber named in the certificate, a person authorized to act for that subscriber, or a person acting on behalf of that unavailable subscriber requests suspension; and

(b) The requester represents that the certification authority that issued the certificate is unavailable.

The secretary may require the person requesting suspension to provide evidence,

including a statement under oath or affirmation, regarding his or her identity, authorization, or the unavailability of the issuing certification authority, and may decline to suspend the certificate in its discretion. Law enforcement agencies may investigate suspensions by the secretary for possible wrongdoing by persons requesting suspension.

(3) Immediately upon suspension of a certificate by a licensed certification authority, the licensed certification authority must give notice of the suspension according to the specification in the certificate. If one or more repositories are specified, then the licensed certification authority must publish a signed notice of the suspension in all the repositories. If a repository no longer exists or refuses to accept publication, or if no repository is recognized under RCW 19.34.400, the licensed certification authority must also publish the notice in a recognized repository. If a certificate is suspended by the secretary, the secretary must give notice as required in this subsection for a licensed certification authority, provided that the person requesting suspension pays in advance any fee required by a repository for publication of the notice of suspension.

(4) A certification authority must terminate a suspension initiated by request only:

(a) If the subscriber named in the suspended certificate requests termination of the suspension, the certification authority has confirmed that the person requesting suspension is the subscriber or an agent of the subscriber authorized to terminate the suspension; or

(b) When the certification authority discovers and confirms that the request for the suspension was made without authorization by the subscriber. However, this subsection (4)(b) does not require the certification authority to confirm a request for suspension.

(5) The contract between a subscriber and a licensed certification authority may limit or preclude requested suspension by the certification authority, or may provide otherwise for termination of a requested suspension. However, if the contract limits or precludes suspension by the secretary when the issuing certification authority is unavailable, the limitation or preclusion is effective only if notice of it is published in the certificate.

(6) No person may knowingly or intentionally misrepresent to a certification authority his or her identity or authorization in requesting suspension of a certificate. Violation of this subsection is a gross misdemeanor.

(7) The secretary may authorize other state or local governmental agencies to perform any of the functions of the secretary under this section upon a regional basis. The authorization must be formalized by an agreement under chapter 39.34 RCW. The secretary may provide by rule the terms and conditions of the regional services.

(8) A suspension under this section must be completed within twenty-four hours of receipt of all information required in this section.

[2000 c 171 § 51; 1999 c 287 § 13; 1997 c 27 § 12; 1996 c 250 § 306.]

NOTES:

Effective date -- 1999 c 287: See note following RCW 19.34.010.

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.260
Revocation of certificate -- Confirmation -- Notice -- Release from security duty -- Discharge of warranties.

(1) A licensed certification authority must revoke a certificate that it issued but which is not a transactional certificate, after:

(a) Receiving a request for revocation by the subscriber named in the certificate; and

(b) Confirming that the person requesting revocation is the subscriber, or is an agent of the subscriber with authority to request the revocation.

(2) A licensed certification authority must confirm a request for revocation and revoke a certificate within one business day after receiving both a subscriber's written request and evidence reasonably sufficient to confirm the identity and any agency of the person requesting the revocation.

(3) A licensed certification authority must revoke a certificate that it issued:

(a) Upon receiving a certified copy of the subscriber's death certificate, or upon confirming by other evidence that the subscriber is dead; or

(b) Upon presentation of documents effecting a dissolution of the subscriber, or upon confirming by other evidence that the subscriber has been dissolved or has ceased to exist, except that if the subscriber is dissolved and is reinstated or restored before revocation is completed, the certification authority is not required to revoke the certificate.

(4) A licensed certification authority may revoke one or more certificates that it issued if the certificates are or become unreliable, regardless of whether the subscriber consents to the revocation and notwithstanding a provision to the contrary in a contract between the subscriber and certification authority.

(5) Immediately upon revocation of a certificate by a licensed certification authority, the licensed certification authority must give notice of the revocation according to the specification in the certificate. If one or more repositories are specified, then the licensed certification authority must publish a signed notice of the revocation in all repositories. If a repository no longer exists or refuses to accept publication, or if no repository is recognized under RCW 19.34.400, then the licensed certification authority must also publish the notice in a recognized repository.

(6) A subscriber ceases to certify, as provided in RCW 19.34.230, and has no further duty to keep the private key secure, as required by RCW 19.34.240, in relation to the certificate whose revocation the subscriber has requested, beginning at the earlier of either:

(a) When notice of the revocation is published as required in subsection (5) of this section; or

(b) One business day after the subscriber requests revocation in writing, supplies to the issuing certification authority information reasonably sufficient to confirm the request, and pays any contractually required fee.

(7) Upon notification as required by subsection (5) of this section, a licensed certification authority is discharged of its warranties based on issuance of the revoked certificate, as to transactions occurring after the notification, and ceases to certify as provided in RCW 19.34.220 (2) and (3) in relation to the revoked certificate.

[1997 c 27 § 13; 1996 c 250 § 307.]

NOTES:

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.270
Certificate -- Expiration.

(1) A certificate must indicate the date on which it expires.

(2) When a certificate expires, the subscriber and certification authority cease to certify as provided in this chapter and the certification authority is discharged of its duties based on issuance, in relation to the expired certificate.

[1996 c 250 § 308.]

RCW 19.34.280
Recommended reliance limit -- Liability -- Damages.

(1) By clearly specifying a recommended reliance limit in a certificate and in the certification practice statement, the issuing certification authority recommends that persons rely on the certificate only to the extent that the total amount at risk does not exceed the recommended reliance limit.

(2) Subject to subsection (3) of this section, unless a licensed certification authority waives application of this subsection, a licensed certification authority is:

(a) Not liable for a loss caused by reliance on a false or forged digital signature of a subscriber, if, with respect to the false or forged digital signature, the certification authority complied with all material requirements of this chapter;

(b) Not liable in excess of the amount specified in the certificate as its recommended reliance limit for either:

(i) A loss caused by reliance on a misrepresentation in the certificate of a fact that the licensed certification authority is required to confirm; or

(ii) Failure to comply with RCW 19.34.210 in issuing the certificate;

(c) Not liable for:

(i) Punitive or exemplary damages. Nothing in this chapter may be interpreted to permit punitive or exemplary damages that would not otherwise be permitted by the law of this state; or

(ii) Damages for pain or suffering.

(3) Nothing in subsection (2)(a) of this section relieves a licensed certification authority of its liability for breach of any of the warranties or certifications it gives under RCW 19.34.220 or for its lack of good faith, which warranties and obligation of good faith may not be disclaimed. However, the standards by which the performance of a licensed certification authority's obligation of good faith is to be measured may be determined by agreement or notification complying with subsection (4) of this section if the standards are not manifestly unreasonable. The liability of a licensed certification authority under this subsection is subject to the limitations in subsection (2)(b) and (c) of this section unless the limits are waived by the licensed certification authority.

(4) Consequential or incidental damages may be liquidated, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. A licensed certification authority may liquidate, limit, alter, or exclude consequential or incidental damages as provided in this subsection by agreement or by notifying any person who will rely on a certificate of the liquidation, limitation, alteration, or exclusion before the person relies on the certificate.

[1999 c 287 § 14; 1997 c 27 § 14; 1996 c 250 § 309.]

NOTES:

Effective date -- 1999 c 287: See note following RCW 19.34.010.

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.290
Collection based on suitable guaranty -- Proceeds -- Attorneys' fees -- Costs -- Notice -- Recovery of qualified right of payment.

(1)(a) If the suitable guaranty is a surety bond, a person may recover from the surety the full amount of a qualified right to payment against the principal named in the bond, or, if there is more than one such qualified right to payment during the term of the bond, a ratable share, up to a maximum total liability of the surety equal to the amount of the bond.

(b) If the suitable guaranty is a letter of credit, a person may recover from the issuing financial institution only in accordance with the terms of the letter of credit.

Claimants may recover successively on the same suitable guaranty, provided that the total liability on the suitable guaranty to all persons making qualified rights of payment during its term must not exceed the amount of the suitable guaranty.

(2) In addition to recovering the amount of a qualified right to payment, a claimant may recover from the proceeds of the guaranty, until depleted, the attorneys' fees, reasonable in amount, and court costs incurred by the claimant in collecting the claim, provided that the total liability on the suitable guaranty to all persons making qualified rights of payment or recovering attorneys' fees during its term must not exceed the amount of the suitable guaranty.

(3) To recover a qualified right to payment against a surety or issuer of a suitable guaranty, the claimant must:

(a) File written notice of the claim with the secretary stating the name and address of the claimant, the amount claimed, and the grounds for the qualified right to payment, and any other information required by rule by the secretary;

and

(b) Append to the notice a certified copy of the judgment on which the qualified right to payment is based.

Recovery of a qualified right to payment from the proceeds of the suitable guaranty is barred unless the claimant substantially complies with this subsection (3).

(4) Recovery of a qualified right to payment from the proceeds of a suitable guaranty are forever barred unless notice of the claim is filed as required in subsection (3)(a) of this section within three years after the occurrence of the violation of this chapter that is the basis for the claim. Notice under this subsection need not include the requirement imposed by subsection (3)(b) of this section.

[1996 c 250 § 310.]

RCW 19.34.291
Discontinuation of certification authority services -- Duties of authority -- Continuation of guaranty -- Process to maintain and update records -- Rules -- Costs.

(1) A licensed certification authority that discontinues providing certification authority services shall:

(a) Notify all subscribers listed in valid certificates issued by the certification authority, before discontinuing services;

(b) Minimize, to the extent commercially reasonable, disruption to the subscribers of valid certificates and relying parties; and

(c) Make reasonable arrangements for preservation of the certification authority's records.

(2) A suitable guaranty of a licensed certification authority may not be released until the expiration of the term specified in the guaranty.

(3) The secretary may provide by rule for a process by which the secretary may, in any combination, receive, administer, or disburse the records of a licensed certification authority or a recognized repository that discontinues providing services, for the purpose of maintaining access to the records and revoking any previously issued valid certificates in a manner that minimizes disruption to subscribers and relying parties. The secretary's rules may include provisions by which the secretary may recover costs incurred in doing so.

[1997 c 27 § 15.]

NOTES:

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.300
Satisfaction of signature requirements.

(1) Where a rule of law requires a signature, or provides for certain consequences in the absence of a signature, that rule is satisfied by a digital signature, if:

(a) The digital signature is verified by reference to the public key listed in a valid certificate issued by a licensed certification authority;

(b) The digital signature was affixed by the signer with the intention of signing the message; and

(c) The recipient has no knowledge or notice that the signer either:

(i) Breached a duty as a subscriber; or

(ii) Does not rightfully hold the private key used to affix the digital signature.

(2) Nothing in this chapter:

(a) Precludes a mark from being valid as a signature under other applicable law;

(b) May be construed to obligate a recipient or any other person asked to rely on a digital signature to accept a digital signature or to respond to an electronic message containing a digital signature except as provided in RCW 19.34.321; or

(c) Precludes the recipient of a digital

signature or an electronic message containing a digital signature from establishing the conditions under which the recipient will accept a digital signature.

[1997 c 27 § 16; 1996 c 250 § 401.]

NOTES:

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.305
Acceptance of digital signature in reasonable manner.

Acceptance of a digital signature may be made in any manner reasonable in the circumstances.

[1997 c 27 § 31.]

NOTES:

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.310
Unreliable digital signatures -- Risk.

Unless otherwise provided by law or contract, the recipient of a digital signature assumes the risk that a digital signature is forged, if reliance on the digital signature is not reasonable under the circumstances.

[1997 c 27 § 17; 1996 c 250 § 402.]

NOTES:

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.311
Reasonableness of reliance -- Factors.

The following factors, among others, are significant in evaluating the reasonableness of a recipient's reliance upon a certificate and upon the digital signatures verifiable with reference to the public key listed in the certificate:

(1) Facts which the relying party knows or of which the relying party has notice, including all facts listed in the certificate or incorporated in it by reference;

(2) The value or importance of the digitally signed message, if known;

(3) The course of dealing between the relying person and subscriber and the available indicia of reliability or unreliability apart from the digital signature; and

(4) Usage of trade, particularly trade conducted by trustworthy systems or other computer-based means.

[1997 c 27 § 18.]

NOTES:

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.320
Digital message as written on paper -- Requirements -- Other requirements not affected -- Exception from uniform commercial code.

A message is as valid, enforceable, and effective as if it had been written on paper, if it:

(1) Bears in its entirety a digital signature; and

(2) That digital signature is verified by the public key listed in a certificate that:

(a) Was issued by a licensed certification authority; and

(b) Was valid at the time the digital signature was created.

Nothing in this chapter shall be construed to eliminate, modify, or condition any other requirements for a contract to be valid, enforceable, and effective. No digital message shall be deemed to be an instrument under Title 62A RCW unless all parties to the transaction agree, including financial institutions affected.

[1997 c 27 § 19; 1996 c 250 § 403.]

NOTES:

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.321
Acceptance of certified court documents in electronic form -- Requirements -- Rules of court on use in proceedings.

(1) A person may not refuse to honor, accept, or act upon a court order, writ, or warrant upon the basis that it is electronic in form and signed with a digital signature, if the digital signature was certified by a licensed certification authority or otherwise issued under court rule. This section applies to a paper printout of a digitally signed document, if the printout reveals that the digital signature was electronically verified before the printout, and in the absence of a finding that the document has been altered.

(2) Nothing in this chapter shall be construed to limit the authority of the supreme court to adopt rules of pleading, practice, or procedure, or of the court of appeals or superior courts to adopt supplementary local rules, governing the use of electronic messages or documents, including rules governing the use of digital signatures, in judicial proceedings.

[1997 c 27 § 20.]

NOTES:

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.330
Digital message deemed original.

A digitally signed message shall be deemed to be an original of the message.

[1999 c 287 § 15; 1996 c 250 § 404.]

NOTES:

Effective date -- 1999 c 287: See note following RCW 19.34.010.

RCW 19.34.340
Certificate as acknowledgment -- Requirements -- Exception -- Responsibility of certification authority.

(1) Unless otherwise provided by law or contract, if so provided in the certificate issued by a licensed certification authority, a digital signature verified by reference to the public key listed in a valid certificate issued by a licensed certification authority satisfies the requirements for an acknowledgment under RCW 42.44.010(4) and for acknowledgment of deeds and other real property conveyances under RCW 64.04.020 if words of an express acknowledgment appear with the digital signature regardless of whether the signer personally appeared before either the certification authority or some other person authorized to take acknowledgments of deeds, mortgages, or other conveyance instruments under RCW 64.08.010 when the digital signature was created, if that digital signature is:

(a) Verifiable by that certificate; and

(b) Affixed when that certificate was valid.

(2) If the digital signature is used as an acknowledgment, then the certification authority is responsible to the same extent as a notary up to the recommended reliance limit for failure to satisfy the requirements for an acknowledgment. The certification authority may not disclaim or limit, other than as provided in RCW 19.34.280, the effect of this section.

[1997 c 27 § 21; 1996 c 250 § 405.]

NOTES:

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.350
Adjudicating disputes -- Presumptions.

In adjudicating a dispute involving a digital signature, it is rebuttably presumed that:

(1) A certificate digitally signed by a licensed certification authority and either published in a recognized repository, or made available by the issuing certification authority or by the subscriber listed in the certificate is issued by the certification authority that digitally signed it and is accepted by the subscriber listed in it.

(2) The information listed in a valid certificate and confirmed by a licensed certification authority issuing the certificate is accurate.

(3) If a digital signature is verified by the public key listed in a valid certificate issued by a licensed certification authority:

(a) That digital signature is the digital signature of the subscriber listed in that certificate;

(b) That digital signature was affixed by that subscriber with the intention of signing the message;

(c) The message associated with the digital signature has not been altered since the signature was affixed; and

(d) The recipient of that digital signature has no knowledge or notice that the signer:

(i) Breached a duty as a subscriber; or

(ii) Does not rightfully hold the private key used to affix the digital signature.

(4) A digital signature was created before it was time stamped by a disinterested person utilizing a trustworthy system.

[1997 c 27 § 22; 1996 c 250 § 406.]

NOTES:

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.351
Alteration of chapter by agreement -- Exceptions.

The effect of this chapter may be varied by agreement, except:

(1) A person may not disclaim responsibility for lack of good faith, but parties may by agreement determine the standards by which the duty of good faith is to be measured if the standards are not manifestly unreasonable; and

(2) As otherwise provided in this chapter.

[1997 c 27 § 34.]

NOTES:

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.360
Presumptions of validity/limitations on liability -- Conformance with chapter.

The presumptions of validity and reasonableness of conduct, and the limitations on liability in this chapter do not apply to electronic records or electronic signatures except for digital signatures created in conformance with all of the requirements of this chapter and rules adopted under this chapter.

[1999 c 287 § 3.]

NOTES:

Effective date -- 1999 c 287: See note following RCW 19.34.010.

RCW 19.34.400
Recognition of repositories -- Application -- Discontinuance -- Procedure.

(1) The secretary must recognize one or more repositories, after finding that a repository to be recognized:

(a) Is a licensed certification authority;

(b) Includes, or will include, a data base containing:

(i) Certificates published in the repository;

(ii) Notices of suspended or revoked certificates published by licensed certification authorities or other persons suspending or revoking certificates; and

(iii) Other information adopted by rule by the secretary;

(c) Operates by means of a trustworthy system, that may, under administrative rule of the secretary, include additional or different attributes than those applicable to a certification authority that does not operate as a recognized repository;

(d) Contains no significant amount of information that is known or likely to be untrue, inaccurate, or not reasonably reliable;

(e) Keeps a record of certificates that have been suspended or revoked, or that have expired, in accordance with requirements adopted by rule by the secretary; and

(f) Complies with other reasonable requirements adopted by rule by the secretary.

(2) A repository may apply to the secretary for recognition by filing a written request and providing evidence to the secretary sufficient for the secretary to find that the conditions for recognition are satisfied, in accordance with requirements adopted by rule by the secretary.

(3) A repository may discontinue its recognition by filing thirty days' written notice with the secretary, upon meeting any conditions for discontinuance adopted by rule by the secretary. In addition the secretary may discontinue recognition of a repository in accordance with the administrative procedure act, chapter 34.05 RCW, if the secretary concludes that the repository no longer satisfies the conditions for recognition listed in this section or in rules adopted by the secretary.

[1999 c 287 § 16; 1997 c 27 § 23; 1996 c 250 § 501.]

NOTES:

Effective date -- 1999 c 287: See note following RCW 19.34.010.

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.410
Repositories -- Liability -- Exemptions -- Liquidation, limitation, alteration, or exclusion of damages.

(1) Notwithstanding a disclaimer by the repository or a contract to the contrary between the repository, a certification authority, or a subscriber, a repository is liable for a loss incurred by a person reasonably relying on a digital signature verified by the public key listed in a certificate that has been suspended or revoked by the licensed certification authority that issued the certificate, if loss was incurred more than one business day after receipt by the repository of a request from the issuing licensed certification authority to publish notice of the suspension or revocation, and the repository had failed to publish the notice when the person relied on the digital signature.

(2) Unless waived, a recognized repository or the owner or operator of a recognized repository is:

(a) Not liable for failure to record publication of a suspension or revocation, unless the repository has received notice of publication and one business day has elapsed since the notice was received;

(b) Not liable under subsection (1) of this section in excess of the amount specified in the certificate as the recommended reliance limit;

(c) Not liable under subsection (1) of this section for:

(i) Punitive or exemplary damages; or

(ii) Damages for pain or suffering;

(d) Not liable for misrepresentation in a certificate published by a licensed certification authority;

(e) Not liable for accurately recording or reporting information that a licensed certification authority, or court clerk, or the secretary has published as required or permitted in this chapter, including information about suspension

or revocation of a certificate;

(f) Not liable for reporting information about a certification authority, a certificate, or a subscriber, if the information is published as required or permitted in this chapter or a rule adopted by the secretary, or is published by order of the secretary in the performance of the licensing and regulatory duties of that office under this chapter.

(3) Consequential or incidental damages may be liquidated, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. A recognized repository may liquidate, limit, alter, or exclude damages as provided in this subsection by agreement, or by notifying any person who will rely on a digital signature verified by the public key listed in a suspended or revoked certificate of the liquidation, limitation, alteration, or exclusion before the person relies on the certificate.

[1999 c 287 § 17; 1997 c 27 § 33; 1996 c 250 § 502.]

NOTES:

Effective date -- 1999 c 287: See note following RCW 19.34.010.

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.420
Confidentiality of certain records -- Limited access to state auditor.

(1) The following information, when in the possession of the secretary, the department of information services, or the state auditor for purposes of this chapter, shall not be made available for public disclosure, inspection, or copying, unless the request is made under an order of a court of competent jurisdiction based upon an express written finding that the need for the information outweighs any reason for maintaining the privacy and confidentiality of the information or records:

(a) A trade secret, as defined by RCW 19.108.010; and

(b) Information regarding design, security, or programming of a computer system used for purposes of licensing or operating a certification authority or repository under this chapter.

(2) The state auditor, or an authorized agent, must be given access to all information referred to in subsection (1) of this section for the purpose of conducting audits under this chapter or under other law, but shall not make that information available for public inspection or copying except as provided in subsection (1) of this section.

[1998 c 33 § 2.]

RCW 19.34.500
Rule making.

The secretary of state may adopt rules to implement this chapter beginning July 27, 1997, but the rules may not take effect until January 1, 1998.

[1997 c 27 § 24; 1996 c 250 § 603.]

NOTES:

Severability -- 1997 c 27: See note following RCW 19.34.030.

RCW 19.34.501
Chapter supersedes and preempts local actions.

This chapter supersedes and preempts all local laws or ordinances regarding the same subject matter.

[1997 c 27 § 25.]

NOTES:

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.502
Criminal prosecution not precluded -- Remedies not exclusive -- Injunctive relief availability.

This chapter does not preclude criminal prosecution under other laws of this state, nor may any provision of this chapter be regarded as an exclusive remedy for a violation. Injunctive relief may not be denied to a party regarding conduct governed by this chapter on the basis that the conduct is also subject to potential criminal prosecution.

[1997 c 27 § 26.]

NOTES:

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.503
Jurisdiction, venue, choice of laws.

Issues regarding jurisdiction, venue, and choice of laws for all actions involving digital signatures must be determined according to the same principles as if all transactions had been performed through paper documents.

[1997 c 27 § 27.]

NOTES:

Effective date -- Severability -- 1997 c 27: See notes following RCW 19.34.030.

RCW 19.34.900
Short title.

This chapter shall be known and may be cited as the Washington electronic authentication act.

[1996 c 250 § 101.]

RCW 19.34.901
Effective date -- 1996 c 250.

(1) Sections 101 through 601, 604, and 605, chapter 250, Laws of 1996 take effect January 1, 1998.

(2) Sections 602 and 603, chapter 250, Laws of 1996 take effect July 27, 1997.

[2000 c 171 § 52; 1997 c 27 § 28; 1996 c 250 § 602.]

NOTES:

Severability -- 1997 c 27: See note following RCW 19.34.030.

RCW 19.34.902
Severability -- 1996 c 250.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1996 c 250 § 604.]

RCW 19.34.903
Part headings and section captions not law -- 1996 c 250.

Part headings and section captions as used in this act do not constitute any part of the law.

[1996 c 250 § 605.]

Chapter 19.122 RCW Underground Utilities

RCW SECTIONS

19.122.010 Intent.

19.122.020 Definitions.

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19.122.040 Underground facilities identified in bid or contract -- Excavator's duty of reasonable care -- Liability for damages -- Attorneys' fees.

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19.122.055 Failure to notify one-number locator service -- Civil penalty, if damages.

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19.122.070 Civil penalties -- Treble damages -- Existing remedies not affected.

19.122.075 Damage or removal of permanent marking -- Civil penalty.

19.122.080 Waiver of notification and marking requirements.

19.122.900 Severability -- 1984 c 144.

RCW 19.122.010
Intent.

It is the intent of the legislature in enacting this chapter to assign responsibilities for locating and keeping accurate records of utility locations, protecting and repairing damage to existing underground facilities, and protecting the public health and safety from interruption in utility services caused by damage to existing underground utility facilities.

[1984 c 144 § 1.]

RCW 19.122.020
Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(2) "Damage" includes the substantial weakening of structural or lateral support of an underground facility, penetration, impairment, or destruction of any underground protective coating, housing, or other protective device, or the severance, partial or complete, of any underground facility to the extent that the project owner or the affected utility owner determines that repairs are required.

(3) "Emergency" means any condition constituting a clear and present danger to life or property, or a customer service outage.

(4) "Excavation" means any operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than twelve inches in depth for agricultural purposes, or road and ditch maintenance that does not change the original road grade or ditch flowline.

(5) "Excavator" means any person who engages directly in excavation.

(6) "Gas" means natural gas, flammable gas, or toxic or corrosive gas.

(7) "Hazardous liquid" means: (a) Petroleum, petroleum products, or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195 as in effect on March 1, 1998; and (b) carbon

dioxide. The utilities and transportation commission may by rule incorporate by reference other substances designated as hazardous by the secretary of transportation.

(8) "Identified facility" means any underground facility which is indicated in the project plans as being located within the area of proposed excavation.

(9) "Identified but unlocatable underground facility" means an underground facility which has been identified but cannot be located with reasonable accuracy.

(10) "Locatable underground facility" means an underground facility which can be field-marked with reasonable accuracy.

(11) "Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American public works association. Markings shall include identification letters indicating the specific type of the underground facility.

(12) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of a state, and its employees, agents, or legal representatives.

(13) "Pipeline" or "pipeline system" means all or parts of a pipeline facility through which hazardous liquid or gas moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. "Pipeline" or "pipeline system" does not include process or transfer pipelines as defined in RCW 81.88.010.

(14) "Pipeline company" means a person or entity constructing, owning, or operating a pipeline for transporting hazardous liquid or gas. A pipeline company does not include: (a) Distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail; or (b) excavation contractors or other contractors that contract with a pipeline company.

(15) "Reasonable accuracy" means location within twenty-four inches of the outside dimensions of both sides of an underground facility.

(16) "Underground facility" means any item buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including but not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or anchors below ground. This definition does not include pipelines as defined in subsection (13) of this section, but does include distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail.

(17) "One-number locator service" means a service through which a person can notify utilities and request field-marking of underground facilities.

[2000 c 191 § 15; 1984 c 144 § 2.]

NOTES:

Intent -- Findings -- Conflict with federal requirements -- Short title -- Effective date -- 2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

RCW 19.122.027
One-number locator services -- Single statewide toll-free telephone number.

(1) By December 31, 2000, the utilities and transportation commission shall cause to be established a single statewide toll-free telephone number to be used for referring excavators to the appropriate one-number locator service.

(2) The utilities and transportation commission, in consultation with the Washington utilities coordinating council, shall establish minimum standards and best management practices for one-number locator services consistent with the recommendations of the governor's fuel accident prevention and response team issued in December 1999. By December 31, 2000, the commission shall

provide its recommendations to the appropriate standing committees of the house of representatives and the senate.

(3) One-number locator services shall be operated by nongovernmental agencies.

[2000 c 191 § 16.]

NOTES:

Intent -- Findings -- Conflict with federal requirements -- Short title -- Effective date -- 2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

RCW 19.122.030
Notice of excavation to owners of underground facilities -- One-number locator service -- Time for notice -- Marking of underground facilities -- Costs.

(1) Before commencing any excavation, excluding agriculture tilling less than twelve inches in depth, the excavator shall provide notice of the scheduled commencement of excavation to all owners of underground facilities through a one-number locator service.

(2) All owners of underground facilities within a one-number locator service area shall subscribe to the service. One-number locator service rates for cable television companies will be based on the amount of their underground facilities. If no one-number locator service is available, notice shall be provided individually to those owners of underground facilities known to or suspected of having underground facilities within the area of proposed excavation. The notice shall be communicated to the owners of underground facilities not less than two business days or more than ten business days before the scheduled date for commencement of excavation, unless otherwise agreed by the parties.

(3) Upon receipt of the notice provided for in this section, the owner of the underground facility shall provide the excavator with reasonably accurate information as to its locatable underground facilities by surface-marking the location of the facilities. If there are identified but unlocatable underground facilities, the owner of such facilities shall provide the excavator with the best available information as to their locations. The owner of the underground facility providing the information shall respond no later than two business days after the receipt of the notice or before the excavation time, at the option of the owner, unless otherwise agreed by the parties. Excavators shall not excavate until all known facilities have been marked. Once marked by the owner of the underground facility, the excavator is responsible for maintaining the markings. Excavators shall have the right to receive compensation from the owner of the underground facility for costs incurred if the owner of the underground facility does not locate its facilities in accordance with this section.

(4) The owner of the underground facility shall have the right to receive compensation for costs incurred in responding to excavation notices given less than two business days prior to the excavation from the excavator.

(5) An owner of underground facilities is not required to indicate the presence of existing service laterals or appurtenances if the presence of existing service laterals or appurtenances on the site of the construction project can be determined from the presence of other visible facilities, such as buildings, manholes, or meter and junction boxes on or adjacent to the construction site.

(6) Emergency excavations are exempt from the time requirements for notification provided in this section.

(7) If the excavator, while performing the contract, discovers underground facilities which are not identified, the excavator shall cease excavating in the vicinity of the facility and immediately notify the owner or operator of such facilities, or the one-number locator service.

[2000 c 191 § 17; 1988 c 99 § 1; 1984 c 144 § 3.]

NOTES:

Intent -- Findings -- Conflict with federal requirements -- Short title -- Effective date -- 2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

Damages to facilities on state highways: RCW 47.44.150.

RCW 19.122.033
Notice of excavation to pipeline companies.

(1) Before commencing any excavation, excluding agricultural tilling less than twelve inches in depth, an excavator shall notify pipeline companies of the scheduled commencement of excavation through a one-number locator service in the same manner as is required for notifying owners of underground facilities of excavation work under RCW 19.122.030. Pipeline companies shall have the same rights and responsibilities as owners of underground facilities under RCW 19.122.030 regarding excavation work. Excavators have the same rights and responsibilities under this section as they have under RCW 19.122.030.

(2) Project owners, excavators, and pipeline companies have the same rights and responsibilities relating to excavation near pipelines that they have for excavation near underground facilities as provided in RCW 19.122.040.

[2000 c 191 § 18.]

NOTES:

Intent -- Findings -- Conflict with federal requirements -- Short title -- Effective date -- 2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

RCW 19.122.035
Pipeline company duties after notice of excavation -- Examination -- Information of damage -- Notification of local first responders.

(1) After a pipeline company has been notified by an excavator pursuant to RCW 19.122.033 that excavation work will uncover any portion of the pipeline, the pipeline company shall ensure that the pipeline section in the vicinity of the excavation is examined for damage prior to being reburied.

(2) Immediately upon receiving information of third-party damage to a hazardous liquid pipeline, the company that operates the pipeline shall terminate the flow of hazardous liquid in that pipeline until it has visually inspected the pipeline. After visual inspection, the operator of the hazardous liquid pipeline shall determine whether the damaged pipeline section should be replaced or repaired, or whether it is safe to resume pipeline operation. Immediately upon receiving information of third-party damage to a gas pipeline, the company that operates the pipeline shall conduct a visual inspection of the pipeline to determine whether the flow of gas through that pipeline should be terminated, and whether the damaged pipeline should be replaced or repaired. A record of the pipeline company's inspection report and test results shall be provided to the utilities and transportation commission consistent with reporting requirements under 49 C.F.R. 195 Subpart B.

(3) Pipeline companies shall immediately notify local first responders and the department of any reportable release of a hazardous liquid from a pipeline. Pipeline companies shall immediately notify local first responders and the commission of any blowing gas leak from a gas pipeline that has ignited or represents a probable hazard to persons or property. Pipeline companies shall take all appropriate steps to ensure the public safety in the event of a release of hazardous liquid or gas under this subsection.

(4) No damaged pipeline may be buried until it is repaired or relocated. The pipeline company shall arrange for repairs or relocation of a damaged pipeline as soon as is practical or may permit the excavator to do necessary repairs or relocation at a mutually acceptable price.

[2000 c 191 § 19.]

NOTES:

Intent -- Findings -- Conflict with federal requirements -- Short title -- Effective date -- 2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

RCW 19.122.040
Underground facilities identified in bid or contract -- Excavator's duty of reasonable care -- Liability for damages -- Attorneys' fees.

(1) Project owners shall indicate in bid or contract documents the existence of underground facilities known by the project owner to be located within the proposed area of excavation.

The following shall be deemed changed or differing site conditions:

(a) An underground facility not identified as required by this chapter or other provision of law; and

(b) An underground facility not located, as required by this chapter or other provision of law, by the project owner or excavator if the project owner or excavator is also a utility.

(2) An excavator shall use reasonable care to avoid damaging underground facilities. An excavator shall:

(a) Determine the precise location of underground facilities which have been marked;

(b) Plan the excavation to avoid damage to or minimize interference with underground facilities in and near the excavation area; and

(c) Provide such support for underground facilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such facilities.

(3) If an underground facility is damaged and such damage is the consequence of the failure to fulfill an obligation under this chapter, the party failing to perform that obligation shall be liable for any damages. Any clause in an excavation contract which attempts to allocate liability, or requires indemnification to shift the economic consequences of liability, different from the provisions of this chapter is against public policy and unenforceable. Nothing in this chapter prevents the parties to an excavation contract from contracting with respect to the allocation of risk for changed or differing site conditions.

(4) In any action brought under this section, the prevailing party is entitled to reasonable attorneys' fees.

[1984 c 144 § 4.]

RCW 19.122.045
Exemption from liability.

Excavators who comply with the requirements of this chapter are not liable for any damages arising from contact or damage to an underground fiber optics facility other than the cost to repair the facility.

[1988 c 99 § 2.]

RCW 19.122.050
Damage to underground facility -- Notification by excavator -- Repairs or relocation of facility.

(1) An excavator who, in the course of excavation, contacts or damages an underground facility shall notify the utility owning or operating such facility and the one-number locator service. If the damage causes an emergency condition, the excavator causing the damage shall also alert the appropriate local public safety agencies and take all appropriate steps to ensure the public safety. No damaged underground facility may be buried until it is repaired or relocated.

(2) The owner of the underground facilities damaged shall arrange for repairs or relocation as soon as is practical or may permit the excavator to do necessary repairs or relocation at a mutually acceptable price.

[1984 c 144 § 5.]

RCW 19.122.055
Failure to notify one-number locator service -- Civil penalty, if damages.

(1) Any person who fails to notify the one-number locator service and causes damage to a hazardous liquid or gas pipeline is subject to a civil penalty of not more than ten thousand dollars for each violation.

(2) All civil penalties recovered under this section shall be deposited into the pipeline safety account created in RCW 81.88.050.

[2001 c 238 § 5; 2000 c 191 § 24.]

NOTES:

Intent--Finding--Effective date -- 2001 c 238: See notes following RCW 80.24.060.

Intent -- Findings -- Conflict with federal requirements -- Short title -- Effective date -- 2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

RCW 19.122.060
Exemption from notice and marking requirements for property owners.

An excavation of less than twelve inches in vertical depth on private noncommercial property shall be exempt from the requirements of RCW 19.122.030, if the excavation is being performed by the person or an employee of the person who owns or occupies the property on which the excavation is being performed.

[1984 c 144 § 6.]

RCW 19.122.070
Civil penalties -- Treble damages -- Existing remedies not affected.

(1) Any person who violates any provision of this chapter, and which violation results in damage to underground facilities, is subject to a civil penalty of not more than one thousand dollars for each violation. All penalties recovered in such actions shall be deposited in the general fund.

(2) Any excavator who wilfully or maliciously damages a field-marked underground facility shall be liable for treble the costs incurred in repairing or relocating the facility. In those cases in which an excavator fails to notify known underground facility owners or the one-number locator service, any damage to the underground facility shall be deemed wilful and malicious and shall be subject to treble damages for costs incurred in repairing or relocating the facility.

(3) This chapter does not affect any civil remedies for personal injury or for property damage, including that to underground facilities, nor does this chapter create any new civil remedies for such damage.

[1984 c 144 § 7.]

NOTES:

Damages to facilities on state highways: RCW 47.44.150.

RCW 19.122.075
Damage or removal of permanent marking -- Civil penalty.

Any person who willfully damages or removes a permanent marking used to identify an underground facility or pipeline, or a temporary marking prior to its intended use, is subject to a civil penalty of not more than one thousand dollars for each act.

[2000 c 191 § 23.]

NOTES:

Intent -- Findings -- Conflict with federal requirements -- Short title -- Effective date -- 2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

RCW 19.122.080
Waiver of notification and marking requirements.

The notification and marking provisions of this chapter may be waived for one or more designated persons by an underground facility owner with respect to all or part of that underground facility owner's own underground facilities.

[1984 c 144 § 8.]

RCW 19.122.900
Severability -- 1984 c 144.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1984 c 144 § 9.]

Chapter 35.56.200-260 RCW Local Improvements -- Filling And Draining Lowlands – Waterways

RCW SECTIONS

35.56.200 Waterways constructed -- Requirements.

35.56.210 Waterways constructed -- Control.

35.56.220 Waterways constructed -- Leasing facilities.

35.56.230 Waterway shoreline front -- Lessee must lease abutting property.

35.56.240 Waterways constructed -- Acquisition of abutting property.

35.56.250 Waterways -- Abutting city owned lands -- Lease of.

35.56.260 Waterways -- Abutting lands -- Lessee must lease shoreline property.

RCW 35.56.200
Waterways constructed -- Requirements.

In the filling of any marshland, swampland, tideland or tideflats no canal or waterway shall be constructed in connection therewith less than three hundred feet wide at the top between the shore lines and with sufficient slope to the sides or banks thereof to as nearly as practicable render bulkheadings or other protection against caving or falling in of said sides or banks unnecessary and of sufficient depth to meet all ordinary requirements of navigation and commerce.

[1965 c 7 § 35.56.200. Prior: 1913 c 16 § 17, part; RRS § 9465, part.]

RCW 35.56.210
Waterways constructed -- Control.

The canal or waterway shall be and remain under the control of the city and immediately upon its completion the city shall establish outer dock lines lengthwise of said canal or waterway on both sides thereof in such manner and position that not less than two hundred feet of the width thereof shall always remain open between such lines and beyond and between which lines no right shall ever be granted to build wharves or other obstructions except bridges; nor shall any permanent obstruction to the free use of the channel so laid out between said wharf or dock lines excepting bridges, their approaches, piers, abutments and spans, ever be permitted but the same shall be kept open for navigation.

[1965 c 7 § 35.56.210. Prior: 1913 c 16 § 17, part; RRS § 9465, part.]

RCW 35.56.220
Waterways constructed -- Leasing facilities.

The city shall have the right to lease the area so created between the said shore lines and the wharf lines so established or any part, parts or parcels thereof during times when the use thereof is not required by the city, for periods not exceeding thirty years, to private individuals or concerns for wharf, warehouse or manufacturing purposes at such annual rate or rental per lineal foot of frontage on the canal or waterway as it may deem reasonable.

The rates of wharfage, and other charges to the public which any lessee may impose shall be reasonable; and the city council or commission may regulate such rates. The lease so granted by the city shall never be transferred or assigned without the consent of the city council or commission having been first obtained.

A city shall never lease to any individual or concern more than four hundred lineal feet of frontage of the area lying between the shore lines and the dock lines and no individual or concern shall ever hold or occupy by lease, sublease or otherwise more than the said four hundred lineal feet of frontage of such area: PROVIDED, That any individual or concern may acquire by lease or sublease whatever additional number of lineal feet of frontage of such area may in the judgment of the city council or commission be necessary for the use of such individual or concern, upon petition therefor to the city council or commission signed by not less than five hundred resident freeholders of the city.

[1965 c 7 § 35.56.220. Prior: 1913 c 16 § 17, part; RRS § 9465, part.]

RCW 35.56.230
Waterway shoreline front -- Lessee must lease abutting property.

If the city owns the land abutting upon any part of the area between the shore lines and dock lines, no portion of the area which has city owned property abutting upon it shall ever be leased unless an equal frontage of the abutting property immediately adjoining it is leased at the same time for the same period to the same individual or concern.

[1965 c 7 § 35.56.230. Prior: 1913 c 16 § 17, part; RRS § 9465, part.]

RCW 35.56.240
Waterways constructed -- Acquisition of abutting property.

While acquiring the rights of way for such canals or waterways or at any time thereafter such city may acquire for its own use and public use by purchase, gift, condemnation or otherwise, and pay therefor by any lawful means including but not restricted to payment out of the current expense fund of such city or by bonding the city or by pledging revenues to be derived from rents and issues therefrom, lands abutting upon the shore lines or right-of-way of such canals or waterways to a distance, depth or width of not more than three hundred feet back from the banks or shore lines of such canals or waterways on either side or both sides thereof, or not more than three hundred lineal feet back from and abutting on the outer lines of such rights-of-way on either side or both sides of such rights-of-way, and such area of such abutting lands as the council or commission may deem necessary for its use for public docks, bridges, wharves, streets and other conveniences of navigation and commerce and for its own use and benefit generally.

[1965 c 7 § 35.56.240. Prior: 1913 c 16 § 18, part; RRS § 9466, part.]

RCW 35.56.250
Waterways -- Abutting city owned lands -- Lease of.

If the city is not using the abutting lands so acquired it may lease any parcels thereof as may be deemed for the best interest and convenience of navigation, commerce and the public interest and welfare to private individuals or concerns for terms not exceeding thirty years each at such annual rate or rental as the city council or commission of such city may deem just, proper and fair, for the purpose of erecting wharves for wholesale and retail warehouses and for general commercial purposes and manufacturing sites, but the said city shall never convey or part with title to the abutting lands above mentioned and so acquired nor with the control other than in the manner herein specified. Any lease or leases granted by the city on such abutting lands shall never be transferred or assigned without the consent of the city council or commission having been first obtained.

A city shall never lease to any individual or concern more than four hundred lineal feet of canal or waterway frontage of said land and no individual or concern shall ever hold or occupy by lease, sublease, or otherwise more than the said four hundred lineal feet of said frontage: PROVIDED, That any individual or concern may acquire by lease or sublease whatever additional frontage of such abutting land may be in the judgment of the city council or commission necessary for the use of such individual or concern, upon petition presented to the city council or commission therefor signed by not less than five hundred resident freeholders of such city.

[1965 c 7 § 35.56.250. Prior: 1913 c 16 § 18, part; RRS § 9466, part.]

RCW 35.56.260
Waterways -- Abutting lands -- Lessee must lease shoreline property.

At the time that the city leases to any individual or concern any of the land abutting on the area between the shore lines and the dock lines the same individual or concern must likewise for the same period of time lease all of the area between the shore line and dock line of such canal or waterway lying contiguous to and immediately in front of the abutting land so leased.

[1965 c 7 § 35.56.260. Prior: 1913 c 16 § 18, part; RRS § 9466, part.]

Chapter 35.79 RCW Streets – Vacation

RCW SECTIONS

35.79.010 Petition by owners -- Fixing time for hearing.

35.79.020 Notice of hearing -- Objections prior to hearing.

35.79.030 Hearing -- Ordinance of vacation.

35.79.035 Limitations on vacations of streets abutting bodies of water -- Procedure.

35.79.040 Title to vacated street or alley.

35.79.050 Vested rights not affected.

RCW 35.79.010
Petition by owners -- Fixing time for hearing.

The owners of an interest in any real estate abutting upon any street or alley who may desire to vacate the street or alley, or any part thereof, may petition the legislative authority to make vacation, giving a description of the property to be vacated, or the legislative authority may itself initiate by resolution such vacation procedure. The petition or resolution shall be filed with the city or town clerk, and, if the petition is signed by the owners of more than two-thirds of the property abutting upon the part of such street or alley sought to be vacated, legislative authority by resolution shall fix a time when the petition will be heard and determined by such authority or a committee thereof, which time shall not be more than sixty days nor less than twenty days after the date of the passage of such resolution.

[1965 c 7 § 35.79.010. Prior: 1957 c 156 § 2; 1901 c 84 § 1, part; RRS § 9297, part.]

RCW 35.79.020
Notice of hearing -- Objections prior to hearing.

Upon the passage of the resolution the city or town clerk shall give twenty days' notice of the pendency of the petition by a written notice posted in three of the most public places in the city or town and a like notice in a conspicuous place on the street or alley sought to be vacated. The said notice shall contain a statement that a petition has been filed to vacate the street or alley described in the notice, together with a statement of the time and place fixed for the hearing of the petition. In all cases where the proceeding is initiated by resolution of the city or town council or similar legislative authority without a petition having been signed by the owners of more than two-thirds of the property abutting upon the part of the street or alley sought to be vacated, in addition to the notice hereinabove required, there shall be given by mail at least fifteen days before the date fixed for the hearing, a similar notice to the owners or reputed owners of all lots, tracts or parcels of land or other property abutting upon any street or alley or any part thereof sought to be vacated, as shown on the rolls of the county treasurer, directed to the address thereon shown: PROVIDED, That if fifty percent of the abutting property owners file written objection to the proposed vacation with the clerk, prior to the time of hearing, the city shall be prohibited from proceeding with the resolution.

[1965 c 7 § 35.79.020. Prior: 1957 c 156 § 3; 1901 c 84 § 1, part; RRS § 9297, part.]

RCW 35.79.030
Hearing -- Ordinance of vacation.

The hearing on such petition may be held before the legislative authority, or before a committee thereof upon the date fixed by resolution or at the time said hearing may be adjourned to. If the hearing is before such a committee the same shall, following the hearing, report its recommendation on the petition to the legislative authority which may adopt or reject the recommendation. If such hearing be held before such a committee it shall not be necessary to hold a hearing on the petition before such legislative authority. If the legislative authority determines to grant said petition or any part thereof, such city or town shall be authorized and have authority by ordinance to vacate such street, or alley, or any part thereof, and the ordinance may provide that it shall not become effective until the owners of property abutting upon the street or alley, or part thereof so vacated, shall compensate such city or town in an amount which does not exceed one-half the appraised

value of the area so vacated. If the street or alley has been part of a dedicated public right-of-way for twenty-five years or more, or if the subject property or portions thereof were acquired at public expense, the city or town may require the owners of the property abutting the street or alley to compensate the city or town in an amount that does not exceed the full appraised value of the area vacated. The ordinance may provide that the city retain an easement or the right to exercise and grant easements in respect to the vacated land for the construction, repair, and maintenance of public utilities and services. A certified copy of such ordinance shall be recorded by the clerk of the legislative authority and in the office of the auditor of the county in which the vacated land is located. One-half of the revenue received by the city or town as compensation for the area vacated must be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the city or town.

[2002 c 55 § 1; 2001 c 202 § 1; 1987 c 228 § 1; 1985 c 254 § 1; 1969 c 28 § 4. Prior: 1967 ex.s. c 129 § 1; 1967 c 123 § 1; 1965 c 7 § 35.79.030; prior: 1957 c 156 § 4; 1949 c 14 § 1; 1901 c 84 § 2; Rem. Supp. 1949 § 9298.]

RCW 35.79.035
Limitations on vacations of streets abutting bodies of water -- Procedure.

(1) A city or town shall not vacate a street or alley if any portion of the street or alley abuts a body of fresh or salt water unless:

(a) The vacation is sought to enable the city or town to acquire the property for port purposes, beach or water access purposes, boat moorage or launching sites, park, public view, recreation, or educational purposes, or other public uses;

(b) The city or town, by resolution of its legislative authority, declares that the street or alley is not presently being used as a street or alley and that the street or alley is not suitable for any of the following purposes: Port, beach or water access, boat moorage, launching sites, park, public view, recreation, or education; or

(c) The vacation is sought to enable a city or town to implement a plan, adopted by resolution or ordinance, that provides comparable or improved public access to the same shoreline area to which the streets or alleys sought to be vacated abut, had the properties included in the plan not been vacated.

(2) Before adopting a resolution vacating a street or alley under subsection (1)(b) of this section, the city or town shall:

(a) Compile an inventory of all rights of way within the city or town that abut the same body of water that is abutted by the street or alley sought to be vacated;

(b) Conduct a study to determine if the street or alley to be vacated is suitable for use by the city or town for any of the following purposes: Port, boat moorage, launching sites, beach or water access, park, public view, recreation, or education;

(c) Hold a public hearing on the proposed vacation in the manner required by this chapter, where in addition to the normal requirements for publishing notice, notice of the public hearing is posted conspicuously on the street or alley sought to be vacated, which posted notice indicates that the area is public access, it is proposed to be vacated, and that anyone objecting to the proposed vacation should attend the public hearing or send a letter to a particular official indicating his or her objection; and

(d) Make a finding that the street or alley sought to be vacated is not suitable for any of the purposes listed under (b) of this subsection, and that the vacation is in the public interest.

(3) No vacation shall be effective until the fair market value has been paid for the street or alley that is vacated. Moneys received from the vacation may be used by the city or town only for acquiring additional beach or water access, acquiring additional public view sites to a body of water, or acquiring additional moorage or launching sites.

[1987 c 228 § 2.]

RCW 35.79.040
Title to vacated street or alley.

If any street or alley in any city or town is vacated by the city or town council, the property within the limits so vacated shall belong to the abutting property owners, one-half to each.

[1965 c 7 § 35.79.040. Prior: 1901 c 84 § 3; RRS § 9299.]

RCW 35.79.050
Vested rights not affected.

No vested rights shall be affected by the provisions of this chapter.

[1965 c 7 § 35.79.050. Prior: 1901 c 84 § 4; RRS § 9300.]

Chapter 36.04 RCW County Boundaries

RCW SECTIONS

36.04.010 Adams county.

36.04.020 Asotin county.

36.04.030 Benton county.

36.04.040 Chelan county.

36.04.050 Clallam county.

36.04.060 Clark county.

36.04.070 Columbia county.

36.04.080 Cowlitz county.

36.04.090 Douglas county.

36.04.100 Ferry county.

36.04.110 Franklin county.

36.04.120 Garfield county.

36.04.130 Grant county.

36.04.140 Grays Harbor county.

36.04.150 Island county.

36.04.160 Jefferson county.

36.04.170 King county.

36.04.180 Kitsap county.

36.04.190 Kittitas county.

36.04.200 Klickitat county.

36.04.210 Lewis county.

36.04.220 Lincoln county.

36.04.230 Mason county.

36.04.240 Okanogan county.

36.04.250 Pacific county.

36.04.260 Pend Oreille county.

36.04.270 Pierce county.

36.04.280 San Juan county.

36.04.290 Skagit county.

36.04.300 Skamania county.

36.04.310 Snohomish county.

36.04.320 Spokane county.

36.04.330 Stevens county.

36.04.340 Thurston county.

36.04.350 Wahkiakum county.

36.04.360 Walla Walla county.

36.04.370 Whatcom county.

36.04.380 Whitman county.

36.04.390 Yakima county.

36.04.400 Survey of county boundaries.

NOTES:

Reviser's note: For the reasons set out in the second paragraph of the explanatory note appended to chapter 4, Laws of 1963, the session laws comprising chapter 36.04 RCW were neither repealed nor reenacted in the 1963 reenactment of Title 36 RCW. Pending reenactment of this chapter, it is herein republished as revised by the 1941 code committee; for rules of construction concerning such revision, see RCW 1.04.020 and 1.04.021.

RCW 36.04.010
Adams county.

Adams county shall consist of the territory bounded as follows, to wit: Beginning at the northwest corner of township fourteen north, range twenty-eight east of the Willamette Meridian; running thence north to the fourth standard parallel; thence east to the Columbia River Guide Meridian; thence north to the fifth standard parallel; thence east on said parallel to the line between the ranges thirty-eight and thirty-nine; thence south on said line to where it intersects the Palouse river in township sixteen; thence down said river to where the line between townships fourteen and fifteen crosses said river; thence west on said line to place of beginning.

[1883 p 93 § 1; RRS § 3924.]

RCW 36.04.020
Asotin county.

Asotin county shall consist of the territory bounded as follows, to wit: Commencing at a

point in the channel of Snake river on the township line between ranges forty-four and forty-five east, Willamette Meridian; thence running south to the northwest corner of section thirty, township eleven north, range forty-five east, Willamette Meridian; thence west six miles; south one mile; west two miles; south one mile; west one mile to the northwest corner of section three in township ten north, of range forty-three east, Willamette Meridian; thence south eighteen miles; thence west three miles; thence south to the Oregon line; thence east on said line to the midchannel of Snake river; thence down the midchannel of Snake river to the place of beginning.

[1883 p 96 § 1; RRS § 3925.]

RCW 36.04.030
Benton county.

Benton county shall consist of the territory bounded as follows, to wit: Beginning at the point of intersection of the middle of the main channel of the Columbia river with the township line between township thirteen north, range twenty-three east, and township thirteen north, range twenty-four east, Willamette Meridian; thence running south along the township line, being the line between range twenty-three east and range twenty-four east to the line between Yakima county and Klickitat county; thence south along the township lines, being the lines between ranges twenty-three east and twenty-four east, to the point of intersection with the middle of the main channel of the Columbia river, or to its intersection with the line between the states of Washington and Oregon; thence northeasterly, northerly and northwesterly and westerly along the middle of the main channel of the Columbia river and up said stream to the place of beginning.

[1905 c 89 § 1; RRS § 3926.]

RCW 36.04.040
Chelan county.

Chelan county shall consist of the territory bounded as follows, to wit: Beginning at the point of intersection of the middle of the main channel of the Columbia river with the fifth standard parallel north, thence running west along said fifth standard parallel north to the point where said fifth standard parallel north intersects the summit of the main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers, and the waters flowing southerly and westerly into the Yakima river, thence in a general northwesterly direction along the summit of said main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers and the waters flowing southerly and westerly into the Yakima river, following the course of the center of the summit of the watershed dividing the said respective waters, to the center of the summit of the Cascade mountains, at the eastern boundary line of King county; thence north along the east boundary lines of King, Snohomish and Skagit counties to the point upon the said east boundary of Skagit county, where said boundary is intersected by the watershed between the waters flowing northerly and easterly into the Methow river and the waters flowing southerly and westerly into Lake Chelan, thence in a general southeasterly direction along the summit of the main divide between the waters flowing northerly and easterly into the Methow river and the waters flowing westerly and southerly into Lake Chelan and its tributaries; following the course of the center of the summit of the watershed dividing said respective waters, to the point where the seventh standard parallel north intersects said center of the summit of said watershed; thence east along the said seventh standard parallel north to the point of intersection of the middle of the main channel of the Columbia river with said seventh standard parallel north; thence down the middle of the main channel of the Columbia river to the point of beginning.

[1899 c 95 § 1; RRS § 3928.]

RCW 36.04.050
Clallam county.

Clallam county shall consist of the territory bounded as follows, to wit: Commencing at the northwest corner of Jefferson county at a point opposite the middle of the channel between Protection Island and Diamond Point on the west of Port Discovery Bay; thence following up the middle of said channel to a point directly east of the mouth of Eagle creek; thence west to the mouth of Eagle creek; thence one mile west from

the mouth of said creek; thence south to the north boundary line of township twenty-seven north, range two west; thence west to the west boundary of the state in the Pacific Ocean; thence northerly along said boundary to a point marking the north terminus of the west boundary of the state in the Pacific Ocean opposite the Strait of Juan de Fuca; thence easterly along said Strait of Juan de Fuca, where it forms the boundary between the state and British possessions, to the place of beginning.

[(i) 1869 p 292 § 1; 1867 p 45 § 1; 1854 p 472 § 1; RRS § 3929. (ii) 1925 ex.s. c 40 § 1; RRS § 3963-1.]

RCW 36.04.060
Clark county.

Clark county shall consist of the territory bounded as follows, to wit: Commencing at the Columbia river opposite the mouth of Lewis river; thence up Lewis river to the forks of said river; thence up the north fork of Lewis river to where said north fork of Lewis river intersects the range line between ranges four and five east; thence due south to the Columbia river; thence with the main channel of said river to the place of beginning.

[(i) 1873 p 561 § 1; 1871 p 153 § 1; 1869 p 295 § 1; RRS § 3930. (ii) 1925 ex.s. c 51 § 1; RRS § 3930-1.]

RCW 36.04.070
Columbia county.

Columbia county shall consist of the territory bounded as follows, to wit: Commencing at a point in the middle of the channel of Snake river, where the range line between ranges thirty-six and thirty-seven east of the Willamette Meridian intersects said point; thence south on said range line to the northwest corner of township nine north, range thirty-seven east; thence east on the north boundary line of township nine north, range thirty-seven east, to the northeast corner of said township; thence south on the line between ranges thirty-seven and thirty-eight east of the Willamette Meridian, to the northwest corner of township eight north, range thirty-eight east; thence along the north boundary line of township eight north, range thirty-eight east, to the northeast corner of said township; thence due south to the line dividing the state of Washington from the state of Oregon; thence due east on said dividing line to the range line between ranges forty-one and forty-two east; thence north on said range line to the corner of sections thirteen, eighteen, nineteen and twenty-four, township ten north, ranges forty-one and forty-two east; thence west three miles; thence north three miles; thence west one mile; thence north one mile; thence west one mile; thence north three miles; thence west one mile; thence north to the southwest corner of township twelve north, range forty-one east; thence west on township line six miles; thence north on range line between ranges thirty-nine and forty to a point in the midchannel of Snake river; thence down the midchannel of said river to the place of beginning.

[(i) 1 H.C. § 6; 1875 p 133 § 1; RRS § 3931. (ii) 1879 p 226 § 1; RRS § 3960-1. (iii) 1881 p 175 § 1; RRS § 3936.]

RCW 36.04.080
Cowlitz county.

Cowlitz county shall consist of the territory bounded as follows, to wit: Commencing at the Columbia river opposite the mouth of Lewis river; thence up Lewis river to the forks of said river; thence up the north fork of Lewis river to where said north fork of Lewis river intersects the range line between ranges four and five east; thence north to the line between townships ten and eleven north; thence west to the first section line east of the range line between ranges four and five west; thence south on said line to the Columbia river, and up the Columbia river to the place of beginning.

[1873 p 561 § 1; 1871 p 153 § 1; 1869 p 295 § 1; 1867 p 48 § 1; 1855 p 39; 1854 p 471 § 1; RRS § 3932.]

RCW 36.04.090
Douglas county.

Douglas county shall consist of the territory bounded as follows, to wit: Beginning at the point where the Columbia Guide Meridian intersects the Columbia river on the northern boundary of Lincoln county; thence running

south on said Columbia Guide Meridian to the township line between townships sixteen and seventeen north; thence running west on said township line to the range line between ranges twenty-seven and twenty-eight east; thence south on said range line to the section line between sections twenty-four and twenty-five in township fourteen north, range twenty-seven east; thence west on said section line to the midchannel of the Columbia river; thence up said channel of said river to the place of beginning, excepting therefrom the territory hereinafter constituted as Grant county.

[1883 p 95 § 1; RRS § 3933. (Grant county, 1909 c 17 § 1; RRS § 3937.)]

RCW 36.04.100
Ferry county.

Ferry county shall consist of the territory bounded as follows, to wit: Commencing at the point where the east boundary line of Okanogan county intersects the Columbia river; thence up the midchannel of the Columbia river to the mouth of Kettle river; thence up the midchannel of Kettle river to the boundary line between the United States and British Columbia; thence westerly along the said boundary line to the intersection thereof with the said east boundary line of Okanogan county; thence southerly along the said boundary line to the place of beginning.

[1899 c 18 § 1; RRS § 3934.]

RCW 36.04.110
Franklin county.

Franklin county shall consist of the territory bounded as follows, to wit: Beginning at a point where the midchannel of the Snake river intersects that of the Columbia river, and running thence up the Columbia river to a point where the section line between sections twenty-one and twenty-eight, township fourteen north, range twenty-seven east, Willamette Meridian, strikes the main body of the Columbia river, on the east side of the island; thence east on said section line to range line between ranges twenty-seven and twenty-eight east; thence north on said range line to the north boundary of township fourteen; thence east on said north boundary of township fourteen to the Palouse river; thence down said river to midchannel of Snake river; thence down Snake river to place of beginning.

[1883 p 87 § 1; RRS § 3935.]

RCW 36.04.120
Garfield county.

Garfield county shall consist of the territory bounded as follows, to wit: Commencing at a point in the midchannel of Snake river on range line between ranges thirty-nine and forty east, W.M.; thence on said line south to the southwest corner of township twelve north, range forty; thence east on township line six miles; thence south to the southwest corner of section seven, township eleven north, range forty-one east; thence east one mile; thence south three miles; thence east one mile; thence south one mile; thence east one mile; thence south three miles; thence east three miles; thence south on township line to the Oregon line; thence due east on said line six miles to the southwest corner of Asotin county; thence northerly following the westerly boundary of Asotin county to a point where the same intersects the midchannel of Snake river; thence down the said midchannel of Snake river to the point of beginning.

[1883 p 96 § 1; 1881 p 175 § 1; RRS § 3936.]

RCW 36.04.130
Grant county.

Grant county shall consist of the territory bounded as follows, to wit: Beginning at the southeast corner of township seventeen north, range thirty east of the Willamette Meridian, thence running west on the township line between townships sixteen and seventeen to the range line between ranges twenty-seven and twenty-eight; thence south on said range line to the section line between sections twenty-four and twenty-five in township fourteen north, range twenty-seven east; thence west on said section line to the midchannel of the Columbia river; thence up the channel of the river to a point, thence at right angles to the course of said channel to the meander corner of section thirteen, township twenty north, range twenty-two east Willamette Meridian, and section eighteen, township twenty north, range twenty-three east Willamette Meridian; thence north

along the range line between ranges twenty-two and twenty-three to the northwest corner of section eighteen, township twenty-one north, range twenty-three east Willamette Meridian; thence east one mile to the southeast corner section seven, township twenty-one, range twenty-three east; north one mile to the northwest corner section eight, township twenty-one, range twenty-three east; east one mile to the southeast corner of section five, township twenty-one, range twenty-three east; north one mile to the northeast corner section five, township twenty-one, range twenty-three east; east one mile to the northeast corner of section four, township twenty-one, range twenty-three east; north one mile to the southeast corner section twenty-eight, township twenty-two, range twenty-three east; east one mile to the southeast corner section twenty-seven, township twenty-two, range twenty-three east; north two miles to the northeast corner of section twenty-two, township twenty-two, range twenty-three east; east one mile to the southeast corner of section fourteen, township twenty-two, range twenty-three east; north one mile to the southeast corner section eleven, township twenty-two, range twenty-three east; east one mile to the southeast corner of section twelve, township twenty-two, range twenty-three east; north two miles to the northwest corner of section six, township twenty-two north, range twenty-four east; east sixteen miles to the northeast corner of section three, township twenty-two north, range twenty-six east; north six miles to the northeast corner of section three, township twenty-three north, range twenty-six east; east one mile to the northeast corner of section two, township twenty-three north, range twenty-six east; north one mile to the northeast corner of section thirty-five, township twenty-four north, range twenty-six east; east one mile to the southeast corner of section twenty-five, township twenty-four north, range twenty-six east; north one mile to the southeast corner of section twenty-four, township twenty-four north, range twenty-six east; east one mile to the southeast corner of section nineteen, township twenty-four north, range twenty-seven east; north one mile to the southeast corner of section eighteen, township twenty-four north, range twenty-seven east; east one mile to the southeast corner of section seventeen, township twenty-four north, range twenty-seven east; north one mile to the southeast corner of section eight, township twenty-four north, range twenty-seven east; east one mile to the southeast corner of section nine, township twenty-four north, range twenty-seven east; north one mile to the southeast corner of section four, township twenty-four north, range twenty-seven east; east one mile to the southeast corner of section three, township twenty-four, range twenty-seven east; north one mile to the northeast corner of section three, township twenty-four, range twenty-seven east; east three miles to the southeast corner of section thirty-one, township twenty-five north, range twenty-eight east; north one mile to the southeast corner of section thirty, township twenty-five north, range twenty-eight east; east one mile to the southeast corner of section twenty-nine, township twenty-five north, range twenty-eight east; north three miles to the southeast corner of section eight, township twenty-five north, range twenty-eight east; east one mile to the southeast corner of section nine, township twenty-five north, range twenty-eight east; north four miles to the southeast corner of section twenty-one, township twenty-six north, range twenty-eight east; east one mile to the southeast corner of section twenty-two, township twenty-six north, range twenty-eight east; north one mile to the southeast corner of section fifteen, township twenty-six north, range twenty-eight east; east one mile to the southeast corner of section fourteen, township twenty-six north, range twenty-eight east; north two miles to the southeast corner of section two, township twenty-six north, range twenty-eight east; east one mile to the southeast corner of section one, township twenty-six north, range twenty-eight east; north two miles to the southeast corner of section twenty-five, township twenty-seven north, range twenty-eight east; east one mile to the southeast corner of section thirty, township twenty-seven north, range twenty-nine east; north six miles to the southeast corner of section thirty, township twenty-eight north, range twenty-nine east; east one mile to the southeast corner of section twenty-nine, township twenty-eight north, range twenty-nine east; north one mile to the southeast corner of section twenty, township twenty-eight north, range twenty-nine east; east two miles to the southeast corner of section twenty-two, township twenty-eight north, range twenty-nine east; north one mile to the southeast corner of section fifteen, township twenty-eight north, range twenty-nine east; east one mile to the southeast corner of section fourteen, township twenty-eight north, range twenty-nine east; north two miles to the southeast corner of section two, township twenty-eight north, range twenty-nine east; east

one mile to the southeast corner of section one, township twenty-eight north, range twenty-nine east; north one mile to the northeast corner of section one, township twenty-eight north, range twenty-nine east; thence east along township line between townships twenty-eight and twenty-nine to the midchannel of the Columbia river; thence up said channel of said river to the point where the Columbia Guide Meridian intersects said channel; thence running south on said Columbia Guide Meridian to the place of beginning.

[1909 c 17 § 1; RRS § 3937.]

RCW 36.04.140
Grays Harbor county.

Grays Harbor county shall consist of the territory bounded as follows, to wit: Commencing at the northeast corner of Pacific county; thence west to the west boundary of the state in the Pacific Ocean; thence northerly along said boundary, including Gray's Harbor, to a point opposite the mouth of Queets river; thence east to the west boundary line of Mason county; thence south to the northeast corner of township eighteen north, range seven west; thence east fourteen miles to the southeast corner of section thirty-two, township nineteen north, range four west; thence south six miles to the southeast corner of section thirty-two in township eighteen north, range four west; thence east two miles to the southeast corner of section thirty-four in the same township; thence south to a point due east of the northeast corner of Pacific county; thence west to the place of beginning.

[(i) 1 H.C. § 3; 1873 p 482 § 1; 1869 p 296 § 1; RRS § 3927. (ii) 1915 c 77 § 1; RRS § 3938. (iii) 1925 ex.s. c 40 § 1; RRS § 3963-1.]

RCW 36.04.150
Island county.

Island county shall consist of all of the islands known as Whidbey, Camano, Smith's Deception and Ure's and shall extend into the adjacent channels to connect with the boundaries of adjoining counties as defined by statute.

[1891 c 119 p 217 § 1; 1877 p 425 §§ 1, 2; 1869 p 292 § 1; 1868 p 68 § 1; 1867 p 46 § 1; RRS § 3939.]

RCW 36.04.160
Jefferson county.

Jefferson county shall consist of the territory bounded as follows, to wit: Commencing at the middle of the channel of Admiralty Inlet due north of Point Wilson; thence westerly along the Strait of Juan de Fuca to the north of Protection Island, to a point opposite the middle of the channel between Protection Island and Diamond Point on the west of Port Discovery Bay; thence following up the middle of said channel to a point direct east of the mouth of Eagle creek; thence west to the mouth of Eagle creek; thence one mile west from the mouth of said creek; thence south to the summit of the Olympic range of mountains, it being the southeast corner of Clallam county, on the north boundary line of township twenty-seven north, range two west; thence west to the west boundary of the state in the Pacific Ocean; thence southerly along said west boundary to a point opposite the mouth of the Queets river; thence east to the range line dividing ranges six and seven west; thence north on said range line to the sixth standard parallel; thence east to the middle of the channel of Hood Canal; thence northerly along said channel to the middle of the channel of Admiralty Inlet; thence northerly following the channel of said inlet to a point due north of Point Wilson and place of beginning.

[(i) 1 H.C. § 12; 1877 p 406 § 1; 1869 p 292 § 1; RRS § 3940. (ii) 1925 ex.s. c 40 § 1; RRS § 3963-1.]

RCW 36.04.170
King county.

King county shall consist of the territory bounded as follows, to wit: Beginning at the point of intersection of the center of East Passage (also known as Admiralty Inlet) on Puget Sound and the northerly line of the Puyallup Indian Reservation (projected northwesterly); thence southeasterly in a straight line along said northerly line of Puyallup Indian Reservation and same extended to a point on the east line of section thirty-one, township twenty-one, north,

range four east, Willamette Meridian; thence south along said east line of section thirty-one, township twenty-one, range four east, Willamette Meridian, to the township line between township twenty north and township twenty-one north (being the fifth standard parallel north); thence east along said township line between township twenty north and township twenty-one north to the middle of the main channel of White river, near the northeast corner of section three, township twenty north, range five east, Willamette Meridian; thence upstream along the middle of the main channel of White river to the forks of White river and Greenwater river; thence upstream along the middle of the main channel of the Greenwater river to the forks of the Greenwater river and Meadow creek; thence upstream along the middle of the main channel of Meadow creek to the summit of the Cascade mountains, at a point known as Naches Pass, said point lying in the southwest quarter of section thirty-five, township nineteen north, range eleven east, Willamette Meridian; thence northerly along the summit of the Cascade mountains to a point on the township line between township twenty-six north and township twenty-seven north, said point lying near the north quarter-corner of section three, township twenty-six north, range thirteen east, Willamette Meridian; thence west along said township line between township twenty-six north and twenty-seven north to the middle of the channel known as Admiralty Inlet on Puget Sound; thence southerly along said middle of channel known as Admiralty Inlet through Colvo's Passage (West Passage) on the west side of Vashon Island to a point due north of Point Defiance; thence southeasterly along middle of channel between Vashon Island and Point Defiance (Dalcos Passage) to a point due south of Quartermaster Harbor; thence northeasterly along middle of channel known as Admiralty Inlet to point of beginning.

[1 H.C. § 13; 1869 p 293 § 1; 1867 p 46 § 1; 1854 p 470 § 1; RRS § 3941.]

NOTES:

Reviser's note: Change in boundary by virtue of election in 1901 under chapter 36.08 RCW incorporated herein.

RCW 36.04.180
Kitsap county.

Kitsap county shall consist of the territory bounded as follows, to wit: Commencing in the middle of Colvo's Passage at a point due east of the meander post between sections nine and sixteen, on west side of Colvo's Passage, in township twenty-two north, range two east; thence west on the north boundary line of sections sixteen, seventeen and eighteen, to the head of Case's Inlet; thence north along the east boundary of Mason county through the center of townships twenty-two and twenty-three, range one west, to the north line of said township twenty-three; thence due west to the middle of the channel of Hood Canal; thence along said channel to the middle of the main channel of Admiralty Inlet; thence following the main channels of said inlet and Puget Sound up to the middle of Colvo's Passage; thence following the channel of said passage to the place of beginning.

[1877 p 406 § 1; 1869 p 293 § 1; 1867 p 46 § 1; 1858 p 51 § 1; RRS § 3942.]

RCW 36.04.190
Kittitas county.

Kittitas county shall consist of the territory bounded as follows, to wit: Commencing at a point where the main channel of the Columbia river crosses the township line between township fourteen and fifteen north, range twenty-three east of the Willamette Meridian, and running thence west on said township line to the range line between ranges eighteen and nineteen east; thence north on said range line six miles, or to the township line between the townships fifteen and sixteen north; thence west on said township line to the range line between ranges seventeen and eighteen east; thence north to the township line between townships sixteen and seventeen north; thence west along said township line and a line prolonged due west to the Naches river; and thence northerly along the main channel of the Naches river to the summit of the Cascade mountains, or to the eastern boundary of King county; thence north along the eastern boundary of King county to the point where such boundary intersects the summit of the main divide between the waters flowing northerly and easterly into the

Wenatchee and Columbia rivers and the water flowing southerly and westerly into the Yakima river; thence in a general southeasterly direction along the summit of such main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers and the waters flowing southerly and westerly into the Yakima river, following the course of the center of the summit of the watershed dividing such respective waters, to the fifth standard parallel north; thence east along the fifth standard parallel north to the middle of the main channel of the Columbia river; thence down the main channel of the Columbia to the place of beginning.

[1899 c 95 § 1; 1886 p 168 § 1; 1883 p 90 § 1; RRS § 3943.]

RCW 36.04.200
Klickitat county.

Klickitat county shall consist of the territory bounded as follows, to wit: Commencing at a point in the midchannel of the Columbia river opposite the mouth of the White Salmon river; thence up the channel of the White Salmon river as far north as the southern boundary of township four north, range ten east of Willamette Meridian; thence due west on the township line to range nine east of Willamette Meridian; thence north following said range line to where it intersects the south boundary of Yakima county projected; thence east along the north boundary of township six north until that line intersects the range line between range twenty-three east and range twenty-four east; thence south along such range line to the Columbia river; thence down the Columbia river, midchannel, to the place of beginning.

[1905 c 89 § 1; 1 H.C. § 17; 1881 p 187 § 1; 1873 p 571 § 1; 1869 p 296 § 1; 1868 p 60 § 1; 1867 p 49 § 1; 1861 p 59 § 1; 1859 p 420 § 1; RRS § 3944.]

RCW 36.04.210
Lewis county.

Lewis county shall consist of the territory bounded as follows, to wit: Beginning at the northwest corner of section eighteen, township fifteen north, range five west; thence south along the west boundary of range five west to the southwest corner of township eleven north, range five west; thence east along the south boundary of township eleven north to the summit of the Cascade mountains; thence northerly along said summit to a point due east of the head of Nisqually river; thence west to the head of the Nisqually river; thence westerly down the channel of the river to a point two miles north of the line between townships fourteen and fifteen north; thence west to the northwest corner of section twenty-six, township fifteen north, range four west; thence north two miles to the northwest corner of section fourteen, township fifteen north, range four west; thence west to place of beginning.

[1 H.C. §§ 18, 19; 1888 p 73 § 1; 1879 p 213 § 1; 1869 p 295 § 1; 1867 p 48 § 1; 1861 p 33 § 1; RRS § 3945.]

RCW 36.04.220
Lincoln county.

Lincoln county shall consist of the territory bounded as follows, to wit: Beginning at the point in township twenty-seven north, where the Colville Guide Meridian between ranges thirty-nine and forty east, Willamette Meridian, intersects the Spokane river, and running thence south along said meridian line to the township line between townships twenty and twenty-one north; thence west along said township line to its intersection with the Columbia Guide Meridian between ranges thirty and thirty-one east, Willamette Meridian; thence north along said meridian line to a point where it intersects the midchannel of the Columbia river; thence up said river in the middle of the channel thereof to the mouth of the Spokane river; thence up the Spokane river, in the middle of the channel thereof, to the place of beginning.

[1883 p 89 § 1; 1883 p 95 § 1; RRS § 3946.]

RCW 36.04.230
Mason county.

Mason county shall consist of the territory bounded as follows, to wit: Commencing in middle of the main channel of Puget Sound where it is intersected in the midchannel of Case's Inlet; thence westerly along the

midchannel of Puget Sound, via Dana's Passage, into Totten's Inlet, and up said inlet to its intersection by section line between sections twenty-eight and twenty-nine, township nineteen north, range three west of the Willamette Meridian; thence south to the southwest corner of section thirty-three in township nineteen north, range three west; thence west along the township line dividing townships eighteen and nineteen, twenty miles, to the township line dividing ranges six and seven west, of the Willamette Meridian, which constitutes a part of the east boundary line of Grays Harbor county; thence north along said township line to the sixth standard parallel; thence east along said parallel line to the middle of the channel of Hood Canal; thence southerly along said midchannel to a point due west of the intersection of the shore line of said Hood Canal by the township line between townships twenty-three and twenty-four; thence east along said township line to the line dividing sections three and four in said township twenty-three north, range one west of the Willamette Meridian; thence south along said section line to the head of Case's Inlet; thence south by the midchannel of said inlet to the place of beginning.

[1877 p 406 § 1; 1869 p 293 § 1; 1867 p 45 § 1; 1864 p 71 § 1; 1863 p 7 (local laws portion) § 1; 1861 p 56 § 1; 1861 p 30 § 1; 1860 p 458 § 1; 1854 p 474 § 1; 1854 p 470 § 1; RRS § 3947.]

RCW 36.04.240
Okanogan county.

Okanogan county shall consist of the territory bounded as follows, to wit: Beginning at the intersection of the forty-ninth parallel with the range line between ranges thirty-one and thirty-two east, and from thence running in a southerly direction on said range line to the intersection of the said range line with the Columbia river, and thence down the river to the seventh standard parallel north; thence west along the seventh standard parallel north to the watershed between the waters flowing northerly and easterly into the Methow river and the waters flowing southerly and westerly into Lake Chelan; thence in a general northwesterly direction along the summit of the main divide between the waters flowing northerly and easterly into the Methow river and the waters flowing westerly and southerly into Lake Chelan and its tributaries; following the course of the center of the summit of the watershed dividing said respective waters to the point where the same intersects the east boundary of Skagit county and the summit of the Cascade mountains; thence northerly with said summit to the forty-ninth parallel, and thence on the said parallel to the place of beginning.

[1899 c 95 § 1; 1888 p 70 § 1; RRS § 3948.]

RCW 36.04.250
Pacific county.

Pacific county shall consist of the territory bounded as follows, to wit: Commencing at the midchannel of the Columbia river at the point of intersection of the line between ranges eight and nine west; thence north along said line to the north boundary of township ten north; thence east along said boundary to the line between ranges five and six west; thence north along the west boundary of range five west to the northwest corner of section eighteen in township fifteen north, range five west; thence west to the west boundary of the state in the Pacific Ocean; thence southerly along said boundary, including Shoalwater Bay, to a point opposite Cape Disappointment; thence up midchannel of the Columbia river to the place of beginning.

[(i) 1879 p 213 § 1; 1873 p 538 § 1; 1867 p 49 § 1; 1860 p 429 § 1; 1854 p 471 § 1; RRS § 3949. (ii) 1925 ex.s. c 40 § 1; RRS § 3963-1.]

RCW 36.04.260
Pend Oreille county.

Pend Oreille county shall consist of the territory bounded and described as follows, to wit: Beginning at the southeast corner of section thirty-six in township thirty north, range forty-two east of the Willamette Meridian; thence running north, along the east line of said township thirty north, range forty-two east of the Willamette Meridian, to the northeast corner of section one, in said township thirty; thence west to the southwest corner of section thirty-four in township thirty-one north, range forty-two east of Willamette Meridian; thence north, along the west line of sections thirty-four, twenty-seven and twenty-two of said township thirty-one north, range forty-two east of Willamette Meridian; thence north on a line from the

northwest corner of section twenty-two in township thirty-one to a point on the north line of township thirty-one, midway between the northeast corner and the northwest corner of said township thirty-one, which line will be the west line of sections fifteen, ten and three of said township thirty-one, when the same are surveyed; thence to the center point on the south line of township thirty-two north, range forty-two east of Willamette Meridian; thence north on the north and south center line of said township thirty-two, which line will be the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten, and three of township thirty-two when the same is surveyed, to the north line of said township thirty-two; thence to the center point on the south line of township thirty-three north, range forty-two east of Willamette Meridian; thence north, on the north and south center line of township thirty-three north of range forty-two east of Willamette Meridian, which line will be the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten and three of said township thirty-three, when the same is surveyed, to the north line of said township thirty-three; thence to the center point on the south line of township thirty-four north, range forty-two east of Willamette Meridian; thence north on the north and south center line of said township thirty-four, which line will be the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten and three of said township thirty-four when the same are surveyed, to the north line of said township; thence to the center point on the south line of township thirty-five north, range forty-two east of Willamette Meridian; thence north, on the north and south center line of township thirty-five north, range forty-two east of Willamette Meridian, which line will be the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten and three of said township thirty-five when the same are surveyed to the north line of said township thirty-five; thence to the southwest corner of section thirty-four in township thirty-six north, range forty-two east of Willamette Meridian; thence north, along the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten and three to the northwest corner of section three of said township thirty-six; thence west along the south line of township thirty-seven north, range forty-two, and township thirty-seven north, range forty-one east of the Willamette Meridian, to the center point on the south line of said township thirty-seven north, range forty-one east of the Willamette Meridian, which point will be the southwest corner of section thirty-four in said township thirty-seven north, range forty-one east of the Willamette Meridian, when the same are surveyed; thence north along the north and south center line of said township thirty-seven north, range forty-one east of the Willamette Meridian, which line will be the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten and three of said township when the same are surveyed, to the north line of said township thirty-seven; thence east, along the south line of township thirty-eight north, range forty-one east of Willamette Meridian to the southeast corner of said township thirty-eight north, range forty-one east of the Willamette Meridian; thence to the southwest corner of section thirty-one in township thirty-eight north, range forty-two east of Willamette Meridian; thence north, along the west line of said township thirty-eight, to the northwest corner of said township thirty-eight; thence east along the north line of township thirty-eight, to the center point on the south line of township thirty-nine north, range forty-two east of Willamette Meridian, which point will be the southwest corner of section thirty-four of said township thirty-nine when the same are surveyed; thence north along the north and south center line of said township thirty-nine, which line will be the west line of sections thirty-four, twenty-seven, twenty-two, fifteen, ten and three of said township thirty-nine, when the same are surveyed, to the north line of said township thirty-nine; thence east along the south line of township forty north, range forty-two east, of Willamette Meridian to the southeast corner of said township forty; thence north, along the east line of said township forty, to the international boundary line; thence east along the international boundary line, to the intersection of the state line between the states of Washington and Idaho with said international boundary line; thence south along said state line, to the southeast corner of section thirty-one, township thirty north, range forty-six east of Willamette Meridian; thence due west to the southeast corner of section thirty-six, township thirty north, range forty-two east of Willamette Meridian, to the place of beginning.

[1911 c 28 § 1; RRS § 3950.]

RCW 36.04.270
Pierce county.

Pierce county shall consist of the territory bounded as follows, to wit: Commencing at the mouth, midchannel, of the Nisqually river; thence following the main channel of said river to its head; thence due east to the summit of the Cascade mountains; thence northerly along the summit to the head of the Green Water; thence westerly down said river to its confluence with White river; thence down the main channel of White river to the intersection of the fifth standard parallel; thence west along said line to the southeast corner of section thirty-one, township twenty-one north, range four east of Willamette Meridian; thence north along the east line of said section thirty-one to its intersection with the northerly line of the Puyallup Indian reservation; thence northwesterly on said line of the Puyallup Indian reservation, projected northwesterly in a straight line, to its intersection with the center line of Puget Sound; thence southwesterly and westerly following the channel of Dalco Passage to the south entrance of Colvo's Passage; thence down the channel of said passage to the northeast corner of section sixteen, in township twenty-two north, range two east; thence west to the northeast corner of section sixteen, in township twenty-two north, range one west; thence southerly along the channels of Case's Inlet and Puget Sound, to the middle of the mouth of the Nisqually river and place of beginning.

[1869 p 294 § 1; 1867 p 47 § 1; 1859 p 59 § 1; 1855 p 43 § 1; RRS § 3951.]

RCW 36.04.280
San Juan county.

San Juan county shall consist of the territory bounded as follows, to wit: Commencing in the Gulf of Georgia at the place where the boundary line between the United States and the British possessions deflects from the forty-ninth parallel of north latitude; thence following said boundary line through the Gulf of Georgia and Haro Strait to the middle of the Strait of Fuca; thence easterly through Fuca Straits along the center of the main channel between Blunt's Island and San Juan and Lopez Islands to a point easterly from the west entrance of Deception Pass, until opposite the middle of the entrance to the Rosario Straits; thence northerly through the middle of Rosario Straits and through the Gulf of Georgia to the place of beginning.

[1877 p 425 § 1; 1873 p 461 § 1; RRS § 3952.]

RCW 36.04.290
Skagit county.

Skagit county shall consist of the territory bounded as follows, to wit: Commencing at midchannel of Rosario Strait where the dividing line between townships thirty-six and thirty-seven intersects the same; thence east on said township line to the summit of the Cascade mountains; thence south along the summit of said mountain range to the eighth standard parallel; thence west along the parallel to the center of the channel or deepest channel of the nearest arm of Puget Sound and extending along said channel to the east entrance of Deception Pass; thence through said pass to the center of the channel of Rosario Strait; thence northerly along said channel to the place of beginning.

[1883 p 97 § 1; RRS § 3953.]

RCW 36.04.300
Skamania county.

Skamania county shall consist of the territory bounded as follows, to wit: Commencing on the Columbia river at a point where range line four east strikes said river; thence north to the north boundary of township ten north; thence east to a point due north of the mouth of White Salmon; thence south to the township line dividing townships six and seven; thence west to the northwest corner of Klickitat county; thence south along the west boundary of said county to the Columbia river; thence along the midchannel of said river to the place of beginning.

[1881 p 187 § 1; 1879 p 213 § 1; 1867 p 49 § 1; 1854 p 472 § 1; RRS § 3954.]

RCW 36.04.310
Snohomish county.

Snohomish county shall consist of the territory bounded as follows, to wit: Commencing at the southwest corner of Skagit county; thence east along the eighth standard parallel to the summit of the Cascade mountains; thence southerly along the summit of the Cascade mountains to

the northeast corner of King county, it being a point due east of the northeast corner of township twenty-six north, range four east; thence due west along the north boundary of King county to Puget Sound; thence northerly along the channel of Puget Sound and Possession Sound to the entrance of Port Susan, including Gedney Island; thence up the main channel of Port Susan to the mouth of the Stillaguamish river; thence northwesterly through the channel of the slough at the head of Camano Island, known as Davis Slough; thence northerly to the place of beginning.

[1877 p 426 § 3; 1869 p 291 § 1; 1867 p 44 § 1; 1862 p 107 § 1; 1861 p 19 § 1; RRS § 3955.]

RCW 36.04.320
Spokane county.

Spokane county shall consist of the territory bounded as follows, to wit: Commencing at the northeast corner of Lincoln county; thence up the midchannel of the Spokane river to the Little Spokane river; thence north to the township line between townships twenty-nine and thirty; thence east to the boundary line between Washington and Idaho; thence south on said boundary line to the fifth standard parallel; thence west on said parallel to the Colville Guide Meridian; thence north on said meridian to the place of beginning.

[1879 p 203; 1864 p 70; 1860 p 436; 1858 p 51; RRS § 3956.]

RCW 36.04.330
Stevens county.

Stevens county shall consist of the territory bounded as follows, to wit: Commencing at the southeast corner of township thirty north, range forty-two east of the Willamette Meridian; thence north to the northeast corner of said township; thence west to the southwest corner of section thirty-four, township thirty-one north, range forty-two east; thence north along the center line of townships thirty-one, thirty-two, thirty-three, thirty-four, thirty-five and thirty-six in said range forty-two east to the northwest corner of section three in township thirty-six north; thence west to the northwest corner of section three, township thirty-six north, range forty-one east; thence north along the center line of township thirty-seven to the northwest corner of section three in said township; thence east to the northeast corner of said township; thence north to the northwest corner of township thirty-eight, range forty-two east; thence east to the northwest corner of section three of said township; thence north along the center line of township thirty-nine to the northwest corner of section three in said township; thence east to the northeast corner of said township; thence north to the northern boundary line of the state; thence west to where said boundary line intersects the middle of the channel of the Kettle river; thence south along said channel to its confluence with the Columbia river; thence continuing south along the middle of the channel of the Columbia river to its confluence with the Spokane river; thence easterly along the channel of the Spokane to the Little Spokane river; thence north to the township line separating townships twenty-nine and thirty; thence east to the place of beginning.

[(i) 1 H.C. § 30; 1888 p 70; 1879 p 203; 1869 p 297; 1867 p 50; 1864 p 70; 1863 p 6; RRS § 3957. (ii) 1899 c 18 § 1; RRS § 3934.]

RCW 36.04.340
Thurston county.

Thurston county shall consist of the territory bounded as follows, to wit: Commencing at the southeast corner of section thirty-two in township nineteen north, range four west; thence east on the township line to the southeast corner of section thirty-two in township nineteen north, range three west; thence north to the middle of the channel of Totten's Inlet; thence along said channel to the waters of Puget Sound, intersecting the line in the channel of Puget Sound west of the southern portion of Squaxen Reservation; thence following said channel to the mouth of the Nisqually river; thence up midchannel of said river to a point where it strikes the north boundary of Lewis county; thence due west to the northwest corner of section twenty-six, township fifteen north, range four west; thence north to the southeast corner of section thirty-four in township eighteen north, range four west; thence west on the township line to the southeast corner of section thirty-two; thence north on the section line to the place of beginning.

[1 H.C. § 31; 1873 p 482; 1869 p 294; 1867 p 47; 1863 p 7; 1860 p 458; RRS § 3958.]

RCW 36.04.350
Wahkiakum county.

Wahkiakum county shall consist of the territory bounded as follows, to wit: Commencing at the southeast corner of Pacific county, on the Columbia river; thence up midchannel of said river to the southwest corner of Cowlitz county; thence north to the northwest corner of Cowlitz county; thence west on the northern boundary of township ten north to the line between ranges eight and nine west; thence south to the place of beginning.

[1879 p 213; 1869 p 295; 1867 p 48; 1854 p 474; RRS § 3959.]

RCW 36.04.360
Walla Walla county.

Walla Walla county shall consist of the territory bounded as follows, to wit: Commencing at a point where the boundary line between Washington and Oregon intersects the Columbia river; thence up the main channel of the Columbia to the mouth of the Snake river; thence up the main channel of said river to where the range line between ranges thirty-six and thirty-seven intersects said point; thence south on said range line to the northwest corner of township nine north, range thirty-seven east; thence east on the north boundary line of township nine north, range thirty-seven east, to the northeast corner of said township; thence south on the line between ranges thirty-seven and thirty-eight east, of the Willamette Meridian, to the northwest corner of township eight north, range thirty-eight east; thence along the north boundary line of township eight north, range thirty-eight east, to the northeast corner of said township; thence due south to the line dividing the state of Washington from the state of Oregon; thence due west on said dividing line to the place of beginning.

[(i) 1 H.C. § 33; 1879 p 226; 1875 p 133; 1869 p 397; 1868 p 60; 1867 p 50; 1858 p 51; 1854 p 472; RRS § 3960. (ii) 1879 p 226; RRS § 3960-1.]

RCW 36.04.370
Whatcom county.

Whatcom county shall consist of the territory bounded as follows, to wit: Commencing on the forty-ninth parallel at the point dividing the American and British possessions in the Gulf of Georgia; thence along said boundary line to where it deflects at the north entrance to the Haro Strait; thence along the northeasterly boundary of San Juan county to the ninth standard parallel, or the northwest corner of Skagit county; thence due east along said parallel to the summit of the Cascade mountains; thence northerly along the summit of said mountains to the forty-ninth parallel of north latitude; thence west along said parallel to the place of beginning.

[1 H.C. § 34; 1877 p 426; 1869 p 291; 1867 p 44; 1859 p 60; 1854 p 475; RRS § 3961.]

RCW 36.04.380
Whitman county.

Whitman county shall consist of the territory bounded as follows, to wit: Commencing at a point where the range line between ranges thirty-eight and thirty-nine east intersects the fifth standard parallel, being the northeast corner of Adams county; thence east on said parallel to the boundary line between Idaho and Washington; thence south on said boundary line to the midchannel of the Snake river; thence down the midchannel of the Snake river to its intersection with the midchannel of the Palouse river; thence north along the midchannel of the Palouse river to the point where the same intersects the range line between ranges thirty-eight and thirty-nine east; thence north along said range line to the place of beginning.

[(i) 1 H.C. § 35; 1875 p 189; 1871 p 134; RRS § 3962. (ii) 1883 p 87; RRS § 3935. (iii) 1883 p 93; RRS § 3924.]

RCW 36.04.390
Yakima county.

Yakima county shall consist of the territory bounded as follows, to wit: Commencing at the northwest corner of township six north of range

twelve east; thence east along the north boundary of township six north until said line intersects the range line between range twenty-three east and range twenty-four east; thence north along said range line to the Columbia river; thence north up the midchannel of said river to the southeast corner of Kittitas county; thence along the southern boundary of Kittitas county to the summit of the Cascade mountains; thence southerly to the southeast corner of Lewis county; thence west along the line of said county to the northeast corner of Skamania county; thence along the east line of Skamania county to the line between townships six and seven north; thence east along said line to the place of beginning.

[1905 c 89 § 1; 1886 p 168; 1873 p 571; 1869 p 296; 1868 p 60; 1867 p 50; RRS § 3963.]

RCW 36.04.400
Survey of county boundaries.

All common boundaries and common corners of counties not adequately marked by natural objects or lines, or by surveys lawfully made, must be definitely established by surveys jointly made by all the counties affected thereby, and approved by the board of county commissioners of such counties. The cost of making such surveys shall be apportioned equally among the counties interested, and the board of county commissioners shall audit the same, and the amounts shall be paid out of the county current expense fund.

[Code 1881 § 2661; RRS § 3990.]

Chapter 36.05 RCW Actions To Establish Boundaries

RCW SECTIONS

36.05.010 Suit in equity authorized -- Grounds.

36.05.020 Noninterested judge to sit.

36.05.030 Residents of area may intervene.

36.05.040 Questions of fact to be determined.

36.05.050 Court may establish boundary line.

36.05.060 Practice in civil actions to prevail.

36.05.070 Copies of decree to be filed and recorded.

36.05.080 "Territory" defined.

NOTES:

Lines not to be changed by special act: State Constitution Art. 2 § 28(18).

RCW 36.05.010
Suit in equity authorized -- Grounds.

Whenever the boundary line between two or more adjoining counties in this state are in dispute, or have been lost by time, accident or any other cause, or have become obscure or uncertain, one or more of the counties, in its corporate name, may bring and maintain suit against such other adjoining county or counties, in equity, in the superior court, to establish the location of the boundary line or lines.

[1963 c 4 § 36.05.010. Prior: 1897 c 76 § 1; RRS § 3964.]

RCW 36.05.020
Noninterested judge to sit.

A suit to establish county boundary lines shall be tried before a judge of the superior court who is not a resident of a county which is a party to such suit, or of a judicial district embracing any such county.

[1963 c 4 § 36.05.020. Prior: 1897 c 76 § 2; RRS § 3965.]

RCW 36.05.030
Residents of area may intervene.

A majority of the voters living in the territory embracing such disputed, lost, obscure, or uncertain boundary line may, by petition, duly verified by one or more of them, intervene in the suit, and thereupon the court shall have jurisdiction and power, in locating and establishing the boundary line or lines, to strike or transfer from one county to another a strip or portion of such territory not exceeding two miles in width.

[1963 c 4 § 36.05.030. Prior: 1897 c 76 § 3; RRS § 3966.]

RCW 36.05.040
Questions of fact to be determined.

The boundaries of such territory, the number of voters living therein, and the sufficiency of such petition are questions of fact to be determined by the court.

[1963 c 4 § 36.05.040. Prior: 1897 c 76 § 5; RRS § 3968.]

RCW 36.05.050
Court may establish boundary line.

The court shall have power to move or establish such boundary line on any government section line or subdivisional line thereof, of the section in or through which said disputed, lost, obscure or uncertain boundary line may be located, or if such boundary line is in unsurveyed territory, then the court shall have power to move or establish such boundary line so it will conform to extensions of government section lines already surveyed in that vicinity.

[1963 c 4 § 36.05.050. Prior: 1897 c 76 § 6; RRS § 3969.]

RCW 36.05.060
Practice in civil actions to prevail.

The practice, procedure, rules of evidence, and appeals to the supreme court or the court of appeals applicable to civil actions, are preserved under this chapter.

[1971 c 81 § 96; 1963 c 4 § 36.05.060. Prior: 1897 c 76 § 7; RRS § 3970.]

RCW 36.05.070
Copies of decree to be filed and recorded.

The clerk of the court in whose office a decree is entered under the provisions of this chapter, shall forthwith furnish certified copies thereof to the secretary of state, and to the auditors of the counties, which are parties to said suit. The secretary of state, and the county auditors, shall file and record said copies of the decree in their respective offices.

[1963 c 4 § 36.05.070. Prior: 1897 c 76 § 8; RRS § 3971.]

RCW 36.05.080
"Territory" defined.

The term "territory," as used in this chapter, means that portion of counties lying along the boundary line and within one mile on either side thereof.

[1963 c 4 § 36.05.080. Prior: 1897 c 76 § 4; RRS § 3967.]

RCW 36.32.370
LAND SURVEYS.

Except as otherwise provided in this title, the board of county commissioners, through a surveyor employed by it shall execute all surveys of land that may be required by the county. The certificate of the surveyor so employed of any survey made of lands within the county shall be presumptive evidence of the facts therein contained.

[1963 c 4 § 36.32.370. Prior: (i) 1895 c 77 § 3; RRS § 4144. (ii) 1895 c 77 § 4; RRS § 4145.]

Chapter 36.75 RCW Roads And Bridges -- General Provisions

RCW SECTIONS

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36.75.020 County roads -- County legislative authority as agent of state -- Standards.

36.75.030 State and county cooperation.

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36.75.040 Powers of county commissioners.

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36.75.260 Annual report to secretary of transportation.

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36.75.300 Primitive roads -- Classification and designation.

NOTES:

Bridges across navigable waters: Chapter 88.28 RCW.

Cities and towns
annexation of unincorporated areas, disposition of road district taxes: RCW 35.13.270.
disincorporation, effect on streets: RCW 35.07.110.
incorporation, disposition of uncollected road district taxes: RCW 35.02.140.

Classification of highways, county roads: RCW 47.04.020.

Contracts for street, road, and highway projects: Chapter 35.72 RCW.

County roads
construction or maintenance of, cooperative agreements, prevention or minimization of flood damages: RCW 47.28.140.
defined for highway purposes: RCW 47.04.010(9).
defined for motor vehicle purposes: RCW 46.04.150.
designation as arterial: RCW 46.61.195.
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federal grants to, department of transportation to administer: RCW 47.04.060, 47.04.070.
may be selected as state highway route: RCW 47.28.010.
projects by department of transportation, funds set aside: RCW 47.08.080.
state participation in building: RCW 47.04.080.
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Department of transportation and transportation improvement board to coordinate long range needs studies: RCW 47.01.240.

Destroying native flora near county roads unlawful: RCW 47.40.080.

Dikes along public road, diking districts by: RCW 85.05.250.

Diking, drainage, and sewerage improvement districts
benefits to roads, costs: RCW 85.08.370.
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Diking, drainage district benefits to roads, how paid: RCW 85.07.040, 85.07.050.

Diking and drainage intercounty districts, counties to contribute for benefits to roads and bridges by: RCW 85.24.240.

Drainage ditches along roads by drainage improvement district: RCW 85.08.385.

Flood control districts (1937 act), crossing county roads, procedure: RCW 86.09.229.

Glass bottles thrown along county roads, collection and removal: RCW 47.40.090.

Highway advertising control act
county information signs allowed under: RCW 47.42.050.
not to supersede county ordinance: RCW 47.42.070.

Labor on, maximum hours of prescribed: Chapter 49.28 RCW.

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Local adopt-a-highway programs: RCW 47.40.105.

Motor vehicles, maximum weight, size, speed in traversing bridges, tunnels, etc.: RCW 46.61.450.

Public lands
rights of way over for county bridges, trestles, across waterways, tide or shore lands: RCW 79.91.100.
rights of way over for roads, county wharves: RCW 79.36.440.
sale of road materials on to counties: RCW 79.15.320.

Public works contracts, reserve from amount due contractors to cover lien for labor, material or taxes: Chapter 60.28 RCW.

Railroad grade crossings, county participation in grant, duty to maintain: Chapter 81.53 RCW.

Reclamation districts of one million acres benefit to public roads, procedure: RCW 89.30.181.

Right to back and hold waters over county roads: RCW 90.28.010, 90.28.020.

Speeds, maximums on county roads: RCW 46.61.415.

State cooperation in building roads, bridges, etc.: RCW 47.04.080.

Street railways, may cross public road: RCW 81.64.030.

Telecommunications companies, use of county roads, how: RCW 80.36.040.

Title to rights of way in county roads vested in state: RCW 47.04.040.

Toll bridges
ferry crossings not to infringe existing franchises: RCW 47.60.120.
state given right of way through county roads: RCW 47.56.100.

Toll roads, bridges, and ferries of state, sale or lease of unneeded property to county: RCW 47.56.253.

RCW 36.75.010
Definitions.

As used in this title with relation to roads and bridges, the following terms mean:

(1) "Alley," a highway not designed for general travel and primarily used as a means of access to the rear of residences and business establishments;

(2) "Board," the board of county commissioners or the county legislative authority, however organized;

(3) "Center line," the line, marked or unmarked, parallel to and equidistant from the sides of a two-way traffic roadway of a highway except where otherwise indicated by painted lines or markers;

(4) "City street," every highway or part thereof, located within the limits of incorporated cities and towns, except alleys;

(5) "County engineer" includes the county director of public works;

(6) "County road," every highway or part thereof, outside the limits of incorporated cities and towns and which has not been designated as a state highway;

(7) "Department," the state department of transportation;

(8) "Director" or "secretary," the state secretary of transportation or his duly authorized assistant;

(9) "Pedestrian," any person afoot;

(10) "Private road or driveway," every way or place in private ownership and used for travel of vehicles by the owner or those having express or implied permission from the owner, but not by other persons;

(11) "Highway," every way, lane, road, street, boulevard, and every way or place in the state of Washington open as a matter of right to public vehicular travel both inside and outside the limits of incorporated cities and towns;

(12) "Railroad," a carrier of persons or property upon vehicles, other than streetcars, operated upon stationary rails, the route of which is principally outside incorporated cities and towns;

(13) "Roadway," the paved, improved, or proper driving portion of a highway designed or ordinarily used for vehicular travel;

(14) "Sidewalk," property between the curb lines or the lateral lines of a roadway, and the adjacent property, set aside and intended for the use of pedestrians or such portion of private property parallel and in proximity to a highway and dedicated to use by pedestrians;

(15) "State highway," includes every highway as herein defined, or part thereof, that has been designated as a state highway, or branch thereof, by legislative enactment.

[1984 c 7 § 26; 1975 c 62 § 1; 1969 ex.s. c 182 § 1; 1963 c 4 § 36.75.010. Prior: 1937 c 187 § 1; RRS § 6450-1.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

Severability -- 1975 c 62: "If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the

provision to other persons or circumstances is not affected." [1975 c 62 § 52.]

RCW 36.75.020
County roads -- County legislative authority as agent of state -- Standards.

All of the county roads in each of the several counties shall be established, laid out, constructed, altered, repaired, improved, and maintained by the legislative authority of the respective counties as agents of the state, or by private individuals or corporations who are allowed to perform such work under an agreement with the county legislative authority. Such work shall be done in accordance with adopted county standards under the supervision and direction of the county engineer.

[1982 c 145 § 6; 1963 c 4 § 36.75.020. Prior: 1943 c 82 § 1; 1937 c 187 § 2; Rem. Supp. 1943 § 6450-2.]

RCW 36.75.030
State and county cooperation.

The state department of transportation and the governing officials of any county may enter into reciprocal public highway improvement and maintenance agreements, providing for cooperation either in the county assisting the department in the improvement or maintenance of state highways, or the department assisting the county in the improvement or maintenance of county roads, under any circumstance where a necessity appears therefor or where economy in public highway improvement and maintenance will be best served.

[1984 c 7 § 27; 1963 c 4 § 36.75.030. Prior: 1939 c 181 § 11; RRS § 6450-2a.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 36.75.035
County may fund improvements to state highways.

A county pursuant to chapter 36.88 RCW, or a service district as provided for in chapter 36.83 RCW, may, with the approval of the state department of transportation, improve or fund the improvement of any state highway within its boundaries. The county may fund improvements under this section by any means authorized by law, except that expenditures of county road funds under chapter 36.82 RCW under this section must be limited to improvements to the state highway system and shall not include maintenance or operations. Nothing in this section shall limit the authority of a county to fund cooperative improvement and maintenance agreements with the department of transportation, authorized by RCW 36.75.030 or 47.28.140.

[2002 c 60 § 1; 1985 c 400 § 1.]

NOTES:

County road improvement districts and service districts may improve state highways: RCW 36.83.010 and 36.88.010.

RCW 36.75.040
Powers of county commissioners.

The board of county commissioners of each county, in relation to roads and bridges, shall have the power and it shall be its duty to:

(1) Acquire in the manner provided by law property real and personal and acquire or erect structures necessary for the administration of the county roads of such county;

(2) Maintain a county engineering office and keep record of all proceedings and orders pertaining to the county roads of such county;

(3) Acquire land for county road purposes by purchase, gift, or condemnation, and exercise the right of eminent domain as by law provided for the taking of land for public use by counties of this state;

(4) Perform all acts necessary and proper for the administration of the county roads of such county as by law provided;

(5) In its discretion rent or lease any lands, improvements or air space above or below any county road or unused county roads to any person or entity, public or private: PROVIDED,

That the said renting or leasing will not interfere with vehicular traffic along said county road or adversely affect the safety of the traveling public: PROVIDED FURTHER, That any such sale, lease or rental shall be by public bid in the manner provided by law: AND PROVIDED FURTHER, That nothing herein shall prohibit any county from granting easements of necessity.

[1969 ex.s. c 182 § 15; 1963 c 4 § 36.75.040. Prior: 1937 c 187 § 3; RRS § 6450-3.]

RCW 36.75.050
Powers -- How exercised.

The powers and duties vested in or imposed upon the boards with respect to establishing, examining, surveying, constructing, altering, repairing, improving, and maintaining county roads, shall be exercised under the supervision and direction of the county road engineer.

The board shall by resolution, and not otherwise, order the survey, establishment, construction, alteration, or improvement of county roads; the county road engineer shall prepare all necessary maps, plans, and specifications therefor, showing the right of way widths, the alignments, gradients, and standards of construction.

[1963 c 4 § 36.75.050. Prior: 1943 c 73 § 1, part; 1937 c 187 § 4, part; Rem. Supp. 1943 § 6450-4.]

RCW 36.75.060
County road districts.

For the purpose of efficient administration of the county roads of each county the board may, but not more than once in each year, form their respective counties, or any part thereof, into suitable and convenient road districts, not exceeding nine in number, and cause a description thereof to be entered upon their records.

Unless the board decides otherwise by majority vote, there shall be at least one road district in each county commissioner's district embracing territory outside of cities and towns and no road district shall extend into more than one county commissioner's district.

[1969 ex.s. c 182 § 3; 1963 c 4 § 36.75.060. Prior: 1937 c 187 § 5; RRS § 6450-5.]

RCW 36.75.065
Community revitalization financing -- Public improvements.

In addition to other authority that a road district possesses, a road district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a road district to otherwise participate in the public improvements if that authority exists elsewhere.

[2001 c 212 § 16.]

NOTES:

Severability -- 2001 c 212: See RCW 39.89.902.

RCW 36.75.070
Highways worked seven years are county roads.

All public highways in this state, outside incorporated cities and towns and not designated as state highways, which have been used as public highways for a period of not less than seven years, where they have been worked and kept up at the expense of the public, are county roads.

[1963 c 4 § 36.75.070. Prior: 1955 c 361 § 2; prior: 1945 c 125 § 1, part; 1937 c 187 § 10, part; Rem. Supp. 1945 § 6450-10, part.]

RCW 36.75.080
Highways used ten years are county roads.

All public highways in this state, outside incorporated cities and towns and not designated as state highways which have been used as public highways for a period of not less than ten years are county roads: PROVIDED, That no duty to maintain such public highway nor any

liability for any injury or damage for failure to maintain such public highway or any road signs thereon shall attach to the county until the same shall have been adopted as a part of the county road system by resolution of the county commissioners.

[1963 c 4 § 36.75.080. Prior: 1955 c 361 § 3; prior: 1945 c 125 § 1, part; 1937 c 187 § 10, part; Rem. Supp. 1945 § 6450-10, part.]

RCW 36.75.090
Abandoned state highways.

All public highways in this state which have been a part of the route of a state highway and have been or may hereafter be no longer necessary as such, if situated outside of the limits of incorporated cities or towns, shall, upon certification thereof by the state department of transportation to the legislative authority of the county in which any portion of the highway is located, become a county road of the county, and if situated within the corporate limits of any city or town shall upon certification thereof by the state department of transportation to the mayor of the city or town in which any portion of the highway is located become a street of the city or town. Upon the certification the secretary of transportation shall execute a deed, which shall be duly acknowledged, conveying the abandoned highway or portion thereof to the county or city as the case may be.

[1984 c 7 § 28; 1977 ex.s. c 78 § 4; 1963 c 4 § 36.75.090. Prior: 1955 c 361 § 4; prior: 1953 c 57 § 1; 1945 c 125 § 1, part; 1937 c 187 § 10, part; Rem. Supp. 1945 § 6450-10, part.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 36.75.100
Informalities not fatal.

No informalities in the records in laying out, establishing, or altering any public highways existing on file in the offices of the various county auditors of this state or in the records of the department or the transportation commission, may be construed to invalidate or vacate the public highways.

[1984 c 7 § 29; 1963 c 4 § 36.75.100. Prior: 1937 c 187 § 11; RRS § 6450-11.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 36.75.110
True locations to be determined -- Survey.

Whenever the board declares by resolution that the true location, course, or width of any county road is uncertain and that the same should be determined, it shall direct the county road engineer to make examination and survey thereof.

This shall embrace an examination and survey of the original petition, report, and field notes on the establishment of such road; a survey of the present traveled roadway; all topography within a reasonable distance and having a bearing on the true location of such road; the distance from the center line of the traveled roadway to the nearest section and quarter section corners; a map of sufficient scale accurately showing the above with field notes thereon; a map on the same scale showing the original field notes, such field notes to be transposed and the same meridian used on both maps.

[1963 c 4 § 36.75.110. Prior: 1937 c 187 § 12; RRS § 6450-12.]

RCW 36.75.120
Action to determine true location.

When the true location, course, or width of a county road, which was prior thereto uncertain, has been reported by the examining engineer, the board shall file an action in the superior court of such county for the determination thereof. All persons affected by the determination of the true location, course, or width insofar as the same may vary from the originally established location, course, or width shall be made parties defendant in such action and service had and return made as in the case of civil actions. Upon

the hearing the court shall consider the survey, maps, and all data with reference to the investigation of the examining engineer and may demand such further examination as it may deem necessary and any objection of any party defendant may be heard and considered. The court shall determine the true location, course, and width of the road and may in its discretion assess the cost of such action against the county to be paid from the county road fund.

[1963 c 4 § 36.75.120. Prior: 1937 c 187 § 13; RRS § 6450-13.]

RCW 36.75.130
Approaches to county roads -- Rules regarding construction -- Penalty.

(1) No person shall be permitted to build or construct any approach to any county road without first obtaining permission therefor from the board.

(2) The boards of the several counties of the state may adopt reasonable rules for the construction of approaches which, when complied with, shall entitle a person to build or construct an approach from any abutting property to any county road. The rules may include provisions for the construction of culverts under the approaches, the depth of fills over the culverts, and for such other drainage facilities as the board deems necessary. The construction of approaches, culverts, fills, or such other drainage facilities as may be required, shall be under the supervision of the county road engineer, and all such construction shall be at the expense of the person benefited by the construction.

(3) Any person violating this section is guilty of a misdemeanor.

[2003 c 53 § 208; 1963 c 4 § 36.75.130. Prior: 1943 c 174 § 1; Rem. Supp. 1943 § 6450-95.]

NOTES:

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

RCW 36.75.160
Power of county commissioners as to roads, bridges, and other structures crossing boundary lines.

The board of county commissioners of any county may erect and construct or acquire by purchase, gift, or condemnation, any bridge, trestle, or any other structure which crosses any stream, body of water, gulch, navigable water, swamp or other topographical formation requiring such structure for the continuation or connection of any county road if such topographical formation constitutes the boundary of a city, town, another county or the state of Washington or another state or a county, city or town of such other state.

The board of such county may join with such city, town, other county, the state of Washington, or other state, or a county, city or town of such other state in paying for, erecting, constructing, acquiring by purchase, gift, or condemnation any such bridge, trestle, or other structure, and the purchase or condemnation of right of way therefor.

The board of any county may construct, maintain, and operate any county road which forms the boundary line between another county within the state or another county in any other state or which through its meandering crosses such boundary; and acquire by purchase or condemnation any lands or rights within this state, either within or without its county, necessary for such boundary road; and enter into joint contracts with authorities of adjoining counties for the construction, operation, and maintenance of such boundary roads. The power of condemnation herein granted may be exercised jointly by two counties in the manner provided in RCW 36.75.170 for bridges, or it may be exercised by a single county in the manner authorized by law.

[2000 c 155 § 1; 1963 c 4 § 36.75.160. Prior: 1943 c 82 § 3; 1937 c 187 § 26; Rem. Supp. 1943 § 6450-26.]

RCW 36.75.170
Power of county commissioners as to roads, bridges, and other structures crossing boundary lines -- Resolution to acquire or construct.

The board may by original resolution entered upon its minutes declare its intention to pay for and erect or construct, or acquire by purchase, gift, or condemnation, any bridge, trestle, or other structure upon any county road which crosses any stream, body of water, gulch, navigable water, swamp or other topographical formation constituting a boundary, or to join therein with any other county, city or town, or with this state, or with any other state, or with any county, city or town of any other state, in the erection, or construction, or acquisition of any such structure, and declare that the same is a public necessity, and direct the county road engineer to report upon such project, dividing any just proportional cost thereof.

In the event two counties or any county and any city wish to join in paying for the erection or acquisition of any such structure, the resolution provided in this section shall be a joint resolution of the governing authorities of the counties and cities and they shall further, by such resolution, designate an engineer employed by one county to report upon the proposed erection or acquisition.

[1963 c 4 § 36.75.170. Prior: 1937 c 187 § 27; RRS § 6450-27.]

RCW 36.75.180
Power of county commissioners as to roads, bridges, and other structures crossing boundary lines -- Freeholders' petition to acquire or construct.

Ten or more freeholders of any county may petition the board for the erection and construction or acquisition by purchase, gift, or condemnation of any bridge, trestle, or any other structure in the vicinity of their residence, and upon any county road which crosses any stream, body of water, gulch, navigable waters, swamp or other topographical formation constituting a boundary by joining with any other county, city or town, or the state of Washington, or with any other state or with any county, city or town of any other state, setting forth and describing the location proposed for the erection of such bridge, trestle, or other structure, and stating that the same is a public necessity. The petition shall be accompanied by a bond with the same requirements, conditions, and amount and in the same manner as in case of a freeholders' petition for the establishing of a county road. Upon the filing of such petition and bond and being satisfied that the petition has been signed by freeholders residing in the vicinity of such proposed bridge, trestle, or other structure, the board shall direct the county road engineer to report upon the project, dividing any just proportional cost thereof.

In the event two counties or any county and any city or town are petitioned to join in paying for the erection or acquisition of such structure, the board of county commissioners of the counties or the board of county commissioners of the county and governing authorities of the city or town shall act jointly in the selection of the engineer who shall report upon such acquisition or erection.

[1963 c 4 § 36.75.180. Prior: 1937 c 187 § 28; RRS § 6450-28.]

RCW 36.75.190
Engineer's report -- Hearing -- Order.

Upon report by the examining engineer for the erection and construction upon any county road, or for acquisition by purchase, gift or condemnation of any bridge, trestle, or any other structure crossing any stream, body of water, gulch, navigable water, swamp or other topographical formation, which constitutes a boundary, publication shall be made and joint hearing had upon such report in the same manner and upon the same procedure as in the case of resolution or petition for the laying out and establishing of county roads. If upon the hearing the governing authorities jointly order the erection and construction or acquisition of such bridge, trestle, or other structure, they may jointly acquire land necessary therefor by purchase, gift, or condemnation in the manner as provided for acquiring land for county roads, and shall advertise calls for bids, require contractor's deposit and bond, award contracts, and supervise construction as by law provided and in the same manner as required in the case of the construction of county roads.

Any such bridges, trestles or other structures may be operated free, or may be operated as toll bridges, trestles, or other structures under the provisions of the laws of this state relating thereto.

[1963 c 4 § 36.75.190. Prior: 1937 c 187 § 29; RRS § 6450-29.]

RCW 36.75.200
Bridges on city or town streets.

The boards of the several counties may expend funds from the county road fund for the construction, improvement, repair, and maintenance of any bridge upon any city street within any city or town in such county where such city street and bridge are essential to the continuation of the county road system of the county. Such construction, improvement, repair, or maintenance shall be ordered by resolution and proceedings conducted in respect thereto in the same manner as provided for the laying out and establishing of county roads by counties, and for the preparation of maps, plans, and specifications, advertising and award of contracts therefor.

[1963 c 4 § 36.75.200. Prior: 1937 c 187 § 30; RRS § 6450-30.]

RCW 36.75.203
Responsibility of city to maintain county road forming a municipal boundary.

If the centerline of a portion of a county road is part of a corporate boundary of a city or town as of May 21, 1985, and that portion of county road has no connection to the county road system, maintenance of all affected portions of the road shall be the responsibility of such city or town after a petition requesting the same has been made to the city or town by the county legislative authority.

[1985 c 429 § 2.]

RCW 36.75.205
Street as extension of road in town of less than one thousand.

Whenever any street in any town, having a population of less than one thousand persons, forms an extension of a county road of the county in which such town is located, and where the board of county commissioners of such county and the governing body of such town, prior to the commencement of any work, have mutually agreed and each adopted a resolution setting forth the nature and scope of the work to be performed and the share of the cost or labor which each shall bear, such county may expend county road funds for construction, improvement, repair, or maintenance of such street.

[1963 c 4 § 36.75.205. Prior: 1959 c 83 § 1.]

RCW 36.75.207
Agreements for planning, establishment, construction, and maintenance of city streets by counties -- Use of county road fund -- Payment by city -- Contracts, bids.

See RCW 35.77.020 through 35.77.040.

RCW 36.75.210
Roads crossing boundaries.

Whenever a county road is established within any county, and such county road crosses the boundary of the county, the board of the county within which the major portion of the road is located may expend the county road fund of such county in laying out, establishing, constructing, altering, repairing, improving, and maintaining that portion of the road lying outside the county, in the manner provided by law for the expenditure of county funds for the construction, alteration, repair, improvement, and maintenance of county roads within the county.

The board of any county may construct, maintain, and operate any county road which forms the boundary line between another county within the state or another county in any other state or which through its meandering crosses such boundary; and acquire by purchase or condemnation any lands or rights within this state, either within or without its county, necessary for such boundary road; and enter into joint contracts with authorities of adjoining counties for the construction, operation, and maintenance of such boundary roads. The power of condemnation herein granted may be exercised jointly by two counties in the manner provided for bridges, or it may be exercised by a single county in the manner authorized by law.

[2000 c 155 § 2; 1963 c 4 § 36.75.210. Prior: 1937 c 187 § 23; RRS § 6450-23. FORMER PART OF SECTION: 1943 c 82 § 3, part; 1937 c 187 § 26, part; Rem. Supp. 1943 § 6450-26, part, now codified in RCW 36.75.160.]

RCW 36.75.220
Connecting road across segment of third county.

Whenever two counties are separated by an intervening portion of a third county not exceeding one mile in width, and each of such counties has constructed or shall construct a county road to the boundary thereof, and the boards of the two counties deem it beneficial to such counties to connect the county roads by the construction and maintenance of a county road across the intervening portion of the third county, it shall be lawful for the boards of the two counties to expend jointly the county road funds of their respective counties in acquiring right of way for the construction, improvement, repair, and maintenance of such connecting county road and any necessary bridges thereon, in the manner provided by law for the expenditure of county road funds for the construction, improvement, repair, and maintenance of county roads lying within a county.

[1963 c 4 § 36.75.220. Prior: 1937 c 187 § 24; RRS § 6450-24.]

RCW 36.75.230
Acquisition of land under RCW 36.75.210 and 36.75.220.

For the purpose of carrying into effect RCW 36.75.210 and 36.75.220 and under the circumstances therein set out the boards may acquire land necessary for the right of way for any portion of a county road lying outside such county or counties by gift or purchase or by condemnation in the manner provided for the taking of property for public use by counties.

[1963 c 4 § 36.75.230. Prior: 1937 c 187 § 25, part; RRS § 6450-25, part.]

RCW 36.75.240
Sidewalks and pedestrian paths or walks -- Bicycle paths, lanes, routes, and roadways -- Standards.

The boards may expend funds credited to the county road fund from any county or road district tax levied for the construction of county roads for the construction of sidewalks, bicycle paths, lanes, routes, and roadways, and pedestrian allocated paths or walks. Bicycle facilities constructed or modified after June 10, 1982, shall meet or exceed the standards of the state department of transportation.

[1982 c 55 § 2; 1974 ex.s. c 141 § 7; 1963 c 4 § 36.75.240. Prior: 1937 c 187 § 25, part; RRS § 6450-25, part.]

NOTES:

Pavement marking standards: RCW 47.36.280.

RCW 36.75.243
Curb ramps for physically handicapped.

See RCW 35.68.075, 35.68.076.

RCW 36.75.250
State may intervene if maintenance neglected.

If by any agreement with the federal government or any agency thereof or with the state or any agency thereof, a county has agreed to maintain certain county roads or any portion thereof and the maintenance is not being performed to the satisfaction of the federal government or the department, reasonably consistent with original construction, notice thereof may be given by the department to the legislative authority of the county, and if the county legislative authority does not within ten days provide for the maintenance, the department may perform the maintenance, and the state treasurer shall pay the cost thereof on vouchers submitted by the department and deduct the cost thereof from any sums in the motor vehicle fund credited or to be credited to the county in which the county road is located.

[1984 c 7 § 30; 1963 c 4 § 36.75.250. Prior: 1937 c 187 § 46; RRS § 6450-46.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 36.75.255
Street improvements -- Provision of supplies or materials.

Any county may assist a street abutter in improving the street serving the abutter's premises by providing asphalt, concrete, or other supplies or materials. The furnishing of supplies or materials or paying to the abutter the cost thereof and the providing of inspectors and other incidental personnel shall not render the street improvements a public work or improvement subject to competitive bidding. The legislative authority of such county shall approve any such assistance at a public meeting and shall maintain a public register of any such assistance setting forth the value, nature, purpose, date and location of the assistance and the name of the beneficiary.

[1983 c 103 § 2.]

RCW 36.75.260
Annual report to secretary of transportation.

Each county legislative authority shall on or before May 31st of each year submit such records and reports to the secretary of transportation, on forms furnished by the department, as are necessary to enable the secretary to compile an annual report on county highway operations.

[1999 c 204 § 2; 1984 c 7 § 31; 1977 c 75 § 31; 1963 c 4 § 36.75.260. Prior: 1943 c 82 § 8; 1937 c 187 § 58; Rem. Supp. 1943 § 6450-58.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 36.75.270
Limitation of type or weight of vehicles authorized -- Penalty.

The board of county commissioners of each county may by resolution limit or prohibit classes or types of vehicles on any county road or bridge and may limit the weight of vehicles which may travel thereon. Any such resolution shall be effective for a definite period of time which shall be stated in the resolution. If such resolution is published at least once in a newspaper of general circulation in the county and if signs indicating such closure or limitation of traffic have been posted on such road or bridge, any person violating such resolution shall be guilty of a misdemeanor.

[1963 c 4 § 36.75.270. Prior: 1949 c 156 § 8; Rem. Supp. 1949 § 6450-8g.]

NOTES:

Local restrictions or limitations of weight: RCW 46.44.080.

RCW 36.75.280
Centralized repair and storage of machinery, equipment, supplies, etc.

All county road machinery, equipment, stores, and supplies, excepting stockpiles and other road building material, shall while not in use be stored and repaired at one centralized point in each county: PROVIDED, That if the geography, topography, distance, or other valid economic considerations require more than one place for storage or repairs, the county commissioners may, by unanimous vote, authorize the same.

[1963 c 4 § 36.75.280. Prior: 1949 c 156 § 4; Rem. Supp. 1949 § 6450-8d.]

RCW 36.75.290
General penalty.

It shall be a misdemeanor for any person to violate any of the provisions of this title relating to county roads and bridges unless such violation is by this title or other law of this state declared to be a felony or gross misdemeanor.

[1963 c 4 § 36.75.290. Prior: 1943 c 82 § 13, part; 1937 c 187 § 66, part; Rem. Supp. 1943 § 6450-66, part.]

RCW 36.75.300
Primitive roads -- Classification and designation.

The legislative authority of each county may by resolution classify and designate portions of the county roads as primitive roads where the designated road portion:

(1) Is not classified as part of the county primary road system, as provided for in RCW 36.86.070;

(2) Has a gravel or earth driving surface; and

(3) Has an average annual daily traffic of one hundred or fewer vehicles.

Any road designated as a primitive road shall be marked with signs indicating that it is a primitive road, as provided in the manual of uniform traffic control devices, at all places where the primitive road portion begins or connects with a highway other than another primitive road. No design or signing or maintenance standards or requirements, other than the requirement that warning signs be placed as provided in this section, apply to primitive roads.

The design of a primitive road, and the location, placing, or failing to place road signs, other than the requirement that warning signs be placed as provided in this section, shall not be considered in any action for damages brought against a county, or against a county employee or county employees, or both, arising from vehicular traffic on the primitive road.

[1985 c 369 § 2; 1980 c 45 § 1.]

Chapter 36.85 RCW Roads And Bridges -- Rights-Of-Way

RCW SECTIONS

36.85.010 Acquisition -- Condemnation.

36.85.020 Aviation site not exempt from condemnation.

36.85.030 Acceptance of federal grants over public lands.

36.85.040 Acceptance of federal grants over public lands -- Prior acceptances ratified.

RCW 36.85.010
Acquisition -- Condemnation.

Whenever it is necessary to secure any lands for a right-of-way for any county road or for the drainage thereof or to afford unobstructed view toward any intersection or point of possible danger to public travel upon any county road or for any borrow pit, gravel pit, quarry, or other land for the extraction of material for county road purposes, or right-of-way for access thereto, the board may acquire such lands on behalf of the county by gift, purchase, or condemnation. When the board so directs, the prosecuting attorney of the county shall institute proceedings in condemnation to acquire such land for a county road in the manner provided by law for the condemnation of land for public use by counties. All cost of acquiring land for right-of-way or for other purposes by purchase or condemnation shall be paid out of the county road fund of the county and chargeable against the project for which acquired.

[1963 c 4 § 36.85.010. Prior: 1937 c 187 § 9; RRS § 6450-9.]

RCW 36.85.020
Aviation site not exempt from condemnation.

Whenever any county has established a public highway, which, in whole or in part, abuts upon and adjoins any aviation site in such county, no property shall be exempt from condemnation for such highway by reason of the same having been or being dedicated, appropriated, or otherwise reduced or held to public use.

[1963 c 4 § 36.85.020. Prior: 1925 ex.s. c 41 § 1; RRS § 905-2.]

RCW 36.85.030
Acceptance of federal grants over public lands.

The boards in their respective counties may accept the grant of rights-of-way for the construction of public highways over public lands of the United States, not reserved for public uses, contained in section 2477 of the Revised Statutes of the United States. Such rights-of-way shall henceforward not be less than sixty feet in width unless a lesser width is specified by the United States. Acceptance shall be by resolution of the board spread upon the records of its proceedings: PROVIDED, That nothing herein contained shall be construed to invalidate the acceptance of such grant by general public use and enjoyment, heretofore or hereafter had.

[1963 c 4 § 36.85.030. Prior: 1937 c 187 § 17; RRS § 6450-17.]

RCW 36.85.040
Acceptance of federal grants over public lands -- Prior acceptances ratified.

Prior action of boards purporting to accept the grant of rights-of-way under section 2477 of the Revised Statutes of the United States for the construction of public highways over public lands of the United States, as provided in RCW 36.85.030, is hereby approved, ratified and confirmed and all such public highways shall be deemed duly laid out county roads and boards of county commissioners may at any time by recorded resolution cause any of such county roads to be opened and improved for public travel.

[1963 c 4 § 36.85.040. Prior: 1937 c 187 § 18; RRS § 6450-18.]

Chapter 36.86 RCW Roads And Bridges – Standards

RCW SECTIONS

36.86.010 Standard width of right-of-way prescribed.

36.86.020 Minimum standards of construction.

36.86.030 Amendment of standards -- Filing.

36.86.040 Uniform standard for signs, signals, guideposts -- Railroad grade crossings.

36.86.050 Monuments at government survey corners.

36.86.060 Restrictions on use of oil at intersections or entrances to county roads.

36.86.070 Classification of roads in accordance with designations under federal functional classification system.

36.86.080 Application of design standards to construction and reconstruction.

36.86.090 Logs dumped on right-of-way -- Removal -- Confiscation.

36.86.100 Railroad grade crossings -- Obstructions.

RCW 36.86.010
Standard width of right-of-way prescribed.

From and after April 1, 1937, the width of thirty feet on each side of the center line of county roads, exclusive of such additional width as may be required for cuts and fills, is the necessary and proper right-of-way width for county roads, unless the board of county commissioners, shall, in any instance, adopt and designate a different width. This shall not be construed to require the acquisition of increased right-of-way for any county road already established and the right-of-way for which has been secured.

[1963 c 4 § 36.86.010. Prior: 1937 c 187 § 14; RRS § 6450-14.]

RCW 36.86.020
Minimum standards of construction.

In the case of roads, the minimum width between shoulders shall be fourteen feet with eight feet of surfacing, and in the case of bridges, which includes all decked structures, the minimum standard shall be for H-10 loading in accordance with the standards of the state department of transportation. When the standards have been prepared by the county road engineer, they shall be submitted to the county legislative authority for approval, and when approved shall be used for all road and bridge construction and improvement in the county.

[1984 c 7 § 38; 1963 c 4 § 36.86.020. Prior: 1943 c 73 § 1, part; 1937 c 187 § 4, part; Rem. Supp. 1943 § 6450-4, part.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 36.86.030
Amendment of standards -- Filing.

Road and bridge standards may be amended from time to time by resolution of the county legislative authority, but no standard may be approved by the legislative authority with any minimum requirement less than that specified in this chapter. Two copies of the approved standards shall be filed with the department of transportation for its use in examinations of county road work.

[1984 c 7 § 39; 1963 c 4 § 36.86.030. Prior: 1943 c 73 § 1, part; 1937 c 187 § 4, part; Rem. Supp. 1943 § 6450-4, part.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 36.86.040
Uniform standard for signs, signals, guideposts -- Railroad grade crossings.

The county legislative authority shall erect and maintain upon the county roads such suitable and proper signs, signals, signboards, and guideposts and appropriate stop, caution, warning, restrictive, and directional signs and markings as it deems necessary or as may be required by law. All such markings shall be in accordance with the uniform state standard of color, design, erection, and location adopted and designed by the Washington state department of transportation. In respect to existing and future railroad grade crossings over county roads the legislative authority shall install and maintain standard, nonmechanical railroad approach warning signs on both sides of the railroad upon the approaches of the county road. All such signs shall be located a sufficient distance from the crossing to give adequate warning to persons traveling on county roads.

[1984 c 7 § 40; 1963 c 4 § 36.86.040. Prior: 1955 c 310 § 1; 1937 c 187 § 37; RRS § 6450-37.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 36.86.050
Monuments at government survey corners.

The board and the road engineer, at the time of establishing, constructing, improving, or paving any county road, shall fix permanent monuments at the original positions of all United States government monuments at township corners, section corners, quarter section corners, meander corners, and witness markers, as originally established by the United States government survey, whenever any such original monuments or markers fall within the right-of-way of any county road, and shall aid in the reestablishment of any such corners, monuments, or markers destroyed or obliterated by the construction of any county road heretofore established, by permitting inspection of the records in the office of the board and the county engineering office.

[1963 c 4 § 36.86.050. Prior: 1937 c 187 § 36; RRS § 6450-36.]

RCW 36.86.060

Restrictions on use of oil at intersections or entrances to county roads.

No oil or other material shall be used in the treatment of any county road or private road or driveway, of such consistency, viscosity or nature or in such quantities and in such proximity to the entrance to or intersection with any state highway or county road, the roadway of which is surfaced with cement concrete or asphaltic concrete, that such oil or other material is or will be tracked by vehicles thereby causing a coating or discoloration of such cement concrete or asphaltic concrete roadway. Any person violating the provisions of this section shall be guilty of a misdemeanor.

[1963 c 4 § 36.86.060. Prior: 1937 c 187 § 43; RRS § 6450-43.]

RCW 36.86.070
Classification of roads in accordance with designations under federal functional classification system.

From time to time the legislative authority of each county shall classify and designate as the county primary road system such county roads as are designated rural minor collector, rural major collector, rural minor arterial, rural principal arterial, urban collector, urban minor arterial, and urban principal arterial in the federal functional classification system.

[1982 c 145 § 2; 1963 c 4 § 36.86.070. Prior: 1949 c 165 § 1; Rem. Supp. 1949 § 6450-8h.]

RCW 36.86.080
Application of design standards to construction and reconstruction.

Upon the adoption of uniform design standards the legislative authority of each county shall apply the same to all new construction within, and as far as practicable and feasible to reconstruction of old roads comprising, the county primary road system. No deviation from such design standards as to such primary system may be made without the approval of the state aid engineer for the department of transportation.

[1982 c 145 § 3; 1963 c 4 § 36.86.080. Prior: 1949 c 165 § 4; Rem. Supp. 1949 § 6450-8k.]

RCW 36.86.090
Logs dumped on right-of-way -- Removal -- Confiscation.

Logs dumped on any county road right-of-way or in any county road drainage ditch due to hauling equipment failure, or for any other reason, shall be removed within ten days. Logs remaining within any county road right-of-way for a period of thirty days shall be confiscated and removed or disposed of as directed by the boards of county commissioners in the respective counties. Confiscated logs may be sold by the county commissioners and the proceeds thereof shall be deposited in the county road fund.

[1963 c 4 § 36.86.090. Prior: 1951 c 143 § 1.]

RCW 36.86.100
Railroad grade crossings -- Obstructions.

Each railroad company shall keep its right of way clear of all brush and timber in the vicinity of a railroad grade crossing with a county road for a distance of one hundred feet from the crossing in such a manner as to permit a person upon the road to obtain an unobstructed view in both directions of an approaching train. The county legislative authority shall cause brush and timber to be cleared from the right of way of county roads in the proximity of a railroad grade crossing for a distance of one hundred feet from the crossing in such a manner as to permit a person traveling upon the road to obtain an unobstructed view in both directions of an approaching train. It is unlawful to erect or maintain a sign, signboard, or billboard within a distance of one hundred feet from the point of intersection of the road and railroad grade crossing located outside the corporate limits of any city or town unless, after thirty days notice to the Washington utilities and transportation commission and the railroad operating the crossing, the county legislative authority determines that it does not obscure the sight distance of a person operating a vehicle or train approaching the grade crossing.

When a person who has erected or who maintains such a sign, signboard, or billboard or when a railroad company permits such brush or timber in the vicinity of a railroad grade crossing with a county road or permits the surface of a grade crossing to become inconvenient or dangerous for passage and who has the duty to maintain it, fails, neglects, or refuses to remove or cause to be removed such brush, timber, sign, signboard, or billboard, or maintain the surface of the crossing, the utilities and transportation commission upon complaint of the county legislative authority or upon complaint of any party interested, or upon its own motion, shall enter upon a hearing in the manner now provided for hearings with respect to railroad-highway grade crossings, and make and enforce proper orders for the removal of the brush, timber, sign, signboard or billboard, or maintenance of the crossing. Nothing in this section prevents the posting or maintaining thereon of highway or road signs or traffic devices giving directions or distances for the information of the public when the signs conform to the "Manual for Uniform Traffic Control Devices" issued by the state department of transportation. The county legislative authority shall inspect highway grade crossings and make complaint of the violation of any provisions of this section.

[1983 c 19 § 1; 1963 c 4 § 36.86.100. Prior: 1955 c 310 § 6.]

NOTES:

Railroad crossings, obstructions: RCW 47.32.140.

Chapter 36.87 RCW Roads And Bridges – Vacation

RCW SECTIONS

36.87.010 Resolution of intention to vacate.

36.87.020 County road frontage owners' petition -- Bond, cash deposit, or fee.

36.87.030 County road frontage owners' petition -- Action on petition.

36.87.040 Engineer's report.

36.87.050 Notice of hearing on report.

36.87.060 Hearing.

36.87.070 Expense of proceeding.

36.87.080 Majority vote required.

36.87.090 Vacation of road unopened for five years -- Exceptions.

36.87.100 Classification of roads for which public expenditures made -- Compensation of county.

36.87.110 Classification of roads for which no public expenditures made -- Compensation of county.

36.87.120 Appraised value as basis for compensation -- Appraisal costs.

36.87.130 Vacation of roads abutting bodies of water prohibited unless for public purposes or industrial use.

36.87.140 Retention of easement for public utilities and services.

36.87.900 Severability -- 1969 ex.s. c 185.

RCW 36.87.010
Resolution of intention to vacate.

When a county road or any part thereof is considered useless, the board by resolution entered upon its minutes, may declare its intention to vacate and abandon the same or any portion thereof and shall direct the county road engineer to report upon such vacation and abandonment.

[1969 ex.s. c 185 § 1; 1963 c 4 § 36.87.010. Prior: 1937 c 187 § 48; RRS § 6450-48.]

RCW 36.87.020
County road frontage owners' petition -- Bond, cash deposit, or fee.

Owners of the majority of the frontage on any county road or portion thereof may petition the county legislative authority to vacate and abandon the same or any portion thereof. The petition must show the land owned by each petitioner and set forth that such county road is useless as part of the county road system and that the public will be benefited by its vacation and abandonment. The legislative authority may (1) require the petitioners to make an appropriate cash deposit or furnish an appropriate bond against which all costs and expenses incurred in the examination, report, and proceedings pertaining to the petition shall be charged; or (2) by ordinance or resolution require the petitioners to pay a fee adequate to cover such costs and expenses.

[1991 c 363 § 89; 1985 c 369 § 4; 1963 c 4 § 36.87.020. Prior: 1937 c 187 § 49, part; RRS § 6450-49, part.]

NOTES:

Purpose -- Captions not law -- 1991 c 363: See notes following RCW 2.32.180.

RCW 36.87.030
County road frontage owners' petition -- Action on petition.

On the filing of the petition and bond and on being satisfied that the petition has been signed by petitioners residing in the vicinity of the county road or portion thereof, the board shall direct the county road engineer to report upon such vacation and abandonment.

[1963 c 4 § 36.87.030. Prior: 1937 c 187 § 49, part; RRS § 6450-49, part.]

RCW 36.87.040
Engineer's report.

When directed by the board the county road engineer shall examine any county road or portion thereof proposed to be vacated and abandoned and report his opinion as to whether the county road should be vacated and abandoned, whether the same is in use or has been in use, the condition of the road, whether it will be advisable to preserve it for the county road system in the future, whether the public will be benefited by the vacation and abandonment, and all other facts, matters, and things which will be of importance to the board, and also file his cost bill.

[1963 c 4 § 36.87.040. Prior: 1937 c 187 § 50; RRS § 6450-50.]

RCW 36.87.050
Notice of hearing on report.

Notice of hearing upon the report for vacation and abandonment of a county road shall be published at least once a week for two consecutive weeks preceding the date fixed for the hearing, in the county official newspaper and a copy of the notice shall be posted for at least twenty days preceding the date fixed for hearing at each termini of the county road or portion thereof proposed to be vacated or abandoned.

[1963 c 4 § 36.87.050. Prior: 1937 c 187 § 51, part; RRS § 6450-51, part.]

RCW 36.87.060
Hearing.

(1) On the day fixed for the hearing, the county legislative authority shall proceed to consider the report of the engineer, together with any evidence for or objection against such vacation and abandonment. If the county road is found useful as a part of the county road system it shall not be vacated, but if it is not useful and the public will be benefited by the vacation, the county legislative authority may vacate the road or any portion thereof. Its decision shall be entered in the minutes of the hearing.

(2) As an alternative, the county legislative authority may appoint a hearing officer to conduct a public hearing to consider the report of the engineer and to take testimony and evidence relating to the proposed vacation. Following the hearing, the hearing officer shall prepare a record of the proceedings and a recommendation to the county legislative authority concerning the proposed vacation. Their decision shall be made at a regular or special public meeting of the county legislative authority.

[1985 c 369 § 5; 1963 c 4 § 36.87.060. Prior: 1937 c 187 § 51, part; RRS § 6450-51, part.]

RCW 36.87.070
Expense of proceeding.

If the county legislative authority has required the petitioners to make a cash deposit or furnish a bond, upon completion of the hearing, it shall certify all costs and expenses incurred in the proceedings to the county treasurer and, regardless of its final decision, the county legislative authority shall recover all such costs and expenses from the bond or cash deposit and release any balance to the petitioners.

[1985 c 369 § 6; 1963 c 4 § 36.87.070. Prior: 1937 c 187 § 51, part; RRS § 6450-51, part.]

RCW 36.87.080
Majority vote required.

No county road shall be vacated and abandoned except by majority vote of the board properly entered, or by operation of law, or judgment of a court of competent jurisdiction.

[1969 ex.s. c 185 § 2; 1963 c 4 § 36.87.080. Prior: 1937 c 187 § 51, part; RRS § 6450-51, part.]

RCW 36.87.090
Vacation of road unopened for five years -- Exceptions.

Any county road, or part thereof, which remains unopen for public use for a period of five years after the order is made or authority granted for opening it, shall be thereby vacated, and the authority for building it barred by lapse of time: PROVIDED, That this section shall not apply to any highway, road, street, alley, or other public place dedicated as such in any plat, whether the land included in such plat is within or without

the limits of an incorporated city or town, or to any land conveyed by deed to the state or to any county, city or town for highways, roads, streets, alleys, or other public places.

[1963 c 4 § 36.87.090. Prior: 1937 c 187 § 52; RRS § 6450-52.]

RCW 36.87.100
Classification of roads for which public expenditures made -- Compensation of county.

Any board of county commissioners may, by ordinance, classify all county roads for which public expenditures were made in the acquisition, improvement or maintenance of the same, according to the type and amount of expenditures made and the nature of the county's property interest in the road; and may require persons benefiting from the vacation of county roads within some or all of the said classes to compensate the county as a condition precedent to the vacation thereof.

[1969 ex.s. c 185 § 4.]

RCW 36.87.110
Classification of roads for which no public expenditures made -- Compensation of county.

Any board of county commissioners may, by ordinance, separately classify county roads for which no public expenditures have been made in the acquisition, improvement or maintenance of the same, according to the nature of the county's property interest in the road; and may require persons benefiting from the vacation of county roads within some or all of the said classes to compensate the county as a condition precedent to the vacation thereof.

[1969 ex.s. c 185 § 5.]

RCW 36.87.120
Appraised value as basis for compensation -- Appraisal costs.

Any ordinance adopted pursuant to this chapter may require that compensation for the vacation of county roads within particular classes shall equal all or a percentage of the appraised value of the vacated road as of the effective date of the vacation. Costs of county appraisals of roads pursuant to such ordinances shall be deemed expenses incurred in vacation proceedings, and shall be paid in the manner provided by RCW 36.87.070.

[1969 ex.s. c 185 § 6.]

RCW 36.87.130
Vacation of roads abutting bodies of water prohibited unless for public purposes or industrial use.

No county shall vacate a county road or part thereof which abuts on a body of salt or fresh water unless the purpose of the vacation is to enable any public authority to acquire the vacated property for port purposes, boat moorage or launching sites, or for park, viewpoint, recreational, educational or other public purposes, or unless the property is zoned for industrial uses.

[1969 ex.s. c 185 § 7.]

RCW 36.87.140
Retention of easement for public utilities and services.

Whenever a county road or any portion thereof is vacated the legislative body may include in the resolution authorizing the vacation a provision that the county retain an easement in respect to the vacated land for the construction, repair, and maintenance of public utilities and services which at the time the resolution is adopted are authorized or are physically located on a portion of the land being vacated: PROVIDED, That the legislative body shall not convey such easement to any public utility or other entity or person but may convey a permit or franchise to a public utility to effectuate the intent of this section. The term "public utility" as used in this section shall include utilities owned, operated, or maintained by every gas company, electrical company, telephone company, telegraph company, and water company whether or not such company is privately owned or owned by a governmental entity.

[1975 c 22 § 1.]

RCW 36.87.900
Severability -- 1969 ex.s. c 185.

If any provision of this act, or its application to any person, property or road is held invalid, the validity of the remainder of the act, or the application of the provision to other persons, property or roads shall not be affected.

[1969 ex.s. c 185 § 8.]

Chapter 39.08 RCW Contractor's Bond

RCW SECTIONS

39.08.010 Bond required -- Conditions -- Retention of contract amount in lieu of bond -- Contracts of one hundred thousand dollars or less.

39.08.015 Liability for failure to take bond.

39.08.030 Conditions of bond -- Notice of claim -- Action on bond -- Attorney's fees.

39.08.065 Notice to contractor condition to suit on bond when supplies are furnished to subcontractor.

39.08.080 Liens for labor, materials, taxes, on public works.

39.08.100 Marine vessel construction -- Security in lieu of bond.

NOTES:

Public officer requiring bond or insurance from particular insurer, agent or broker, procuring bond or insurance, violations: RCW 48.30.270.

RCW 39.08.010
Bond required -- Conditions -- Retention of contract amount in lieu of bond -- Contracts of one hundred thousand dollars or less.

Whenever any board, council, commission, trustees, or body acting for the state or any county or municipality or any public body shall contract with any person or corporation to do any work for the state, county, or municipality, or other public body, city, town, or district, such board, council, commission, trustees, or body shall require the person or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond, with a surety company as surety, conditioned that such person or persons shall faithfully perform all the provisions of such contract and pay all laborers, mechanics, and subcontractors and materialmen, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, which bond in cases of cities and towns shall be filed with the clerk or comptroller thereof, and any person or persons performing such services or furnishing material to any subcontractor shall have the same right under the provisions of such bond as if such work, services or material was furnished to the original contractor: PROVIDED, HOWEVER, That the provisions of RCW 39.08.010 through 39.08.030 shall not apply to any money loaned or advanced to any such contractor, subcontractor or other person in the performance of any such work: PROVIDED FURTHER, That on contracts of twenty-five thousand dollars or less, at the option of the contractor the respective public entity may, in lieu of the bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later: PROVIDED FURTHER, That for contracts of one hundred thousand dollars or less, the public entity may accept a full payment and performance bond from an individual surety or sureties: AND PROVIDED FURTHER, That the surety must agree to be bound by the laws of the state of Washington and subjected to the jurisdiction of the state of Washington.

[1989 c 145 § 1; 1982 c 98 § 5; 1975 1st ex.s. c 278 § 23; 1967 c 70 § 2; 1915 c 28 § 1; 1909 c 207 § 1; RRS § 1159. Prior: 1897 c 44 § 1; 1888 p 15 § 1.]

NOTES:

Construction -- Severability -- 1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Liens for labor, material, taxes on public works -- Reserve fund required: RCW 60.28.010.

State highway construction and maintenance, bond and surety requirements: Chapter 47.28 RCW.

RCW 39.08.015
Liability for failure to take bond.

If any board of county commissioners of any county, or mayor and common council of any incorporated city or town, or tribunal transacting the business of any municipal corporation shall

fail to take such bond as herein required, such county, incorporated city or town, or other municipal corporation, shall be liable to the persons mentioned in RCW 39.08.010, to the full extent and for the full amount of all such debts so contracted by such contractor.

[1909 c 207 § 2; RRS § 1160. Prior: 1888 p 15 § 2. Formerly RCW 39.08.070.]

RCW 39.08.030
Conditions of bond -- Notice of claim -- Action on bond -- Attorney's fees.

(1) The bond mentioned in RCW 39.08.010 shall be in an amount equal to the full contract price agreed to be paid for such work or improvement, except under subsection (2) of this section, and shall be to the state of Washington, except as otherwise provided in RCW 39.08.100, and except in cases of cities and towns, in which cases such municipalities may by general ordinance fix and determine the amount of such bond and to whom such bond shall run: PROVIDED, The same shall not be for a less amount than twenty-five percent of the contract price of any such improvement, and may designate that the same shall be payable to such city, and not to the state of Washington, and all such persons mentioned in RCW 39.08.010 shall have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements: PROVIDED, That such persons shall not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or materialman, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, shall present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows:

To (here insert the name of the state, county or municipality or other public body, city, town or district):

Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or materialman, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of . . . . . dollars (here insert the amount) against the bond taken from . . . . . (here insert the name of the principal and surety or sureties upon such bond) for the work of . . . . . (here insert a brief mention or description of the work concerning which said bond was taken).

(here to be signed) . . . . . .

Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items hereinbefore specified, the claimant shall be entitled to recover in addition to all other costs, attorney's fees in such sum as the court shall adjudge reasonable: PROVIDED, HOWEVER, That no attorney's fees shall be allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice hereinbefore mentioned: PROVIDED FURTHER, That any city may avail itself of the provisions of RCW 39.08.010 through 39.08.030, notwithstanding any charter provisions in conflict herewith: AND PROVIDED FURTHER, That any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict herewith.

(2) Under the job order contracting procedure described in RCW 39.10.130, bonds will be in an amount not less than the dollar value of all open work orders.

[2003 c 301 § 4; 1989 c 58 § 1; 1977 ex.s. c 166 § 4; 1915 c 28 § 2; 1909 c 207 § 3; RRS § 1161. Prior: 1899 c 105 § 1; 1888 p 16 § 3. Formerly RCW 39.08.030 through 39.08.060.]

NOTES:

Severability -- 1977 ex.s. c 166: "If any provision of this 1977 amendatory act, or its

application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to the other persons or circumstances is not affected." [1977 ex.s. c 166 § 9.]

RCW 39.08.065
Notice to contractor condition to suit on bond when supplies are furnished to subcontractor.

Every person, firm or corporation furnishing materials, supplies or provisions to be used in the construction, performance, carrying on, prosecution or doing of any work for the state, or any county, city, town, district, municipality or other public body, shall, not later than ten days after the date of the first delivery of such materials, supplies or provisions to any subcontractor or agent of any person, firm or corporation having a subcontract for the construction, performance, carrying on, prosecution or doing of such work, deliver or mail to the contractor a notice in writing stating in substance and effect that such person, firm or corporation has commenced to deliver materials, supplies or provisions for use thereon, with the name of the subcontractor or agent ordering or to whom the same is furnished and that such contractor and his bond will be held for the payment of the same, and no suit or action shall be maintained in any court against the contractor or his bond to recover for such material, supplies or provisions or any part thereof unless the provisions of this section have been complied with.

[1915 c 167 § 1; RRS § 1159-1. Formerly RCW 39.08.020.]

RCW 39.08.080
Liens for labor, materials, taxes, on public works.

See chapter 60.28 RCW.

RCW 39.08.100
Marine vessel construction -- Security in lieu of bond.

On contracts for construction, maintenance, or repair of a marine vessel, the department of transportation may permit, subject to specified format and conditions, the substitution of one or more of the following alternate forms of security in lieu of all or part of the bond: Certified check, replacement bond, cashier's check, treasury bills, an irrevocable bank letter of credit, assignment of a savings account, or other liquid assets specifically approved by the secretary of transportation. The secretary of transportation shall predetermine and include in the special provisions of the bid package the amount of this alternative form of security or bond, or a combination of the two, on a case-by-case basis, in an amount adequate to protect one hundred percent of the state's exposure to loss. Assets used as an alternative form of security shall not be used to secure the bond. By October 1, 1989, the department shall develop and adopt rules under chapter 34.05 RCW that establish the procedures for determining the state's exposure to loss on contracts for construction, maintenance, or repair of a marine vessel.

[1989 c 58 § 2.]

Chapter 39.80 RCW Contracts For Architectural And Engineering Services

RCW SECTIONS

39.80.010 Legislative declaration.

39.80.020 Definitions.

39.80.030 Agency's requirement for professional services -- Advance publication.

39.80.040 Procurement of architectural and engineering services -- Submission of statement of qualifications and performance data -- Participation by minority and women-owned firms.

39.80.050 Procurement of architectural and engineering services -- Contract negotiations.

39.80.060 Procurement of architectural and engineering services -- Exception for emergency work.

39.80.070 Contracts, modifications reported to the office of financial management.

39.80.900 Savings.

39.80.910 Severability -- 1981 c 61.

RCW 39.80.010
Legislative declaration.

The legislature hereby establishes a state policy, to the extent provided in this chapter, that governmental agencies publicly announce requirements for architectural and engineering services, and negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

[1981 c 61 § 1.]

NOTES:

Effective date -- 1981 c 61: "This act shall take effect on January 1, 1982." [1981 c 61 § 9.]

RCW 39.80.020
Definitions.

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "State agency" means any department, agency, commission, bureau, office, or any other entity or authority of the state government.

(2) "Local agency" means any city and any town, county, special district, municipal corporation, agency, port district or authority, or political subdivision of any type, or any other entity or authority of local government in corporate form or otherwise.

(3) "Special district" means a local unit of government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, and including but not limited to, water-sewer districts, irrigation districts, fire districts, school districts, community college districts, hospital districts, transportation districts, and metropolitan municipal corporations organized under chapter 35.58 RCW.

(4) "Agency" means both state and local agencies and special districts as defined in subsections (1), (2), and (3) of this section.

(5) "Architectural and engineering services" or "professional services" means professional services rendered by any person, other than as an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in chapters 18.08, 18.43, or 18.96 RCW.

(6) "Person" means any individual, organization, group, association, partnership, firm, joint venture, corporation, or any combination thereof.

(7) "Consultant" means any person providing professional services who is not an employee of the agency for which the services are provided.

(8) "Application" means a completed statement of qualifications together with a request to be considered for the award of one or more contracts for professional services.

[1999 c 153 § 55; 1981 c 61 § 2.]

NOTES:

Part headings not law -- 1999 c 153: See note following RCW 57.04.050.

Effective date -- 1981 c 61: See note following RCW 39.80.010.

RCW 39.80.030
Agency's requirement for professional services -- Advance publication.

Each agency shall publish in advance that agency's requirement for professional services. The announcement shall state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the agency who can provide further details. An agency may comply with this section by: (1) Publishing an announcement on each occasion when professional services provided by a consultant are required by the agency; or (2) announcing generally to the public its projected requirements for any category or type of professional services.

[1981 c 61 § 3.]

NOTES:

Effective date -- 1981 c 61: See note following RCW 39.80.010.

RCW 39.80.040
Procurement of architectural and engineering services -- Submission of statement of qualifications and performance data -- Participation by minority and women-owned firms.

In the procurement of architectural and engineering services, the agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, based upon criteria established by the agency, the firm deemed to be the most highly qualified to provide the services required for the proposed project. Such agency procedures and guidelines shall include a plan to insure that minority and women-owned firms are afforded the maximum practicable opportunity to compete for and obtain public contracts for services. The level of participation by minority and women-owned firms shall be consistent with their general availability within the professional communities involved.

[1981 c 61 § 4.]

NOTES:

Effective date -- 1981 c 61: See note following RCW 39.80.010.

RCW 39.80.050
Procurement of architectural and engineering services -- Contract negotiations.

(1) The agency shall negotiate a contract with the most qualified firm for architectural and engineering services at a price which the agency determines is fair and reasonable to the agency. In making its determination, the agency shall take into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature thereof.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm shall be formally terminated and the agency shall select other firms in accordance with RCW 39.80.040 and continue in accordance with this section until an agreement is reached or the process is terminated.

[1981 c 61 § 5.]

NOTES:

Effective date -- 1981 c 61: See note following RCW 39.80.010.

RCW 39.80.060
Procurement of architectural and engineering services -- Exception for emergency work.

(1) This chapter need not be complied with by any agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved.

(2) Nothing in this chapter shall relieve the contracting authority from complying with applicable law limiting emergency expenditures.

[1981 c 61 § 6.]

NOTES:

Effective date -- 1981 c 61: See note following RCW 39.80.010.

RCW 39.80.070
Contracts, modifications reported to the office of financial management.

Contracts entered into by any state agency for architectural and engineering services, and modifications thereto, shall be reported to the office of financial management on a quarterly basis, in such form as the office of financial management prescribes.

[1993 c 433 § 9.]

RCW 39.80.900
Savings.

Nothing in this chapter shall affect the validity or effect of any contract in existence on January 1, 1982.

[1981 c 61 § 7.]

NOTES:

Effective date -- 1981 c 61: See note following RCW 39.80.010.

RCW 39.80.910
Severability -- 1981 c 61.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1981 c 61 § 8.]

NOTES:

Effective date -- 1981 c 61: See note following RCW 39.80.010.

Chapter 47.36 RCW Traffic Control Devices

RCW SECTIONS

47.36.005 Definitions.

47.36.010 Restoration of United States survey markers.

47.36.020 Traffic control signals.

47.36.030 Traffic control devices -- Specifications to be furnished to counties and cities.

47.36.040 Furnished by department, paid for by counties and cities.

47.36.050 Duty to erect traffic devices on state highways and railroad crossings.

47.36.053 General duty to place and maintain traffic devices on state highways and railroad crossings.

47.36.060 Traffic devices on county roads and city streets.

47.36.070 Failure to erect signs, procedure.

47.36.080 Signs at railroad crossings.

47.36.090 Cooperation with United States on road markers.

47.36.095 Highway designation system -- Signs.

47.36.097 Highway designation system--Filing.

47.36.100 Directional, caution, and stop signs.

47.36.110 Stop signs, "Yield" signs -- Duties of persons using highway.

47.36.120 City limit signs.

47.36.130 Meddling with signs prohibited.

47.36.141 Bus shelters -- Advertising.

47.36.180 Forbidden devices -- Penalty.

47.36.200 Signs or flagmen at thoroughfare work sites -- Penalty.

47.36.250 Dangerous road conditions requiring special tires, chains, or traction equipment -- Signs or devices -- Penalty.

47.36.260 Signs indicating proper lane usage.

47.36.270 Regional shopping center directional signs.

47.36.280 Pavement marking standards.

47.36.290 State park directional signs.

47.36.300 Supplemental directional signs -- Erection by local governments.

47.36.310 Motorist information signs -- Interstate highways -- Contents, placement, fees.

47.36.320 Motorist information signs, tourist-oriented directional signs -- Primary and scenic roads -- Contents, placement, fees.

47.36.325 Motorist information signs -- Private contractors.

47.36.330 Motorist information signs -- Maximum number and distance.

47.36.340 Motorist information signs -- Lodging.

47.36.350 Motorist information signs -- Installation time.

47.36.400 Adopt-a-highway signs.

NOTES:

County roads, signs, signals, guideposts -- Standards: RCW 36.86.040.

Range areas, signs: RCW 16.24.060.

Rules of the road: Chapter 46.61 RCW.

RCW 47.36.005
Definitions.

The definitions set forth in this section apply throughout this chapter.

(1) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(2) "Interstate system" means a state highway that is or becomes part of the national system of interstate and defense highways as described in section 103(d) of Title 23, United States Code.

(3) "Maintain" means to allow to exist.

(4) "Primary system" means a state highway

that is or becomes part of the federal-aid primary system as described in section 103(b) of Title 23, United States Code.

(5) "Scenic system" means (a) a state highway within a public park, federal forest area, public beach, public recreation area, or national monument, (b) a state highway or portion of a highway outside the boundaries of an incorporated city or town designated by the legislature as a part of the scenic system, or (c) a state highway or portion of a highway outside the boundaries of an incorporated city or town designated by the legislature as a part of the scenic and recreational highway system except for the sections of highways specifically excluded in RCW 47.42.025.

(6) "Motorist information sign panel" means a panel, rectangular in shape, located in the same manner as other official traffic signs readable from the main traveled ways, and consisting of:

(a) The words "GAS," "FOOD," "LODGING," "CAMPING," "RECREATION," or "TOURIST ACTIVITIES" and directional information; and

(b) One or more individual business signs mounted on the panel.

(7) "Business sign" means a separately attached sign mounted on the motorist information sign panel or roadside area information panel to show the brand or trademark and name, or both, of the motorist service available on the crossroad at or near the interchange. Nationally, regionally, or locally known commercial symbols or trademarks for service stations, restaurants, and motels shall be used when applicable. The brand or trademark identification symbol used on the business sign shall be reproduced with the colors and general shape consistent with customary use. Messages, trademarks, or brand symbols that interfere with, imitate, or resemble an official warning or regulatory traffic sign, signal, or device are prohibited.

(8) "Roadside area information panel or display" means a panel or display located so as not to be readable from the main traveled way, erected in a safety rest area, scenic overlook, or similar roadside area, for providing motorists with information in the specific interest of the traveling public.

(9) "Tourist-oriented directional sign" means a sign on a motorist information sign panel on the state highway system to provide directional information to a qualified tourist-oriented business, service, or activity.

(10) "Qualified tourist-oriented business" means a lawful cultural, historical, recreational, educational, or entertaining activity or a unique or unusual commercial or nonprofit activity, the major portion of whose income or visitors are derived during its normal business season from motorists not residing in the immediate area of the activity.

(11) "Adopt-a-highway sign" means a sign on a state highway right of way referring to the departments' adopt-a-highway litter control program.

[1999 c 201 § 1; 1991 c 94 § 3.]

RCW 47.36.010
Restoration of United States survey markers.

The department shall fix permanent monuments at the original positions of all United States government monuments at township corners, section corners, quarter section corners, meander corners, and witness markers, as originally established by the United States government survey whenever any such original monuments or markers fall within the right of way of any state highway, and aid in the reestablishment of any such corners, monuments, or markers destroyed or obliterated by the construction of any state highway by permitting inspection of the records in the department's office.

[1984 c 7 § 188; 1961 c 13 § 47.36.010. Prior: 1937 c 53 § 42; RRS § 6400-42; 1931 c 117 § 1; RRS § 6830-1.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 47.36.020
Traffic control signals.

The secretary of transportation shall adopt specifications for a uniform system of traffic control signals consistent with the provisions of this title for use upon public highways within this state. Such uniform system shall correlate with and so far as possible conform to the system current as approved by the American Association of State Highway Officials and as set out in the manual of uniform traffic control devices for streets and highways.

[1977 ex.s. c 151 § 60; 1961 c 13 § 47.36.020. Prior: 1937 c 53 § 50; RRS § 6400-50; prior: 1927 c 309 § 6; RRS § 6362-6.]

RCW 47.36.030
Traffic control devices -- Specifications to be furnished to counties and cities.

The secretary of transportation shall have the power and it shall be its duty to adopt and designate a uniform state standard for the manufacture, display, erection, and location of all signs, signals, signboards, guideposts, and other traffic devices erected or to be erected upon the state highways of the state of Washington for the purpose of furnishing information to persons traveling upon such state highways regarding traffic regulations, directions, distances, points of danger, and conditions requiring caution, and for the purpose of imposing restrictions upon persons operating vehicles thereon. Such signs shall conform as nearly as practicable to the manual of specifications for the manufacture, display, and erection of uniform traffic control devices for streets and highways and all amendments, corrections, and additions thereto. The department of transportation shall prepare plans and specifications of the uniform state standard of traffic devices so adopted and designated, showing the materials, colors, and designs thereof, and shall upon the issuance of any such plans and specifications or revisions thereof and upon request, furnish to the boards of county commissioners and the governing body of any incorporated city or town, a copy thereof. Signs, signals, signboards, guideposts, and other traffic devices erected on county roads shall conform in all respects to the specifications of color, design, and location approved by the secretary. Traffic devices hereafter erected within incorporated cities and towns shall conform to such uniform state standard of traffic devices so far as is practicable. The uniform system must allow local transit authority bus shelters located within the right of way of the state highway system to display and maintain commercial advertisements subject to applicable federal regulations, if any.

[2003 c 198 § 3; 1977 ex.s. c 151 § 61; 1961 c 13 § 47.36.030. Prior: 1945 c 178 § 1, part; 1937 c 53 § 48, part; Rem. Supp. 1945 § 6400-48, part; prior: 1931 c 118 § 1, part; RRS § 6308-1, part; 1923 c 102 § 1, part; 1917 c 78 § 1, part; RRS § 6303, part.]

RCW 47.36.040
Furnished by department, paid for by counties and cities.

The department, upon written request, shall cause to be manufactured, painted, and printed, and shall furnish to any county legislative authority or the governing body of any incorporated city or town, directional signboards, guide boards, and posts of the uniform state standard of color, shape, and design for the erection and maintenance thereof by the county legislative authority or the governing body of any incorporated city or town upon the roads and streets within their respective jurisdictions. The directional signboards, guide boards, and posts shall be manufactured and furnished, as aforesaid, pursuant to written request showing the number of signs desired and the directional or guide information to be printed thereon. The department shall fix a charge for each signboard, guide board, and post manufactured and furnished as aforesaid, based upon the ultimate cost of the operations to the department, and the county legislative authority, from the county road fund, and the governing body of any incorporated city or town, from the street fund, shall pay the charges so fixed for all signboards, guide boards, and posts so received from the department.

[1984 c 7 § 189; 1961 c 13 § 47.36.040. Prior: 1945 c 178 § 1, part; 1937 c 53 § 48, part; Rem. Supp. 1945 § 6400-48, part; prior: 1931 c 118 § 1, part; RRS § 6308-1, part; 1923 c 102 § 1, part; 1917 c 78 § 1, part; RRS § 6303, part.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 47.36.050
Duty to erect traffic devices on state highways and railroad crossings.

The department shall erect and maintain upon every state highway in the state of Washington suitable and proper signs, signals, signboards, guideposts, and other traffic devices according to the adopted and designated state standard of design, erection, and location, and in the manner required by law. The department shall erect and maintain upon all state highways appropriate stop signs, warning signs, and school signs. Any person, firm, corporation, or municipal corporation, building, owning, controlling, or operating a railroad that crosses any state highway at grade shall construct, erect, and maintain at or near each point of crossing, or at such point or points as will meet the approval of the department, a sign of the type known as the saw buck crossing sign with the lettering "railroad crossing" inscribed thereon and also a suitable inscription indicating the number of tracks. The sign must be of standard design that will comply with the plans and specifications furnished by the department. Additional safety devices and signs may be installed at any time when required by the utilities and transportation commission as provided by laws regulating railroad-highway grade crossings.

[1984 c 7 § 190; 1961 c 13 § 47.36.050. Prior: 1937 c 53 § 49; RRS § 6400-49; prior: 1931 c 118 § 1, part; RRS § 6308-1, part; 1923 c 102 § 1, part; RRS § 6303, part; 1919 c 146 § 1; 1917 c 78 § 2; RRS § 6304. FORMER PART OF SECTION: 1937 c 53 § 51 now in RCW 47.36.053.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 47.36.053
General duty to place and maintain traffic devices on state highways and railroad crossings.

The department shall place and maintain such traffic devices conforming to the manual and specifications adopted upon all state highways as it deems necessary to carry out the provisions of this title or to regulate, warn, or guide traffic.

[1984 c 7 § 191; 1961 c 13 § 47.36.053. Prior: 1937 c 53 § 51; RRS § 6400-51. Formerly RCW 47.36.050, part.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 47.36.060
Traffic devices on county roads and city streets.

Local authorities in their respective jurisdictions shall place and maintain such traffic devices upon public highways under their jurisdiction as are necessary to carry out the provisions of the law or local traffic ordinances or to regulate, warn, or guide traffic. Cities and towns, which as used in this section mean cities and towns having a population of over fifteen thousand according to the latest federal census, shall adequately equip with traffic devices, streets that are designated as forming a part of the route of a primary or secondary state highway and streets which constitute connecting roads and secondary state highways to such cities and towns. The traffic devices, signs, signals, and markers shall comply with the uniform state standard for the manufacture, display, direction, and location thereof as designated by the department. The design, location, erection, and operation of traffic devices and traffic control signals upon such city or town streets constituting either the route of a primary or secondary state highway to the city or town or connecting streets to the primary or secondary state highways through the city or town shall be under the direction of the department, and if the city or town fails to comply with any such directions, the department shall provide for the design, location, erection, or operation thereof, and any cost incurred therefor shall be charged to and paid from any funds in the motor vehicle fund of the state that have accrued or may accrue to the credit of the city or town, and the state treasurer shall issue warrants therefor upon vouchers submitted and approved by the department.

[1984 c 7 § 192; 1961 c 13 § 47.36.060. Prior: 1955 c 179 § 4; 1939 c 81 § 1; 1937 c 53 § 52; RRS § 6400-52.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 47.36.070
Failure to erect signs, procedure.

Whenever any person, firm, corporation, municipal corporation, or local authorities responsible for the erection and maintenance, or either, of signs at any railroad crossing or point of danger upon any state highway fails, neglects, or refuses to erect and maintain, or either, the sign or signs as required by law at highway-railroad grade crossings, the utilities and transportation commission shall upon complaint of the department or upon complaint of any party interested, or upon its own motion, enter upon a hearing in the manner provided by law for hearings with respect to railroad-highway grade crossings and make and enforce proper orders for the erection or maintenance of the signs, or both.

[1984 c 7 § 193; 1961 c 13 § 47.36.070. Prior: 1937 c 53 § 54; RRS § 6400-54.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 47.36.080
Signs at railroad crossings.

Wherever it is considered necessary or convenient the department may erect approach and warning signs upon the approach of any state highway to a highway-railroad grade crossing situated at a sufficient distance therefrom to make the warning effective. The department may further provide such additional or other highway-railroad grade crossing markings as may be considered to serve the interests of highway safety.

[1984 c 7 § 194; 1961 c 13 § 47.36.080. Prior: 1937 c 53 § 57; RRS § 6400-57.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 47.36.090
Cooperation with United States on road markers.

Standard federal road markers shall be placed on state highways in the manner requested by the department of transportation of the United States. The department of transportation of the state of Washington is authorized and empowered to cooperate with the several states and with the federal government in promoting, formulating, and adopting a standard and uniform system of numbering or designating state highways of an interstate character and in promoting, formulating, and adopting uniform and standard specifications for the manufacture, display, erection, and location of road markers and signs, for the information, direction, and control of persons traveling upon public highways.

[1984 c 7 § 195; 1961 c 13 § 47.36.090. Prior: 1937 c 53 § 55; RRS § 6400-55; prior: 1925 c 24 § 1; RRS § 6303-1.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 47.36.095
Highway designation system -- Signs.

The department is hereby authorized to establish a continuing system for the designating of state highways and branches or portions thereof, heretofore established by the legislature of the state of Washington, to give designations to such state highways and branches, or portions thereof, in accord with that system, and to install signs in accord therewith on such state highways and branches, or portions thereof. The system may be changed from time to time and shall be extended to new state highways and branches, or portions thereof, as they are hereafter established by the legislature.

[1984 c 7 § 196; 1967 ex.s. c 145 § 43; 1963 c 24 § 1.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

Classification of highways: RCW 47.04.020.

RCW 47.36.097
Highway designation system -- Filing.

Designations or redesignations assigned under the system by the department pursuant to RCW 47.36.095 as each is made, shall be filed with the secretary of state and with the auditor of each county. Thereafter such highways shall be so designated for all purposes.

[1984 c 7 § 197; 1967 ex.s. c 145 § 46.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 47.36.100
Directional, caution, and stop signs.

Directional signs showing distance and direction to points of importance may be placed at all crossings and intersections of primary and secondary state highways. The department may place such directional signs as it deems necessary upon any city streets designated by it as forming a part of the route of any primary or secondary state highway through any incorporated city or town. Caution and warning signs or signals shall be placed wherever practicable on all primary and secondary state highways in a manner provided by law. Stop signs shall be placed, erected, and maintained by the department as follows: Upon all county roads at the point of intersection with any arterial primary or secondary state highway; upon all primary and secondary state highways at the point of intersection with any county road that has been designated by the department as an arterial having preference over the traffic on the state highway; and upon at least one state highway at the intersection of two state highways.

[1984 c 7 § 198; 1967 ex.s. c 145 § 38; 1961 c 13 § 47.36.100. Prior: 1947 c 206 § 1; 1937 c 53 § 56; Rem. Supp. 1947 § 6400-56.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 47.36.110
Stop signs, "Yield" signs -- Duties of persons using highway.

In order to provide safety at intersections on the state highway system, the department may require persons traveling upon any portion of such highway to stop before entering the intersection. For this purpose there may be erected a standard stop sign as prescribed in the state department of transportation's "Manual on Uniform Traffic Control Devices for Streets and Highways." All persons traveling upon the highway shall come to a complete stop at such a sign, and the appearance of any sign so located is sufficient warning to a person that he is required to stop. A person stopping at such a sign shall proceed through that portion of the highway in a careful manner and at a reasonable rate of speed not to exceed twenty miles per hour. It is unlawful to fail to comply with the directions of any such stop sign. When the findings of a traffic engineering study show that the condition of an intersection is such that vehicles may safely enter the major artery without stopping, the department or local authorities in their respective jurisdictions shall install and maintain a "Yield" sign.

[1984 c 7 § 199; 1963 ex.s. c 3 § 49; 1961 c 13 § 47.36.110. Prior: 1955 c 146 § 6; 1937 c 53 § 59; RRS § 6400-59.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

Arterial highways designated -- Stopping on entering: RCW 46.61.195.

RCW 47.36.120
City limit signs.

The department shall erect wherever it deems necessary upon state highways at or near their point of entrance into cities and towns, signs of the standard design designating the city or town limits of the cities or towns.

[1984 c 7 § 200; 1961 c 13 § 47.36.120. Prior: 1937 c 53 § 58; RRS § 6400-58.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 47.36.130
Meddling with signs prohibited.

No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove any official traffic control signal, traffic device or railroad sign or signal, or any inscription, shield, or insignia thereon, or any other part thereof.

[1961 c 13 § 47.36.130. Prior: 1937 c 53 § 53; RRS § 6400-53.]

NOTES:

Defacing, injuring, or destroying signs: RCW 46.61.080.

Imitation of signs: RCW 46.61.075.

Structures concealing signs prohibited: RCW 46.61.075.

Unlawful erection of traffic devices: RCW 46.61.075.

RCW 47.36.141
Bus shelters -- Advertising.

(1) Local transit authority bus shelters within the right of way of the state highway system may display and maintain commercial advertisements subject to applicable federal regulations, if any. Pursuant to RCW 47.12.120, the department may lease state right of way air space to local transit authorities for this purpose, unless there are significant safety concerns regarding the placement of certain advertisements.

(2) Advertisements posted on a local transit authority's bus shelter may not exceed twenty-four square feet on each side of the panel. Panels may not be placed on the roof of the shelter or on the forward side of the shelter facing oncoming traffic.

[2003 c 198 § 1.]

RCW 47.36.180
Forbidden devices -- Penalty.

(1) It is unlawful to erect or maintain at or near a city street, county road, or state highway any structure, sign, or device:

(a) Visible from a city street, county road, or state highway and simulating any directional, warning, or danger sign or light likely to be mistaken for such a sign or bearing any such words as "danger," "stop," "slow," "turn," or similar words, figures, or directions likely to be construed as giving warning to traffic;

(b) Visible from a city street, county road, or state highway and displaying any red, green, blue, or yellow light or intermittent or blinking light or rotating light identical or similar in size, shape, and color to that used on any emergency vehicle or road equipment or any light otherwise likely to be mistaken for a warning, danger, directional, or traffic control signal or sign;

(c) Visible from a city street, county road, or state highway and displaying any lights tending to blind persons operating vehicles upon the highway, city street, or county road, or any glaring light, or any light likely to be mistaken for a vehicle upon the highway or otherwise to be so mistaken as to constitute a danger; or

(d) Visible from a city street, county road, or state highway and flooding or intending to flood or directed across the roadway of the highway with a directed beam or diffused light, whether or not the flood light is shielded against directing its flood beam toward approaching traffic on the highway, city street, or county road.

(2) Any structure or device erected or maintained contrary to the provisions of this section is a public nuisance, and the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city

or town shall notify the owner thereof that it constitutes a public nuisance and must be removed, and if the owner fails to do so, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town may abate the nuisance.

(3) If the owner fails to remove any structure or device within fifteen days after being notified to remove the structure or device as provided in this section, he or she is guilty of a misdemeanor.

[2003 c 53 § 257; 1984 c 7 § 201; 1961 c 13 §47.36.180 . Prior: 1957 c 204 § 1; 1937 c 53 § 62; RRS § 6400-62.]

NOTES:

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 47.36.200
Signs or flagmen at thoroughfare work sites -- Penalty.

(1) When construction, repair, or maintenance work is conducted on or adjacent to a public highway, county road, street, bridge, or other thoroughfare commonly traveled and when the work interferes with the normal and established mode of travel on the highway, county road, street, bridge, or thoroughfare, the location shall be properly posted by prominently displayed signs or flagmen or both. Signs used for posting in such an area shall be consistent with the provisions found in the state of Washington "Manual on Uniform Traffic Control Devices for Streets and Highways" obtainable from the department of transportation.

(2) If the construction, repair, or maintenance work includes or uses grooved pavement, abrupt lane edges, steel plates, or gravel or earth surfaces, the construction, repair, or maintenance zone must be posted with signs stating the condition, as required by current law, and in addition, must warn motorcyclists of the potential hazard. For the purposes of this subsection, the department shall adopt by rule a uniform sign or signs for this purpose, including at least the following language, "MOTORCYCLES USE EXTREME CAUTION."

(3) Any contractor, firm, corporation, political subdivision, or other agency performing such work shall comply with this section.

(4) Each driver of a motor vehicle used in connection with such construction, repair, or maintenance work shall obey traffic signs posted for, and flaggers stationed at such location in the same manner and under the same restrictions as is required for the driver of any other vehicle.

(5) A violation of or a failure to comply with this section is a misdemeanor. Each day upon which there is a violation, or there is a failure to comply, constitutes a separate violation.

[2003 c 355 § 1; 2003 c 53 § 258; 1984 c 7 § 202; 1961 c 13 §47.36.200 . Prior: 1957 c 95 § 1.]

NOTES:

Reviser's note: This section was amended by 2003 c 53 § 258 and by 2003 c 355 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date -- 2003 c 355: "This act takes effect January 1, 2004." [2003 c 355 § 3.]

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 47.36.250
Dangerous road conditions requiring special tires, chains, or traction equipment -- Signs or devices -- Penalty.

(1) If the department or its delegate determines at any time for any part of the public highway system that the unsafe conditions of the roadway require particular tires, tire chains, or traction equipment in addition to or beyond the ordinary pneumatic rubber tires, the department may

establish the following recommendations or requirements with respect to the use of such equipment for all persons using such public highway:

(a) Traction advisory - oversize vehicles prohibited.

(b) Traction advisory - oversize vehicles prohibited. Vehicles over 10,000 GVW - chains required.

(c) Traction advisory - oversize vehicles prohibited. All vehicles - chains required, except all wheel drive.

(2) Any equipment that may be required by this section shall be approved by the state patrol as authorized under RCW 46.37.420.

(3) The department shall place and maintain signs and other traffic control devices on the public highways that indicate the tire, tire chain, or traction equipment recommendation or requirement determined under this section. Such signs or traffic control devices shall in no event prohibit the use of studded tires from November 1st to April 1st, but when the department determines that chains are required and that no other traction equipment will suffice, the requirement is applicable to all types of tires including studded tires. The Washington state patrol or the department may specify different recommendations or requirements for four wheel drive vehicles in gear.

(4) Failure to obey a requirement indicated under this section is a traffic infraction under chapter 46.63 RCW subject to a penalty of five hundred dollars including all statutory assessments.

[2003 c 356 § 1; 2003 c 53 § 259; 1987 c 330 § 747; 1984 c 7 § 203; 1975 1st ex.s. c 255 § 1; 1969 ex.s. c 7 § 2.]

NOTES:

Reviser's note: This section was amended by 2003 c 53 § 259 and by 2003 c 356 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Construction -- Application of rules -- Severability -- 1987 c 330: See notes following RCW 28B.12.050.

Severability -- 1984 c 7: See note following RCW 47.01.141.

Restrictions as to tire equipment, metal studs: RCW 46.37.420.

RCW 47.36.260
Signs indicating proper lane usage.

The department shall erect signs on multilane highways indicating proper lane usage.

[1986 c 93 § 6.]

NOTES:

Keep right except when passing, etc: RCW 46.61.100.

RCW 47.36.270
Regional shopping center directional signs.

Regional shopping center directional signs shall be erected and maintained on state highway right of way if they meet each of the following criteria:

(1) There shall be at least five hundred thousand square feet of retail floor space available for lease at the regional shopping center;

(2) The regional shopping center shall contain at least three major department stores that are owned by a national or regional retail chain organization;

(3) The shopping center shall be located within one mile of the roadway;

(4) The center shall generate at least nine thousand daily one-way vehicle trips to the center;

(5) There is sufficient space available for installation of the directional sign as specified in the Manual On Uniform Traffic Control Devices;

(6) Supplemental follow-through directional

signing is required at key decision points to direct motorists to the shopping center if it is not clearly visible from the point of exit from the main traveled way.

The department shall collect from the regional shopping center a reasonable fee based upon the cost of erection and maintenance of the directional sign.

[1987 c 469 § 1.]

RCW 47.36.280
Pavement marking standards.

The department of transportation shall, by January 1, 1992, adopt minimum pavement marking standards for the area designating the limits of the vehicle driving lane along the right edge for arterials that do not have curbs or sidewalks and are inside urbanized areas. In preparing the standards, the department of transportation shall take into consideration all types of pavement markings, including flat, raised, and recessed markings, and their effect on pedestrians, bicycle, and motor vehicle safety.

The standards shall provide that a jurisdiction shall conform to these requirements, at such time thereafter that it undertakes to (1) renew or install permanent markings on the existing or new roadway, and (2) remove existing nonconforming raised pavement markers at the time the jurisdiction prepares to resurface the roadway, or earlier, at its option. These standards shall be in effect, as provided in this section, unless the legislative authority of the local governmental body finds that special circumstances exist affecting vehicle and pedestrian safety that warrant a variance to the standard.

For the purposes of this section, "urbanized area" means an area designated as such by the United States bureau of census and having a population of more than fifty thousand. Other jurisdictions that install pavement marking material on the right edge of the roadway shall do so in a manner not in conflict with the minimum state standard.

[1991 c 214 § 4.]

RCW 47.36.290
State park directional signs.

Directional signs for state parks within fifteen miles of an interstate highway shall be erected and maintained on the interstate highway by the department despite the existence of additional directional signs on primary or scenic system highways in closer proximity to such state parks.

[1985 c 376 § 7. Formerly RCW 47.42.160.]

NOTES:

Legislative intent -- 1985 c 376: See note following RCW 47.42.020.

RCW 47.36.300
Supplemental directional signs -- Erection by local governments.

(1) The legislative authority of any county, city, or town may erect, or permit the erection of, supplemental directional signs directing motorists to motorist service businesses qualified for motorist information sign panels pursuant to RCW 47.36.310 or 47.36.320 in any location on, or adjacent to, the right of way of any roads or streets within their jurisdiction.

(2) Appropriate fees may be charged to cover the cost of issuing permits, installation, or maintenance of such signs.

(3) Supplemental signs and their locations shall comply with all applicable provisions of this chapter, the Manual on Uniform Traffic Control Devices, and such rules as may be adopted by the department.

[1999 c 201 § 2; 1986 c 114 § 3. Formerly RCW 47.42.052.]

RCW 47.36.310
Motorist information signs -- Interstate highways -- Contents, placement, fees.

The department is authorized to erect and maintain motorist information sign panels within the right of way of the interstate highway system to give the traveling public specific information

as to gas, food, lodging, camping, or tourist-oriented business available on a crossroad at or near an interchange. Motorist information sign panels shall include the words "GAS," "FOOD," "LODGING," "CAMPING," or "TOURIST ACTIVITIES" and directional information and may contain one or more individual business signs maintained on the panel. Motorist information sign panels are authorized within the corporate limits of cities and towns and areas zoned for commercial or industrial uses at locations where there is adequate distance between interchanges to ensure compliance with the Manual on Uniform Traffic Control Devices. The erection and maintenance of motorist information sign panels shall also conform to the Manual on Uniform Traffic Control Devices and rules adopted by the state department of transportation. A motorist service or tourist-oriented business located within one mile of an interstate highway shall not be permitted to display its name, brand, or trademark on a motorist information sign panel unless its owner has first entered into an agreement with the department limiting the height of its on-premise signs at the site of its service installation to not more than fifteen feet higher than the roof of its main building measured to the bottom of the on-premise sign. The restriction for on-premise signs does not apply if the sign is not visible from the highway. The department may, on a case-by-case basis, waive the height restriction when an on-premise sign is visible from the rural interstate system. The department shall charge reasonable fees for the display of individual business signs to defray the costs of their installation and maintenance, and may charge reasonable fees to recover costs for the erection and maintenance of the motorist information sign panels.

[1999 c 201 § 3; 1987 c 469 § 3; 1986 c 114 § 1; 1985 c 142 § 1; 1984 c 7 § 223; 1974 ex.s. c 80 § 2. Formerly RCW 47.42.046.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 47.36.320
Motorist information signs, tourist-oriented directional signs -- Primary and scenic roads -- Contents, placement, fees.

The department is authorized to erect and maintain motorist information sign panels within the right of way of noninterstate highways to give the traveling public specific information as to gas, food, lodging, recreation, or tourist-oriented businesses accessible by way of highways intersecting the noninterstate highway. The motorist information sign panels are permitted only at locations within the corporate limits of cities and towns and areas zoned for commercial or industrial uses where there is adequate distance between interchanges to ensure compliance with the Manual on Uniform Traffic Control Devices. Motorist information sign panels shall include the words "GAS," "FOOD," "LODGING," "RECREATION," or "TOURIST ACTIVITIES" and directional information and may contain one or more individual business signs maintained on the panel. The erection and maintenance of motorist information sign panels along noninterstate highways shall also conform to the Manual on Uniform Traffic Control Devices and rules adopted by the state department of transportation. A motorist service or tourist-oriented business located within one mile of a noninterstate highway shall not be permitted to display its name, brand, or trademark on a motorist information sign panel unless its owner has first entered into an agreement with the department limiting the height of its on-premise signs at the site of its service installation to not more than fifteen feet higher than the roof of its main building measured to the bottom of the on-premise sign.

The department shall adopt rules for the erection and maintenance of tourist-oriented directional signs with the following restrictions:

(1) Where installed, they shall be placed in advance of the "GAS," "FOOD," "LODGING," or "RECREATION" motorist information sign panels previously described in this section;

(2) Signs shall not be placed to direct a motorist to an activity visible from the main traveled roadway;

(3) Premises on which the qualified tourist-oriented business is located must be within fifteen miles of the state highway except as provided in RCW 47.36.330(3) (b) and (c), and necessary supplemental signing on local roads must be provided before the installation of the signs on the state highway.

The department shall charge reasonable fees for the display of individual business signs to defray the costs of their installation and maintenance, and may charge reasonable fees for the erection and maintenance of the motorist information sign panels.

[1999 c 213 § 1; 1999 c 201 § 4; 1986 c 114 § 2; 1985 c 376 § 4; 1985 c 142 § 2; 1984 c 7 § 224; 1974 ex.s. c 80 § 4. Formerly RCW 47.42.047.]

NOTES:

Reviser's note: This section was amended by 1999 c 201 § 4 and by 1999 c 213 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Legislative intent -- 1985 c 376: See note following RCW 47.42.020.

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 47.36.325
Motorist information signs -- Private contractors.

(1) When exercising its authority to erect and maintain motorist information sign panels under RCW 47.36.310 and 47.36.320, the department shall contract with a private contractor for a term of ten years. The contractor selected by the department must be incorporated, and must maintain an office, in this state.

(2) The contractor, at no cost to the department, is solely responsible for marketing, administration, financial management, sign fabrication, installation, and maintenance and is subject to the provisions of this chapter otherwise applicable to the department. The contractor may set the market rate to be charged to businesses advertising on the motorist informational [information] signs.

(3) A contract entered into between the department and a contractor must require the contractor to administer, fabricate, install, and maintain community historical signs authorized for placement by the department at no cost to the department.

(4) In [The] department may set the contractual terms it deems necessary to guarantee the performance of the contract. The department shall periodically monitor the performance of the contract.

(5) In letting a contract under this section the department shall comply with purchasing guidelines adopted by the general services administration.

[2002 c 321 § 1.]

RCW 47.36.330
Motorist information signs -- Maximum number and distance.

(1) Not more than six business signs may be permitted on motorist information sign panels authorized by RCW 47.36.310 and 47.36.320.

(2) The maximum distance that eligible service facilities may be located on either side of an interchange or intersection to qualify for a business sign are as follows:

(a) On interstate highways, gas, food, or lodging activities shall be located within three miles. Camping or tourist-oriented activities shall be within five miles.

(b) On noninterstate highways, gas, food, lodging, recreation, or tourist-oriented activities shall be located within five miles.

(3)(a) If no eligible services are located within the distance limits prescribed in subsection (2) of this section, the distance limits shall be increased until an eligible service of a type being considered is reached, up to a maximum of fifteen miles.

(b) The department may erect and maintain signs on an alternate route that is longer than fifteen miles if it is safer and still provides reasonable and convenient travel to an eligible service.

(c) The department may erect and maintain signs on a route up to a maximum of twenty miles if it qualifies as an eligible service and is

within a distressed area under the criteria of chapter 43.165 RCW.

[1999 c 213 § 2; 1999 c 201 § 5; 1985 c 142 § 3. Formerly RCW 47.42.0475.]

NOTES:

Reviser's note: This section was amended by 1999 c 201 § 5 and by 1999 c 213 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

RCW 47.36.340
Motorist information signs -- Lodging.

To be eligible for placement of a business sign on a motorist information sign panel a lodging activity shall:

(1) Be licensed or approved by the department of social and health services or county health authority;

(2) Provide adequate sleeping and bathroom accommodations available for rental on a daily basis; and

(3) Provide public telephone facilities.

[1999 c 201 § 6; 1985 c 376 § 8. Formerly RCW 47.42.170.]

NOTES:

Legislative intent -- 1985 c 376: See note following RCW 47.42.020.

RCW 47.36.350
Motorist information signs -- Installation time.

The department shall ensure that motorist information sign panels are installed within nine months of receiving the request for installation.

[1999 c 201 § 7; 1991 c 94 § 5.]

RCW 47.36.400
Adopt-a-highway signs.

The department may install adopt-a-highway signs, with the following restrictions:

(1) Signs shall be designed by the department and may only include the words "adopt-a-highway litter control facility" or "adopt-a-highway litter control next XX miles" and the name of the litter control area sponsor. The sponsor's name shall not be displayed more predominantly than the remainder of the sign message. Trademarks or business logos may be displayed;

(2) Signs may be placed along interstate, primary, and scenic system highways;

(3) Signs may be erected at other state-owned transportation facilities in accordance with RCW 47.40.100(1);

(4) For each litter control area designated by the department, one sign may be placed visible to traffic approaching from each direction;

(5) Signs shall be located so as not to detract from official traffic control signs installed pursuant to the manual on uniform traffic control devices adopted by the department;

(6) Signs shall be located so as not to restrict sight distance on approaches to intersections or interchanges;

(7) The department may charge reasonable fees to defray the cost of manufacture, installation, and maintenance of adopt-a-highway signs.

[1998 c 180 § 1; 1991 c 94 § 4.]

Chapter 58.04 RCW Boundaries

RCW SECTIONS

58.04.001 Purpose -- Remedies.

58.04.003 Definition of surveyor.

58.04.007 Affected landowners may resolve dispute over location of a point or line -- Procedures.

58.04.011 Authorization to enter upon any land or waters for purpose of resolving dispute.

58.04.015 Disturbing a survey monument -- Penalty -- Cost.

58.04.020 Suit to establish lost or uncertain boundaries -- Mediation may be required.

58.04.030 Commissioners -- Survey and report.

58.04.040 Proceedings, conduct of -- Costs.

NOTES:

Cities and towns
jurisdiction over adjacent waters (boundaries adjacent to or fronting thereon): RCW 35.21.160.
proposed boundaries required on incorporation: Chapter 35.02 RCW.

Counties
actions to establish boundaries: Chapter 36.05 RCW.
boundaries: Chapter 36.04 RCW.
roads and bridges -- Establishment -- Monuments at government survey corners: RCW 36.86.050.
survey map, field notes and profiles: RCW 36.81.060.

Dike or ditch as common boundary: RCW 85.28.140.

Diking and drainage districts -- Boundaries: Title 85 RCW.

Fences: Chapter 16.60 RCW.

Flood control districts -- Boundaries: Title 86 RCW.

Harbor line commission: RCW 79.90.070, 79.92.010.

Public waterway districts -- Boundaries: Chapter 91.08 RCW.

Reclamation districts of one million acres -- Boundaries to be fixed: RCW 89.30.082.

Relocation of inner harbor line: RCW 79.92.020.

Shellfish cultivation or other aquaculture use -- Survey and boundary markers: RCW 79.96.040.

Soil conservation -- Annexation of territory -- Boundary change: RCW 89.08.180.

Survey of county boundaries: RCW 36.04.400.

Tidelands, shorelands -- Boundary of shorelands when water lowered: RCW 79.94.220.

RCW 58.04.001
Purpose -- Remedies.

The purpose of this chapter is to provide alternative procedures for fixing boundary points or lines when they cannot be determined from the existing public record and landmarks or are otherwise in dispute. This chapter does not impair, modify, or supplant any other remedy available at law or equity.

[1996 c 160 § 1.]

RCW 58.04.003
Definition of surveyor.

As used in this chapter, "surveyor" means every person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW.

[1996 c 160 § 2.]

RCW 58.04.007

Affected landowners may resolve dispute over location of a point or line -- Procedures.

Whenever a point or line determining the boundary between two or more parcels of real property cannot be identified from the existing public record, monuments, and landmarks, or is in dispute, the landowners affected by the determination of the point or line may resolve any dispute and fix the boundary point or line by one of the following procedures:

(1) If all of the affected landowners agree to a description and marking of a point or line determining a boundary, they shall document the agreement in a written instrument, using appropriate legal descriptions and including a survey map, filed in accordance with chapter 58.09 RCW. The written instrument shall be signed and acknowledged by each party in the manner required for a conveyance of real property. The agreement is binding upon the parties, their successors, assigns, heirs and devisees and runs with the land. The agreement shall be recorded with the real estate records in the county or counties in which the affected parcels of real estate or any portion of them is located;

(2) If all of the affected landowners cannot agree to a point or line determining the boundary between two or more parcels of real estate, any one of them may bring suit for determination as provided in RCW 58.04.020.

[1996 c 160 § 3.]

RCW 58.04.011
Authorization to enter upon any land or waters for purpose of resolving dispute.

Any surveyor authorized by the court and the surveyor's employees may, without liability for trespass, enter upon any land or waters and remain there while performing the duties as required in RCW 58.04.001 through 58.04.007 and this section. The persons named in this section may, without liability for trespass, investigate, construct, or place a monument or reference monuments for the position of any land boundary mark or general land office corner or mark and subdivisional corners thereof. Persons entering lands under the authority of RCW 58.04.001 through 58.04.007 and this section must exercise due care not to damage property while on land or waters performing their duties, and are liable for property damage, if any, caused by their negligence or willful misconduct. Where practical, the persons named in this section must announce and identify themselves and their intention before entering upon private property in the performance of their duties.

[1996 c 160 § 4.]

RCW 58.04.015
Disturbing a survey monument -- Penalty -- Cost.

A person who intentionally disturbs a survey monument placed by a surveyor in the performance of the surveyor's duties is guilty of a gross misdemeanor and is liable for the cost of the reestablishment.

[1996 c 160 § 5.]

RCW 58.04.020
Suit to establish lost or uncertain boundaries -- Mediation may be required.

(1) Whenever the boundaries of lands between two or more adjoining proprietors have been lost, or by time, accident or any other cause, have become obscure, or uncertain, and the adjoining proprietors cannot agree to establish the same, one or more of the adjoining proprietors may bring a civil action in equity, in the superior court, for the county in which such lands, or part of them are situated, and that superior court, as a court of equity, may upon the complaint, order such lost or uncertain boundaries to be erected and established and properly marked.

(2) The superior court may order the parties to utilize mediation before the civil action is allowed to proceed.

[1996 c 160 § 8; 1886 p 104 § 1; RRS § 947.]

RCW 58.04.030
Commissioners -- Survey and report.

Said court may, in its discretion, appoint commissioners, not exceeding three competent

and disinterested persons, one or more of whom shall be practical surveyors, residents of the state, which commissioners shall be, before entering upon their duties, duly sworn to perform their said duties faithfully, and the said commissioners shall thereupon, survey, erect, establish and properly mark said boundaries, and return to the court a plat of said survey, and the field notes thereof, together with their report. Said report shall be advisory and either party may except thereto, in the same manner as to a report of referees.

[1886 p 105 § 2; RRS § 948.]

RCW 58.04.040
Proceedings, conduct of -- Costs.

The proceedings shall be conducted as other civil actions, and the court, on final decree, shall apportion the costs of the proceedings equitably, and the cost so apportioned, shall be a lien upon the said lands, severally, as against any transfer or incumbrance made of, or attaching to said lands, from the time of the filing of the complaint: PROVIDED, A notice of lis pendens, is filed in the auditor's office of the proper county, in accordance with law.

[1886 p 105 § 3; RRS § 949.]

Chapter 58.08 RCW Plats – Recording

RCW SECTIONS

58.08.010 Town plat to be recorded -- Requisites.

58.08.015 Effect of donation marked on plat.

58.08.020 Additions.

58.08.030 Plats to be acknowledged -- Certificate that taxes and assessments are paid.

58.08.035 Platted streets, public highways -- Lack of compliance, penalty.

58.08.040 Deposit to cover anticipated taxes and assessments.

58.08.050 Official plat -- Platted streets as public highways.

NOTES:

Cities and towns -- Recording of ordinance and plat on effective date of reduction: RCW 35.16.050.

Record of platted tide and shore lands: RCW 79.94.040.

RCW 58.08.010
Town plat to be recorded -- Requisites.

Any person or persons, who may hereafter lay off any town within this state, shall, previous to the sale of any lots within such town, cause to be recorded in the recorder's office of the county wherein the same may lie, a plat of said town, with the public grounds, (if any there be,) streets, lanes and alleys, with their respective widths properly marked, and the lots regularly numbered, and the size stated on said plat.

[Code 1881 § 2328; 1862 p 431 § 1; 1857 p 25 § 1; RRS § 9288.]

RCW 58.08.015
Effect of donation marked on plat.

Every donation or grant to the public, or to any individual or individuals, religious society or societies, or to any corporation or body politic, marked or noted as such on the plat of the town, or wherein such donation or grant may have been made, shall be considered, to all intents and purposes, as a quitclaim deed to the said donee or donees, grantee or grantees, for his, her or their use, for the purposes intended by the donor or donors, grantor or grantors, as aforesaid.

[Code 1881 § 2329; 1862 p 431 § 2; 1857 p 26 § 2; RRS § 9310. Formerly RCW 58.08.060.]

RCW 58.08.020
Additions.

Every person hereinafter laying off any lots in addition to any town, shall, previous to the sale of such lots, have the same recorded under the like regulations as are provided for recording the original plat of said town, and thereafter the same shall be considered an addition thereto.

[Code 1881 § 2330; 1862 p 431 § 3; 1857 p 26 § 3; RRS § 9289.]

RCW 58.08.030
Plats to be acknowledged -- Certificate that taxes and assessments are paid.

Every person whose duty it may be to comply with the foregoing regulations shall at or before the time of offering such plat for record, acknowledge the same before the auditor of the proper county, or any other officer who is authorized by law to take acknowledgment of deeds, a certificate of which acknowledgment shall be indorsed on or annexed to such plat and recorded therewith. In all cases where any person or persons, corporation or corporations shall desire to file a plat, map, subdivision or replat of any property or shall desire to vacate the whole or any portion of any existing plat, map, subdivision or replat, such person or persons, corporation or corporations must, at the time of filing the same for record or of filing a petition for vacation thereof, file therewith a certificate from the proper officer or officers who may be in charge of the collection of taxes for which the property affected may be liable at that date, that all taxes which have been levied and become chargeable against such property at such date

have been duly paid, satisfied and discharged and must file therewith a certificate from the proper officer or officers, who may be in charge of the collections, that all delinquent assessments for which the property affected may be liable at that date and that all special assessments assessed against said property, which, under the plat filed, become streets, alleys and other public places, have been paid.

[1927 c 188 § 1; 1893 c 129 § 1; Code 1881 § 2331; 1862 p 431 § 4; 1857 p 26 § 4; RRS § 9290.]

NOTES:

Acknowledgments: Chapter 64.08 RCW.

Taxes collected by treasurer -- Dates of delinquency: RCW 84.56.020.

RCW 58.08.035
Platted streets, public highways -- Lack of compliance, penalty.

All streets, lanes and alleys, laid off and recorded in accordance with *the foregoing provisions, shall be considered, to all intents and purposes, public highways, and any person who may lay off any town or any addition to any town in this state, and neglect or refuse to comply with the requisitions aforesaid, shall forfeit and pay for the use of said town, for every month he may delay a compliance with the provisions of this chapter, a sum not exceeding one hundred dollars, nor less than five dollars, to be recovered by civil action, in the name of the treasurer of the county.

[Code 1881 § 2332; 1862 p 431 § 5; 1857 p 26 § 5; no RRS.]

NOTES:

***Reviser's note:** "the foregoing provisions" refer to earlier sections of chapter 178, Code of 1881 codified (as amended) in RCW 58.08.010 through 58.08.030.

Platted streets as public highways: RCW 58.08.050.

Regulation of surveys and plats: RCW 58.10.040.

RCW 58.08.040
Deposit to cover anticipated taxes and assessments.

Prior to any person recording a plat, replat, altered plat, or binding site plan subsequent to May 31st in any year and prior to the date of the collection of taxes in the ensuing year, the person shall deposit with the county treasurer a sum equal to the product of the county assessor's latest valuation on the property less improvements in such subdivision multiplied by the current year's dollar rate increased by twenty-five percent on the property platted. The treasurer's receipt shall be evidence of the payment. The treasurer shall appropriate so much of the deposit as will pay the taxes and assessments on the property when the levy rates are certified by the assessor using the value of the property at the time of filing a plat, replat, altered plat, or binding site plan, and in case the sum deposited is in excess of the amount necessary for the payment of the taxes and assessments, the treasurer shall return, to the party depositing, the amount of excess.

[1997 c 393 § 11; 1994 c 301 § 16; 1991 c 245 § 14; 1989 c 378 § 2; 1973 1st ex.s. c 195 § 74; 1969 ex.s. c 271 § 34; 1963 c 66 § 1; 1909 c 200 § 1; 1907 c 44 § 1; 1893 c 129 § 2; RRS § 9291.]

NOTES:

Severability -- Effective dates and termination dates -- Construction -- 1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability -- 1969 ex.s. c 271: See RCW 58.17.910.

Assessment date: RCW 84.40.020.

Property taxes -- Collection of taxes: Chapter 84.56 RCW.

RCW 58.08.050
Official plat -- Platted streets as public highways.

Whenever any city or town has been surveyed and platted and a plat thereof showing the roads, streets and alleys has been filed in the office of the auditor of the county in which such city or town is located, such plat shall be deemed the official plat of such city, or town, and all roads,

streets and alleys in such city or town as shown by such plat, be and the same are declared public highways: PROVIDING, That nothing herein shall apply to any part of a city or town that has been vacated according to law.

[Code 1881 § 3049; 1877 p 314 § 1; RRS § 9292.]

NOTES:

Platted streets, public highways -- Lack of compliance, penalty: RCW 58.08.035.

Streets and alleys over first class tidelands -- Control of: RCW 35.21.250.

Streets over tidelands declared public highways: RCW 35.21.230.

Chapter 58.09 RCW Surveys – Recording

RCW SECTIONS

58.09.010 Purpose -- Short title.

58.09.020 Definitions.

58.09.030 Compliance with chapter required.

58.09.040 Records of survey -- Contents -- Filing -- Replacing corner, filing record.

58.09.050 Records of survey -- Processing -- Requirements.

58.09.060 Records of survey, contents -- Record of corner, information.

58.09.070 Coordinates -- Map showing control scheme required.

58.09.080 Certificates -- Required -- Forms.

58.09.090 When record of survey not required.

58.09.100 Filing fee.

58.09.110 Duties of county auditor.

58.09.120 Monuments -- Requirements.

58.09.130 Monuments disturbed by construction activities -- Procedure -- Requirements.

58.09.140 Noncompliance grounds for revocation of land surveyor's license.

58.09.900 Severability -- 1973 c 50.

RCW 58.09.010
Purpose -- Short title.

The purpose of this chapter is to provide a method for preserving evidence of land surveys by establishing standards and procedures for monumenting and for recording a public record of the surveys. Its provisions shall be deemed supplementary to existing laws relating to surveys, subdivisions, platting, and boundaries.

This chapter shall be known and may be cited as the "Survey Recording Act".

[1973 c 50 § 1.]

RCW 58.09.020
Definitions.

As used in this chapter:

(1) "Land surveyor" shall mean every person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW, as now or hereafter amended.

(2) "Washington coordinate system" shall mean that system of plane coordinates as established and designated by chapter 58.20 RCW.

(3) "Survey" shall mean the locating and monumenting in accordance with sound principles of land surveying by or under the supervision of a licensed land surveyor, of points or lines which define the exterior boundary or boundaries common to two or more ownerships or which reestablish or restore general land office corners.

[1973 c 50 § 2.]

RCW 58.09.030
Compliance with chapter required.

Any land surveyor engaged in the practice of land surveying may prepare maps, plats, reports, descriptions, or other documentary evidence in connection therewith.

Every map, plat, report, description, or other document issued by a licensed land surveyor shall comply with the provisions of this chapter whenever such map, plat, report, description, or other document is filed as a public record.

It shall be unlawful for any person to sign, stamp, or seal any map, report, plat, description, or other document for filing under this chapter unless he be a land surveyor.

[1973 c 50 § 3.]

RCW 58.09.040
Records of survey -- Contents -- Filing -- Replacing corner, filing record.

After making a survey in conformity with sound principles of land surveying, a land surveyor may file a record of survey with the county auditor in the county or counties wherein the lands surveyed are situated.

(1) It shall be mandatory, within ninety days after the establishment, reestablishment or restoration of a corner on the boundary of two or more ownerships or general land office corner by survey that a land surveyor shall file with the county auditor in the county or counties wherein the lands surveyed are situated a record of such survey, in such form as to meet the requirements of this chapter, which through accepted survey procedures, shall disclose:

(a) The establishment of a corner which materially varies from the description of record;

(b) The establishment of one or more property corners not previously existing;

(c) Evidence that reasonable analysis might result in alternate positions of lines or points as a result of an ambiguity in the description;

(d) The reestablishment of lost government land office corners.

(2) When a licensed land surveyor, while conducting work of a preliminary nature or other activity that does not constitute a survey required by law to be recorded, replaces or restores an existing or obliterated general land office corner, it is mandatory that, within ninety days thereafter, he shall file with the county auditor in the county in which said corner is located a record of the monuments and accessories found or placed at the corner location, in such form as to meet the requirements of this chapter.

[1973 c 50 § 4.]

RCW 58.09.050
Records of survey -- Processing -- Requirements.

The records of survey to be filed under authority of this chapter shall be processed as follows:

(1)(a) The record of survey filed under RCW 58.09.040(1) shall be an original map, eighteen by twenty-four inches, that is legibly drawn in black ink on mylar and is suitable for producing legible prints through scanning, microfilming, or other standard copying procedures.

(b) The following are allowable formats for the original that may be used in lieu of the format set forth under (a) of this subsection:

(i) Photo mylar with original signatures;

(ii) Any standard material as long as the format is compatible with the auditor's recording process and records storage system. This format is only allowed in those counties that are excepted from permanently storing the original document as required in RCW 58.09.110(5);

(iii) An electronic version of the original if the county has the capability to accept a digital signature issued by a licensed certification authority under chapter 19.34 RCW or a certification authority under the rules adopted by the Washington state board of registration for professional engineers and land surveyors, and can import electronic files into an imaging system. The electronic version shall be a standard raster file format acceptable to the county.

A two inch margin on the left edge and a one-half inch margin on other edges of the map shall be provided. The auditor shall reject for recording any maps not suitable for producing legible prints through scanning, microfilming, or other standard copying procedures.

(2) Information required by RCW 58.09.040(2) shall be filed on a standard form eight and one-half inches by fourteen inches as designed and prescribed by the department of natural resources. The auditor shall reject for recording any records of corner information not suitable for producing legible prints through scanning, microfilming, or other standard copying procedures. An electronic version of the standard form may be filed if the county has the capability to accept a digital signature issued by a licensed certification authority under chapter 19.34 RCW or a certification authority under the rules adopted by the Washington state board of registration for professional engineers and land surveyors, and can import electronic files into an imaging system. The electronic version shall be a standard raster file format acceptable to the county.

(3) Two legible prints of each record of survey as required under the provisions of this chapter shall be furnished to the county auditor in the county in which the survey is to be recorded. The auditor, in those counties using imaging systems, may require only the original, and fewer prints, as needed, to meet the requirements of their duties. If any of the prints submitted are not suitable for scanning or microfilming the auditor shall not record the original.

(4) Legibility requirements are set forth in the recorder's checklist under RCW 58.09.110.

[1999 c 39 § 1; 1973 c 50 § 5.]

RCW 58.09.060
Records of survey, contents -- Record of corner, information.

(1) The record of survey as required by RCW 58.09.040(1) shall show:

(a) All monuments found, set, reset, replaced, or removed, describing their kind, size, and location and giving other data relating thereto;

(b) Bearing trees, corner accessories or witness monuments, basis of bearings, bearing and length of lines, scale of map, and north arrow;

(c) Name and legal description of tract in which the survey is located and ties to adjoining surveys of record;

(d) Certificates required by RCW 58.09.080;

(e) Any other data necessary for the intelligent interpretation of the various items and locations of the points, lines and areas shown.

(2) The record of corner information as required by RCW 58.09.040(2) shall be on a standard form showing:

(a) An accurate description and location, in reference to the corner position, of all monuments and accessories found at the corner;

(b) An accurate description and location, in reference to the corner position, of all monuments and accessories placed or replaced at the corner;

(c) Basis of bearings used to describe or locate such monuments or accessories;

(d) Corollary information that may be helpful to relocate or identify the corner position;

(e) Certificate required by RCW 58.09.080.

[1973 c 50 § 6.]

RCW 58.09.070
Coordinates -- Map showing control scheme required.

When coordinates in the Washington coordinate system are shown for points on a record of survey map, the map may not be recorded unless it also shows, or is accompanied by a map showing, the control scheme through which the coordinates were determined from points of known coordinates.

[1973 c 50 § 7.]

RCW 58.09.080
Certificates -- Required -- Forms.

Certificates shall appear on the record of survey map as follows:

SURVEYOR'S CERTIFICATE

This map correctly represents a survey made by me or under my direction in conformance with the requirements of the Survey Recording Act at the request of . . . . . in . . . . . ., 19. . .

Name of Person

(Signed and Sealed) . . . . . .

Certificate No. . . . . .

AUDITOR'S CERTIFICATE

Filed for record this . . . . day of . . . . . ., 19. . . at . . . . .M. in book . . . . of . . . . at page . . . . at the request of . . . . . .

(Signed) . . . . . .
County Auditor

[1973 c 50 § 8.]

RCW 58.09.090
When record of survey not required.

(1) A record of survey is not required of any survey:

(a) When it has been made by a public officer in his official capacity and a reproducible copy thereof has been filed with the county engineer of the county in which the land is located. A map so filed shall be indexed and kept available for public inspection. A record of survey shall not be required of a survey made by the United States bureau of land management. A state agency conducting surveys to carry out the program of the agency shall not be required to use a land surveyor as defined by this chapter;

(b) When it is of a preliminary nature;

(c) When a map is in preparation for recording or shall have been recorded in the county under any local subdivision or platting law or ordinance;

(d) When it is a retracement or resurvey of boundaries of platted lots, tracts, or parcels shown on a filed or recorded and surveyed subdivision plat or filed or recorded and surveyed short subdivision plat in which monuments have been set to mark all corners of the block or street centerline intersections, provided that no discrepancy is found as compared to said recorded information or information revealed on other subsequent public survey map records, such as a record of survey or city or county engineer's map. If a discrepancy is found, that discrepancy must be clearly shown on the face of the required new record of survey. For purposes of this exemption, the term discrepancy shall include:

(i) A nonexisting or displaced original or replacement monument from which the parcel is defined and which nonexistence or displacement has not been previously revealed in the public record;

(ii) A departure from proportionate measure solutions which has not been revealed in the public record;

(iii) The presence of any physical evidence of encroachment or overlap by occupation or improvement; or

(iv) Differences in linear and/or angular measurement between all controlling monuments that would indicate differences in spatial relationship between said controlling monuments in excess of 0.50 feet when compared with all locations of public record: That is, if these measurements agree with any previously existing public record plat or map within the stated tolerance, a discrepancy will not be deemed to exist under this subsection.

(2) Surveys exempted by foregoing subsections of this section shall require filing of a record of corner information pursuant to RCW 58.09.040(2).

[1992 c 106 § 1; 1973 c 50 § 9.]

RCW 58.09.100
Filing fee.

The charge for filing any record of survey and/or record of corner information shall be fixed by the board of county commissioners.

[1973 c 50 § 10.]

RCW 58.09.110
Duties of county auditor.

The auditor shall accept for recording those records of survey and records of corner information that are in compliance with the recorder's checklist as jointly developed by a committee consisting of the survey advisory board and two representatives from the Washington state association of county auditors. This checklist shall be adopted in rules by the department of natural resources.

(1) The auditor shall keep proper indexes of such record of survey by the name of owner and by quarter-quarter section, township, and range, with reference to other legal subdivisions.

(2) The auditor shall keep proper indexes of the record of corner information by section, township, and range.

(3) After entering the recording data on the record of survey and all prints received from the surveyor, the auditor shall send one of the surveyor's prints to the department of natural resources in Olympia, Washington, for incorporation into the statewide survey records repository. However, the county and the department of natural resources may mutually agree to process the original or an electronic version of the original in lieu of the surveyor's print.

(4) After entering the recording data on the record of corner information the auditor shall send a legible copy, suitable for scanning, to the department of natural resources in Olympia, Washington. However, the county and the department of natural resources may mutually agree to process the original or an electronic version of the original in lieu of the copy.

(5) The auditor shall permanently keep the original document filed using storage and handling processes that do not cause excessive deterioration of the document. A county may be excepted from the requirement to permanently store the original document if it has a document scanning, filming, or other process that creates a permanent, archival record that meets or surpasses the standards as adopted in rule by the division of archives and records management in chapter 434-663 or 434-677 WAC. The auditor must be able to provide full-size copies upon request. The auditor shall maintain a copy or image of the original for public reference.

(6) If the county has the capability to accept a digital signature issued by a licensed certification authority under chapter 19.34 RCW or a certification authority under the rules adopted by the Washington state board of registration for professional engineers and land surveyors, and can import electronic files into an imaging system, the auditor may accept for recording electronic versions of the documents required by this chapter. The electronic version shall be a standard raster file format acceptable to the county.

(7) This section does not supersede other existing recording statutes.

[1999 c 39 § 2; 1973 c 50 § 11.]

RCW 58.09.120
Monuments -- Requirements.

Any monument set by a land surveyor to mark or reference a point on a property or land line shall be permanently marked or tagged with the certificate number of the land surveyor setting it. If the monument is set by a public officer it shall be marked by an appropriate official designation.

Monuments set by a land surveyor shall be sufficient in number and durability and shall be efficiently placed so as not to be readily disturbed in order to assure, together with monuments already existing, the perpetuation or reestablishment of any point or line of a survey.

[1973 c 50 § 12.]

RCW 58.09.130
Monuments disturbed by construction activities -- Procedure -- Requirements.

When adequate records exist as to the location of subdivision, tract, street, or highway monuments, such monuments shall be located and referenced by or under the direction of a land surveyor at the time when streets or highways are reconstructed or relocated, or when other construction or activity affects their perpetuation. Whenever practical a suitable monument shall be reset in the surface of the new construction. In all other cases permanent witness monuments shall be set to perpetuate the location of preexisting monuments. Additionally, sufficient controlling monuments shall be retained or replaced in their original positions to enable land lines, property corners, elevations and tract boundaries to be reestablished without requiring surveys originating from monuments other than the ones disturbed by the current construction or activity.

It shall be the responsibility of the governmental agency or others performing construction work or other activity to provide for the monumentation required by this section. It

shall be the duty of every land surveyor to cooperate with such governmental agency or other person in matters of maps, field notes, and other pertinent records. Monuments set to mark the limiting lines of highways, roads, or streets shall not be deemed adequate for this purpose unless specifically noted on the records of the improvement works with direct ties in bearing or azimuth and distance between those and other monuments of record.

[1973 c 50 § 13.]

RCW 58.09.140
Noncompliance grounds for revocation of land surveyor's license.

Noncompliance with any provision of this chapter, as it now exists or may hereafter be amended, shall constitute grounds for revocation of a land surveyor's authorization to practice the profession of land surveying and as further set forth under RCW 18.43.105 and 18.43.110.

[1973 c 50 § 14.]

RCW 58.09.900
Severability -- 1973 c 50.

If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

[1973 c 50 § 15.]

Chapter 58.10 RCW Defective Plats Legalized

RCW SECTIONS

58.10.010 Defective plats legalized -- 1881 Code.

58.10.020 Certified copy of plat as evidence.

58.10.030 Resurvey and corrected plat -- Corrected plat as evidence.

58.10.040 Regulation of surveys and plats.

RCW 58.10.010
Defective plats legalized -- 1881 Code.

All city or town plats or any addition or additions thereto, heretofore made and recorded in the county auditor's office of any county in Washington state, showing lots, blocks, streets, alleys or public grounds, shall be conclusive evidence of the location and size of the lots, blocks and public grounds and the location and width of each and every street or alley marked, laid down or appearing on such plat, and that all the right, title, interest or estate which the person or persons making or recording such plat, or causing the same to be made, or recorded, had at the time of making or recording such plat in or to such streets, alleys or public grounds was thereby dedicated to public use, whether the same was made, executed or acknowledged in accordance with the provisions of the laws of this state in force at the time of making the same or not.

[Code 1881 § 2338; RRS § 9306. Formerly RCW 58.08.080.]

RCW 58.10.020
Certified copy of plat as evidence.

A copy of any city or town plat or addition thereto recorded in the manner provided for in RCW 58.10.010, certified by the county auditor of the county in which the same is recorded to be a true copy of such record and the whole thereof, shall be received in evidence in all the courts of this state, with like effect as the original.

[Code 1881 § 2339; RRS § 9307. Formerly RCW 58.08.070.]

NOTES:

Rules of court: ER 803(a)(14).

Certified copies
of instruments, or transcripts of county commissioners' proceedings: RCW 5.44.070.
of recorded instruments as evidence: RCW 5.44.060.

Copies of business and public records as evidence: RCW 5.46.010.

Instruments to be recorded or filed: RCW 65.04.030.

Photostatic or photographic copies of public or business records admissible in evidence: RCW 40.20.030.

RCW 58.10.030
Resurvey and corrected plat -- Corrected plat as evidence.

Whenever the recorded plat of any city or addition thereto does not definitely show the location or size of lots or blocks, or the location or width of any street or alley in such city or addition, the city council of the city in which the land so platted is located, is hereby authorized and empowered by ordinance and the action of its proper officers, to cause a new and correct survey and plat of such city or addition to be made, and recorded in the office of the county auditor of the county in which such city or addition is located, which corrected plat shall follow the plan of the original survey and plat, so far as the same can be ascertained and followed, and a certificate of the officer or surveyor making the same shall be endorsed thereon, referring to the original plat corrected thereby, and the deficit existing therein, and corrected by such new survey and plat; and the ordinance authorizing the making of such plat shall be recorded in the office of the county auditor of said county and said certificate shall show where said ordinance is recorded, and such plat when so made and recorded, or a copy thereof certified as

provided in RCW 58.10.020 shall be admissible in evidence in all the courts in this state.

[Code 1881 § 2340; RRS § 9308. Formerly RCW 58.12.130.]

RCW 58.10.040
Regulation of surveys and plats.

All incorporated cities in the state of Washington are hereby authorized and empowered to regulate and prescribe the manner and form of making any future survey or plat of lands within their respective limits and enforce such regulations by a fine of not exceeding one hundred dollars, to be recovered by and in the name of such city, or imprisonment not exceeding twenty days for each violation of any ordinance regulating such survey and platting: PROVIDED, That nothing in this chapter shall be construed so as to apply to additions to towns in which no lots have been sold.

[Code 1881 § 2341; RRS § 9309. Formerly RCW 58.12.140.]

NOTES:

Platted streets, public highways -- Lack of compliance, penalty: RCW 58.08.035.

Chapter 58.17 RCW Plats -- Subdivisions – Dedications

RCW SECTIONS

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58.17.330 Hearing examiner system -- Adoption authorized -- Procedures -- Decisions.

58.17.900 Validation of existing ordinances and resolutions.

58.17.910 Severability -- 1969 ex.s. c 271.

58.17.920 Effective date and application of 1974 ex.s. c 134.

NOTES:

Fees for filing subdivision plats and short plats: RCW 58.24.070.

RCW 58.17.010
Purpose.

The legislature finds that the process by which land is divided is a matter of state concern and should be administered in a uniform manner by cities, towns, and counties throughout the state. The purpose of this chapter is to regulate the subdivision of land and to promote the public health, safety and general welfare in accordance with standards established by the state to prevent the overcrowding of land; to lessen congestion in the streets and highways; to promote effective use of land; to promote safe and convenient travel by the public on streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage, parks and recreation areas, sites for schools and schoolgrounds and other public requirements; to provide for proper ingress and egress; to provide for the expeditious review and approval of proposed subdivisions which conform to zoning standards and local plans and policies; to adequately provide for the housing and commercial needs of the citizens of the state; and to require uniform monumenting of land subdivisions and conveyancing by accurate legal description.

[1981 c 293 § 1; 1969 ex.s. c 271 § 1.]

NOTES:

Reviser's note: Throughout this chapter, the phrase "this act" has been changed to "this chapter." "This act" [1969 ex.s. c 271] also consists of amendments to RCW 58.08.040 and 58.24.040 and the repeal of RCW 58.16.010 through 58.16.110.

Severability -- 1981 c 293: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 293 § 16.]

RCW 58.17.020
Definitions.

As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(1) "Subdivision" is the division or redivision of land into five or more lots, tracts, parcels,

sites, or divisions for the purpose of sale, lease, or transfer of ownership, except as provided in subsection (6) of this section.

(2) "Plat" is a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys, or other divisions and dedications.

(3) "Dedication" is the deliberate appropriation of land by an owner for any general and public uses, reserving to himself or herself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final plat or short plat showing the dedication thereon; and, the acceptance by the public shall be evidenced by the approval of such plat for filing by the appropriate governmental unit.

A dedication of an area of less than two acres for use as a public park may include a designation of a name for the park, in honor of a deceased individual of good character.

(4) "Preliminary plat" is a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision consistent with the requirements of this chapter. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision.

(5) "Final plat" is the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in this chapter and in local regulations adopted under this chapter.

(6) "Short subdivision" is the division or redivision of land into four or fewer lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership. However, the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine. The legislative authority of any county planning under RCW 36.70A.040 that has adopted a comprehensive plan and development regulations in compliance with chapter 36.70A RCW may by ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine in any urban growth area.

(7) "Binding site plan" means a drawing to a scale specified by local ordinance which: (a) Identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations; (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the local government body having authority to approve the site plan; and (c) contains provisions making any development be in conformity with the site plan.

(8) "Short plat" is the map or representation of a short subdivision.

(9) "Lot" is a fractional part of divided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts or parcels.

(10) "Block" is a group of lots, tracts, or parcels within well defined and fixed boundaries.

(11) "County treasurer" shall be as defined in chapter 36.29 RCW or the office or person assigned such duties under a county charter.

(12) "County auditor" shall be as defined in chapter 36.22 RCW or the office or person assigned such duties under a county charter.

(13) "County road engineer" shall be as defined in chapter 36.40 RCW or the office or person assigned such duties under a county charter.

(14) "Planning commission" means that body as defined in chapter 36.70, 35.63, or 35A.63 RCW as designated by the legislative body to perform a planning function or that body assigned such duties and responsibilities under a city or county charter.

(15) "County commissioner" shall be as defined in chapter 36.32 RCW or the body assigned such duties under a county charter.

[2002 c 262 § 1; 1995 c 32 § 2; 1983 c 121 § 1. Prior: 1981 c 293 § 2; 1981 c 292 § 1; 1969 ex.s. c 271 § 2.]

NOTES:

Severability -- 1981 c 293: See note following RCW 58.17.010.

Camping resort contracts -- Nonapplicability of certain laws to -- Resort not subdivision except under city, county powers: RCW 19.105.510.

RCW 58.17.030
Subdivisions to comply with chapter, local regulations.

Every subdivision shall comply with the provisions of this chapter. Every short subdivision as defined in this chapter shall comply with the provisions of any local regulation adopted pursuant to RCW 58.17.060.

[1974 ex.s. c 134 § 1; 1969 ex.s. c 271 § 3.]

RCW 58.17.033
Proposed division of land -- Consideration of application for preliminary plat or short plat approval -- Requirements defined by local ordinance.

(1) A proposed division of land, as defined in RCW 58.17.020, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official.

(2) The requirements for a fully completed application shall be defined by local ordinance.

(3) The limitations imposed by this section shall not restrict conditions imposed under chapter 43.21C RCW.

[1987 c 104 § 2.]

RCW 58.17.035
Alternative method of land division -- Binding site plans.

A city, town, or county may adopt by ordinance procedures for the divisions of land by use of a binding site plan as an alternative to the procedures required by this chapter. The ordinance shall be limited and only apply to one or more of the following: (1) The use of a binding site plan to divisions for sale or lease of commercially or industrially zoned property as provided in RCW 58.17.040(4); (2) divisions of property for lease as provided for in RCW 58.17.040(5); and (3) divisions of property as provided for in RCW 58.17.040(7). Such ordinance may apply the same or different requirements and procedures to each of the three types of divisions and shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan.

The ordinance shall provide that after approval of the general binding site plan for industrial or commercial divisions subject to a binding site plan, the approval for improvements and finalization of specific individual commercial or industrial lots shall be done by administrative approval.

The binding site plan, after approval, and/or when specific lots are administratively approved, shall be filed with the county auditor with a record of survey. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. The number of lots, tracts, parcels, sites, or divisions shall not exceed the number of lots allowed by the local zoning ordinances.

All provisions, conditions, and requirements of the binding site plan shall be legally enforceable on the purchaser or any other person acquiring a lease or other ownership interest of any lot, parcel, or tract created pursuant to the binding site plan.

Any sale, transfer, or lease of any lot, tract, or parcel created pursuant to the binding site plan, that does not conform to the requirements of the binding site plan or without binding site plan approval, shall be considered a violation of chapter 58.17 RCW and shall be restrained by injunctive action and be illegal as provided in chapter 58.17 RCW.

[1987 c 354 § 2.]

RCW 58.17.040
Chapter inapplicable, when.

The provisions of this chapter shall not apply to:

(1) Cemeteries and other burial plots while used for that purpose;

(2) Divisions of land into lots or tracts each of which is one-one hundred twenty-eighth of a section of land or larger, or five acres or larger if the land is not capable of description as a fraction of a section of land, unless the governing authority of the city, town, or county in which the land is situated shall have adopted a subdivision ordinance requiring plat approval of such divisions: PROVIDED, That for purposes of computing the size of any lot under this item which borders on a street or road, the lot size shall be expanded to include that area which would be bounded by the center line of the road or street and the side lot lines of the lot running perpendicular to such center line;

(3) Divisions made by testamentary provisions, or the laws of descent;

(4) Divisions of land into lots or tracts classified for industrial or commercial use when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;

(5) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;

(6) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site;

(7) Divisions of land into lots or tracts if: (a) Such division is the result of subjecting a portion of a parcel or tract of land to either chapter 64.32 or 64.34 RCW subsequent to the recording of a binding site plan for all such land; (b) the improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest; (c) a city, town, or county has approved the binding site plan for all such land; (d) such approved binding site plan is recorded in the county or counties in which such land is located; and (e) the binding site plan contains thereon the following statement: "All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein." The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either chapter 64.32 or 64.34 RCW. A site plan shall be deemed to have been approved if the site plan was approved by a city, town, or county: (i) In connection with the final approval of a subdivision plat or planned unit development with respect to all of such land; or (ii) in connection with the issuance of building permits or final certificates of occupancy with respect to all of such land; or (iii) if not approved pursuant to (i) and (ii) of this subsection (7)(e), then pursuant to such other procedures as such city, town, or county may have established for the approval of a binding site plan;

(8) A division for the purpose of leasing land for facilities providing personal wireless services while used for that purpose. "Personal wireless services" means any federally licensed personal wireless service. "Facilities" means unstaffed facilities that are used for the transmission or reception, or both, of wireless communication services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures; and

(9) A division of land into lots or tracts of less than three acres that is recorded in accordance with chapter 58.09 RCW and is used or to be used for the purpose of establishing a site for construction and operation of consumer-owned or investor-owned electric utility facilities. For purposes of this subsection, "electric utility facilities" means unstaffed facilities, except for the presence of security personnel, that are used for or in connection with or to facilitate the transmission, distribution, sale, or furnishing of electricity including, but not limited to, electric power substations. This subsection does not exempt a division of land from the zoning and permitting laws and regulations of cities, towns, counties, and municipal corporations. Furthermore, this subsection only applies to electric utility facilities that will be placed into service to meet the electrical needs of a utility's existing and new customers. New customers are defined as electric service locations not already in existence as of the date that electric utility facilities subject to the provisions of this subsection are planned and constructed.

[2004 c 239 § 1; 2002 c 44 § 1; 1992 c 220 § 27; 1989 c 43 § 4-123. Prior: 1987 c 354 § 1; 1987 c 108 § 1; 1983 c 121 § 2; prior: 1981 c 293 § 3; 1981 c 292 § 2; 1974 ex.s. c 134 § 2; 1969 ex.s. c 271 § 4.]

NOTES:

Severability -- Effective date -- 1989 c 43: See RCW 64.34.920 and 64.34.930.

Severability -- 1981 c 293: See note following RCW 58.17.010.

RCW 58.17.050
Assessors plat -- Compliance.

An assessors plat made in accordance with RCW 58.18.010 need not comply with any of the requirements of this chapter except RCW 58.17.240 and 58.17.250.

[1969 ex.s. c 271 § 5.]

RCW 58.17.060
Short plats and short subdivisions -- Summary approval -- Regulations -- Requirements.

(1) The legislative body of a city, town, or county shall adopt regulations and procedures, and appoint administrative personnel for the summary approval of short plats and short subdivisions or alteration or vacation thereof. When an alteration or vacation involves a public dedication, the alteration or vacation shall be processed as provided in RCW 58.17.212 or 58.17.215. Such regulations shall be adopted by ordinance and shall provide that a short plat and short subdivision may be approved only if written findings that are appropriate, as provided in RCW 58.17.110, are made by the administrative personnel, and may contain wholly different requirements than those governing the approval of preliminary and final plats of subdivisions and may require surveys and monumentations and shall require filing of a short plat, or alteration or vacation thereof, for record in the office of the county auditor: PROVIDED, That such regulations must contain a requirement that land in short subdivisions may not be further divided in any manner within a period of five years without the filing of a final plat, except that when the short plat contains fewer than four parcels, nothing in this section shall prevent the owner who filed the short plat from filing an alteration within the five-year period to create up to a total of four lots within the original short plat boundaries: PROVIDED FURTHER, That such regulations are not required to contain a penalty clause as provided in RCW 36.32.120 and may provide for wholly injunctive relief.

An ordinance requiring a survey shall require that the survey be completed and filed with the application for approval of the short subdivision.

(2) Cities, towns, and counties shall include in their short plat regulations and procedures pursuant to subsection (1) of this section provisions for considering sidewalks and other planning features that assure safe walking conditions for students who walk to and from school.

[1990 1st ex.s. c 17 § 51; 1989 c 330 § 2; 1987 c 354 § 5; 1987 c 92 § 1; 1974 ex.s. c 134 § 3; 1969 ex.s. c 271 § 6.]

NOTES:

Severability -- Part, section headings not law -- 1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

RCW 58.17.065
Short plats and short subdivisions -- Filing.

Each short plat and short subdivision granted pursuant to local regulations after July 1, 1974, shall be filed with the county auditor and shall not be deemed "approved" until so filed.

[1974 ex.s. c 134 § 12.]

RCW 58.17.070
Preliminary plat of subdivisions and dedications -- Submission for approval -- Procedure.

A preliminary plat of proposed subdivisions and dedications of land shall be submitted for approval to the legislative body of the city, town, or county within which the plat is situated.

Unless an applicant for preliminary plat approval requests otherwise, a preliminary plat shall be processed simultaneously with applications for rezones, variances, planned unit developments, site plan approvals, and similar quasi-judicial or administrative actions to the extent that procedural requirements applicable to these actions permit simultaneous processing.

[1981 c 293 § 4; 1969 ex.s. c 271 § 7.]

NOTES:

Severability -- 1981 c 293: See note following RCW 58.17.010.

RCW 58.17.080
Filing of preliminary plat -- Notice.

Notice of the filing of a preliminary plat of a proposed subdivision adjacent to or within one mile of the municipal boundaries of a city or town, or which contemplates the use of any city or town utilities shall be given to the appropriate city or town authorities. Any notice required by this chapter shall include the hour and location of the hearing and a description of the property to be platted. Notice of the filing of a preliminary plat of a proposed subdivision located in a city or town and adjoining the municipal boundaries thereof shall be given to appropriate county officials. Notice of the filing of a preliminary plat of a proposed subdivision located adjacent to the right-of-way of a state highway or within two miles of the boundary of a state or municipal airport shall be given to the secretary of transportation. In the case of notification to the secretary of transportation, the secretary shall respond to the notifying authority within fifteen days of such notice as to the effect that the proposed subdivision will have on the state highway or the state or municipal airport.

[1982 c 23 § 1; 1969 ex.s. c 271 § 8.]

RCW 58.17.090
Notice of public hearing.

(1) Upon receipt of an application for preliminary plat approval the administrative officer charged by ordinance with responsibility for administration of regulations pertaining to platting and subdivisions shall provide public notice and set a date for a public hearing. Except as provided in RCW 36.70B.110, at a minimum, notice of the hearing shall be given in the following manner:

(a) Notice shall be published not less than ten days prior to the hearing in a newspaper of general circulation within the county and a newspaper of general circulation in the area where the real property which is proposed to be subdivided is located; and

(b) Special notice of the hearing shall be given to adjacent landowners by any other reasonable method local authorities deem necessary. Adjacent landowners are the owners of real property, as shown by the records of the county assessor, located within three hundred feet of any portion of the boundary of the proposed subdivision. If the owner of the real property which is proposed to be subdivided owns another parcel or parcels of real property which lie adjacent to the real property proposed to be subdivided, notice under this subsection (1)(b) shall be given to owners of real property located within three hundred feet of any portion of the boundaries of such adjacently located parcels of real property owned by the owner of

the real property proposed to be subdivided.

(2) All hearings shall be public. All hearing notices shall include a description of the location of the proposed subdivision. The description may be in the form of either a vicinity location sketch or a written description other than a legal description.

[1995 c 347 § 426; 1981 c 293 § 5; 1974 ex.s. c 134 § 4; 1969 ex.s. c 271 § 9.]

NOTES:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

Severability -- 1981 c 293: See note following RCW 58.17.010.

RCW 58.17.092
Public notice -- Identification of affected property.

Any notice made under chapter 58.17 or 36.70B RCW that identifies affected property may identify this affected property without using a legal description of the property including, but not limited to, identification by an address, written description, vicinity sketch, or other reasonable means.

[1995 c 347 § 427; 1988 c 168 § 12.]

NOTES:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

RCW 58.17.095
Ordinance may authorize administrative review of preliminary plat without public hearing.

A county, city, or town may adopt an ordinance providing for the administrative review of a preliminary plat without a public hearing by adopting an ordinance providing for such administrative review. The ordinance may specify a threshold number of lots in a subdivision above which a public hearing must be held, and may specify other factors which necessitate the holding of a public hearing. The administrative review process shall include the following minimum conditions:

(1) The notice requirements of RCW 58.17.090 shall be followed, except that the publication shall be made within ten days of the filing of the application. Additionally, at least ten days after the filing of the application notice both shall be: (a) Posted on or around the land proposed to be subdivided in at least five conspicuous places designed to attract public awareness of the proposal; and (b) mailed to the owner of each lot or parcel of property located within at least three hundred feet of the site. The applicant shall provide the county, city, or town with a list of such property owners and their addresses. The notice shall include notification that no public hearing will be held on the application, except as provided by this section. The notice shall set out the procedures and time limitations for persons to require a public hearing and make comments.

(2) Any person shall have a period of twenty days from the date of the notice to comment upon the proposed preliminary plat. All comments received shall be provided to the applicant. The applicant has seven days from receipt of the comments to respond thereto.

(3) A public hearing on the proposed subdivision shall be held if any person files a request for a hearing with the county, city, or town within twenty-one days of the publishing of such notice. If such a hearing is requested, notice requirements for the public hearing shall be in conformance with RCW 58.17.090, and the ninety-day period for approval or disapproval of the proposed subdivision provided for in RCW 58.17.140 shall commence with the date of the filing of the request for a public hearing. Any hearing ordered under this subsection shall be conducted by the planning commission or hearings officer as required by county or city ordinance.

(4) On its own initiative within twenty-one days of the filing of the request for approval of the subdivision, the governing body, or a designated employee or official, of the county, city, or town, shall be authorized to cause a public hearing to be held on the proposed

subdivision within ninety days of the filing of the request for the subdivision.

(5) If the public hearing is waived as provided in this section, the planning commission or planning agency shall complete the review of the proposed preliminary plat and transmit its recommendation to the legislative body as provided in RCW 58.17.100.

[1986 c 233 § 1.]

NOTES:

Applicability -- 1986 c 233: "This act does not affect the provisions of RCW 82.02.020." [1986 c 233 § 3.]

RCW 58.17.100
Review of preliminary plats by planning commission or agency -- Recommendation -- Change by legislative body -- Procedure -- Approval.

If a city, town or county has established a planning commission or planning agency in accordance with state law or local charter, such commission or agency shall review all preliminary plats and make recommendations thereon to the city, town or county legislative body to assure conformance of the proposed subdivision to the general purposes of the comprehensive plan and to planning standards and specifications as adopted by the city, town or county. Reports of the planning commission or agency shall be advisory only: PROVIDED, That the legislative body of the city, town or county may, by ordinance, assign to such commission or agency, or any department official or group of officials, such administrative functions, powers and duties as may be appropriate, including the holding of hearings, and recommendations for approval or disapproval of preliminary plats of proposed subdivisions.

Such recommendation shall be submitted to the legislative body not later than fourteen days following action by the hearing body. Upon receipt of the recommendation on any preliminary plat the legislative body shall at its next public meeting set the date for the public meeting where it shall consider the recommendations of the hearing body and may adopt or reject the recommendations of such hearing body based on the record established at the public hearing. If, after considering the matter at a public meeting, the legislative body deems a change in the planning commission's or planning agency's recommendation approving or disapproving any preliminary plat is necessary, the legislative body shall adopt its own recommendations and approve or disapprove the preliminary plat.

Every decision or recommendation made under this section shall be in writing and shall include findings of fact and conclusions to support the decision or recommendation.

A record of all public meetings and public hearings shall be kept by the appropriate city, town or county authority and shall be open to public inspection.

Sole authority to approve final plats, and to adopt or amend platting ordinances shall reside in the legislative bodies.

[1995 c 347 § 428; 1981 c 293 § 6; 1969 ex.s. c 271 § 10.]

NOTES:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

Severability -- 1981 c 293: See note following RCW 58.17.010.

RCW 58.17.110
Approval or disapproval of subdivision and dedication -- Factors to be considered -- Conditions for approval -- Finding -- Release from damages.

(1) The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine:
(a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and shall consider all other

relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.

(2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. No dedication, provision of public improvements, or impact fees imposed under RCW 82.02.050 through 82.02.090 shall be allowed that constitutes an unconstitutional taking of private property. The legislative body shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners.

(3) If the preliminary plat includes a dedication of a public park with an area of less than two acres and the donor has designated that the park be named in honor of a deceased individual of good character, the city, town, or county legislative body must adopt the designated name.

[1995 c 32 § 3; 1990 1st ex.s. c 17 § 52; 1989 c 330 § 3; 1974 ex.s. c 134 § 5; 1969 ex.s. c 271 § 11.]

NOTES:

Severability -- Part, section headings not law -- 1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

RCW 58.17.120
Disapproval due to flood, inundation or swamp conditions -- Improvements -- Approval conditions.

The city, town, or county legislative body shall consider the physical characteristics of a proposed subdivision site and may disapprove a proposed plat because of flood, inundation, or swamp conditions. Construction of protective improvements may be required as a condition of approval, and such improvements shall be noted on the final plat.

No plat shall be approved by any city, town, or county legislative authority covering any land situated in a flood control zone as provided in chapter 86.16 RCW without the prior written approval of the department of ecology of the state of Washington.

[1974 ex.s. c 134 § 6; 1969 ex.s. c 271 § 12.]

RCW 58.17.130
Bond in lieu of actual construction of improvements prior to approval of final plat -- Bond or security to assure successful operation of improvements.

Local regulations shall provide that in lieu of the completion of the actual construction of any required improvements prior to the approval of a final plat, the city, town, or county legislative body may accept a bond, in an amount and with surety and conditions satisfactory to it, or other secure method, providing for and securing to the municipality the actual construction and installation of such improvements within a period specified by the city, town, or county legislative body and expressed in the bonds. In addition, local regulations may provide for methods of security, including the posting of a bond securing to the municipality the successful operation of improvements for an appropriate period of time up to two years after final approval. The municipality is hereby granted the power to enforce bonds authorized under this section by all appropriate legal and equitable remedies. Such local regulations may provide

that the improvements such as structures, sewers, and water systems shall be designed and certified by or under the supervision of a registered civil engineer prior to the acceptance of such improvements.

[1974 ex.s. c 134 § 7; 1969 ex.s. c 271 § 13.]

RCW 58.17.140
Time limitation for approval or disapproval of plats -- Extensions.

Preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within ninety days from date of filing thereof unless the applicant consents to an extension of such time period or the ninety day limitation is extended to include up to twenty-one days as specified under RCW 58.17.095(3): PROVIDED, That if an environmental impact statement is required as provided in RCW 43.21C.030, the ninety day period shall not include the time spent preparing and circulating the environmental impact statement by the local government agency. Final plats and short plats shall be approved, disapproved, or returned to the applicant within thirty days from the date of filing thereof, unless the applicant consents to an extension of such time period. A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within five years of the date of preliminary plat approval. Nothing contained in this section shall act to prevent any city, town, or county from adopting by ordinance procedures which would allow extensions of time that may or may not contain additional or altered conditions and requirements.

[1995 c 68 § 1; 1986 c 233 § 2; 1983 c 121 § 3; 1981 c 293 § 7; 1974 ex.s. c 134 § 8; 1969 ex.s. c 271 § 14.]

NOTES:

Applicability -- 1986 c 233: See note following RCW 58.17.095.

Severability -- 1981 c 293: See note following RCW 58.17.010.

RCW 58.17.150
Recommendations of certain agencies to accompany plats submitted for final approval.

Each preliminary plat submitted for final approval of the legislative body shall be accompanied by the following agencies' recommendations for approval or disapproval:

(1) Local health department or other agency furnishing sewage disposal and supplying water as to the adequacy of the proposed means of sewage disposal and water supply;

(2) Local planning agency or commission, charged with the responsibility of reviewing plats and subdivisions, as to compliance with all terms of the preliminary approval of the proposed plat subdivision or dedication;

(3) City, town or county engineer.

Except as provided in RCW 58.17.140, an agency or person issuing a recommendation for subsequent approval under subsections (1) and (3) of this section shall not modify the terms of its recommendations without the consent of the applicant.

[1983 c 121 § 4; 1981 c 293 § 8; 1969 ex.s. c 271 § 15.]

NOTES:

Severability -- 1981 c 293: See note following RCW 58.17.010.

RCW 58.17.155
Short subdivision adjacent to state highway -- Notice to department of transportation.

Whenever a city, town, or county receives an application for the approval of a short plat of a short subdivision that is located adjacent to the right of way of a state highway, the responsible administrator shall give written notice of the application, including a legal description of the short subdivision and a location map, to the department of transportation. The department shall, within fourteen days after receiving the notice, submit to the responsible administrator who furnished the notice a statement with any information that the department deems to be

relevant about the effect of the proposed short subdivision upon the legal access to the state highway, the traffic carrying capacity of the state highway and the safety of the users of the state highway.

[1984 c 47 § 1.]

RCW 58.17.160
Requirements for each plat or replat filed for record.

Each and every plat, or replat, of any property filed for record shall:

(1) Contain a statement of approval from the city, town or county licensed road engineer or by a licensed engineer acting on behalf of the city, town or county as to the layout of streets, alleys and other rights of way, design of bridges, sewage and water systems, and other structures;

(2) Be accompanied by a complete survey of the section or sections in which the plat or replat is located made to surveying standards adopted by the division of engineering services of the department of natural resources pursuant to RCW 58.24.040.

(3) Be acknowledged by the person filing the plat before the auditor of the county in which the land is located, or any other officer who is authorized by law to take acknowledgment of deeds, and a certificate of said acknowledgment shall be enclosed or annexed to such plat and recorded therewith.

(4) Contain a certification from the proper officer or officers in charge of tax collections that all taxes and delinquent assessments for which the property may be liable as of the date of certification have been duly paid, satisfied or discharged.

No engineer who is connected in any way with the subdividing and platting of the land for which subdivision approval is sought, shall examine and approve such plats on behalf of any city, town or county.

[1985 c 99 § 1; 1969 ex.s. c 271 § 16.]

RCW 58.17.165

Certificate giving description and statement of owners must accompany final plat -- Dedication, certificate requirements if plat contains -- Waiver.

Every final plat or short plat of a subdivision or short subdivision filed for record must contain a certificate giving a full and correct description of the lands divided as they appear on the plat or short plat, including a statement that the subdivision or short subdivision has been made with the free consent and in accordance with the desires of the owner or owners.

If the plat or short plat is subject to a dedication, the certificate or a separate written instrument shall contain the dedication of all streets and other areas to the public, and individual or individuals, religious society or societies or to any corporation, public or private as shown on the plat or short plat and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of said road. Said certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the lands subdivided and recorded as part of the final plat.

Every plat and short plat containing a dedication filed for record must be accompanied by a title report confirming that the title of the lands as described and shown on said plat is in the name of the owners signing the certificate or instrument of dedication.

An offer of dedication may include a waiver of right of direct access to any street from any property, and if the dedication is accepted, any such waiver is effective. Such waiver may be required by local authorities as a condition of approval. Roads not dedicated to the public must be clearly marked on the face of the plat. Any dedication, donation or grant as shown on the face of the plat shall be considered to all intents and purposes, as a quitclaim deed to the said donee or donees, grantee or grantees for his, her or their use for the purpose intended by the donors or grantors as aforesaid.

[1981 c 293 § 9; 1969 ex.s. c 271 § 30.]

NOTES:

Severability -- 1981 c 293: See note following RCW 58.17.010.

RCW 58.17.170
Written approval of subdivision -- Original of final plat to be filed -- Copies.

When the legislative body of the city, town or county finds that the subdivision proposed for final plat approval conforms to all terms of the preliminary plat approval, and that said subdivision meets the requirements of this chapter, other applicable state laws, and any local ordinances adopted under this chapter which were in effect at the time of preliminary plat approval, it shall suitably inscribe and execute its written approval on the face of the plat. The original of said final plat shall be filed for record with the county auditor. One reproducible copy shall be furnished to the city, town or county engineer. One paper copy shall be filed with the county assessor. Paper copies shall be provided to such other agencies as may be required by ordinance. Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of five years from the date of filing. A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of five years after final plat approval unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

[1981 c 293 § 10; 1969 ex.s. c 271 § 17.]

NOTES:

Severability -- 1981 c 293: See note following RCW 58.17.010.

RCW 58.17.180
Review of decision.

Any decision approving or disapproving any plat shall be reviewable under chapter 36.70C RCW.

[1995 c 347 § 717; 1983 c 121 § 5; 1969 ex.s. c 271 § 18.]

NOTES:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

RCW 58.17.190
Approval of plat required before filing -- Procedure when unapproved plat filed.

The county auditor shall refuse to accept any plat for filing until approval of the plat has been given by the appropriate legislative body. Should a plat or dedication be filed without such approval, the prosecuting attorney of the county in which the plat is filed shall apply for a writ of mandate in the name of and on behalf of the legislative body required to approve same, directing the auditor and assessor to remove from their files or records the unapproved plat, or dedication of record.

[1969 ex.s. c 271 § 19.]

RCW 58.17.195
Approval of plat or short plat -- Written finding of conformity with applicable land use controls.

No plat or short plat may be approved unless the city, town, or county makes a formal written finding of fact that the proposed subdivision or proposed short subdivision is in conformity with any applicable zoning ordinance or other land use controls which may exist.

[1981 c 293 § 14.]

NOTES:

Severability -- 1981 c 293: See note following RCW 58.17.010.

RCW 58.17.200
Injunctive action to restrain subdivision, sale, transfer of land where final plat not filed.

Whenever any parcel of land is divided into five or more lots, tracts, or parcels of land and any person, firm or corporation or any agent of any

of them sells or transfers, or offers or advertises for sale or transfer, any such lot, tract, or parcel without having a final plat of such subdivision filed for record, the prosecuting attorney shall commence an action to restrain and enjoin further subdivisions or sales, or transfers, or offers of sale or transfer and compel compliance with all provisions of this chapter. The costs of such action shall be taxed against the person, firm, corporation or agent selling or transferring the property.

[1969 ex.s. c 271 § 20.]

RCW 58.17.205
Agreements to transfer land conditioned on final plat approval -- Authorized.

If performance of an offer or agreement to sell, lease, or otherwise transfer a lot, tract, or parcel of land following preliminary plat approval is expressly conditioned on the recording of the final plat containing the lot, tract, or parcel under this chapter, the offer or agreement is not subject to RCW 58.17.200 or 58.17.300 and does not violate any provision of this chapter. All payments on account of an offer or agreement conditioned as provided in this section shall be deposited in an escrow or other regulated trust account and no disbursement to sellers shall be permitted until the final plat is recorded.

[1981 c 293 § 12.]

NOTES:

Severability -- 1981 c 293: See note following RCW 58.17.010.

RCW 58.17.210
Building, septic tank or other development permits not to be issued for land divided in violation of chapter or regulations -- Exceptions -- Damages -- Rescission by purchaser.

No building permit, septic tank permit, or other development permit, shall be issued for any lot, tract, or parcel of land divided in violation of this chapter or local regulations adopted pursuant thereto unless the authority authorized to issue such permit finds that the public interest will not be adversely affected thereby. The prohibition contained in this section shall not apply to an innocent purchaser for value without actual notice. All purchasers' or transferees' property shall comply with provisions of this chapter and each purchaser or transferee may recover his damages from any person, firm, corporation, or agent selling or transferring land in violation of this chapter or local regulations adopted pursuant thereto, including any amount reasonably spent as a result of inability to obtain any development permit and spent to conform to the requirements of this chapter as well as cost of investigation, suit, and reasonable attorneys' fees occasioned thereby. Such purchaser or transferee may as an alternative to conforming his property to these requirements, rescind the sale or transfer and recover costs of investigation, suit, and reasonable attorneys' fees occasioned thereby.

[1974 ex.s. c 134 § 10; 1969 ex.s. c 271 § 21.]

RCW 58.17.212
Vacation of subdivision -- Procedure.

Whenever any person is interested in the vacation of any subdivision or portion thereof, or any area designated or dedicated for public use, that person shall file an application for vacation with the legislative authority of the city, town, or county in which the subdivision is located. The application shall set forth the reasons for vacation and shall contain signatures of all parties having an ownership interest in that portion of the subdivision subject to vacation. If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for vacation would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the vacation of the subdivision or portion thereof.

When the vacation application is specifically for a county road or city or town street, the procedures for road vacation or street vacation in chapter 36.87 or 35.79 RCW shall be utilized for the road or street vacation. When the application is for the vacation of the plat together with the roads and/or streets, the procedure for vacation in this section shall be used, but vacations of streets may not be made that are prohibited under

*RCW 35.79.030, and vacations of roads may not be made that are prohibited under RCW 36.87.130.

The legislative authority of the city, town, or county shall give notice as provided in RCW 58.17.080 and 58.17.090 and shall conduct a public hearing on the application for a vacation and may approve or deny the application for vacation of the subdivision after determining the public use and interest to be served by the vacation of the subdivision. If any portion of the land contained in the subdivision was dedicated to the public for public use or benefit, such land, if not deeded to the city, town, or county, shall be deeded to the city, town, or county unless the legislative authority shall set forth findings that the public use would not be served in retaining title to those lands.

Title to the vacated property shall vest with the rightful owner as shown in the county records. If the vacated land is land that was dedicated to the public, for public use other than a road or street, and the legislative authority has found that retaining title to the land is not in the public interest, title thereto shall vest with the person or persons owning the property on each side thereof, as determined by the legislative authority. When the road or street that is to be vacated was contained wholly within the subdivision and is part of the boundary of the subdivision, title to the vacated road or street shall vest with the owner or owners of property contained within the vacated subdivision.

This section shall not be construed as applying to the vacation of any plat of state-granted tide or shore lands.

[1987 c 354 § 3.]

NOTES:

***Reviser's note:** After amendment by 1987 c 228 § 1, RCW 35.79.030 no longer prohibited vacations of streets. Limitations on vacations of streets abutting bodies of water are now found in RCW 35.79.035.

RCW 58.17.215
Alteration of subdivision -- Procedure.

When any person is interested in the alteration of any subdivision or the altering of any portion thereof, except as provided in RCW 58.17.040(6), that person shall submit an application to request the alteration to the legislative authority of the city, town, or county where the subdivision is located. The application shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered. If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof.

Upon receipt of an application for alteration, the legislative body shall provide notice of the application to all owners of property within the subdivision, and as provided for in RCW 58.17.080 and 58.17.090. The notice shall either establish a date for a public hearing or provide that a hearing may be requested by a person receiving notice within fourteen days of receipt of the notice.

The legislative body shall determine the public use and interest in the proposed alteration and may deny or approve the application for alteration. If any land within the alteration is part of an assessment district, any outstanding assessments shall be equitably divided and levied against the remaining lots, parcels, or tracts, or be levied equitably on the lots resulting from the alteration. If any land within the alteration contains a dedication to the general use of persons residing within the subdivision, such land may be altered and divided equitably between the adjacent properties.

After approval of the alteration, the legislative body shall order the applicant to produce a revised drawing of the approved alteration of the final plat or short plat, which after signature of the legislative authority, shall be filed with the county auditor to become the lawful plat of the property.

This section shall not be construed as applying to the alteration or replatting of any plat of state-granted tide or shore lands.

[1987 c 354 § 4.]

RCW 58.17.217
Alteration or vacation of subdivision -- Conduct of hearing.

Any hearing required by RCW 58.17.212, 58.17.215, or 58.17.060 may be administered by a hearings examiner as provided in RCW 58.17.330.

[1987 c 354 § 7.]

RCW 58.17.218
Alteration of subdivision -- Easements by dedication.

The alteration of a subdivision is subject to RCW 64.04.175.

[1991 c 132 § 2.]

RCW 58.17.220
Violation of court order or injunction -- Penalty.

Any person who violates any court order or injunction issued pursuant to this chapter shall be subject to a fine of not more than five thousand dollars or imprisonment for not more than ninety days or both.

[1969 ex.s. c 271 § 22.]

RCW 58.17.225
Easement over public open space -- May be exempt from RCW 58.17.215 -- Hearing -- Notice.

The granting of an easement for ingress and egress or utilities over public property that is held as open space pursuant to a subdivision or plat, where the open space is already used as a utility right of way or corridor, where other access is not feasible, and where the granting of the easement will not impair public access or authorize construction of physical barriers of any type, may be authorized and exempted from the requirements of RCW 58.17.215 by the county, city, or town legislative authority following a public hearing with notice to the property owners in the affected plat.

[1995 c 32 § 1.]

RCW 58.17.230
Assurance of discontinuance of violations.

In the enforcement of this chapter, the prosecuting attorney may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter from any person engaging in, or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violation occurs. A violation of such assurance shall constitute prima facie proof of a violation of this chapter.

[1969 ex.s. c 271 § 23.]

RCW 58.17.240
Permanent control monuments.

Except for subdivisions excluded under the provisions of RCW 58.17.040, as now or hereafter amended, permanent control monuments shall be established at each and every controlling corner on the boundaries of the parcel of land being subdivided. The local authority shall determine the number and location of permanent control monuments within the plat, if any.

[1974 ex.s. c 134 § 11; 1969 ex.s. c 271 § 24.]

RCW 58.17.250
Survey of subdivision and preparation of plat.

The survey of the proposed subdivision and preparation of the plat shall be made by or under the supervision of a registered land surveyor who shall certify on the plat that it is a true and correct representation of the lands actually surveyed.

[1969 ex.s. c 271 § 26.]

RCW 58.17.255
Survey discrepancy -- Disclosure.

Whenever a survey of a proposed subdivision or short subdivision reveals a discrepancy, the discrepancy shall be noted on the face of the final plat or short plat. Any discrepancy shall be disclosed in a title report prepared by a title insurer and issued after the filing of the final plat or short plat. As used in this section, "discrepancy" means: (1) A boundary hiatus; (2) an overlapping boundary; or (3) a physical appurtenance, which indicates encroachment, lines of possession, or conflict of title.

[1987 c 354 § 6.]

RCW 58.17.260
Joint committee -- Members -- Recommendations for surveys, monumentation and plat drawings.

In order that there be a degree of uniformity of survey monumentation throughout the cities, towns and counties of the state of Washington, there is hereby created a joint committee composed of six members to be appointed as follows: The Washington state association of counties shall appoint two county road engineers; the association of Washington cities shall appoint two city engineers; the land surveyors association of Washington shall appoint one member; and the consulting engineers association of Washington shall appoint one member. The joint committee is directed to cooperate with the department of natural resources to establish recommendations pertaining to requirements of survey, monumentation and plat drawings for subdivisions and dedications throughout the state of Washington. The department of natural resources shall publish such recommendation.

[1971 ex.s. c 85 § 9; 1969 ex.s. c 271 § 27.]

RCW 58.17.275
Proposals to adopt, amend, or repeal local ordinances -- Advance notice.

All cities, towns, and counties shall establish procedures to provide reasonable advance notice of proposals to adopt, amend, or repeal local ordinances adopted in accordance with this chapter. These procedures shall include but not be limited to advance notice to individuals or organizations which have submitted requests for notice. Reasonable fees may be charged to defray the costs of providing notice.

[1981 c 293 § 13.]

NOTES:

Severability -- 1981 c 293: See note following RCW 58.17.010.

RCW 58.17.280
Naming and numbering of short subdivisions, subdivisions, streets, lots and blocks.

Any city, town or county shall, by ordinance, regulate the procedure whereby short subdivisions, subdivisions, streets, lots and blocks are named and numbered. A lot numbering system and a house address system, however, shall be provided by the municipality for short subdivisions and subdivisions and must be clearly shown on the short plat or final plat at the time of approval.

[1993 c 486 § 1; 1969 ex.s. c 271 § 29.]

RCW 58.17.290
Copy of plat as evidence.

A copy of any plat recorded in the manner provided in this chapter and certified by the county auditor of the county in which the same is recorded to be a true copy of such record and the whole thereof, shall be received in evidence in all the courts of this state, with like effect as the original.

[1969 ex.s. c 271 § 31.]

RCW 58.17.300
Violations -- Penalties.

Any person, firm, corporation, or association or any agent of any person, firm, corporation, or association who violates any provision of this

chapter or any local regulations adopted pursuant thereto relating to the sale, offer for sale, lease, or transfer of any lot, tract or parcel of land, shall be guilty of a gross misdemeanor and each sale, offer for sale, lease or transfer of each separate lot, tract, or parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto, shall be deemed a separate and distinct offense.

[1969 ex.s. c 271 § 32.]

RCW 58.17.310
Approval of plat within irrigation district without provision for irrigation prohibited.

In addition to any other requirements imposed by the provisions of this chapter, the legislative authority of any city, town, or county shall not approve a short plat or final plat, as defined in RCW 58.17.020, for any subdivision, short subdivision, lot, tract, parcel, or site which lies in whole or in part in an irrigation district organized pursuant to chapter 87.03 RCW unless there has been provided an irrigation water right of way for each parcel of land in such district. In addition, if the subdivision, short subdivision, lot, tract, parcel, or site lies within land within the district classified as irrigable, completed irrigation water distribution facilities for such land may be required by the irrigation district by resolution, bylaw, or rule of general applicability as a condition for approval of the short plat or final plat by the legislative authority of the city, town, or county. Rights of way shall be evidenced by the respective plats submitted for final approval to the appropriate legislative authority. In addition, if the subdivision, short subdivision, lot, tract, parcel, or site to be platted is wholly or partially within an irrigation district of two hundred thousand acres or more and has been previously platted by the United States bureau of reclamation as a farm unit in the district, the legislative authority shall not approve for such land a short plat or final plat as defined in RCW 58.17.020 without the approval of the irrigation district and the administrator or manager of the project of the bureau of reclamation, or its successor agency, within which that district lies. Compliance with the requirements of this section together with all other applicable provisions of this chapter shall be a prerequisite, within the expressed purpose of this chapter, to any sale, lease, or development of land in this state.

[1990 c 194 § 1; 1986 c 39 § 1; 1985 c 160 § 1; 1973 c 150 § 2.]

RCW 58.17.320
Compliance with chapter and local regulations -- Enforcement.

Whenever land within a subdivision granted final approval is used in a manner or for a purpose which violates any provision of this chapter, any provision of the local subdivision regulations, or any term or condition of plat approval prescribed for the plat by the local government, then the prosecuting attorney, or the attorney general if the prosecuting attorney shall fail to act, may commence an action to restrain and enjoin such use and compel compliance with the provisions of this chapter or the local regulations, or with such terms or conditions. The costs of such action may be taxed against the violator.

[1974 ex.s. c 134 § 13.]

RCW 58.17.330
Hearing examiner system -- Adoption authorized -- Procedures -- Decisions.

(1) As an alternative to those provisions of this chapter requiring a planning commission to hear and issue recommendations for plat approval, the county or city legislative body may adopt a hearing examiner system and shall specify by ordinance the legal effect of the decisions made by the examiner. The legal effect of such decisions shall include one of the following:

(a) The decision may be given the effect of a recommendation to the legislative body;

(b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body; or

(c) The decision may be given the effect of a final decision of the legislative body.

The legislative authority shall prescribe procedures to be followed by a hearing examiner.

(2) Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Each final decision of a hearing examiner, unless a longer period is mutually agreed to by the applicant and the hearing examiner, shall be rendered within ten working days following conclusion of all testimony and hearings.

[1995 c 347 § 429; 1994 c 257 § 6; 1977 ex.s. c 213 § 4.]

NOTES:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

Severability -- 1994 c 257: See note following RCW 36.70A.270.

Severability -- 1977 ex.s. c 213: See note following RCW 35.63.130.

RCW 58.17.900
Validation of existing ordinances and resolutions.

All ordinances and resolutions enacted at a time prior to the passage of this chapter by the legislative bodies of cities, towns, and counties and which are in substantial compliance with the provisions of this chapter, shall be construed as valid and may be further amended to include new provisions and standards as are authorized in general law.

[1969 ex.s. c 271 § 33.]

RCW 58.17.910
Severability -- 1969 ex.s. c 271.

If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances is not affected.

[1969 ex.s. c 271 § 35.]

RCW 58.17.920
Effective date and application of 1974 ex.s. c 134.

(1) The provisions of *this 1974 amendatory act shall become effective July 1, 1974.

(2) The provisions of *this 1974 amendatory act shall not apply to any plat which has been granted preliminary approval prior to July 1, 1974, but shall apply to any proposed plat granted preliminary approval on or after July 1, 1974.

[1974 ex.s. c 134 § 14.]

NOTES:

***Reviser's note:** For codification of "this 1974 amendatory act" [1974 ex.s. c 134], see Codification Tables, Volume 0.

Chapter 58.18 RCW Assessor's Plats

RCW SECTIONS

58.18.010 Assessor's plat -- Requisites, filing, index, etc. -- When official plat.

RCW 58.18.010
Assessor's plat -- Requisites, filing, index, etc. -- When official plat.

In any county where an assessor has and maintains an adequate set of maps drawn from surveys at a scale of not less than two hundred feet to the inch, the assessor may with the permission of the county commissioners, file an assessor's plat of the area, which when filed shall become the official plat for all legal purposes, provided:

(1) The plat is filed in the offices of the county auditor and the county assessor, together with a list of the existing legal descriptions and a list of the new legal descriptions as assigned by the county assessor;

(2) The recorded plat is drawn in such a manner that a ready reference can be made to the legal description in existence prior to the time of the filing of the assessor's plat and in conformance with existing statutes;

(3) The first year the tax roll and tax statement shall contain the prior legal description and the new legal description as assigned and shown on the assessor's plat with a notation that this legal description shall be used for all purposes;

(4) The county assessor shall maintain an index for reference to the prior and the existing legal descriptions of the parcels contained in the assessor's plats;

(5) Each dedicated plat after June 7, 1961, shall be submitted to the county assessor of the county wherein the plat is located, for the sole purpose of assignment of parcel, tract, block and or lot numbers and the county auditor shall not accept any such plat for filing unless the said plat carries a signed affidavit from the assessor to this effect, and a statement to the effect that the name of the plat shall be number . . . . in the county of . . . . .

[1961 c 262 § 1.]

Chapter 58.19 RCW Land Development Act

RCW SECTIONS

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RCW 58.19.010
Purpose.

The legislature finds and declares that the sale and offering for sale of land or of interests in associations which provide for the use or occupancy of land touches and affects a great number of the citizens of this state and that full and complete disclosure to prospective purchasers of pertinent information concerning land developments, including any encumbrances or liens attached to the land and the physical characteristics of the development is essential. The legislature further finds and declares that delivery to prospective purchasers of a complete and accurate public offering statement is necessary in order to adequately protect both the economic and physical welfare of the citizens of this state. It is the purpose of this chapter to provide for the reasonable regulation of the sale and offering for sale of any interest in significant land developments within or without the state of Washington, so that the prospective purchasers of such interests might be provided with full, complete, and accurate information of all pertinent circumstances affecting their purchase.

[1992 c 191 § 1; 1973 1st ex.s. c 12 § 1.]

RCW 58.19.020
Definitions.

When used in this chapter, unless the context otherwise requires:

(1) "Affiliate of a developer" means any person who controls, is controlled by, or is under common control with a developer.

(a) A person controls a developer if the person: (i) Is a general partner, officer, director, or employer of the developer; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than

twenty percent of the voting interest in the developer; (iii) controls in any manner the election of a majority of the directors of the developer; or (iv) has contributed more than twenty percent of the capital of the developer.

(b) A person is controlled by a developer if the developer: (i) Is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one of [or] more other persons, or through one or more subsidiaries, owns, controls, holds with the power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(2) "Blanket encumbrance" shall mean a trust deed, mortgage, mechanic's lien, or any other lien or encumbrance, securing or evidencing the payment of money and affecting the land to be developed or affecting more than one lot or parcel of developed land, or an agreement affecting more than one such lot or parcel by which the developer holds said development under option, contract, sale, or trust agreement. The term shall not include taxes and assessments levied by a public authority.

(3) "Common promotional plan" means an offering of related developed lands in a common promotional plan of disposition. Elements relevant to whether the related developed lands are being offered as part of a common promotional plan include but are not limited to: Whether purchasers of interests in the offered land will share in the use of common amenities, or other rights or privileges; whether the offered lands are known, designated, or advertised as a common unit or by a common name; whether a common broker or sales personnel, common sales office or facilities, or common promotional methods are utilized; and whether cross-referrals of prospective purchasers between sales operations is utilized.

(4) "Developer" means any owner of a development who offers it for disposition, or the principal agent of an inactive owner.

(5) "Development" or "developed lands" means land which is divided or is proposed to be divided for the purpose of disposition into twenty-six or more lots, parcels, or units (excluding interests in camping resorts regulated under chapter 19.105 RCW and interests in condominiums regulated under chapter 64.34 RCW) or any other land whether contiguous or not, if twenty-six or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

(6) "Disposition" includes any sale, lease, assignment, or exchange of any interest in any real property which is a part of or included within a development, and also includes the offering of property as a prize or gift when a monetary charge or consideration for whatever purpose is required in conjunction therewith, and any other transaction concerning a development if undertaken for gain or profit.

(7) "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a mortgage, deed of trust, or real estate contract, or a deed in lieu thereof.

(8) "Improvements" include all existing, advertised, and governmentally required facilities such as streets, water, electricity, natural gas, telephone lines, drainage control systems, and sewage disposal systems.

(9) "Offer" includes every inducement, solicitation, or media advertisement which has as a principal aim to encourage a person to acquire an interest in land.

(10) "Owners association" means any profit or nonprofit corporation, unincorporated association, or other organization or legal entity, a membership or other interest in which is appurtenant to or based upon owing an interest in a development.

(11) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(12) "Physical hazard" means a physical condition which poses, or may very likely pose, a material risk of either: Material damage to the development and improvements thereon; or

material endangerment to the safety and health of persons using the development and improvements thereon.

(13) "Purchaser" means a person who acquires or attempts to acquire or succeeds to any interest in land.

(14) "Related developed lands" means two or more developments which are owned by the same developer or an affiliate or affiliates of that developer and which are physically located within the same five-mile radius area.

(15) "Residential buildings" shall mean premises that are actually intended or used primarily for residential or recreational purposes by the purchasers.

[1992 c 191 § 2; 1979 c 158 § 208; 1973 1st ex.s. c 12 § 2.]

RCW 58.19.030
Exemptions from chapter.

(1) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to land and offers or dispositions:

(a) By a purchaser of developed lands for his or her own account in a single or isolated transaction;

(b) If fewer than ten separate lots, parcels, units, or interests in developed lands are offered by a person in a period of twelve months;

(c) If each lot offered in the development is five acres or more;

(d) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct such a building within two years from date of disposition;

(e) To any person who acquires such lot, parcel, unit or interest therein for the purpose of engaging in the business of constructing residential, commercial, or industrial buildings or for the purpose of resale or lease or other disposition of such lots to persons engaged in such business or businesses;

(f) Any lot, parcel, unit or interest if the development is located within an area incorporated prior to January 1, 1974;

(g) Pursuant to court order; or

(h) As cemetery lots or interests.

(2) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to:

(a) Offers or dispositions of evidence of indebtedness secured by a mortgage or deed of trust of real estate;

(b) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;

(c) A development as to which the director has waived the provisions of this chapter;

(d) Offers or dispositions of securities currently registered with the department of financial institutions;

(e) Offers or dispositions of any interest in oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of such interests are regulated as securities by the United States or by the department of financial institutions.

[1994 c 92 § 504; 1979 c 158 § 209; 1973 1st ex.s. c 12 § 3.]

RCW 58.19.045
Public offering statement -- Developer's duties--Purchaser's rights.

(1) A developer shall prepare a public offering statement conforming to the requirements of RCW 58.19.055 unless the development or the transaction is exempt under RCW 58.19.030.

(2) Any agent, attorney, or other person assisting the developer in preparing the public offering statement may rely upon information provided by the developer without independent investigation. The agent, attorney, or other person shall not be liable for any material

misrepresentation in or omissions of material facts from the public offering statement unless the person had actual knowledge of the misrepresentation or omission at the time the public offering statement was prepared. The developer shall be liable for any misrepresentation contained in the public offering statement or for any omission of material fact therefrom if the developer had actual knowledge of the misrepresentation or omission or, in the exercise of reasonable care, should have known of the misrepresentation or omission.

(3) Unless the development or the transaction is exempt under RCW 58.19.030, a developer shall provide a purchaser of a lot, parcel, unit, or interest with a copy of the public offering statement and all material amendments thereto before conveyance of that lot, parcel, unit, or interest. Unless a purchaser is given the public offering statement more than two days before execution of a contract for the purchase of a lot, parcel, unit, or interest, the purchaser, before conveyance, shall have the right to cancel the contract within two days after first receiving the public offering statement and, if necessary to have two days to review the public offering statement and cancel the contract, to extend the closing date for conveyance to a date not more than two days after first receiving the public offering statement. The purchaser shall have no right to cancel the contract upon receipt of an amendment unless the purchaser would have that right under generally applicable legal principles. The two-day period shall not include Saturdays, Sundays, or legal holidays.

(4) If a purchaser elects to cancel a contract pursuant to subsection (3) of this section, the purchaser may do so by hand-delivering notice thereof to the developer or by mailing notice thereof by prepaid United States mail to the developer for service of process. If cancellation is by mailing notice, the date of the postmark on the mail shall be the official date of cancellation. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded within thirty days from the date of cancellation.

(5) If a person required to deliver a public offering statement pursuant to subsection (1) of this section fails to provide a purchaser to whom a lot, parcel, unit, or interest is conveyed with that public offering statement and all material amendments thereto as required by subsection (3) of this section, the purchaser is entitled to receive from that person an amount equal to the actual damages suffered by the purchaser as a result of the public offering statement not being delivered. There shall be no liability for failure to deliver any amendment unless such failure would have entitled the purchaser under generally applicable legal principles to cancel the contract for the purchase of the lot, parcel, unit, or interest had the undisclosed information been evident to the purchaser before the closing of the purchase.

(6) A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the developer or developer's agent identified in the public offering statement.

[1992 c 191 § 4.]

RCW 58.19.055
Public offering statement -- Contents.

(1) A public offering statement shall contain the following information:

(a) The name, and the address or approximate location, of the development;

(b) The name and address of the developer;

(c) The name and address of the management company, if any, for the development;

(d) The relationship of the management company to the developer, if any;

(e) The nature of the interest being offered for sale;

(f) A brief description of the permitted uses and use restrictions pertaining to the development and the purchaser's interest therein;

(g) The number of existing lots, parcels, units, or interests in the development and either the maximum number that may be added to the development or the fact that such maximum number has not yet been determined;

(h) A list of the principal common amenities

in the development which materially affect the value of the development and those that will or may be added to the development;

(i) The identification of any real property not in the development, the owner of which has access to any of the development, and a description of the terms of such access;

(j) The identification of any real property not in the development to which owners in the development have access and a description of the terms of such access;

(k) The status of construction of improvements in the development, including either the estimated dates of completion if not completed or the fact that such estimated completion dates have not yet been determined; and the estimated costs, if any, to be paid by the purchaser;

(l) The estimated current owners' association expense, if any, for which a purchaser would be liable;

(m) An estimate of any payment with respect to any owners' association expense for which the purchaser would be liable at closing;

(n) The estimated current amount and purpose of any fees not included in any owners' association assessments and charged by the developer or any owners' association for the use of any of the development or improvements thereto;

(o) Any assessments which have been agreed to or are known to the developer and which, if not paid, may constitute a lien against any portion of the development in favor of any governmental agency;

(p) The identification of any parts of the development which any purchaser will have the responsibility for maintaining;

(q) A brief description of any blanket encumbrance which is subject to the provisions of RCW 58.19.180;

(r) A list of any physical hazards known to the developer which particularly affect the development or the immediate vicinity in which the development is located and which are not readily ascertainable by the purchaser;

(s) A brief description of any construction warranties to be provided to the purchaser;

(t) Any building code violation citations received by the developer in connection with the development which have not been corrected;

(u) A statement of any unsatisfied judgments or pending suits against any owners' association involved in the development and a statement of the status of any pending suits material to the development of which the developer has actual knowledge;

(v) A notice which describes a purchaser's right to cancel the purchase agreement or extend the closing under RCW 58.19.045(3), including applicable time frames and procedures;

(w) A list of the documents which the prospective purchaser is entitled to receive from the developer before the rescission period commences;

(x) A notice which states:

"A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the developer or by any person identified in the public offering statement as the declarant's agent";

(y) A notice which states:

"This public offering statement is only a summary of some of the significant aspects of purchasing an interest in this development and any documents which may govern or affect the development may be complex, may contain other important information, and create binding legal obligations. You should consider seeking assistance of legal counsel"; and

(z) Any other information and cross-references which the developer believes will be helpful in describing the development to the recipients of the public offering statement, all of which may be included or not included at the option of the developer.

(2) The public offering statement shall include copies of each of the following documents: Any declaration of covenants, conditions, restrictions, and reservations affecting the development; any survey, plat, or subdivision map; the articles of incorporation of any owners' association; the bylaws of any owners' association; the rules and regulations, if any, of any owners' association; current or proposed budget for any owners' association; and the balance sheet of any owners' association current within ninety days if assessments have been collected for ninety days or more.

If any of the foregoing documents listed in this subsection are not available because they have not yet been executed, adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of an interest in the development, the purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1)(v), (x), and (y) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size.

[1992 c 191 § 5.]

RCW 58.19.120
Report of changes required -- Amendments.

The developer shall immediately amend the public offering statement to include any material changes affecting the development. No change in the substance of the promotional plan or plan of disposition or completion of the development may be made without first making an appropriate amendment of the public offering statement. A public offering statement is not current unless it incorporates all amendments.

[1992 c 191 § 6; 1973 1st ex.s. c 12 § 12.]

RCW 58.19.130
Public offering statement form -- Type and style restriction.

No portion of the public offering statement form may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the director so requires.

[1973 1st ex.s. c 12 § 13.]

RCW 58.19.140
Public offering statement -- Promotional use, distribution restriction -- Holding out that state or employees, etc., approve development prohibited.

The public offering statement shall not be used for any promotional purposes. It may not be distributed to prospective purchasers before registration of the development and may be distributed afterwards only when it is used in its entirety. No person may advertise or represent that the state of Washington or the director, the department, or any employee thereof approves or recommends the development or disposition thereof.

[1973 1st ex.s. c 12 § 14.]

RCW 58.19.180
Unlawful to sell lots or parcels subject to blanket encumbrance which does not provide purchaser can obtain clear title -- Alternatives.

It shall be unlawful for the developer to make a sale of lots or parcels within a development which is subject to a blanket encumbrance which does not contain, within its terms or by supplementary agreement, a provision which shall unconditionally provide that the purchaser of a lot or parcel encumbered thereby can obtain the legal title, or other interest contracted for, free and clear of the lien of such blanket encumbrance upon compliance with the terms and conditions of the purchase agreement, unless the developer shall elect and comply with one of the following alternative conditions:

(1) The developer shall deposit earnest moneys and all subsequent payments on the obligation in a neutral escrow depository, or real estate trust account regulated under RCW 18.85.310, until such time as all payments on the obligation have been made and clear title is delivered, or any of the following occurs:

(a) A proper release is obtained from such blanket encumbrance;

(b) Either the developer or the purchaser defaults under the sales contract and there is a forfeiture of the interest of the purchaser or there is a determination as to the disposition of such moneys, as the case may be; or

(c) The developer orders a return of such moneys to such purchaser.

(2) The title to the development is held in trust under an agreement of trust until the proper release of such blanket encumbrance is obtained.

(3) The purchaser shall receive title insurance from a licensed title insurance company against such blanket encumbrance.

[1992 c 191 § 7; 1973 1st ex.s. c 12 § 18.]

RCW 58.19.185
Requiring purchaser to pay additional sum to construct, complete or maintain development.

It shall be unlawful for the developer to sell a lot or parcel within a development if the terms of the sale require that the purchaser pay any sum in addition to the purchase price for constructing, completing, or maintaining improvements to the development unless the sums are to be paid directly to:

(1) A governmental agency;

(2) A person who is not affiliated with the developer, in trust, and on terms acceptable to the director; or

(3) An association comprised solely of persons who have purchased lots in the development, or their assignees.

The terms which require the payment of any additional sum shall be set forth in the public offering statement.

[1977 ex.s. c 252 § 1.]

RCW 58.19.190
Advertising -- Materially false, misleading, or deceptive statements prohibited.

No person shall publish in this state any advertisement concerning a development subject to the requirements of this chapter which contains any statements that are materially false, misleading, or deceptive.

[1992 c 191 § 8; 1973 1st ex.s. c 12 § 19.]

RCW 58.19.265
Violations -- Remedies -- Attorneys' fees.

If a developer, or any other person subject to this chapter, fails to comply with any provision of this chapter, any person or class of persons adversely affected by the failure to comply may seek appropriate relief through an action for damages or an injunctive court order. The court, in an appropriate case, may award attorneys' fees.

[1992 c 191 § 9.]

RCW 58.19.270
Violations deemed unfair practice subject to chapter 19.86 RCW.

(1) The commission by any person of an act or practice prohibited by this chapter is hereby declared to be a matter affecting the public interest for the purpose of applying chapter 19.86 RCW and is not reasonable in relation to the development and preservation of business. A violation of this chapter constitutes an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce for the purpose of the attorney general bringing an action in the name of the state under the consumer protection act, pursuant to RCW 19.86.080.

(2) Evidence concerning violations of this chapter may be referred to the attorney general, who may, in his or her discretion, with or without such a reference, in addition to any other action the attorney general might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this chapter. This chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW, and the powers and duties of the attorney general as such powers and duties appear in chapters 9.04 and 19.86 RCW shall apply against all persons

subject to this chapter.

(3) Only the attorney general can bring an action under the consumer protection act, chapter 19.86 RCW, pursuant to this section.

[1992 c 191 § 10; 1973 1st ex.s. c 12 § 27.]

RCW 58.19.280
Jurisdiction of superior courts.

Dispositions of an interest in a development are subject to this chapter, and the superior courts of this state have jurisdiction in claims or causes of action arising under this chapter, if:

(1) The interest in a development offered for disposition is located in this state;

(2) The developer maintains an office in this state; or

(3) Any offer or disposition of an interest in a development is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

[1973 1st ex.s. c 12 § 28.]

RCW 58.19.300
Hazardous conditions -- Notice.

If, before disposition of all or any portion of a development which is covered by this chapter, a condition constituting a physical hazard is discovered on or around the immediate vicinity of the development, the developer or government agency discovering such condition shall notify the purchasers of the affected lands either by transmitting notice through the appropriate county assessor's office or such other steps as might reasonably give actual notice to the purchasers.

[1992 c 191 § 11; 1973 1st ex.s. c 12 § 30.]

RCW 58.19.920
Liberal construction.

The provisions of this chapter shall be construed liberally so as to give effect to the purposes stated in RCW 58.19.010.

[1973 1st ex.s. c 12 § 33.]

RCW 58.19.940
Short title.

This chapter may be cited as the land development act.

[1992 c 191 § 12; 1973 1st ex.s. c 12 § 35.]

RCW 58.19.950
Severability -- 1973 1st ex.s. c 12.

If any provision of this 1973 act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this 1973 act are severable.

[1973 1st ex.s. c 12 § 36.]

RCW 58.19.951
Severability -- 1992 c 191.

If any provision of this act or its application to any person or circumstances is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1992 c 191 § 14.]

Chapter 58.20 RCW Washington Coordinate System

RCW SECTIONS

58.20.110 Definitions.

58.20.120 System designation -- Permitted uses.

58.20.130 Plane coordinates adopted -- Zones.

58.20.140 Designation of system -- Zones.

58.20.150 Designation of coordinates -- "N" and "E."

58.20.160 Tract in both zones -- Description.

58.20.170 Zones -- Technical definitions.

58.20.180 Recording coordinates -- Control stations.

58.20.190 Conversion of coordinates -- Metric.

58.20.200 Term -- Limited use.

58.20.210 United States survey prevails -- Conflict.

58.20.220 Real estate transactions -- Exemption.

58.20.901 Severability -- 1989 c 54.

RCW 58.20.110
Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 58.20.110 through 58.20.220 and 58.20.901:

(1) "Committee" means the interagency federal geodetic control committee or its successor;

(2) "GRS 80" means the geodetic reference system of 1980 as adopted in 1979 by the international union of geodesy and geophysics defined on an equipotential ellipsoid;

(3) "National geodetic survey" means the national ocean service's national geodetic survey of the national oceanic and atmospheric administration, United States department of commerce, or its successor;

(4) "Washington coordinate system of 1927" means the system of plane coordinates in effect under this chapter until July 1, 1990, which is based on the North American datum of 1927 as determined by the national geodetic survey of the United States department of commerce;

(5) "Washington coordinate system of 1983" means the system of plane coordinates under this chapter based on the North American datum of 1983 as determined by the national geodetic survey of the United States department of commerce.

[1989 c 54 § 9.]

RCW 58.20.120
System designation -- Permitted uses.

Until July 1, 1990, the Washington coordinate system of 1927, or its successor, the Washington coordinate system of 1983, may be used in Washington for expressing positions or locations of points on the surface of the earth. On and after that date, the Washington coordinate system of 1983 shall be the designated coordinate system in Washington. The Washington coordinate system of 1927 may be used only for purposes of reference after June 30, 1990.

[1989 c 54 § 10.]

RCW 58.20.130
Plane coordinates adopted -- Zones.

The system of plane coordinates which has been established by the national geodetic survey for defining and stating the positions or locations of points on the surface of the earth within the state of Washington is designated as the "Washington coordinate system of 1983."

For the purposes of this system the state is divided into a "north zone" and a "south zone."

The area now included in the following counties shall constitute the north zone: Chelan, Clallam, Douglas, Ferry, Island, Jefferson, King, Kitsap, Lincoln, Okanogan, Pend Oreille, San Juan, Skagit, Snohomish, Spokane, Stevens, Whatcom, and that part of Grant lying north of parallel 47° 30' north latitude.

The area now included in the following counties shall constitute the south zone: Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, that part of Grant lying south of parallel 47° 30' north latitude, Grays Harbor, Kittitas, Klickitat, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, Wahkiakum, Walla Walla, Whitman and Yakima.

[1989 c 54 § 11.]

RCW 58.20.140
Designation of system -- Zones.

As established for use in the north zone, the Washington coordinate system of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Washington coordinate system of 1983, north zone."

As established for use in the south zone, the Washington coordinate system of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Washington coordinate system of 1983, south zone."

[1989 c 54 § 12.]

RCW 58.20.150
Designation of coordinates -- "N" and "E."

"N" and "E" shall be used in labeling coordinates of a point on the earth's surface and in expressing the position or location of such point relative to the origin of the appropriate zone of this system, expressed in meters and decimals of a meter. These coordinates shall be made to depend upon and conform to the coordinates, on the Washington coordinate system of 1983, of the horizontal control stations of the national geodetic survey within the state of Washington, as those coordinates have been determined, accepted, or adjusted by the survey.

[1989 c 54 § 13.]

RCW 58.20.160
Tract in both zones -- Description.

When any tract of land to be defined by a single description extends from one into the other of the coordinate zones under RCW 58.20.130, the positions of all points on its boundaries may be referred to either of the zones, the zone which is used being specifically named in the description.

[1989 c 54 § 14.]

RCW 58.20.170
Zones -- Technical definitions.

For purposes of more precisely defining the Washington coordinate system of 1983, the following definition by the national geodetic survey is adopted:

The Washington coordinate system of 1983, north zone, is a Lambert conformal conic projection of the GRS 80 spheroid, having standard parallels at north latitudes 47° 30' and 48° 44', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120° 50' west of Greenwich and the parallel 47° 00' north latitude. This origin is given the coordinates: E = 500,000 meters and N = 0 meters.

The Washington coordinate system of 1983, south zone, is a Lambert conformal conic projection of the GRS 80 spheroid, having standard parallels at north latitudes 45° 50' and 47° 20', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120° 30' west of Greenwich and the parallel 45° 20' north latitude. This origin is given the coordinates: E = 500,000 meters and N = 0 meters.

[1989 c 54 § 15.]

RCW 58.20.180
Recording coordinates -- Control stations.

Coordinates based on the Washington coordinate system of 1983, purporting to define the position of a point on a land boundary, may be presented to be recorded in any public land records or deed records if the survey method used for the determination of these coordinates is established in conformity with standards and specifications prescribed by the interagency federal geodetic control committee, or its successor. These surveys shall be connected to monumented control stations that are adjusted to and

published in the national network of geodetic control by the national geodetic survey and such connected horizontal control stations shall be described in the land or deed record. Standards and specifications of the committee in force on the date of the survey shall apply. In all instances where reference has been made to such coordinates in land surveys or deeds, the scale and sea level factors shall be stated for the survey lines used in computing ground distances and areas.

The position of the Washington coordinate system of 1983 shall be marked on the ground by horizontal geodetic control stations which have been established in conformity with the survey standards adopted by the committee and whose geodetic positions have been rigorously adjusted on the North American datum of 1983, and whose coordinates have been computed and published on the system defined in RCW 58.20.110 through 58.20.220 and 58.20.901. Any such control station may be used to establish a survey connection with the Washington coordinate system of 1983.

[1989 c 54 § 16.]

RCW 58.20.190
Conversion of coordinates -- Metric.

Any conversion of coordinates between the meter and the United States survey foot shall be based upon the length of the meter being equal to exactly 39.37 inches.

[1989 c 54 § 17.]

RCW 58.20.200
Term -- Limited use.

The use of the term "Washington coordinate system of 1983" on any map, report of survey, or other document, shall be limited to coordinates based on the Washington coordinate system of 1983 as defined in this chapter.

[1989 c 54 § 18.]

RCW 58.20.210
United States survey prevails -- Conflict.

Whenever coordinates based on the Washington coordinate system of 1983 are used to describe any tract of land which in the same document is also described by reference to any subdivision, line or corner of the United States public land surveys, the description by coordinates shall be construed as supplemental to the basic description of such subdivision, line, or corner contained in the official plats and field notes filed of record, and in the event of any conflict the description by reference to the subdivision, line, or corner of the United States public land surveys shall prevail over the description by coordinates.

[1989 c 54 § 19.]

RCW 58.20.220
Real estate transactions -- Exemption.

Nothing contained in this chapter shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Washington coordinate system of 1927 or 1983.

[1989 c 54 § 20.]

RCW 58.20.901
Severability -- 1989 c 54.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1989 c 54 § 21.]

Chapter 58.22 RCW State Base Mapping System

RCW SECTIONS

58.22.010 Legislative intent.

58.22.020 Establishment and maintenance -- Standards.

58.22.030 United States geological survey quadrangle map separates -- Acquisition by state agencies.

58.22.040 United States geological survey quadrangle map separates -- State depository.

58.22.050 Availability of map separates -- Powers and duties of department.

NOTES:

Surveys and maps account established for purposes of chapter 58.22 RCW: RCW 58.24.060.

RCW 58.22.010
Legislative intent.

It is the intent of the legislature to establish a coordinated system of state base maps to assist all levels of government to more effectively provide the information to meet their responsibilities for resource planning and management.

It is further the legislature's intent to eliminate duplication, to insure compatibility, and to create coordination through a uniform base which all agencies will use.

It is in the interest of all citizens in the state of Washington that a state base mapping system be established to make essential base maps available at cost to all users, both public and private.

[1973 1st ex.s. c 159 § 1.]

RCW 58.22.020
Establishment and maintenance -- Standards.

The department of natural resources shall establish and maintain a state base mapping system. The standards for the state base mapping system shall be:

(1) A series of fifteen minute United States geological survey quadrangle map separates at a scale of one to 48,000 (one inch equals 4,000 feet) covering the entire state;

(2) A series of seven and one-half minute United States geological survey quadrangle map separates at a scale of one to 24,000 (one inch equals 2,000 feet) for urban areas; including but not limited to those identified as urban by the state department of transportation for the United States department of transportation.

All features and symbols added to the quadrangle separates shall meet as nearly as is practical national map accuracy standards and specifications as defined by the United States geological survey for their fifteen minute and seven and one-half minute quadrangle map separates.

Each quadrangle shall be revised by the department of natural resources as necessary to reflect current conditions.

[1984 c 7 § 367; 1973 1st ex.s. c 159 § 2.]

NOTES:

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 58.22.030
United States geological survey quadrangle map separates -- Acquisition by state agencies.

Any state agency purchasing or acquiring United States geological survey quadrangle map separates shall do so through the department of natural resources.

[1973 1st ex.s. c 159 § 3.]

RCW 58.22.040
United States geological survey quadrangle map separates -- State depository.

The department of natural resources shall be the primary depository of all United States geological survey quadrangle map separates for state agencies: PROVIDED, That any state agency may maintain duplicate copies.

[1973 1st ex.s. c 159 § 4.]

RCW 58.22.050
Availability of map separates -- Powers and duties of department.

(1) All United States geological survey quadrangle map separates shall be available at cost to all state agencies, local agencies, the federal government, and any private individual or company through duplication and purchase.

The department shall coordinate all requests for the use of United States geological survey quadrangle map separates and shall provide advice on how to best use the system.

(2) The department shall maintain a catalogue showing all United States geological survey quadrangle map separates available. The department shall also catalogue information describing additional separates or products created by users. Copies of maps made for any state or local agency shall be available to any other state or local agency.

[1973 1st ex.s. c 159 § 5.]

Chapter 58.24 RCW State Agency For Surveys And Maps – Fees

RCW SECTIONS

58.24.010 Declaration of necessity.

58.24.020 Official agency designated -- Advisory board.

58.24.030 Official agency designated -- Powers -- Cooperate and advise -- Purposes.

58.24.040 Official agency designated -- Powers -- Standards, maps, records, report, temporary removal of boundary marks or monuments.

58.24.050 Employees -- Licensed engineers or surveyors.

58.24.060 Surveys and maps account -- Purposes.

58.24.070 Fees for filing and recording surveys, plats, or maps -- Deposit and use of fees.

NOTES:

Cemetery property -- Surveys and maps, plats, etc.: Chapter 68.24 RCW.

Counties -- Land surveys, record of surveys: RCW 36.32.370, 36.32.380.

Geological survey: Chapter 43.27A RCW.

Irrigation districts -- Map of district: RCW 87.03.775.

Public lands -- Maps and plats -- Record and index -- Public inspection: RCW 79.02.210.

Reclamation districts -- Surveys, etc.: Chapter 89.30 RCW.

Regulation of public ground waters -- Designating or modifying boundaries of areas -- Notice of hearing -- Findings -- Order: RCW 90.44.130.

Restoration of United States survey markers: RCW 47.36.010.

State highways and toll bridges
copy of map, plans, etc. -- Fee: RCW 47.28.060.
maps, plans, etc. -- Filing: RCW 47.28.040.

RCW 58.24.010
Declaration of necessity.

It is the responsibility of the state to provide a means for the identification and preservation of survey points for the description of common land boundaries in the interest of the people of the state. There is a necessity for the adoption and maintenance of a system of permanent reference as to boundary monuments. The department of natural resources shall be the recognized agency for the establishment of this system.

[1987 c 466 § 4; 1982 c 165 § 1; 1951 c 224 § 2.]

NOTES:

Severability -- 1951 c 224: "If any provision of this act shall be declared invalid, such invalidity shall not affect any other portion of this act which can be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable." [1951 c 224 § 7.]

RCW 58.24.020
Official agency designated -- Advisory board.

The department of natural resources is designated as the official agency for surveys and maps. The commissioner of public lands shall appoint an advisory board of five members, the majority of whom shall be registered professional engineers or land surveyors, who shall serve at the pleasure of the commissioner. Members of the board shall serve without salary but are to receive travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended while actively engaged in the discharge of their duties.

[1987 c 466 § 5; 1982 c 165 § 2; 1975-'76 2nd ex.s. c 34 § 152; 1951 c 224 § 3.]

NOTES:

Effective date -- Severability -- 1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Severability -- 1951 c 224: See note following RCW 58.24.010.

Department of natural resources to exercise powers and duties of commissioner of public lands: RCW 43.30.411.

RCW 58.24.030
Official agency designated -- Powers -- Cooperate and advise -- Purposes.

The commissioner of public lands, the department of natural resources, and the advisory board are authorized to cooperate and advise with various departments and subdivisions of the state, counties, municipalities, and registered engineers or land surveyors of the state for the following purposes:

(1) The recovery of section corners or other land boundary marks;

(2) The monumentation of accepted section corners, and other boundary and reference marks; said monumentation shall be adequately connected to adjusted United States coast and geodetic survey triangulation stations and the coordinates of the monuments computed to conform with the Washington coordinate system in accordance with the provisions of chapter 58.20 RCW, as derived from chapter 168, Laws of 1945;

(3) For facilitation and encouragement of the use of the Washington state coordinate system; and

(4) For promotion of the use of the level net as established by the United States coast and geodetic survey.

[1987 c 466 § 6; 1982 c 165 § 3; 1951 c 224 § 4.]

NOTES:

Severability -- 1951 c 224: See note following RCW 58.24.010.

RCW 58.24.040
Official agency designated -- Powers -- Standards, maps, records, report, temporary removal of boundary marks or monuments.

The agency designated by RCW 58.24.020 is further authorized to:

(1) Set up standards of accuracy and methods of procedure;

(2) Compile and publish maps and records from surveys performed under the provisions of this chapter, and to maintain suitable indexes of surveys to prevent duplication of effort and to cooperate with all agencies of local, state, and federal government to this end;

(3) Compile and maintain records of all surveys performed under the provisions of this chapter, and assemble and maintain records of all reliable survey monuments and bench marks within the state;

(4) Collect and preserve information obtained from surveys locating and establishing land monuments and land boundaries;

(5) Supervise the sale and distribution of cadastral and geodetic survey data, and such related survey maps and publications as may come into the possession of the department of natural resources. Revenue derived from the sale thereof shall be deposited in the surveys and maps account in the general fund;

(6) Supervise the sale and distribution of maps, map data, photographs, and such publications as may come into the possession of the department of natural resources.

(7) Submit, as part of the biennial report of the commissioner of public lands, a report of the accomplishments of the agency;

(8) Permit the temporary removal or destruction of any section corner or any other land boundary mark or monument by any person, corporation, association, department, or subdivision of the state, county, or municipality as may be necessary or desirable to accommodate construction, mining, and other development of any land: PROVIDED, That such section corner or other land boundary mark or monument shall be referenced to the Washington Coordinate System by a registered professional engineer or land surveyor prior to

such removal or destruction, and shall be replaced or a suitable reference monument established by a registered professional engineer or land surveyor within a reasonable time after completion of such construction, mining, or other development: AND PROVIDED FURTHER, That the department of natural resources shall adopt and promulgate reasonable rules and regulations under which the agency shall authorize such temporary removal or destruction and require the replacement of such section corner or other land boundary marks or monuments.

[1987 c 466 § 7; 1982 c 165 § 4; 1969 ex.s. c 271 § 25; 1951 c 224 § 6.]

NOTES:

Severability -- 1969 ex.s. c 271: See RCW 58.17.910.

Severability -- 1951 c 224: See note following RCW 58.24.010.

RCW 58.24.050
Employees -- Licensed engineers or surveyors.

All employees who are in responsible charge of work under the provisions of this chapter shall be licensed professional engineers or land surveyors.

[1982 c 165 § 5; 1951 c 224 § 5.]

NOTES:

Severability -- 1951 c 224: See note following RCW 58.24.010.

RCW 58.24.060
Surveys and maps account -- Purposes.

There is created in the state treasury the surveys and maps account which shall be a separate account consisting of funds received or collected under chapters 58.22 and 58.24 RCW, moneys appropriated to it by law. This account shall be used exclusively by the department of natural resources for carrying out the purposes and provisions of chapters 58.22 and 58.24 RCW. Appropriations from the account shall be expended for no other purposes.

[1991 sp.s. c 13 § 14; 1987 c 466 § 8; 1985 c 57 § 65; 1983 c 272 § 1; 1982 c 165 § 6.]

NOTES:

Effective dates -- Severability -- 1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date -- 1985 c 57: See note following RCW 18.04.105.

RCW 58.24.070
Fees for filing and recording surveys, plats, or maps -- Deposit and use of fees.

A fee set by the board of natural resources shall be charged by each county auditor, in addition to any other fees required by law, as a condition precedent to the filing and recording of any surveys, subdivision plats, short plats, and condominium surveys, plats, or maps. Such funds shall be forwarded monthly to the state treasurer to be deposited in the surveys and maps account in the general fund. The fees shall be verified in the same manner as other fees collected by the county auditor. Fees collected under this section shall be expended by the department only for the activities prescribed in this chapter.

[1987 c 466 § 9; 1983 c 272 § 2; 1982 c 165 § 7.]

NOTES:

Condominium surveys and maps: RCW 64.32.100.

Plats and subdivisions: Chapter 58.17 RCW.

Chapter 58.28 RCW Townsites On United States Land -- Acquisition Of Land

RCW SECTIONS

INCORPORATED TOWNS ON UNITED STATES LAND

58.28.010 Councils' duties when townsites on United States land.

58.28.020 Councils' duties when townsites on United States land -- Survey and plat.

58.28.030 Councils' duties when townsites on United States land -- Plats -- Filing.

58.28.040 Councils' duties when townsites on United States land -- Survey, notice of -- Bids for -- Franchises continued.

58.28.050 Contents of plat.

58.28.060 Monuments -- Location, placement requisites.

58.28.070 Monuments -- Markings -- Surveyor's certificate on plat.

58.28.080 Plats filed -- Auditor's fee.

58.28.090 Assessments.

58.28.100 Notice of possession filed -- Assessment and fee -- Certificate -- Council record.

58.28.110 Deficiency assessment -- When payable.

58.28.120 Deed to claimants -- Actions contesting title, limitations on.

58.28.130 Entries on mineral lands -- Rights of claimants.

58.28.140 Conflicting claims -- Procedure.

58.28.150 Notice of filing patent -- Abandonment of claim.

58.28.160 Sale of unoccupied lots -- Notice -- Minimum price.

58.28.170 Lands for school and municipal purposes -- Funds.

58.28.180 Effect of informalities -- Certificate or deed as prima facie evidence.

58.28.190 Corporate authorities to act promptly.

58.28.200 Proof requisite to delivery of deed.

58.28.201 Title to vacated lots by occupancy and improvements.

58.28.202 Controversies, by whom settled -- Review.

58.28.203 Platted lands declared dedicated to public use.

58.28.204 Appeals -- Procedure.

UNINCORPORATED TOWNS ON UNITED STATES LAND

58.28.210 Unincorporated towns on United States land -- Superior court judge to file claim.

58.28.220 Petition to superior court judge -- Contents -- Procedure.

58.28.230 Survey and plat -- Boundaries -- Monuments.

58.28.240 Plats -- Filing.

58.28.250 Survey, notice of -- Bids for -- Franchises continued.

58.28.260 Contents of plat.

58.28.270 Monuments -- Location, placement requisites.

58.28.280 Monuments -- Markings -- Surveyor's certificate on plat.

58.28.290 Plats filed -- Auditor's fee.

58.28.300 Assessments -- Disposition -- Employment of attorney authorized.

58.28.310 Notice of possession filed -- Assessment and fee -- Certificate -- Judge's record.

58.28.320 Deficiency assessment -- When payable.

58.28.330 Deed to claimants -- Actions contesting title, limitations on.

58.28.340 Entries on mineral lands -- Rights of claimants.

58.28.350 Conflicting claims -- Procedure.

58.28.360 Proof of right -- Costs upon failure of both conflicting parties.

58.28.370 Notice of filing patent.

58.28.380 Abandonment of claim.

58.28.390 Sale of unoccupied lots -- Notice --

Minimum price.

58.28.400 Lands for school and public purposes -- Expenses as charge against fund.

58.28.410 Disposition of excess money -- Special fund.

58.28.420 Effect of informalities -- Certificate or deed as prima facie evidence.

58.28.430 Proof requisite to delivery of deed.

58.28.440 Platted lands declared dedicated to public use.

58.28.450 Clerk's duties when judge trustee.

58.28.460 Accounting and depositing money -- Promptness.

58.28.470 Records filed with county clerk.

58.28.480 Judge, a trustee for purposes herein.

58.28.490 Appellate review -- Procedure.

58.28.500 Succession of trust.

58.28.510 Title to vacated lots by occupancy and improvements.

58.28.520 Controversies, by whom settled -- Review.

INCORPORATED TOWNS ON UNITED STATES LAND

RCW 58.28.010
Councils' duties when townsites on United States land.

It is the duty of the city or town council of any city or town in this state situate upon public lands of the United States or lands, the legal and equitable title to which is in the United States of America, to enter at the proper land office of the United States such quantity of land as the inhabitants of any incorporated city or town may be entitled to claim, in the aggregate, according to their population, in the manner required by the laws of the United States and the regulations prescribed by the secretary of the interior of the United States, and by order entered upon their minutes and proceedings, at a regular meeting, to authorize and direct the mayor and clerk of such council, attested by the corporate seal, to make and sign all necessary declaratory statements, certificates, and affidavits, or other instruments requisite to carry into effect the intentions of this chapter and the intentions of the act of congress of the United States entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and all acts of congress amendatory thereof and supplemental thereto, including section sixteen of an act of congress entitled "An act to repeal timber culture laws and for other purposes," approved March 3, 1891, and to make proof, when required, of the facts necessary to establish the claim of such inhabitants to the lands so granted by said acts of congress, and file in the proper United States land office a proper application in writing describing the tracts of land on which such city or town is situate, and make proof and payment for such tracts of land in the manner required by law.

[1909 c 231 § 1; RRS § 11485. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.020
Councils' duties when townsites on United States land -- Survey and plat.

Said council must cause a survey to be made by some competent person, of the lands which the inhabitants of said city or town may be entitled to claim under the said act of congress, located according to the legal subdivisions of the sections and by the section lines of the United States, and the same must be distinctly marked by suitable monuments; such survey must further particularly designate all streets, roads, lanes and alleys, public squares, churches, school lots, cemeteries, commons and levees as the same exist and have been heretofore dedicated in any manner to public use, and by measurement the precise boundaries and area of each, and every lot or parcel of land and premises claimed by any person, corporations or associations within said city or townsite must, as far as known by the surveyor, be designated on the plat, showing the name or names of the possessor or occupants and claimants, and in case of any disputed claim as to lots, lands, premises or boundaries the said surveyor, if the same be demanded by any person, shall designate the lines in different color

from the body of the plat of such part of any premises so disputed or claimed adversely.

[1909 c 231 § 2; RRS § 11486. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.030
Councils' duties when townsites on United States land -- Plats -- Filing.

A plat thereof must be made in triplicate, on a scale of not less than eighty feet to one inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county auditor of the county wherein the city or town is situated, one must be deposited in the proper United States land office, and one with the city or town clerk. These plats shall be considered public records, and each must be accompanied with a copy of the field notes, and the county auditor must make a record of such plat in a book to be kept by him for that purpose, and such county auditor must file a copy of said field notes in his office. The said surveyor must number the blocks as divided by the roads, highways and streets opened and generally used, and for which a public necessity exists at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said town or city surveyed as herein provided, which said numbers must be a sufficient description of any parcel of land in said plats. Said survey and plat thereof shall conform as near as may be to the existing rights, interests and claims of the occupants thereof, but no lot in the central or business portion of such city or town shall exceed in area four thousand, two hundred square feet, and no suburban lot in such city or town shall exceed two acres in area.

[1909 c 231 § 3; RRS § 11487. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.040
Councils' duties when townsites on United States land -- Survey, notice of -- Bids for -- Franchises continued.

Before proceeding to make such survey, at least ten days' notice thereof must be given, by posting within the limits of such city or townsite, not less than five written or printed notices of the time when such survey shall commence, or by publication thereof in a newspaper published in the city or town, if one there be. The survey of said city or town lands must be made to the best advantage and at the least expense to the holders, claimants and occupants thereof; and the council is hereby authorized and directed to receive bids for such surveying, and to let the same by contract to the lowest competent bidder: PROVIDED, That the possessors, owners and claimants of water works, electric light, telegraph, telephone, pipe or power lines, sewers and like or similar property located in such roads, streets, alleys and other public places in such cities and towns shall be maintained and protected in the same, as the same shall exist at the time of the entry in the United States land office of the land embracing such city or town, and the right to continue to use such property for the purposes for which said property was intended, is hereby acknowledged and confirmed.

[1909 c 231 § 4; RRS § 11488. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.050
Contents of plat.

Such plat must show as follows:

(1) All streets, alleys, avenues, roads and highways, and the width thereof.

(2) All parks, squares and all other grounds reserved for public uses, with the boundaries and dimensions thereof.

(3) All lots and blocks, with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of every lot.

(4) The angles of intersection of all boundary lines of the lots and block, whenever the angle of intersection is not a right angle.

(5) The location of all stone or iron monuments set to establish street lines.

(6) The exterior boundaries of the piece of land so platted, giving such boundaries by true courses and distances.

(7) The location of all section corners, quarter

section or meander corners of sections within the limits of said plat.

(8) In case no such section or quarter section or meander corners are within the limits of the plat, it must show a connection line to some corner or initial point of the government surveys, or a government mineral monument, if there be any within one mile of such townsite. All distances marked on the plat must be in feet and decimals of a foot.

[1909 c 231 § 5; RRS § 11489. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.060
Monuments -- Location, placement requisites.

Such surveyor must mark all corners of blocks or lots shown on the plat by substantial stakes or monuments, and must set stone or iron monuments at the points of intersection of the center lines of all the streets, where practicable, or as near as possible to such points, and their location must be shown by marking on the plat the distances to the block corners adjacent thereto. The top of such monument must be placed one foot below the surface of the ground, and in size must be at least six inches by six inches by six inches, and be placed in the ground to the depth of one foot.

[1909 c 231 § 6; RRS § 11490. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.070
Monuments -- Markings -- Surveyor's certificate on plat.

If a stone is used as a monument, it must have a cross cut in the top at the point of intersection of the center lines of streets, or a hole may be drilled in the stone to mark such point. If an iron monument is used it must be at least two inches in diameter by two and one-half feet in length, and may be either solid iron or pipe. The dimensions of the monuments must be marked on the plat, and reference thereto made in the field notes, and establish permanently the lines of all the streets. The surveyor must make and subscribe on the plat a certificate that such survey was made in accordance with the provisions of this chapter, stating the date of survey, and verify the same by his oath.

[1909 c 231 § 7; RRS § 11491. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.080
Plats filed -- Auditor's fee.

All such plats must be made on mounted drawing paper, and filed and recorded in the office of the county auditor, and he must keep the original plat for public inspection. The fee of such county auditor for filing and recording each of such plats and the field notes accompanying the same shall be the sum of ten dollars.

[1909 c 231 § 8; RRS § 11492. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.090
Assessments.

Each lot or parcel of said lands having thereon valuable improvements or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said corporate authorities at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and fifty cents; each lot or parcel of such lands exceeding in area one-eighth of one acre and not exceeding one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre and not exceeding one-half of one acre in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved exceeding one-half acre in area shall be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land enclosed, which may not otherwise be improved, claimed by any person, corporation, or association, shall be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where upon one parcel of land there shall be two or more separate buildings occupied or used ordinarily as dwellings or for business purposes each such building, for the purposes of this section, shall be

considered as standing on a separate lot of land; but the whole of such premises may be conveyed in one deed; which moneys so assessed must be received by the clerk and be paid by him into the city or town treasury.

[1909 c 231 § 9; RRS § 11493. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.100
Notice of possession filed -- Assessment and fee -- Certificate -- Council record.

Every person, company, corporation or association claimant of any city or town lot or parcel of land within the limits of such city or townsite, must present to the council, by filing the same with the clerk thereof, within three months after the patent (or certified copy thereof) from the United States has been filed in the office of the county auditor, his, her, its or their affidavit, (or by guardian or next friend where the claimant is under disability), verified in person or by duly authorized agent, attorney, guardian or next friend, in which must be concisely stated the facts constituting the possession or right of possession of the claimant, and that the claimant is entitled to the possession thereof and to a deed therefor as against all other persons, to the best of his knowledge and belief, and stating who was an occupant of such lot or parcel of land at the time of the entry of such townsite at the United States land office, to which must be attached a copy of so much of the plat of said city or townsite as will fully exhibit the particular lot or parcel of land so claimed, and every such claimant, at the time of filing such affidavit, must pay to such clerk such sum of money as said clerk shall certify to be due for the assessment mentioned in RCW 58.28.090, together with the further sum of four dollars, to be appropriated to the payment of expenses incurred in carrying out the provisions of this chapter, and the said clerk must thereupon give to such claimant a certificate, attested by the corporate seal, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. The council of every such city or town must procure a bound book, wherein the clerk must make proper entries of the substantial matters contained in every such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of lot or lands claimed.

[1909 c 231 § 10; RRS § 11494. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.110
Deficiency assessment -- When payable.

If it is found that the amounts hereinbefore specified as assessments and fees for costs and expenses prove to be insufficient to cover and defray all the necessary expenses, the council must estimate the deficiency and assess such deficiency pro rata upon all the lots and parcels of land in such city or town, and declare the same upon the basis set down in RCW 58.28.090, which additional amount, if any, may be paid by the claimant at the time when the certificate hereinafter [hereinbefore] mentioned, or at the time when the deed of conveyance hereinbefore [hereinafter] provided for, is issued.

[1909 c 231 § 11; RRS § 11495. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.120
Deed to claimants -- Actions contesting title, limitations on.

At the expiration of six months after the time of filing of such patent, or a certified copy thereof in the office of the county auditor, if there has been no adverse claim filed in the meantime, the council must execute and deliver to such claimant, his or her, its or their heirs, executors, administrators, grantees, successors or assigns a good and sufficient deed of the premises described in the application of the claimant originally filed, if proper proof shall have been made, which said deed must be signed and acknowledged by the mayor or other presiding officer of the council, and attested by the corporate seal of such city or town. No conveyance of any such lands made as in this chapter provided, concludes the rights of third persons; but such third persons may have their action in the premises, to determine their alleged interest in such lands and their right to the legal title thereto against such grantee, his, her, its or their heirs, successors or assigns, to which they may deem themselves entitled either in law or equity; but no action for the recovery or

possession of such premises, or any portion thereof, or to establish the right to the legal title thereto, must be maintained in any court against the grantee named therein, or against his, her, its or their legal representatives or assigns, unless such action shall be commenced within six months after such deed shall have been filed for record in the office of the county auditor of the county where such lands are situate; nothing herein shall be construed to extend the time of limitation prescribed by law for the commencement of actions upon the possessory claim or title to real estate, when such action is barred by law at the time of the passage of this chapter.

[1909 c 231 § 12; RRS § 11496. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.130
Entries on mineral lands -- Rights of claimants.

Townsite entries may be made by incorporated towns or cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof and when entry has been made or patent issued for such townsites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: PROVIDED, That no entry shall be made by such mineral vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral vein applicant.

[1909 c 231 § 13; RRS § 11497. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.140
Conflicting claims -- Procedure.

In all cases of adverse claims or disputes arising out of conflicting claims to lands or concerning boundary lines, the adverse claimants may submit the decision thereof to the council of such city or town by an agreement in writing specifying particularly the subject matter in dispute, and may agree that their decision shall be final. The council must hear the proofs, and shall order a deed to be executed or denied in accordance with the facts; but in all other cases of adverse claims, the party out of possession shall commence his action in a court of competent jurisdiction within six months after the time of filing of the patent from the United States (or a certified copy thereof), in the office of the county auditor. In case such action be commenced, the plaintiff must serve a notice of lis pendens upon the mayor, who must thereupon stay all proceedings in the matter of granting any deed to the land in dispute until the final decision in such suit; and upon presentation of a certified copy of the final judgment of such court in such action, the council must cause to be executed and delivered a deed of such premises, in accordance with the judgment, adjudging the claimant to have been an occupant of any particular lot or lots at the time of the entry of such townsite in the United States land office, or to be the successor in interest of such occupant. If in any action brought under this chapter, or under said acts of congress, the right to the ground in controversy shall not be established by either party, the court or jury shall so find and judgment shall be entered accordingly. In such case costs shall not be allowed to either party, and neither party shall be entitled to a deed to the ground in controversy, and in such action it shall be incumbent upon each claimant to establish that he, she or it was an occupant of the ground in controversy within the meaning of the said acts of congress at the time of the entry of said townsite in the United States land office, or is the successor in interest of such occupant.

[1909 c 231 § 14; RRS § 11498. Prior: 1888 c 124 pp 216-220.]

NOTES:

Proof of right -- Costs upon failure of both conflicting parties: RCW 58.28.360.

RCW 58.28.150
Notice of filing patent -- Abandonment of claim.

The said council must give public notice by advertising for four weeks in a newspaper published in said city or town, or, if there be no newspaper published in said city or town, then by publication in some newspaper having general circulation in such city or town, and not less than five written or printed notices must be posted in public places within the limits of such city or townsite; such notice must state that patent for said townsite (or certified copy thereof) has been filed in the county auditor's office. If any person, company, association or any other claimant of lands in such city or town fails, neglects or refuses to make application to the council for a deed of conveyance to the lands so claimed, and to pay the sums of money specified in this chapter, within three months after filing of such patent, or a certified copy thereof, in the office of the county auditor, shall be deemed to have abandoned the same and to have forfeited all right, title and interest therein or thereto both in law and in equity as against the trustee of said townsite, and such abandoned or forfeited lot or lots shall be sold as unoccupied lands, and the proceeds thereof placed in the special fund in this chapter mentioned.

[1909 c 231 § 15; RRS § 11499. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.160
Sale of unoccupied lots -- Notice -- Minimum price.

All lots in such city or townsite which were unoccupied at the time of the entry of said townsite in the United States land office shall be sold by the corporate authorities of such city or town, or under their direction, at public auction to the highest bidder for cash, each lot to be sold separately, and notice of such sale or sales shall be given by posting five written or printed notices in public places within said townsite, giving the time and particular place of sale, which notices must be posted for at least thirty days prior to the date of said sale, and by publishing a like notice for four consecutive weeks prior to such sale in a newspaper published in such city or town, or, if no such newspaper be published in such city or town, then in some newspaper having general circulation in such city or town, and deeds shall be given therefor to the several purchasers: PROVIDED, That no such unoccupied lot shall be sold for less than five dollars in addition to an assessment equivalent to assessment provided in RCW 58.28.090, and all moneys arising from such sale, after deducting the costs and expenses of such sale or sales, shall be placed in the treasury of such city or town.

[1909 c 231 § 16; RRS § 11500. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.170
Lands for school and municipal purposes -- Funds.

All school lots or parcels of land, reserved or occupied for school purposes, must be conveyed to the school district in which such city or town is situated, without cost or charge of any kind whatever. All lots or parcels of land reserved or occupied for municipal purposes must be conveyed to such city or town without cost or charge of any kind whatever. All expenses necessarily incurred or contracted by the carrying into effect of the provisions of this chapter are a charge against the city or town on behalf of which the work was done, and such expenses necessarily incurred, either before or after the incorporation thereof, shall be paid out of the treasury of such city or town upon the order of the council thereof; and all moneys paid for lands or to defray the expenses of carrying into effect the provisions of this chapter shall be paid into the city or town treasury by the officer or officers receiving the same, and shall constitute a special fund, from which shall be paid all expenses, and the surplus, if any there be, shall be expended under the direction of the city or town council for public improvements in such city or town.

[1909 c 231 § 17; RRS § 11501. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.180
Effect of informalities -- Certificate or deed as prima facie evidence.

No mere informality, failure or omission on the part of any of the persons or officers named in this chapter invalidates the acts of such person or officer; but every certificate or deed granted to any person pursuant to the provisions of this chapter is prima facie evidence that all

preliminary proceedings in relation thereto have been correctly taken and performed, and that the recitals therein are true and correct.

[1909 c 231 § 18; RRS § 11502. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.190
Corporate authorities to act promptly.

Such corporate authorities shall promptly execute and perform all duties imposed upon them by the provisions of this chapter.

[1909 c 231 § 19; RRS § 11503. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.200
Proof requisite to delivery of deed.

No deed to any lot or parcel of land in such townsite entry shall be made or delivered to any alleged occupant thereof before proof shall have been made under oath showing such claimant to have been an occupant of such lot or parcel of land within the meaning of said laws of congress at the time of the entry of such townsite at the proper United States land office, but the grantees, heirs, successors in interest or assigns of such occupant of any lot, as such, may receive such deed.

[1909 c 231 § 20; RRS § 11504. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.201
Title to vacated lots by occupancy and improvements.

See RCW 58.28.510.

RCW 58.28.202
Controversies, by whom settled -- Review.

See RCW 58.28.520.

RCW 58.28.203
Platted lands declared dedicated to public use.

See RCW 58.28.440.

RCW 58.28.204
Appeals -- Procedure.

See RCW 58.28.490.

UNINCORPORATED TOWNS ON UNITED STATES LAND

RCW 58.28.210
Unincorporated towns on United States land -- Superior court judge to file claim.

It is the duty of the judge of the superior court of any county in this state to enter at the proper land office of the United States such quantity of land as the inhabitants of any unincorporated town, situate upon lands the legal and equitable title to which is in the United States of America, or situate upon public lands of the United States within the county wherein such superior court is held, may be entitled to claim in the aggregate, according to their population, in the manner required by the laws of the United States, and valid regulations prescribed by the secretary of the interior of the United States, and to make and sign all necessary declaratory statements, certificates and affidavits, or other instruments requisite to carry into effect the intentions of this chapter, and the intention of the act of congress of the United States entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and all acts of congress amendatory thereof and supplemental thereto, and to file in the proper United States land office a proper application in writing, describing the tracts of land on which such unincorporated town is situated, and all lands entitled to be embraced in such government townsite entry, and make proof and payment for such tracts of land in the manner required by law.

[1909 c 231 § 21; RRS § 11505. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.220

Petition to superior court judge -- Contents -- Procedure.

The judge of the superior court of any county in this state, whenever he is so requested by a petition signed by not less than five residents, householders in any such unincorporated town, whose names appear upon the assessment roll for the year preceding such application in the county wherein such unincorporated town is situated -- which petition shall set forth the existence, name and locality of such town, whether such town is situated on surveyed or unsurveyed lands, and if on surveyed lands an accurate description according to the government survey of the legal subdivisions sought to be entered as a government townsite must be stated; the estimated number of its inhabitants; the approximate number of separate lots or parcels of land within such townsite, and the amount of land to which they are entitled under such acts of congress -- must estimate the cost of entering such land, and of the survey, platting and recording of the same, and must endorse such estimate upon such petition, and upon receiving from any of the parties interested the amount of money mentioned in such estimate, the said judge may cause an enumeration of the inhabitants of such town to be made by some competent person, exhibiting therein the names of all persons residing in said proposed townsite and the names of occupants of lots, lands, or premises within such townsite, alphabetically arranged, verified by his oath, and cause such enumeration to be presented to such judge.

[1909 c 231 § 22; RRS § 11506. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.230
Survey and plat -- Boundaries -- Monuments.

Such judge must thereupon cause a survey to be made by some competent person, of the lands which the inhabitants of said town may be entitled to claim under said acts of congress, located according to the legal subdivisions of the sections according to the government survey thereof, and the same must be distinctly marked by suitable monuments; such survey must further particularly designate all streets, roads, lanes, and alleys, public squares, churches, school lots, cemeteries, commons, and levees, as the same exist and have been heretofore dedicated, in any manner to public use, and by measurement the precise boundaries and area of each and every lot or parcel of land and premises claimed by any person, corporation, or association within said townsite must, as far as known by the surveyor, be designated on the plat, showing the name or names of the possessor, occupant or claimant; and in case of any disputed claim as to lots, lands, premises or boundaries, the said surveyor, if the same be demanded by any person, shall designate the lines in different color from the body of the plat of such part of any premises so disputed or claimed adversely; said surveyor shall survey, lay out and plat all of said lands, whether occupied or not, into lots, blocks, streets and alleys.

[1909 c 231 § 23; RRS § 11507. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.240
Plats -- Filing.

The plat thereof must be made in triplicate on a scale of not less than eighty feet to an inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county auditor of the county wherein such unincorporated town is situated, one must be deposited in the proper United States land office, and one with such judge. These plats shall constitute public records, and must each be accompanied by a copy of the field notes, and the county auditor must make a record of such plat in a book to be kept by him for that purpose, and such county auditor must file such copy of said field notes in his office. The said surveyor must number and survey the blocks as divided by the roads, and streets opened and generally used and for which a public necessity exists, at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said unincorporated town as herein provided, which said numbers must be a sufficient description of any parcel of land represented on said plats. Said survey and plat thereof shall conform as nearly as may be to the existing rights, interest, and claims of the occupants thereof, but no lot in the center or business portion of said unincorporated town shall exceed in area four thousand two hundred feet, and no suburban lot in such unincorporated town shall exceed two acres in area.

[1909 c 231 § 24; RRS § 11508. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.250
Survey, notice of -- Bids for -- Franchises continued.

Before proceeding to make such survey, at least ten days' notice thereof must be given, by posting within the limits of such townsite, not less than five written or printed notices of the time when such survey shall commence, or by publication thereof in a newspaper published in said town, if one there be. The survey of said townsite must be made to the best advantage and at the least expense to the holders, claimants, possessors and occupants thereof. The said judge is hereby authorized and directed to receive bids for such surveying, platting and furnishing copies of the field notes, and to let the same by contract to the lowest competent bidder: PROVIDED, That the possessors, owners, or claimants of water works, electric light, telegraph, telephone, pipe or power lines, sewers, irrigating ditches, drainage ditches, and like or similar property located in such townsites or in the roads, streets, alleys or highways therein or in other public places in such townsite, shall be maintained and protected in the same as the same shall exist at the time of the entry in the United States land office of the land embraced in such government townsite, and the right to continue to use such property, for the purposes for which said property was intended, is hereby acknowledged and confirmed.

[1909 c 231 § 25; RRS § 11509. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.260
Contents of plat.

Such plat must show as follows:

(1) All streets, alleys, avenues, roads and highways, and the width thereof.

(2) All parks, squares and all other ground reserved for public uses, with the boundaries and dimensions thereof.

(3) All lots and blocks, with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of every lot.

(4) The angles of intersection of all boundary lines of the lots and block, whenever the angle of intersection is not a right angle.

(5) The location of all stone or iron monuments set to establish street lines.

(6) The exterior boundaries of the piece of land so platted, giving such boundaries by true courses and distances.

(7) The location of all section corners, or legal subdivision corners of sections within the limits of said plat.

(8) In case no such section or subdivision corners are within the limits of the plat, it must show a connection line to some corner or initial point of the government surveys, or a government mineral monument, if there be any within one mile of such townsite. All distances marked on the plat must be in feet and decimals of a foot.

[1909 c 231 § 26; RRS § 11510. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.270
Monuments -- Location, placement requisites.

Such surveyor must mark all corners of blocks or lots shown on the plat by substantial stakes or monuments, and must set stone or iron monuments at the points of intersection of the center lines of all the streets, where practicable, or as near as possible to such points, and their location must be shown by marking on the plat the distances to the block corners adjacent thereto. The top of such monument must be placed one foot below the surface of the ground, and in size must be at least six inches by six inches by six inches, and be placed in the ground to the depth of one foot.

[1909 c 231 § 27; RRS § 11511. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.280
Monuments -- Markings -- Surveyor's certificate on plat.

If a stone is used as a monument it must have a cross cut in the top at the point of intersection of center lines of streets, or a hole may be drilled in the stone to mark such point. If an iron monument is used it must be at least two inches in diameter by two and one-half feet in length, and may be either solid iron or pipe. The dimensions of the monuments must be marked on the plat, and reference thereto made in the field notes, and establish permanently the lines of all the streets. The surveyor must make and subscribe on the plat a certificate that such survey was made in accordance with the provisions of this chapter, stating the date of survey, and verify the same by his oath.

[1909 c 231 § 28; RRS § 11512. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.290
Plats filed -- Auditor's fee.

All such plats must be made on mounted drawing paper, and filed and recorded in the office of the county auditor, and he must keep the original plat for public inspection. The fee of such county auditor for filing and recording each of such plats, and the field notes accompanying the same shall be the sum of ten dollars.

[1909 c 231 § 29; RRS § 11513. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.300
Assessments -- Disposition -- Employment of attorney authorized.

Each lot or parcel of said lands having thereon valuable improvements or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said judge at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth, and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and five [fifty] cents; each lot or parcel of such lands exceeding in area one-eighth of one acre and not exceeding one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre and not exceeding one-half of one acre in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved, exceeding one-half acre in area, shall be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land enclosed, which may not otherwise be improved, claimed by any person, corporation, or association, shall be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where upon one parcel of land there shall be two or more separate buildings occupied or used ordinarily as dwellings or for business purposes, each such building, for the purposes of this section, shall be considered as standing on a separate lot of land; but the whole of such premises may be conveyed in one deed; which moneys so assessed must constitute a fund from which must be reimbursed or paid the moneys necessary to pay the government of the United States for said townsite lands, and interest thereon, if such moneys have been loaned or advanced for the purpose and expenses of their location, entry and purchase, and cost and expenses attendant upon the making of such survey, plats, publishing and recording, including a reasonable attorney's fee for legal services necessarily performed, and the persons or occupants in such townsite procuring said townsite entry to be made, may employ an attorney to assist them in so doing and to assist such judge in the execution of his trust, and he shall be allowed by such judge out of said fund a reasonable compensation for his services.

[1909 c 231 § 30; RRS § 11514. Prior: 1888 c 124 pp 216-200.]

RCW 58.28.310
Notice of possession filed -- Assessment and fee -- Certificate -- Judge's record.

Every person, company, corporation, or association, claimant of any town lot or parcel of land, within the limits of such townsite, must present to such judge within three months after the patent (or a certified copy thereof), from the United States has been filed in the office of the county auditor, his, her, its or their affidavit, (or by guardian or next friend where the claimant is under disability), verified in person, or by duly authorized agent or attorney, guardian or next friend, in which must be concisely stated the facts constituting the possession or right of possession of the claimant and that the claimant

is entitled to the possession thereof and to a deed therefor as against all other persons or claimants, to the best of his knowledge and belief, and in which must be stated who was an occupant of such lot or parcel of land at the time of the entry of such townsite at the United States land office, to which must be attached a copy of so much of the plat of said townsite as will fully exhibit the particular lots or parcels of land so claimed; and every such claimant, at the time of presenting and filing such affidavit with said judge, must pay to such judge such sum of money as said judge shall certify to be due for the assessment mentioned in RCW 58.28.300, together with the further sum of four dollars, to be appropriated to the payment of cost and expenses incurred in carrying out the provisions of this chapter, and the said judge must thereupon give to such claimant a certificate, signed by him and attested by the seal of the superior court, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. Such judge must procure a bound book for each unincorporated government townsite in his county wherein he must make proper entries of the substantial matters contained in such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of the lot or lands claimed.

[1909 c 231 § 31; RRS § 11515. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.320
Deficiency assessment -- When payable.

If it is found that the amounts hereinbefore specified as assessments and fees for costs and expenses, prove to be insufficient to cover and defray all the necessary expenses, the said judge must estimate the deficiency and assess such deficiency pro rata upon all the lots and parcels of land in such government townsite, and declare the same upon the basis set down in RCW 58.28.300; which additional amount, if any, may be paid by the claimant at the time when the certificate hereinbefore mentioned, or at the time when the deed of conveyance hereinafter provided for, is issued.

[1909 c 231 § 32; RRS § 11516. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.330
Deed to claimants -- Actions contesting title, limitations on.

At the expiration of six months after the time of filing such patent, or certified copy thereof, in the office of the county auditor, if there has been no adverse claim filed in the meantime, said judge must execute and deliver to such claimant or to his, her, its or their heirs, executor, administrator, grantee, successor or assigns a good and sufficient deed of the premises described in the application of the claimant originally filed, if proper proof shall have been made, which said deed must be signed and acknowledged by such judge as trustee, and attested by the seal of the superior court. No conveyance of any such lands made as in this chapter provided, concludes the rights of third persons; but such third persons may have their action in the premises, to determine their alleged interest in such lands, and their right to the legal title thereto, against such grantee, his, her, its or their heirs, executors, administrators, successors or assigns, to which they may deem themselves entitled, either in law or in equity; but no action for the recovery or possession of such premises, or any portion thereof, or to establish the right to the legal title thereto, must be maintained in any court against the grantee named therein, or against his, her, its or their heirs, executors, administrators, successors or assigns, unless such action shall be commenced within six months after such deed shall have been filed for record in the office of the county auditor of the county where such lands are situated; nothing herein shall be construed to extend the time of limitation prescribed by law for the commencement of actions upon a possessory claim or title to real estate, when such action is barred by law at the time of the taking effect of this chapter.

[1909 c 231 § 33; RRS § 11517. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.340
Entries on mineral lands -- Rights of claimants.

Townsite entries may be made by such judge on mineral lands of the United States, but no title shall be acquired by such judge to any vein of

gold, silver, cinnabar, copper or lead, or to any valid mining claim or possession held under existing laws. When mineral veins are possessed within the limits of an unincorporated town, and such possession is recognized by local authority, or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof, and when entry has been made or patent issued for such townsite to such judge, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: PROVIDED, That no entry shall be made by such mineral vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral vein applicant.

[1909 c 231 § 34; RRS § 11518. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.350
Conflicting claims -- Procedure.

In all cases of adverse claims or disputes arising out of conflicting claims to land or concerning boundary lines, the adverse claimants may submit the decision thereof to said judge by an agreement in writing specifying particularly the subject matter in dispute and may agree that his decision shall be final. The said judge must hear the proofs, and shall execute a deed or deny the execution of a deed in accordance with the facts; but in all other cases of adverse claims the party out of possession shall commence his action in a court of competent jurisdiction within six months after the filing of the patent (or a certified copy thereof) from the United States, in the office of the county auditor. In case such action be commenced within the time herein limited, the plaintiff must serve notice of lis pendens upon such judge, who must thereupon stay all proceedings in the matter of granting or executing any deed to the land in dispute until the final decision in such suit; upon presentation of a certified copy of the final judgment in such action, such judge must execute and deliver a deed of the premises, in accordance with the judgment, adjudging the claimant to have been an occupant of any particular lot or lots at the time of the entry of such townsite in the United States land office, or to be the successor in interest of such occupant.

[1909 c 231 § 35; RRS § 11519. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.360
Proof of right -- Costs upon failure of both conflicting parties.

If in any action brought under this chapter, or under said acts of congress, the right to the ground in controversy shall not be established by either party, the court or jury shall so find and judgment shall be entered accordingly. In such case costs shall not be allowed to either party, and neither party shall be entitled to a deed to the ground in controversy, and in such action it shall be incumbent upon each claimant or claimants to establish that he, she, it or they, was or were, an occupant of the ground in controversy within the meaning of said acts of congress at the time of the entry of said townsite in the United States land office, or is or are the successor, or successors in interest of such occupant.

[1909 c 231 § 36; RRS § 11520. Prior: 1888 c 124 pp 216-220.]

NOTES:

Conflicting claims -- Procedure: RCW 58.28.140.

RCW 58.28.370
Notice of filing patent.

Said judge must promptly give public notice by advertising for four weeks in any newspaper published in such town, or if there be no newspaper published in such town, then by publication in some newspaper having general circulation in such town, and not less than five written or printed notices must be posted in public places within the limits of such townsite; such notice must state that the patent for said townsite (or a certified copy thereof) has been filed in the county auditor's office.

[1909 c 231 § 37; RRS § 11521. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.380
Abandonment of claim.

If any person, company, association, or any other claimant of lands in such townsite fails, neglects or refuses to make application to said judge for a deed of conveyance to said land so claimed, and pay the sums of money specified in this chapter, within three months after the filing of such patent, or a certified copy thereof, in the office of the county auditor, shall be deemed to have abandoned the claim to such land and to have forfeited all right, title, claim and interest therein or thereto both in law and in equity as against the trustee of said townsite, and such abandoned or forfeited lot or lots may be sold by such trustee as unoccupied lands, and the proceeds thereof placed in the fund heretofore mentioned in this chapter.

[1909 c 231 § 38; RRS § 11522. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.390
Sale of unoccupied lots -- Notice -- Minimum price.

All lots in such townsite which were unoccupied within the meaning of the said acts of congress at the time of the entry of said townsite in the United States land office shall be sold by such judge or under his direction, at public auction to the highest bidder for cash, each lot to be sold separately, and notice of such sale, or sales, shall be given by posting five written or printed notices in public places within said townsite, giving the time and particular place of sale, which notices must be posted at least thirty days prior to the date of any such sale, and by publishing a like notice for four consecutive weeks prior to any such sale in a newspaper published in such town, or if no newspaper be published in such town, then in some newspaper having general circulation in such town. And deed shall be given therefor to the several purchasers: PROVIDED, That no such unoccupied lot shall be sold for less than five dollars in addition to an assessment equivalent to assessment provided for in RCW 58.28.300, and all moneys arising from such sale or sales after deducting the cost and expenses of such sale or sales shall be placed in the fund hereinbefore mentioned.

[1909 c 231 § 39; RRS § 11523. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.400
Lands for school and public purposes -- Expenses as charge against fund.

All school lots or parcels of land reserved or occupied for school purposes, must be conveyed to the school district in which such town is situated without cost or charge of any kind whatever. All lots or parcels of land reserved or occupied for public purposes must be set apart and dedicated to such public purposes without cost or charge of any kind whatever. All expenses necessarily incurred or contracted by the carrying into effect of the provisions of this chapter or said acts of congress are a charge against the fund herein provided for.

[1909 c 231 § 40; RRS § 11524. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.410
Disposition of excess money -- Special fund.

Any sum of money remaining in said fund after defraying all necessary expenses of location, entry, surveying, platting, advertising, filing and recording, reimbursement of moneys loaned or advanced and paying the cost and expenses herein authorized and provided for must be deposited in the county treasury by such judge to the credit of a special fund of each particular town, and kept separate by the county treasurer to be paid out by him only upon the written order of such judge in payment for making public improvements, or for public purposes, in such town.

[1909 c 231 § 41; RRS § 11525. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.420
Effect of informalities -- Certificate or deed as prima facie evidence.

No mere informality, failure, or omission on the part of any persons or officers named in this chapter invalidates the acts of such person or officers; but every certificate or deed granted to any person pursuant to the provisions of this chapter is prima facie evidence that all preliminary proceedings in relation thereto have

been taken and performed and that the recitals therein are true and correct.

[1909 c 231 § 42; RRS § 11526. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.430
Proof requisite to delivery of deed.

No deed to any lot in such unincorporated town or unincorporated government townsite entry shall be made or delivered to any alleged occupant thereof before proof shall have been made under oath, showing such claimant to have been an occupant of such lot or parcel of land within the meaning of said laws of congress at the time of the entry of such townsite at the proper United States land office, but the grantees, heirs, executors, administrators, successors in interest or assigns of such occupant of any lot, as such, may receive such deed.

[1909 c 231 § 43; RRS § 11527. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.440
Platted lands declared dedicated to public use.

All streets, roads, lanes and alleys, public squares, cemeteries, parks, levees, school lots, and commons, surveyed, marked and platted, on the map of any townsite, as prescribed and directed by the provisions of this chapter, are hereby declared to be dedicated to public use, by the filing of such town plat in the office of the county auditor, and are inalienable, unless by special order of the board of commissioners of the county, so long as such town shall remain unincorporated; and if such town at any time thereafter becomes incorporated, the same becomes the property of such town or city, and must be under the care and subject to the control of the council or other municipal authority of such town or city.

[1909 c 231 § 44; RRS § 11528. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.450
Clerk's duties when judge trustee.

All clerical work under this chapter where a judge of the superior court is trustee must be performed by the clerk of the superior court.

[1909 c 231 § 45; RRS § 11529. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.460
Accounting and depositing money -- Promptness.

Such judge when fulfilling the duties imposed upon him by said acts of congress, and by this chapter, must keep a correct account of all moneys received and paid out by him. He must deposit all surplus money with the treasurer of the proper county, and he must promptly settle up all the affairs relating to his trust pertaining to such town.

[1909 c 231 § 46; RRS § 11530. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.470
Records filed with county clerk.

Whenever the affairs pertaining to such trust shall be finally settled and disposed of by such judge, he shall deposit all books and papers relating thereto in the office of the county clerk of the proper county to be thereafter kept in the custody of such county clerk as public records, and the county clerk's fee, for the use of his county therefor, shall be the sum of ten dollars.

[1909 c 231 § 47; RRS § 11531. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.480
Judge, a trustee for purposes herein.

Every such judge when fulfilling the duties imposed upon him by said acts of congress, and by this chapter, shall be deemed and held to be acting as a trustee for the purposes of fulfilling the purposes of said acts and not as a superior court, and such judge shall be deemed to be disqualified to sit as judge of such superior court in any action or proceeding wherein is involved the execution of such trust or rights involved therein.

[1909 c 231 § 48; RRS § 11532. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.490
Appellate review -- Procedure.

Appellate review of the judgment or orders of the superior court in all cases arising under this chapter or said acts of congress may be sought as in other civil cases.

[1988 c 202 § 54; 1971 c 81 § 127; 1909 c 231 § 49; RRS § 11533. Prior: 1888 c 124 pp 216-220.]

NOTES:

Severability -- 1988 c 202: See note following RCW 2.24.050.

RCW 58.28.500
Succession of trust.

The successors in office of such superior court judge shall be his successors as trustee of such trust.

[1909 c 231 § 51; RRS § 11534. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.510
Title to vacated lots by occupancy and improvements.

The judge of the superior court of any county is hereby declared to be the successor as trustee of any territorial probate judge in such county who was trustee under any such acts of congress, and may as such succeeding trustee perform any unperformed duties of his predecessor in office as such trustee, agreeably to the provisions of this chapter as nearly as may be. And when entry was made by any such probate judge under any of said acts of congress and subsequent to such entry, the city or town situated upon such townsite entry has been incorporated according to law, and the corporate authorities thereof have or have attempted to vacate any common, plaza, public square, public park or the like, in such government townsite, and where thereafter, any person, or corporation, has placed permanent improvements on such land so vacated or attempted to be vacated, exceeding in value the sum of five thousand dollars, with the knowledge, consent, or acquiescence of the corporate authorities of such city or town and with the general consent and approval of the inhabitants of said city or town and such improvements have been made for more than five years and such person or corporation making such improvements has been in the open, notorious and peaceable possession of such lands and premises for a period of more than five years, such superior court judge, as trustee, of such government townsite, and successor as trustee to such judge of probate, trustee of such government townsite, shall have the power and authority to make and deliver to such person or corporation, or to his or its heirs, executors, administrators, successors or assigns, a deed for such lands and premises, conveying a fee simple title to such lands and premises upon such terms and for such price as he shall deem just and reasonable under all the facts and surrounding circumstances of the case, and the consideration paid for such deed, one dollar or more, shall be placed in the city or town treasury of such city or town, in the general fund.

[1909 c 231 § 52; RRS § 11535. Prior: 1888 c 124 pp 216-220.]

RCW 58.28.520
Controversies, by whom settled -- Review.

Except as hereinbefore specially provided, the city or town council in incorporated cities and towns, and the judge of the superior court, as trustee, in cases of unincorporated government townsites, are hereby expressly given power and jurisdiction to hear and determine all questions arising under this chapter and under said acts of congress and the right to ascertain who were the occupants of lots in such government townsites at the time of the entry thereof in the United States land office, and to determine from sworn testimony who are and who are not entitled to deeds of conveyance to specific lots in such government townsite, subject to review by courts of competent jurisdiction.

[1909 c 231 § 53; RRS § 11536. Prior: 1888 c 124 pp 216-220.]

Chapter 60.04 RCW Mechanics' And Materialmen's Liens

RCW SECTIONS

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60.04.021 Lien authorized.

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60.04.903 Effective date -- 1992 c 126.

60.04.904 Application of chapter 281, Laws of 1991, to actions pending as of June 1, 1992 -- 1993 c 357.

NOTES:

Crop lien for furnishing work or labor: RCW 60.11.040.

RCW 60.04.011
Definitions.

Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Construction agent" means any registered or licensed contractor, registered or licensed subcontractor, architect, engineer, or other person having charge of any improvement to real property, who shall be deemed the agent of the owner for the limited purpose of establishing the lien created by this chapter.

(2) "Contract price" means the amount agreed upon by the contracting parties, or if no amount is agreed upon, then the customary and reasonable charge therefor.

(3) "Draws" means periodic disbursements of interim or construction financing by a lender.

(4) "Furnishing labor, professional services, materials, or equipment" means the performance of any labor or professional services, the contribution owed to any employee benefit plan

on account of any labor, the provision of any supplies or materials, and the renting, leasing, or otherwise supplying of equipment for the improvement of real property.

(5) "Improvement" means: (a) Constructing, altering, repairing, remodeling, demolishing, clearing, grading, or filling in, of, to, or upon any real property or street or road in front of or adjoining the same; (b) planting of trees, vines, shrubs, plants, hedges, or lawns, or providing other landscaping materials on any real property; and (c) providing professional services upon real property or in preparation for or in conjunction with the intended activities in (a) or (b) of this subsection.

(6) "Interim or construction financing" means that portion of money secured by a mortgage, deed of trust, or other encumbrance to finance improvement of, or to real property, but does not include:

(a) Funds to acquire real property;

(b) Funds to pay interest, insurance premiums, lease deposits, taxes, assessments, or prior encumbrances;

(c) Funds to pay loan, commitment, title, legal, closing, recording, or appraisal fees;

(d) Funds to pay other customary fees, which pursuant to agreement with the owner or borrower are to be paid by the lender from time to time;

(e) Funds to acquire personal property for which the potential lien claimant may not claim a lien pursuant to this chapter.

(7) "Labor" means exertion of the powers of body or mind performed at the site for compensation. "Labor" includes amounts due and owed to any employee benefit plan on account of such labor performed.

(8) "Mortgagee" means a person who has a valid mortgage of record or deed of trust of record securing a loan.

(9) "Owner-occupied" means a single-family residence occupied by the owner as his or her principal residence.

(10) "Payment bond" means a surety bond issued by a surety licensed to issue surety bonds in the state of Washington that confers upon potential claimants the rights of third party beneficiaries.

(11) "Potential lien claimant" means any person or entity entitled to assert lien rights under this chapter who has otherwise complied with the provisions of this chapter and is registered or licensed if required to be licensed or registered by the provisions of the laws of the state of Washington.

(12) "Prime contractor" includes all contractors, general contractors, and specialty contractors, as defined by chapter 18.27 or 19.28 RCW, or who are otherwise required to be registered or licensed by law, who contract directly with a property owner or their common law agent to assume primary responsibility for the creation of an improvement to real property, and includes property owners or their common law agents who are contractors, general contractors, or specialty contractors as defined in chapter 18.27 or 19.28 RCW, or who are otherwise required to be registered or licensed by law, who offer to sell their property without occupying or using the structures, projects, developments, or improvements for more than one year.

(13) "Professional services" means surveying, establishing or marking the boundaries of, preparing maps, plans, or specifications for, or inspecting, testing, or otherwise performing any other architectural or engineering services for the improvement of real property.

(14) "Real property lender" means a bank, savings bank, savings and loan association, credit union, mortgage company, or other corporation, association, partnership, trust, or individual that makes loans secured by real property located in the state of Washington.

(15) "Site" means the real property which is or is to be improved.

(16) "Subcontractor" means a general contractor or specialty contractor as defined by chapter 18.27 or 19.28 RCW, or who is otherwise required to be registered or licensed by law, who contracts for the improvement of real property with someone other than the owner of the property or their common law agent.

[1992 c 126 § 1; 1991 c 281 § 1.]

RCW 60.04.021
Lien authorized.

Except as provided in RCW 60.04.031, any person furnishing labor, professional services, materials, or equipment for the improvement of real property shall have a lien upon the improvement for the contract price of labor, professional services, materials, or equipment furnished at the instance of the owner, or the agent or construction agent of the owner.

[1991 c 281 § 2.]

RCW 60.04.031
Notices -- Exceptions.

(1) Except as otherwise provided in this section, every person furnishing professional services, materials, or equipment for the improvement of real property shall give the owner or reputed owner notice in writing of the right to claim a lien. If the prime contractor is in compliance with the requirements of RCW 19.27.095, 60.04.230, and 60.04.261, this notice shall also be given to the prime contractor as described in this subsection unless the potential lien claimant has contracted directly with the prime contractor. The notice may be given at any time but only protects the right to claim a lien for professional services, materials, or equipment supplied after the date which is sixty days before:

(a) Mailing the notice by certified or registered mail to the owner or reputed owner; or

(b) Delivering or serving the notice personally upon the owner or reputed owner and obtaining evidence of delivery in the form of a receipt or other acknowledgement signed by the owner or reputed owner or an affidavit of service.

In the case of new construction of a single-family residence, the notice of a right to claim a lien may be given at any time but only protects the right to claim a lien for professional services, materials, or equipment supplied after a date which is ten days before the notice is given as described in this subsection.

(2) Notices of a right to claim a lien shall not be required of:

(a) Persons who contract directly with the owner or the owner's common law agent;

(b) Laborers whose claim of lien is based solely on performing labor; or

(c) Subcontractors who contract for the improvement of real property directly with the prime contractor, except as provided in subsection (3)(b) of this section.

(3) Persons who furnish professional services, materials, or equipment in connection with the repair, alteration, or remodel of an existing owner-occupied single-family residence or appurtenant garage:

(a) Who contract directly with the owner-occupier or their common law agent shall not be required to send a written notice of the right to claim a lien and shall have a lien for the full amount due under their contract, as provided in RCW 60.04.021; or

(b) Who do not contract directly with the owner-occupier or their common law agent shall give notice of the right to claim a lien to the owner-occupier. Liens of persons furnishing professional services, materials, or equipment who do not contract directly with the owner-occupier or their common law agent may only be satisfied from amounts not yet paid to the prime contractor by the owner at the time the notice described in this section is received, regardless of whether amounts not yet paid to the prime contractor are due. For the purposes of this subsection "received" means actual receipt of notice by personal service, or registered or certified mail, or three days after mailing by registered or certified mail, excluding Saturdays, Sundays, or legal holidays.

(4) The notice of right to claim a lien described in subsection (1) of this section, shall include but not be limited to the following information and shall substantially be in the following form, using lower-case and upper-case ten-point type where appropriate.

NOTICE TO OWNER

IMPORTANT: READ BOTH SIDES OF THIS NOTICE

CAREFULLY.

PROTECT YOURSELF FROM PAYING TWICE

To: . . . . . Date: . . . . . .

Re: (description of property: Street address or general location.)

From: . . . . . .

AT THE REQUEST OF: (Name of person ordering the professional services, materials, or equipment)

THIS IS NOT A LIEN: This notice is sent to you to tell you who is providing professional services, materials, or equipment for the improvement of your property and to advise you of the rights of these persons and your responsibilities. Also take note that laborers on your project may claim a lien without sending you a notice.

OWNER/OCCUPIER OF EXISTING

RESIDENTIAL PROPERTY

Under Washington law, those who furnish labor, professional services, materials, or equipment for the repair, remodel, or alteration of your owner-occupied principal residence and who are not paid, have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

The law limits the amount that a lien claimant can claim against your property. Claims may only be made against that portion of the contract price you have not yet paid to your prime contractor as of the time this notice was given to you or three days after this notice was mailed to you. Review the back of this notice for more information and ways to avoid lien claims.

COMMERCIAL AND/OR NEW

RESIDENTIAL PROPERTY

We have or will be providing professional services, materials, or equipment for the improvement of your commercial or new residential project. In the event you or your contractor fail to pay us, we may file a lien against your property. A lien may be claimed for all professional services, materials, or equipment furnished after a date that is sixty days before this notice was given to you or mailed to you, unless the improvement to your property is the construction of a new single-family residence, then ten days before this notice was given to you or mailed to you.

Sender: . . . . . .

Address: . . . . . .

Telephone: . . . . . .

Brief description of professional services, materials, or equipment provided or to be provided: . . . . . .

IMPORTANT INFORMATION

ON REVERSE SIDE

IMPORTANT INFORMATION

FOR YOUR PROTECTION

This notice is sent to inform you that we have or

will provide professional services, materials, or equipment for the improvement of your property. We expect to be paid by the person who ordered our services, but if we are not paid, we have the right to enforce our claim by filing a construction lien against your property.

LEARN more about the lien laws and the meaning of this notice by discussing them with your contractor, suppliers, Department of Labor and Industries, the firm sending you this notice, your lender, or your attorney.

COMMON METHODS TO AVOID CONSTRUCTION LIENS: There are several methods available to protect your property from construction liens. The following are two of the more commonly used methods.

DUAL PAYCHECKS (Joint Checks): When paying your contractor for services or materials, you may make checks payable jointly to the contractor and the firms furnishing you this notice.

LIEN RELEASES: You may require your contractor to provide lien releases signed by all the suppliers and subcontractors from whom you have received this notice. If they cannot obtain lien releases because you have not paid them, you may use the dual payee check method to protect yourself.

YOU SHOULD TAKE APPROPRIATE STEPS TO PROTECT YOUR PROPERTY FROM LIENS.

YOUR PRIME CONTRACTOR AND YOUR CONSTRUCTION LENDER ARE REQUIRED BY LAW TO GIVE YOU WRITTEN INFORMATION ABOUT LIEN CLAIMS. IF YOU HAVE NOT RECEIVED IT, ASK THEM FOR IT.

* * * * * * * * * * * * *

(5) Every potential lien claimant providing professional services where no improvement as defined in RCW 60.04.011(5) (a) or (b) has been commenced, and the professional services provided are not visible from an inspection of the real property may record in the real property records of the county where the property is located a notice which shall contain the professional service provider's name, address, telephone number, legal description of the property, the owner or reputed owner's name, and the general nature of the professional services provided. If such notice is not recorded, the lien claimed shall be subordinate to the interest of any subsequent mortgagee and invalid as to the interest of any subsequent purchaser if the mortgagee or purchaser acts in good faith and for a valuable consideration acquires an interest in the property prior to the commencement of an improvement as defined in RCW 60.04.011(5) (a) or (b) without notice of the professional services being provided. The notice described in this subsection shall be substantially in the following form:

NOTICE OF FURNISHING

PROFESSIONAL SERVICES

That on the (day) day of (month and year) , (name of provider) began providing professional services upon or for the improvement of real property legally described as follows:

[Legal Description

is mandatory]

The general nature of the professional services provided is . . . . . .

The owner or reputed owner of the real property is . . . . . .

. . . . . .

. . . . . .
(Signature)

. . . . . .
(Name of Claimant)

. . . . . .
(Street Address)

. . . . . .
(City, State, Zip Code)

. . . . . .
(Phone Number)

(6) A lien authorized by this chapter shall not be enforced unless the lien claimant has complied with the applicable provisions of this section.

[1992 c 126 § 2; 1991 c 281 § 3.]

RCW 60.04.035
Acts of coercion -- Application of chapter 19.86 RCW.

The legislature finds that acts of coercion or attempted coercion, including threats to withhold future contracts, made by a contractor or developer to discourage a contractor, subcontractor, or material or equipment supplier from giving an owner the notice of right to claim a lien required by RCW 60.04.031, or from filing a claim of lien under this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. These acts of coercion are not reasonable in relation to the development and preservation of business. These acts of coercion shall constitute an unfair or deceptive act or practice in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW.

[1992 c 126 § 3.]

RCW 60.04.041
Contractor registration.

A contractor or subcontractor required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, or otherwise required to be registered or licensed by law, shall be deemed the construction agent of the owner for the purposes of establishing the lien created by this chapter only if so registered or licensed. Persons dealing with contractors or subcontractors may rely, for the purposes of this section, upon a certificate of registration issued pursuant to chapter 18.27 RCW or license issued pursuant to chapter 19.28 RCW, or other certificate or license issued pursuant to law, covering the period when the labor, professional services, material, or equipment shall be furnished, and the lien rights shall not be lost by suspension or revocation of registration or license without their knowledge. No lien rights described in this chapter shall be lost or denied by virtue of the absence, suspension, or revocation of such registration or license with respect to any contractor or subcontractor not in immediate contractual privity with the lien claimant.

[1992 c 126 § 4; 1991 c 281 § 4.]

RCW 60.04.051
Property subject to lien.

The lot, tract, or parcel of land which is improved is subject to a lien to the extent of the interest of the owner at whose instance, directly or through a common law or construction agent the labor, professional services, equipment, or materials were furnished, as the court deems appropriate for satisfaction of the lien. If, for any reason, the title or interest in the land upon which the improvement is situated cannot be subjected to the lien, the court in order to satisfy the lien may order the sale and removal of the improvement from the land which is subject to the lien.

[1992 c 126 § 5; 1991 c 281 § 5.]

RCW 60.04.061
Priority of lien.

The claim of lien created by this chapter upon any lot or parcel of land shall be prior to any lien, mortgage, deed of trust, or other encumbrance which attached to the land after or was unrecorded at the time of commencement of labor or professional services or first delivery of materials or equipment by the lien claimant.

[1991 c 281 § 6.]

RCW 60.04.071
Release of lien rights.

Upon payment and acceptance of the amount due to the lien claimant and upon demand of the owner or the person making payment, the lien claimant shall immediately prepare and execute a release of all lien rights for which payment has been made, and deliver the release to the person making payment. In any suit to compel deliverance of the release thereafter in which the court determines the delay was unjustified, the court shall, in addition to ordering the deliverance of the release, award the costs of the action including reasonable attorneys' fees and any damages.

[1991 c 281 § 7.]

RCW 60.04.081
Frivolous claim -- Procedure.

(1) Any owner of real property subject to a recorded claim of lien under this chapter, or contractor, subcontractor, lender, or lien claimant who believes the claim of lien to be frivolous and made without reasonable cause, or clearly excessive may apply by motion to the superior court for the county where the property, or some part thereof is located, for an order directing the lien claimant to appear before the court at a time no earlier than six nor later than fifteen days following the date of service of the application and order on the lien claimant, and show cause, if any he or she has, why the relief requested should not be granted. The motion shall state the grounds upon which relief is asked, and shall be supported by the affidavit of the applicant or his or her attorney setting forth a concise statement of the facts upon which the motion is based.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted the lien shall be released, with prejudice, and that the lien claimant shall be ordered to pay the costs requested by the applicant including reasonable attorneys' fees.

(3) If no action to foreclose the lien claim has been filed, the clerk of the court shall assign a cause number to the application and obtain from the applicant a filing fee of thirty-five dollars. If an action has been filed to foreclose the lien claim, the application shall be made a part of that action.

(4) If, following a hearing on the matter, the court determines that the lien is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order releasing the lien if frivolous and made without reasonable cause, or reducing the lien if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the lien claimant. If the court determines that the lien is not frivolous and was made with reasonable cause, and is not clearly excessive, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the lien claimant to be paid by the applicant.

(5) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise.

[1992 c 126 § 6; 1991 c 281 § 8.]

RCW 60.04.091
Recording--Time--Contents of lien.

Every person claiming a lien under RCW 60.04.021 shall file for recording, in the county where the subject property is located, a notice of claim of lien not later than ninety days after the person has ceased to furnish labor, professional services, materials, or equipment or the last date on which employee benefit contributions were due. The notice of claim of lien:

(1) Shall state in substance and effect:

(a) The name, phone number, and address of

the claimant;

(b) The first and last date on which the labor, professional services, materials, or equipment was furnished or employee benefit contributions were due;

(c) The name of the person indebted to the claimant;

(d) The street address, legal description, or other description reasonably calculated to identify, for a person familiar with the area, the location of the real property to be charged with the lien;

(e) The name of the owner or reputed owner of the property, if known, and, if not known, that fact shall be stated; and

(f) The principal amount for which the lien is claimed.

(2) Shall be signed by the claimant or some person authorized to act on his or her behalf who shall affirmatively state they have read the notice of claim of lien and believe the notice of claim of lien to be true and correct under penalty of perjury, and shall be acknowledged pursuant to chapter 64.08 RCW. If the lien has been assigned, the name of the assignee shall be stated. Where an action to foreclose the lien has been commenced such notice of claim of lien may be amended as pleadings may be by order of the court insofar as the interests of third parties are not adversely affected by such amendment. A claim of lien substantially in the following form shall be sufficient:

CLAIM OF LIEN

. . . . . ., claimant, vs . . . . . ., name of person indebted to claimant:

Notice is hereby given that the person named below claims a lien pursuant to *chapter 64.04 RCW. In support of this lien the following information is submitted:

1. NAME OF LIEN CLAIMANT: . . . . . .

TELEPHONE NUMBER: . . . . . .

ADDRESS: . . . . . .

2. DATE ON WHICH THE CLAIMANT BEGAN TO PERFORM LABOR, PROVIDE PROFESSIONAL SERVICES, SUPPLY MATERIAL OR EQUIPMENT OR THE DATE ON WHICH EMPLOYEE BENEFIT CONTRIBUTIONS BECAME DUE: . . . . . .

3. NAME OF PERSON INDEBTED TO THE CLAIMANT:

. . . . . .

4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS CLAIMED (Street address, legal description or other information that will

reasonably describe the property): . . . . . .

. . . . . .

. . . . . .

. . . . . .

5. NAME OF THE OWNER OR REPUTED OWNER (If not known state "unknown"): . . . . . .

6. THE LAST DATE ON WHICH LABOR WAS PERFORMED; PROFESSIONAL SERVICES WERE FURNISHED; CONTRIBUTIONS TO AN EMPLOYEE BENEFIT PLAN WERE DUE; OR MATERIAL, OR EQUIPMENT WAS FURNISHED: . . . . . .

. . . . . .

7. PRINCIPAL AMOUNT FOR WHICH THE LIEN IS CLAIMED IS: . . . . . .

8. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO STATE HERE: . . . . . .

. . . . . .

. . . . . , Claimant

. . . . . .

. . . . . .

(Phone number, address, city, and state of claimant)

STATE OF WASHINGTON, COUNTY OF

. . . . . ., ss.

. . . . . ., being sworn, says: I am the claimant (or attorney of the claimant, or administrator, representative, or agent of the trustees of an employee benefit plan) above named; I have read or heard the foregoing claim, read and know the contents thereof, and believe the same to be true and correct and that the claim of lien is not frivolous and is made with reasonable cause, and is not clearly excessive under penalty of perjury.

. . . . . .

Subscribed and sworn to before me this . . . . day of . . . . . .

. . . . . .

The period provided for recording the claim of lien is a period of limitation and no action to foreclose a lien shall be maintained unless the claim of lien is filed for recording within the ninety-day period stated. The lien claimant shall give a copy of the claim of lien to the owner or reputed owner by mailing it by certified or registered mail or by personal service within fourteen days of the time the claim of lien is filed for recording. Failure to do so results in a

forfeiture of any right the claimant may have to attorneys' fees and costs against the owner under RCW 60.04.181.

[1992 c 126 § 7; 1991 c 281 § 9.]

NOTES:

***Reviser's note:** The reference to chapter 64.04 RCW appears to be erroneous. Reference to chapter 60.04 RCW was apparently intended.

RCW 60.04.101
Separate residential units -- Time for filing.

When furnishing labor, professional services, materials, or equipment for the construction of two or more separate residential units, the time for filing claims of lien against each separate residential unit shall commence to run upon the cessation of the furnishing of labor, professional services, materials, or equipment on each residential unit, as provided in this chapter. For the purposes of this section a separate residential unit is defined as consisting of one residential structure together with any garages or other outbuildings appurtenant thereto.

[1991 c 281 § 10.]

RCW 60.04.111
Recording -- Fees.

The county auditor shall record the notice of claim of lien in the same manner as deeds and other instruments of title are recorded under chapter 65.08 RCW. Notices of claim of lien for registered land need not be recorded in the Torrens register. The county auditor shall charge no higher fee for recording notices of claim of lien than other documents.

[1991 c 281 § 11.]

RCW 60.04.121
Lien -- Assignment.

Any lien or right of lien created by this chapter and the right of action to recover therefor, shall be assignable so as to vest in the assignee all rights and remedies of the assignor, subject to all defenses thereto that might be made.

[1991 c 281 § 12.]

RCW 60.04.131
Claims -- Designation of amount due.

In every case in which the notice of claim of lien is recorded against two or more separate pieces of property owned by the same person or owned by two or more persons jointly or otherwise, who contracted for the labor, professional services, material, or equipment for which the notice of claim of lien is recorded, the person recording the notice of claim of lien shall designate in the notice of claim of lien the amount due on each piece of property, otherwise the lien is subordinated to other liens that may be established under this chapter. The lien of such claim does not extend beyond the amount designated as against other creditors having liens upon any of such pieces of property.

[1991 c 281 § 13.]

RCW 60.04.141
Lien -- Duration -- Procedural limitations.

No lien created by this chapter binds the property subject to the lien for a longer period than eight calendar months after the claim of lien has been recorded unless an action is filed by the lien claimant within that time in the superior court in the county where the subject property is located to enforce the lien, and service is made upon the owner of the subject property within ninety days of the date of filing the action; or, if credit is given and the terms thereof are stated in the claim of lien, then eight calendar months after the expiration of such credit; and in case the action is not prosecuted to judgment within two years after the commencement thereof, the court, in its discretion, may dismiss the action for want of prosecution, and the dismissal of the action or a judgment rendered thereon that no lien exists shall constitute a cancellation of the lien. This is a period of limitation, which shall be tolled by the filing of any petition seeking protection under Title Eleven, United States Code by an owner of any property subject to the lien established by this chapter.

[1992 c 126 § 8; 1991 c 281 § 14.]

RCW 60.04.151
Rights of owner -- Recovery options.

The lien claimant shall be entitled to recover upon the claim recorded the contract price after deducting all claims of other lien claimants to whom the claimant is liable, for furnishing labor, professional services, materials, or equipment; and in all cases where a claim of lien shall be recorded under this chapter for labor, professional services, materials, or equipment supplied to any lien claimant, he or she shall defend any action brought thereupon at his or her own expense. During the pendency of the action, the owner may withhold from the prime contractor the amount of money for which a claim is recorded by any subcontractor, supplier, or laborer. In case of judgment against the owner or the owner's property, upon the lien, the owner shall be entitled to deduct from sums due to the prime contractor the principal amount of the judgment from any amount due or to become due from the owner to the prime contractor plus such costs, including interest and attorneys' fees, as the court deems just and equitable, and the owner shall be entitled to recover back from the prime contractor the amount for which a lien or liens are established in excess of any sum that may remain due from the owner to the prime contractor.

[1992 c 126 § 9; 1991 c 281 § 15.]

RCW 60.04.161
Bond in lieu of claim.

Any owner of real property subject to a recorded claim of lien under this chapter, or contractor, subcontractor, lender, or lien claimant who disputes the correctness or validity of the claim of lien may record, either before or after the commencement of an action to enforce the lien, in the office of the county recorder or auditor in the county where the claim of lien was recorded, a bond issued by a surety company authorized to issue surety bonds in the state. The surety shall be listed in the latest federal department of the treasury list of surety companies acceptable on federal bonds, published in the Federal Register, as authorized to issue bonds on United States government projects with an underwriting limitation, including applicable reinsurance, equal to or greater than the amount of the bond to be recorded. The bond shall contain a description of the claim of lien and real property involved, and be in an amount equal to the greater of five thousand dollars or two times the amount of the lien claimed if it is ten thousand dollars or less, and in an amount equal to or greater than one and one-half times the amount of the lien if it is in excess of ten thousand dollars. If the claim of lien affects more than one parcel of real property and is segregated to each parcel, the bond may be segregated the same as in the claim of lien. A separate bond shall be required for each claim of lien made by separate claimants. However, a single bond may be used to guarantee payment of amounts claimed by more than one claim of lien by a single claimant so long as the amount of the bond meets the requirements of this section as applied to the aggregate sum of all claims by such claimant. The condition of the bond shall be to guarantee payment of any judgment upon the lien in favor of the lien claimant entered in any action to recover the amount claimed in a claim of lien, or on the claim asserted in the claim of lien. The effect of recording a bond shall be to release the real property described in the notice of claim of lien from the lien and any action brought to recover the amount claimed. Unless otherwise prohibited by law, if no action is commenced to recover on a lien within the time specified in RCW 60.04.141, the surety shall be discharged from liability under the bond. If an action is timely commenced, then on payment of any judgment entered in the action or on payment of the full amount of the bond to the holder of the judgment, whichever is less, the surety shall be discharged from liability under the bond.

Nothing in this section shall in any way prohibit or limit the use of other methods, devised by the affected parties to secure the obligation underlying a claim of lien and to obtain a release of real property from a claim of lien.

[1992 c 126 § 10; 1991 c 281 § 16.]

RCW 60.04.171
Foreclosure -- Parties.

The lien provided by this chapter, for which claims of lien have been recorded, may be

foreclosed and enforced by a civil action in the court having jurisdiction in the manner prescribed for the judicial foreclosure of a mortgage. The court shall have the power to order the sale of the property. In any action brought to foreclose a lien, the owner shall be joined as a party. The interest in the real property of any person who, prior to the commencement of the action, has a recorded interest in the property, or any part thereof, shall not be foreclosed or affected unless they are joined as a party.

A person shall not begin an action to foreclose a lien upon any property while a prior action begun to foreclose another lien on the same property is pending, but if not made a party plaintiff or defendant to the prior action, he or she may apply to the court to be joined as a party thereto, and his or her lien may be foreclosed in the same action. The filing of such application shall toll the running of the period of limitation established by RCW 60.04.141 until disposition of the application or other time set by the court. The court shall grant the application for joinder unless to do so would create an undue delay or cause hardship which cannot be cured by the imposition of costs or other conditions as the court deems just. If a lien foreclosure action is filed during the pendency of another such action, the court may, on its own motion or the motion of any party, consolidate actions upon such terms and conditions as the court deems just, unless to do so would create an undue delay or cause hardship which cannot be cured by the imposition of costs or other conditions. If consolidation of actions is not permissible under this section, the lien foreclosure action filed during the pendency of another such action shall not be dismissed if the filing was the result of mistake, inadvertence, surprise, excusable neglect, or irregularity. An action to foreclose a lien shall not be dismissed at the instance of a plaintiff therein to the prejudice of another party to the suit who claims a lien.

[1992 c 126 § 11; 1991 c 281 § 17.]

RCW 60.04.181
Rank of lien -- Application of proceeds -- Attorneys' fees.

(1) In every case in which different construction liens are claimed against the same property, the court shall declare the rank of such lien or class of liens, which liens shall be in the following order:

(a) Liens for the performance of labor;

(b) Liens for contributions owed to employee benefit plans;

(c) Liens for furnishing material, supplies, or equipment;

(d) Liens for subcontractors, including but not limited to their labor and materials; and

(e) Liens for prime contractors, or for professional services.

(2) The proceeds of the sale of property must be applied to each lien or class of liens in order of its rank and, in an action brought to foreclose a lien, pro rata among each claimant in each separate priority class. A personal judgment may be rendered against any party personally liable for any debt for which the lien is claimed. If the lien is established, the judgment shall provide for the enforcement thereof upon the property liable as in the case of foreclosure of judgment liens. The amount realized by such enforcement of the lien shall be credited upon the proper personal judgment. The deficiency, if any, remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against any party liable therefor.

(3) The court may allow the prevailing party in the action, whether plaintiff or defendant, as part of the costs of the action, the moneys paid for recording the claim of lien, costs of title report, bond costs, and attorneys' fees and necessary expenses incurred by the attorney in the superior court, court of appeals, supreme court, or arbitration, as the court or arbitrator deems reasonable. Such costs shall have the priority of the class of lien to which they are related, as established by subsection (1) of this section.

(4) Real property against which a lien under this chapter is enforced may be ordered sold by the court and the proceeds deposited into the registry of the clerk of the court, pending further determination respecting distribution of the proceeds of the sale.

[1992 c 126 § 12; 1991 c 281 § 18.]

RCW 60.04.190
Destruction or concealment of property -- Removal from premises -- Penalty.

See RCW 61.12.030, 9.45.060.

RCW 60.04.191
Effect of note -- Personal action preserved.

The taking of a promissory note or other evidence of indebtedness for any labor, professional services, material, or equipment furnished for which a lien is created by this chapter does not discharge the lien therefor, unless expressly received as payment and so specified therein.

Nothing in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for the furnishing of labor, professional services, material, or equipment to maintain a personal action to recover the debt against any person liable therefor.

[1991 c 281 § 19.]

RCW 60.04.201
Material exempt from process -- Exception.

Whenever material is furnished for use in the improvement of property subject to a lien created by this chapter, the material is not subject to attachment, execution, or other legal process to enforce any debt due by the purchaser of the material, except a debt due for the purchase money thereof, so long as in good faith, the material is about to be applied in the improvement of such property.

[1991 c 281 § 20.]

RCW 60.04.211
Lien -- Effect on community interest.

The claim of lien, when filed as required by this chapter, shall be notice to the husband or wife of the person who appears of record to be the owner of the property sought to be charged with the lien, and shall subject all the community interest of both husband and wife to the lien.

[1991 c 281 § 21.]

RCW 60.04.221
Notice to lender -- Withholding of funds.

Any lender providing interim or construction financing where there is not a payment bond of at least fifty percent of the amount of construction financing shall observe the following procedures and the rights and liabilities of the lender and potential lien claimant shall be affected as follows:

(1) Any potential lien claimant who has not received a payment within five days after the date required by their contract, invoice, employee benefit plan agreement, or purchase order may within thirty-five days of the date required for payment of the contract, invoice, employee benefit plan agreement, or purchase order, give a notice as provided in subsections (2) and (3) of this section of the sums due and to become due, for which a potential lien claimant may claim a lien under this chapter.

(2) The notice shall be signed by the potential lien claimant or some person authorized to act on his or her behalf.

(3) The notice shall be given in writing to the lender at the office administering the interim or construction financing, with a copy given to the owner and appropriate prime contractor. The notice shall be given by:

(a) Mailing the notice by certified or registered mail to the lender, owner, and appropriate prime contractor; or

(b) Delivering or serving the notice personally and obtaining evidence of delivery in the form of a receipt or other acknowledgment signed by the lender, owner, and appropriate prime contractor, or an affidavit of service.

(4) The notice shall state in substance and effect as follows:

(a) The person, firm, trustee, or corporation filing the notice is entitled to receive contributions to any type of employee benefit plan or has furnished labor, professional services, materials, or equipment for which a lien is given by this chapter.

(b) The name of the prime contractor, common law agent, or construction agent ordering the same.

(c) A common or street address of the real property being improved or the legal description of the real property.

(d) The name, business address, and telephone number of the lien claimant.

The notice to the lender may contain additional information but shall be in substantially the following form:

NOTICE TO REAL PROPERTY LENDER

(Authorized by RCW . . . . . .)

TO: . . . . . .

(Name of Lender)

. . . . . .

(Administrative Office-Street Address)

. . . . . .

(City) (State) (Zip)

AND TO: . . . . . .

(Owner)

AND TO: . . . . . .

(Prime Contractor-If Different Than Owner)

. . . . . .

(Name of Laborer, Professional,

Materials, or Equipment Supplier)

whose business address is . . . . . ., did at the property located at . . . . . .

(Check appropriate box) ( ) perform labor ( ) furnish professional services ( ) provide materials ( ) supply equipment as follows:

. . . . . .

. . . . . .

. . . . . .

which was ordered by . . . . . .

(Name of Person)

whose address was stated to be . . . . . .

. . . . . .

The amount owing to the undersigned according to contract or purchase order for labor, supplies, or equipment (as above mentioned) is the sum of . . . . . Dollars ($. . . . . .). Said sums became due and owing as of

. . . . . .

(State Date)

. . . . . , ...

You are hereby required to withhold from any future draws on existing construction financing which has been made on the subject property (to the extent there remain

undisbursed funds) the sum of
. . . . . Dollars ($. . . . . .).

IMPORTANT

Failure to comply with the requirements of this notice may subject the lender to a whole or partial compromise of any priority lien interest it may have pursuant to RCW 60.04.226.

DATE: . . . . . .
By: . . . . . .
Its: . . . . . .

(5) After the receipt of the notice, the lender shall withhold from the next and subsequent draws the amount claimed to be due as stated in the notice. Alternatively, the lender may obtain from the prime contractor or borrower a payment bond for the benefit of the potential lien claimant in an amount sufficient to cover the amount stated in the potential lien claimant's notice. The lender shall be obligated to withhold amounts only to the extent that sufficient interim or construction financing funds remain undisbursed as of the date the lender receives the notice.

(6) Sums so withheld shall not be disbursed by the lender, except by the written agreement of the potential lien claimant, owner, and prime contractor in such form as may be prescribed by the lender, or the order of a court of competent jurisdiction.

(7) In the event a lender fails to abide by the provisions of *subsections (4) and (5) of this section, then the mortgage, deed of trust, or other encumbrance securing the lender shall be subordinated to the lien of the potential lien claimant to the extent of the interim or construction financing wrongfully disbursed, but in no event more than the amount stated in the notice plus costs as fixed by the court, including reasonable attorneys' fees.

(8) Any potential lien claimant shall be liable for any loss, cost, or expense, including reasonable attorneys' fees and statutory costs, to a party injured thereby arising out of any unjust, excessive, or premature notice filed under purported authority of this section. "Notice" as used in this subsection does not include notice given by a potential lien claimant of the right to claim liens under this chapter where no actual claim is made.

(9)(a) Any owner of real property subject to a notice to real property lender under this section, or the contractor, subcontractor, lender, or lien claimant who believes the claim that underlies the notice is frivolous and made without reasonable cause, or is clearly excessive may apply by motion to the superior court for the county where the property, or some part thereof is located, for an order commanding the potential lien claimant who issued the notice to the real property lender to appear before the court at a time no earlier than six nor later than fifteen days from the date of service of the application and order on the potential lien claimant, and show cause, if any he or she has, why the notice to real property lender should not be declared void. The motion shall state the grounds upon which relief is asked and shall be supported by the affidavit of the applicant or his or her attorney setting forth a concise statement of the facts upon which the motion is based.

(b) The order shall clearly state that if the potential lien claimant fails to appear at the time and place noted, the notice to lender shall be declared void and that the potential lien claimant issuing the notice shall be ordered to pay the costs requested by the applicant including reasonable attorneys' fees.

(c) The clerk of the court shall assign a cause number to the application and obtain from the applicant a filing fee of thirty-five dollars.

(d) If, following a hearing on the matter, the court determines that the claim upon which the notice to real property lender is based is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order declaring the notice to real property lender void if frivolous and made without reasonable cause, or reducing the amount stated in the notice if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the person who issued the notice. If the court determines that the claim underlying the notice to real property lender is not frivolous and was made with reasonable cause, and is not

clearly excessive, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the issuer of the notice to be paid by the applicant.

(e) Proceedings under this subsection shall not affect other rights and remedies available to the parties under this chapter or otherwise.

[1992 c 126 § 13; 1991 c 281 § 22.]

NOTES:

***Reviser's note:** The reference to subsections (4) and (5) of this section appears to be erroneous. Engrossed Senate Bill No. 6441 changed the subsection numbers. Subsections (4) and (5) are now subsections (5) and (6).

RCW 60.04.226
Financial encumbrances -- Priorities.

Except as otherwise provided in RCW 60.04.061 or 60.04.221, any mortgage or deed of trust shall be prior to all liens, mortgages, deeds of trust, and other encumbrances which have not been recorded prior to the recording of the mortgage or deed of trust to the extent of all sums secured by the mortgage or deed of trust regardless of when the same are disbursed or whether the disbursements are obligatory.

[1991 c 281 § 23.]

RCW 60.04.230
Construction projects -- Notice to be posted by prime contractor -- Penalty.

(1) For any construction project costing more than five thousand dollars the prime contractor shall post in plain view for the duration of the construction project a legible notice at the construction job site containing the following:

(a) The legal description, or the tax parcel number assigned pursuant to RCW 84.40.160, and the street address if available, and may include any other identification of the construction site by the prime contractor;

(b) The property owner's name, address, and phone number;

(c) The prime contractor's business name, address, phone number, current state contractor registration number and identification; and

(d) Either:

(i) The name, address, and phone number of the office of the lender administering the interim construction financing, if any; or

(ii) The name and address of the firm that has issued a payment bond, if any, on behalf of the prime contractor for the protection of the owner if the bond is for an amount not less than fifty percent of the total amount of the construction project.

(2) For any construction project which requires a building permit under local ordinance, compliance with the posting requirements of RCW 19.27.095 shall constitute compliance with this section. Otherwise, the information shall be posted as set forth in this section.

(3) Failure to comply with this section shall subject the prime contractor to a civil penalty of not more than five thousand dollars, payable to the county where the project is located.

[1991 c 281 § 28; 1984 c 202 § 3.]

RCW 60.04.250
Informational materials on construction lien laws -- Master documents.

The department of labor and industries shall prepare master documents that provide informational material about construction lien laws and available safeguards against real property lien claims. The material shall include methods of protection against lien claims, including obtaining lien release documents, performance bonds, joint payee checks, the opportunity to require contractor disclosure of all potential lien claimants as a condition of payment, and lender supervision under *RCW 60.04.200 and 60.04.210. The material shall also include sources of further information, including the department of labor and industries and the office of the attorney general.

[1990 c 81 § 1; 1988 c 270 § 1.]

NOTES:

***Reviser's note:** RCW 60.04.200 and 60.04.210 were repealed by 1991 c 281 § 31, effective April 1, 1992.

Effective date -- 1988 c 270: "This act shall take effect July 1, 1989." [1988 c 270 § 4.]

RCW 60.04.255
Informational materials on construction lien laws -- Copies -- Liability.

(1) Every real property lender shall provide a copy of the informational material described in RCW 60.04.250 to all persons obtaining loans, the proceeds of which are to be used for residential construction or residential repair or remodeling.

(2) Every contractor shall provide a copy of the informational material described in RCW 60.04.250 to customers required to receive contractor disclosure notice under RCW 18.27.114.

(3) No cause of action may lie against the state, a real property lender, or a contractor arising from the provisions of RCW 60.04.250 and this section.

(4) For the purpose of this section, "real property lender" means a bank, savings bank, savings and loan association, credit union, mortgage company, or other corporation, association, partnership, or individual that makes loans secured by real property in this state.

[1988 c 270 § 2.]

NOTES:

Effective date -- 1988 c 270: See note following RCW 60.04.250.

RCW 60.04.261
Availability of information.

The prime contractor shall immediately supply the information listed in RCW 19.27.095(2) to any person who has contracted to supply materials, equipment, or professional services or who is a subcontractor on the improvement, as soon as the identity and mailing address of such subcontractor, supplier, or professional is made known to the prime contractor either directly or through another subcontractor, supplier, or professional.

[1991 c 281 § 24.]

RCW 60.04.900
Liberal construction -- 1991 c 281.

RCW 19.27.095, 60.04.230, and 60.04.011 through 60.04.226 and 60.04.261 are to be liberally construed to provide security for all parties intended to be protected by their provisions.

[1991 c 281 § 25.]

RCW 60.04.901
Captions not law -- 1991 c 281.

Section headings as used in this chapter do not constitute any part of the law.

[1991 c 281 § 26.]

RCW 60.04.902
Effective date, application -- 1991 c 281.

This act shall take effect June 1, 1992. Lien claims based on an improvement commenced by a potential lien claimant on or after June 1, 1992, shall be governed by the provisions of this act.

[1992 c 126 § 14; 1991 c 281 § 32.]

RCW 60.04.903
Effective date -- 1992 c 126.

This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1992, except section 14 of this act which shall take effect immediately [March 31, 1992].

[1992 c 126 § 15.]

RCW 60.04.904
Application of chapter 281, Laws of 1991, to actions pending as of June 1, 1992 -- 1993 c 357.

All rights acquired and liabilities incurred under acts or parts of act repealed by chapter 281, Laws of 1991, are hereby preserved, and all actions pending as of June 1, 1992, shall proceed under the law as it existed at the time chapter 281, Laws of 1991, took effect.

[1993 c 357 § 1.]

NOTES:

Retroactive application -- 1993 c 357: "This act is remedial in nature and shall be applied retroactively to June 1, 1992." [1993 c 357 § 2.]

Effective date -- 1993 c 357: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 357 § 3.]

Chapter 60.28 RCW Lien For Labor, Materials, Taxes On Public Works

RCW SECTIONS

60.28.010 Retained percentage -- Labor and material lien created -- Bond in lieu of retained funds -- Termination before completion -- Chapter deemed exclusive -- Release of ferry contract payments -- Projects of farmers home administration.

60.28.011 Retained percentage -- Labor and material lien created -- Bond in lieu of retained funds -- Termination before completion -- Chapter deemed exclusive -- Release of ferry contract payments -- Projects of farmers home administration -- General contractor/construction manager procedure -- Definitions.

60.28.015 Recovery from retained percentage -- Written notice to contractor of materials furnished.

60.28.020 Excess over lien claims to contractor.

60.28.021 Excess over lien claims paid to contractor.

60.28.030 Foreclosure of lien -- Limitation of action -- Release of funds.

60.28.040 Tax liens -- Priority of liens.

60.28.050 Duties of disbursing officer upon final acceptance of contract.

60.28.051 Duties of disbursing officer upon completion of contract.

60.28.060 Duties of disbursing officer upon final acceptance of contract -- Payments to department of revenue.

60.28.080 Delay due to litigation -- Change order or force account directive -- Costs -- Arbitration -- Termination.

60.28.900 Severability -- 1955 c 236.

NOTES:

Contractor's bond for payment of mechanics, laborers, materialmen, etc., on public works: Chapter 39.08 RCW.

RCW 60.28.010
Retained percentage -- Labor and material lien created -- Bond in lieu of retained funds -- Termination before completion -- Chapter deemed exclusive -- Release of ferry contract payments -- Projects of farmers home administration.

(1) Contracts for public improvements or work, other than for professional services, by the state, or any county, city, town, district, board, or other public body, herein referred to as "public body", shall provide, and there shall be reserved by the public body from the moneys earned by the contractor on estimates during the progress of the improvement or work, a sum not to exceed five percent, said sum to be retained by the state, county, city, town, district, board, or other public body, as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor or materialman who shall perform any labor upon such contract or the doing of said work, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work, and the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor. Every person performing labor or furnishing supplies toward the completion of said improvement or work shall have a lien upon said moneys so reserved: PROVIDED, That such notice of the lien of such claimant shall be given in the manner and within the time provided in RCW 39.08.030 as now existing and in accordance with any amendments that may hereafter be made thereto: PROVIDED FURTHER, That the board, council, commission, trustees, officer or body acting for the state, county or municipality or other public body; (a) at any time after fifty percent of the original contract work has been completed, if it finds that satisfactory progress is being made, may make any of the partial payments which would otherwise be subsequently made in full; but in no event shall the amount to be retained be reduced to less than five percent of the amount of the moneys earned by the contractor: PROVIDED, That the contractor may request that retainage be reduced to one hundred percent of the value of the work remaining on the project; and (b) thirty days after completion and acceptance of all contract work other than landscaping, may release and pay in full the amounts retained during the performance of the

contract (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of RCW 60.28.020.

(2) The moneys reserved under the provisions of subsection (1) of this section, at the option of the contractor, shall be:

(a) Retained in a fund by the public body until thirty days following the final acceptance of said improvement or work as completed;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until after the final acceptance of said improvement or work as completed, or until agreed to by both parties: PROVIDED, That interest on such account shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body until thirty days following the final acceptance of said improvement or work as completed. When the moneys reserved are to be placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. Such check shall be converted into bonds and securities chosen by the contractor and approved by the public body and such bonds and securities shall be held in escrow. Interest on such bonds and securities shall be paid to the contractor as the said interest accrues.

(3) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(4) With the consent of the public body the contractor may submit a bond for all or any portion of the amount of funds retained by the public body in a form acceptable to the public body. Such bond and any proceeds therefrom shall be made subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(5) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in such case any amounts retained and accumulated under this section shall be held for a period of thirty days following such acceptance. In the event that the work shall have been terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter 60.28 RCW shall be deemed exclusive and shall supersede all provisions and regulations in conflict herewith.

(6) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, thirty days after completion and final acceptance of each ferry vessel, the department may release and pay in full the amounts retained in connection with the construction of such vessel subject to the provisions of RCW 60.28.020: PROVIDED, That the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no

taxes shall be certified or claims filed for work on such ferry after a period of thirty days following final acceptance of such ferry; and if such taxes are certified or claims filed, recovery may be had on such bond by the department of revenue and the materialmen and laborers filing claims.

(7) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations shall not be subject to subsections (1) through (6) of this section.

[1986 c 181 § 6; 1984 c 146 § 1; 1982 c 170 § 1; 1981 c 260 § 14. Prior: 1977 ex.s. c 205 § 1; 1977 ex.s. c 166 § 5; 1975 1st ex.s. c 104 § 1; 1970 ex.s. c 38 § 1; 1969 ex.s. c 151 § 1; 1963 c 238 § 1; 1955 c 236 § 1; 1921 c 166 § 1; RRS § 10320.]

NOTES:

Application -- 1992 c 233: See RCW 39.04.901.

Severability -- 1977 ex.s. c 166: See note following RCW 39.08.030.

RCW 60.28.011
Retained percentage -- Labor and material lien created -- Bond in lieu of retained funds -- Termination before completion -- Chapter deemed exclusive -- Release of ferry contract payments -- Projects of farmers home administration -- General contractor/construction manager procedure -- Definitions.

(1) Public improvement contracts shall provide, and public bodies shall reserve, a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and payment of: (a) The claims of any person arising under the contract; and (b) the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor.

(2) Every person performing labor or furnishing supplies toward the completion of a public improvement contract shall have a lien upon moneys reserved by a public body under the provisions of a public improvement contract. However, the notice of the lien of the claimant shall be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

(3) The contractor at any time may request the contract retainage be reduced to one hundred percent of the value of the work remaining on the project.

(a) After completion of all contract work other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter the public body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of chapters 39.12 and 60.28 RCW.

(b) Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW.

(4) The moneys reserved by a public body under the provisions of a public improvement contract, at the option of the contractor, shall be:

(a) Retained in a fund by the public body;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by a public body under the provision of a public improvement contract shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body. When the moneys reserved are placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. This check shall be converted into bonds and securities chosen by the contractor and approved by the public body and the bonds and securities shall be held in escrow. Interest on the bonds and securities shall be paid to the contractor as the interest accrues.

(5) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or

sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(6) A contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to the public body and from a bonding company meeting standards established by the public body. The public body shall accept a bond meeting these requirements unless the public body can demonstrate good cause for refusing to accept it. This bond and any proceeds therefrom are subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(7) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in this case any amounts retained and accumulated under this section shall be held for a period of sixty days following the completion. In the event that the work is terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter are exclusive and shall supersede all provisions and regulations in conflict herewith.

(8) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, sixty days after completion of all contract work on each ferry vessel, the department must release and pay in full the amounts retained in connection with the construction of the vessel subject to the provisions of RCW 60.28.020 and chapter 39.12 RCW. However, the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on the ferry after a period of sixty days following completion of the ferry; and if taxes are certified or claims filed, recovery may be had on the bond by the department of revenue and the materialmen and laborers filing claims.

(9) Except as provided in subsection (1) of this section, reservation by a public body for any purpose from the moneys earned by a contractor by fulfilling its responsibilities under public improvement contracts is prohibited.

(10) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations are not subject to subsections (1) through (9) of this section.

(11) This subsection applies only to a public body that has contracted for the construction of a facility using the general contractor/construction manager procedure, as defined under RCW 39.10.061. If the work performed by a subcontractor on the project has been completed within the first half of the time provided in the general contractor/construction manager contract for completing the work, the public body may accept the completion of the subcontract. The public body must give public notice of this acceptance. After a forty-five day period for giving notice of liens, and compliance with the retainage release procedures in RCW 60.28.021, the public body may release that portion of the retained funds associated with the subcontract. Claims against the retained funds after the forty-

five day period are not valid.

(12) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Contract retainage" means an amount reserved by a public body from the moneys earned by a person under a public improvement contract.

(b) "Person" means a person or persons, mechanic, subcontractor, or materialperson who performs labor or provides materials for a public improvement contract, and any other person who supplies the person with provisions or supplies for the carrying on of a public improvement contract.

(c) "Public body" means the state, or a county, city, town, district, board, or other public body.

(d) "Public improvement contract" means a contract for public improvements or work, other than for professional services, or a work order as defined in RCW 39.10.020.

[2003 c 301 § 7; 2000 c 185 § 1; 1994 c 101 § 1; 1992 c 223 § 2.]

NOTES:

Effective date -- 1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction -- Application -- 1992 c 223: See RCW 39.04.900 and 39.04.901.

RCW 60.28.015
Recovery from retained percentage -- Written notice to contractor of materials furnished.

Every person, firm, or corporation furnishing materials, supplies, or equipment to be used in the construction, performance, carrying on, prosecution, or doing of any work for the state, or any county, city, town, district, municipality, or other public body, shall give to the contractor of the work a notice in writing, which notice shall cover the material, supplies, or equipment furnished or leased during the sixty days preceding the giving of such notice as well as all subsequent materials, supplies, or equipment furnished or leased, stating in substance and effect that such person, firm, or corporation is and/or has furnished materials and supplies, or equipment for use thereon, with the name of the subcontractor ordering the same, and that a lien against the retained percentage may be claimed for all materials and supplies, or equipment furnished by such person, firm, or corporation for use thereon, which notice shall be given by (1) mailing the same by registered or certified mail in an envelope addressed to the contractor, or (2) by serving the same personally upon the contractor or the contractor's representative and obtaining evidence of such service in the form of a receipt or other acknowledgement signed by the contractor or the contractor's representative, and no suit or action shall be maintained in any court against the retained percentage to recover for such material, supplies, or equipment or any part thereof unless the provisions of this section have been complied with.

[1986 c 314 § 5.]

RCW 60.28.020
Excess over lien claims to contractor.

After the expiration of the thirty day period, and after receipt of the department of revenue's certificate, and the public body is satisfied that the taxes certified as due or to become due by the department of revenue are discharged, and the claims of materialmen and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys' fees, have been paid, the public body shall pay to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow.

If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the public body shall either retain in its fund, or in an interest bearing account, or retain in escrow, at the option of the contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the contractor.

[1975 1st ex.s. c 104 § 2; 1970 ex.s. c 38 § 2; 1967 ex.s. c 26 § 23; 1955 c 236 § 2; 1921 c 166 § 2; RRS § 10321.]

NOTES:

Application -- 1992 c 223: See RCW 39.04.901.

Effective date -- 1967 ex.s. c 26: See note following RCW 82.01.050.

RCW 60.28.021
Excess over lien claims paid to contractor.

After the expiration of the forty-five day period for giving notice of lien provided in RCW 60.28.011(2), and after receipt of the department of revenue's certificate, and the public body is satisfied that the taxes certified as due or to become due by the department of revenue are discharged, and the claims of materialmen and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys' fees, have been paid, the public body may withhold from the remaining retained amounts for claims the public body may have against the contractor and shall pay the balance, if any, to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow.

If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the public body shall either retain in its fund, or in an interest bearing account, or retain in escrow, at the option of the contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the contractor.

[1992 c 223 § 3.]

NOTES:

Effective date -- 1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction -- Application -- 1992 c 223: See RCW 39.04.900 and 39.04.901.

RCW 60.28.030
Foreclosure of lien -- Limitation of action -- Release of funds.

Any person, firm, or corporation filing a claim against the reserve fund shall have four months from the time of the filing thereof in which to bring an action to foreclose the lien. The lien shall be enforced by action in the superior court of the county where filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien against it: PROVIDED, That the public body shall not be required to make any detailed answer to any complaint or other pleading but need only certify to the court the name of the contractor; the work contracted to be done; the date of the contract; the date of completion and final acceptance of the work; the amount retained; the amount of taxes certified due or to become due to the state; and all claims filed with it showing respectively the dates of filing, the names of claimants, and amounts claimed. Such certification shall operate to arrest payment of so much of the funds retained as is required to discharge the taxes certified due or to become due and the claims filed in accordance with this chapter. In any action brought to enforce the lien, the claimant, if he prevails, is entitled to recover, in addition to all other costs, attorney fees in such sum as the court finds reasonable. If a claimant fails to bring action to foreclose his lien within the four months period, the reserve fund shall be discharged from the lien of his claim and the funds shall be paid to the contractor. The four months limitation shall not, however, be construed as a limitation upon the right to sue the contractor or his surety where no right of foreclosure is sought against the fund.

[1979 ex.s. c 38 § 1; 1955 c 236 § 3; 1927 c 241 § 1; 1921 c 166 § 3; RRS § 10322.]

RCW 60.28.040
Tax liens -- Priority of liens.

The amount of all taxes, increases and penalties due or to become due under Title 82 RCW, from a contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is twenty thousand dollars or more shall be a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract, except that the employees of a contractor or the contractor's successors or assignees who have not been paid the prevailing wage under such a public improvement contract shall have a first priority lien against the bond or retainage prior to all other liens. The amount of all other taxes, increases and penalties due and owing from the contractor shall be a lien upon the balance of such retained percentage remaining in the possession of the disbursing officer after all other statutory lien claims have been paid.

[1985 c 80 § 1; 1971 ex.s. c 299 § 1; 1955 c 236 § 4. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

NOTES:

Severability -- Effective dates -- 1971 ex.s. c 299: See notes following RCW 82.04.050.

RCW 60.28.050
Duties of disbursing officer upon final acceptance of contract.

Upon final acceptance of a contract, the state, county or other municipal officer charged with the duty of disbursing or authorizing disbursement or payment of such contracts shall forthwith notify the department of revenue of the completion of contracts over twenty thousand dollars. Such officer shall not make any payment from the retained percentage fund or release any retained percentage escrow account to any person, until he has received from the department of revenue a certificate that all taxes, increases and penalties due from the contractor, and all taxes due and to become due with respect to such contract have been paid in full or that they are, in the department's opinion, readily collectible without recourse to the state's lien on the retained percentage.

[1982 c 170 § 2; 1970 ex.s. c 38 § 3; 1967 ex.s. c 26 § 24; 1955 c 236 § 5. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

NOTES:

Application -- 1992 c 223: See RCW 39.04.901.

Effective date -- 1967 ex.s. c 26: See note following RCW 82.01.050.

RCW 60.28.051
Duties of disbursing officer upon completion of contract.

Upon completion of a contract, the state, county or other municipal officer charged with the duty of disbursing or authorizing disbursement or payment of such contracts shall forthwith notify the department of revenue of the completion of contracts over twenty thousand dollars. Such officer shall not make any payment from the retained percentage fund or release any retained percentage escrow account to any person, until he has received from the department of revenue a certificate that all taxes, increases and penalties due from the contractor, and all taxes due and to become due with respect to such contract have been paid in full or that they are, in the department's opinion, readily collectible without recourse to the state's lien on the retained percentage.

[1992 c 223 § 4.]

NOTES:

Effective date -- 1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction -- Application -- 1992 c 223: See RCW 39.04.900 and 39.04.901.

RCW 60.28.060
Duties of disbursing officer upon final acceptance of contract -- Payments to department of revenue.

If within thirty days after receipt of notice by the department of revenue of the completion of the

contract, the amount of all taxes, increases and penalties due from the contractor or any of his successors or assignees or to become due with respect to such contract have not been paid, the department of revenue may certify to the disbursing officer the amount of all taxes, increases and penalties due from the contractor, together with the amount of all taxes due and to become due with respect to the contract and may request payment thereof to the department of revenue in accordance with the priority provided by this chapter. The disbursing officer shall within ten days after receipt of such certificate and request pay to the department of revenue the amount of all taxes, increases and penalties certified to be due or to become due with respect to the particular contract, and, after payment of all claims which by statute are a lien upon the retained percentage withheld by the disbursing officer, shall pay to the department of revenue the balance, if any, or so much thereof as shall be necessary to satisfy the claim of the department of revenue for the balance of all taxes, increases or penalties shown to be due by the certificate of the department of revenue. If the contractor owes no taxes imposed pursuant to Title 82 RCW, the department of revenue shall so certify to the disbursing officer.

[1967 ex.s. c 26 § 25; 1955 c 236 § 6. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

NOTES:

Effective date -- 1967 ex.s. c 26: See note following RCW 82.01.050.

RCW 60.28.080
Delay due to litigation -- Change order or force account directive -- Costs -- Arbitration -- Termination.

(1) If any delay in issuance of notice to proceed or in construction following an award of any public construction contract is primarily caused by acts or omissions of persons or agencies other than the contractor and a preliminary, special or permanent restraining order of a court of competent jurisdiction is issued pursuant to litigation and the appropriate public contracting body does not elect to delete the completion of the contract as provided by *RCW 60.28.010(3), the appropriate contracting body will issue a change order or force account directive to cover reasonable costs incurred by the contractor as a result of such delay. These costs shall include but not be limited to contractor's costs for wages, labor costs other than wages, wage taxes, materials, equipment rentals, insurance, bonds, professional fees, and subcontracts, attributable to such delay plus a reasonable sum for overhead and profit.

In the event of a dispute between the contracting body and the contractor, arbitration procedures may be commenced under the applicable terms of the construction contract, or, if the contract contains no such provision for arbitration, under the then obtaining rules of the American Arbitration Association.

If the delay caused by litigation exceeds six months, the contractor may then elect to terminate the contract and to delete the completion of the contract and receive payment in proportion to the amount of the work completed plus the cost of the delay. Amounts retained and accumulated under RCW 60.28.010 shall be held for a period of thirty days following the election of the contractor to terminate. Election not to terminate the contract by the contractor shall not affect the accumulation of costs incurred as a result of the delay provided above.

(2) This section shall not apply to any contract awarded pursuant to an invitation for bid issued on or before July 16, 1973.

[1982 c 170 § 3; 1973 1st ex.s. c 62 § 3.]

NOTES:

***Reviser's note:** RCW 60.28.010 was amended by 1982 c 170 § 1, changing subsection (3) to subsection (5).

Severability -- 1973 1st ex.s. c 62: See note following RCW 39.04.120.

Change orders due to environmental protection requirements, costs: RCW 39.04.120.

RCW 60.28.900
Severability -- 1955 c 236.

If any section, provision or part of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not

affect the validity of this chapter as a whole or any section, provision or part hereof not adjudged invalid or unconstitutional.

[1955 c 236 § 8.]

Chapter 64.04 RCW Conveyances

RCW SECTIONS

64.04.005 Earnest money deposit -- Exclusive remedy -- Definition.

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NOTES:

Validating -- 1929 c 33: "All instruments in writing purporting to convey or encumber real estate situated in this state, or any interest therein, or other instrument in writing required to be acknowledged, heretofore executed and acknowledged according to the provisions of this act are hereby declared legal and valid." [1929 c 33 § 7; RRS § 10563, part.]

Validating -- 1891 p 178: "In all cases where real estate has been heretofore duly sold by a sheriff in pursuance of law by virtue of an execution or other process, and no deed having been made therefor in the manner required by law to the purchaser therefor [thereof] or other person entitled to the same by the sheriff making the sale, the successor in office of the sheriff making the sale having made a deed of the premises so sold to the purchaser or other person entitled to the same, such deed shall be valid and effectual to convey to the grantee the lands or premises so sold: PROVIDED, That this act shall not be construed to affect the equities of third parties in the premises." [1891 p 178 § 1; RRS § 10569.]

Validating -- 1890 p 89: "All deeds, mortgages or other instruments in writing heretofore executed to convey real estate, or any interest therein, and which have no subscribing witness or witnesses thereto, are hereby cured of such defect and made valid, notwithstanding such omission: PROVIDED, Nothing in this act shall be construed to affect vested rights or impair contracts made in good faith between parties prior to the passage of this act: AND PROVIDED FURTHER, That nothing in this act shall be construed to give validity to, or in any manner affect, the sale or transfer of real estate made by the territory or state of Washington, or any officer, agent or employee thereof prior to

the passage of this act." [1890 p 89 § 1; RRS § 10570.]

Reviser's note: The two sections below were repealed by 1929 c 33 § 15 but are retained for their historical value.

Validating -- Code 1881: "All deeds, mortgages, or other instruments in writing, which, prior to the passage of this chapter may have been acknowledged before either of the foregoing named officers, or deputies, or before the clerk of any court, or his deputies, heretofore established by the laws of this territory, are hereby declared legal and valid, in so far as such acknowledgment is concerned." [Code 1881 § 2318; RRS § 10562.]

Validating -- Code 1881: "That all deeds, mortgages, and other instruments at any time heretofore acknowledged according to the provisions of this chapter are hereby declared legal and valid." [Code 1881 § 2322; RRS § 10568.]

Recording of deeds and conveyances: Title 65 RCW.

RCW 64.04.005
Earnest money deposit -- Exclusive remedy -- Definition.

(1)(a) A provision in a written agreement for the purchase and sale of real estate which provides for the forfeiture of an earnest money deposit to the seller as the seller's sole and exclusive remedy if the purchaser fails, without legal excuse, to complete the purchase, is valid and enforceable, regardless of whether the seller incurs any actual damages, PROVIDED That:

(i) The total earnest money deposit to be forfeited does not exceed five percent of the purchase price; and

(ii) The agreement includes an express provision in substantially the following form: "In the event the purchaser fails, without legal excuse, to complete the purchase of the property, the earnest money deposit made by the purchaser shall be forfeited to the seller as the sole and exclusive remedy available to the seller for such failure."

(b) If the real estate which is the subject of the agreement is being purchased by the purchaser primarily for the purchaser's personal, family, or household purposes, then the agreement provision required by (a)(ii) of this subsection must be:

(i) In typeface no smaller than other text provisions of the agreement; and

(ii) Must be separately initialed or signed by the purchaser and seller.

(2) If an agreement for the purchase and sale of real estate does not satisfy the requirements of subsection (1) of this section, then the seller shall have all rights and remedies otherwise available at law or in equity as a result of the failure of the purchaser, without legal excuse, to complete the purchase.

(3) Nothing in subsection (1) of this section shall affect or limit the rights of any party to an agreement for the purchase and sale of real estate with respect to:

(a) Any cause of action arising from any other breach or default by either party under the agreement; or

(b) The recovery of attorneys' fees in any action commenced with respect to the agreement, if the agreement so provides.

(4) For purposes of this section, "earnest money deposit" means any deposit, deposits, payment, or payments of a part of the purchase price for the property, made in the form of cash, check, promissory note, or other things of value for the purpose of binding the purchaser to the agreement and identified in the agreement as an earnest money deposit, and does not include other deposits or payments made by the purchaser.

[1991 c 210 § 1.]

NOTES:

Application -- 1991 c 210: "The provisions of this act apply only to written agreements entered on or after July 28, 1991." [1991 c 210 § 2.]

RCW 64.04.010
Conveyances and encumbrances to be by deed.

Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed: PROVIDED, That when real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record, and the instrument creating such trust authorizes the issuance of certificates or written evidence of any interest in said real estate under said trust, and authorizes the transfer of such certificates or evidence of interest by assignment by the holder thereof by a simple writing or by endorsement on the back of such certificate or evidence of interest or delivery thereof to the vendee, such transfer shall be valid, and all such assignments or transfers hereby authorized and heretofore made in accordance with the provisions of this section are hereby declared to be legal and valid.

[1929 c 33 § 1; RRS § 10550. Prior: 1888 p 50 § 1; 1886 p 177 § 1; Code 1881 § 2311; 1877 p 312 § 1; 1873 p 465 § 1; 1863 p 430 § 1; 1860 p 299 § 1; 1854 p 402 § 1.]

RCW 64.04.020
Requisites of a deed.

Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by *this act to take acknowledgments of deeds.

[1929 c 33 § 2; RRS § 10551. Prior: 1915 c 172 § 1; 1888 p 50 § 2; 1886 p 177 § 2; Code 1881 § 2312; 1854 p 402 § 2.]

NOTES:

***Reviser's note:** The language "this act" appears in 1929 c 33, which is codified in RCW 64.04.010-64.04.050, 64.08.010-64.08.070, 64.12.020, and 65.08.030.

RCW 64.04.030
Warranty deed -- Form and effect.

Warranty deeds for the conveyance of land may be substantially in the following form, without express covenants:

The grantor (here insert the name or names and place or residence) for and in consideration of (here insert consideration) in hand paid, conveys and warrants to (here insert the grantee's name or names) the following described real estate (here insert description), situated in the county of . . . . . ., state of Washington. Dated this . . . . day of . . . . . ., 19. . .

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple to the grantee, his heirs and assigns, with covenants on the part of the grantor: (1) That at the time of the making and delivery of such deed he was lawfully seized of an indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all encumbrances; and (3) that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same, and such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at full length in such deed.

[1929 c 33 § 9; RRS § 10552. Prior: 1886 p 177 § 3.]

RCW 64.04.040
Bargain and sale deed -- Form and effect.

Bargain and sale deeds for the conveyance of land may be substantially in the following form, without express covenants:

The grantor (here insert name or names and place of residence), for and in consideration of (here insert consideration) in hand paid, bargains, sells and conveys to (here insert the grantee's name or names) the following described real estate (here insert description) situated in the county of . . . . . ., state of Washington. Dated this . . . . day of . . . . . ., 19. . .

Every deed in substance in the above form when otherwise duly executed, shall convey to the grantee, his heirs or assigns an estate of inheritance in fee simple, and shall be adjudged an express covenant to the grantee, his heirs or assigns, to wit: That the grantor was seized of an indefeasible estate in fee simple, free from encumbrances, done or suffered from the grantor, except the rents and services that may be reserved, and also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed; and the grantee, his heirs, executors, administrators and assigns may recover in any action for breaches as if such covenants were expressly inserted.

[1929 c 33 § 10; RRS § 10553. Prior: 1886 p 178 § 4.]

RCW 64.04.050
Quitclaim deed -- Form and effect.

Quitclaim deeds may be in substance in the following form:

The grantor (here insert the name or names and place of residence), for and in consideration of (here insert consideration) conveys and quitclaims to (here insert grantee's name or names) all interest in the following described real estate (here insert description), situated in the county of . . . . . ., state of Washington. Dated this . . . . day of . . . . . ., 19. . .

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quitclaim to the grantee, his heirs and assigns in fee of all the then existing legal and equitable rights of the grantor in the premises therein described, but shall not extend to the after acquired title unless words are added expressing such intention.

[1929 c 33 § 11; RRS § 10554. Prior: 1886 p 178 § 5.]

RCW 64.04.055

Deeds for conveyance of apartments under horizontal property regimes act.

All deeds for the conveyance of apartments as provided for in chapter 64.32 RCW shall be substantially in the form required by law for the conveyance of any other land or real property and shall in addition thereto contain the contents described in RCW 64.32.120.

[1963 c 156 § 29.]

RCW 64.04.060
Word "heirs" unnecessary.

The term "heirs", or other technical words of inheritance, shall not be necessary to create and convey an estate in fee simple. All conveyances heretofore made omitting the word "heirs", or other technical words of inheritance, but not limiting the estate conveyed, are hereby validated as and are declared to be conveyances of an estate in fee simple.

[1931 c 20 § 1; RRS § 10558. Prior: 1888 p 51 § 4.]

RCW 64.04.070
After acquired title follows deed.

Whenever any person or persons having sold and conveyed by deed any lands in this state, and who, at the time of such conveyance, had no title to such land, and any person or persons who may hereafter sell and convey by deed any lands in this state, and who shall not at the time of such sale and conveyance have the title to such land, shall acquire a title to such lands so sold and conveyed, such title shall inure to the benefit of the purchasers or conveyee or conveyees of such lands to whom such deed was executed and delivered, and to his and their heirs and assigns forever. And the title to such land so sold and conveyed shall pass to and vest in the conveyee or conveyees of such lands and to his or their heirs and assigns, and shall thereafter run with such land.

[1871 p 195 § 1; RRS § 10571. Cf. Code 1881 (Supp.) p 25 § 1.]

RCW 64.04.080
Purchaser of community real property protected by record title.

See RCW 26.16.095.

RCW 64.04.090
Private seals abolished.

The use of private seals upon all deeds, mortgages, leases, bonds, and other instruments, and contracts in writing, including deeds from a husband to his wife and from a wife to her husband for their respective community right, title, interest or estate in all or any portion of their community real property, is hereby abolished, and the addition of a private seal to any such instrument or contract in writing hereafter made, shall not affect its validity or legality in any respect.

[1923 c 23 § 1; RRS § 10556. Prior: 1888 p 184 § 1; 1888 p 50 § 3; 1886 p 165 § 1; 1871 p 83 §§ 1, 2.]

RCW 64.04.100
Private seals abolished -- Validation.

All deeds, mortgages, leases, bonds and other instruments and contracts in writing, including deeds from a husband to his wife and from a wife to her husband for their respective community right, title, interest or estate in all or any portion of their community real property, which have heretofore been executed without the use of a private seal, are, notwithstanding, hereby declared to be legal and valid.

[1923 c 23 § 2; RRS § 10557. Prior: 1888 p 184 § 2.]

RCW 64.04.105
Corporate seals -- Effect of absence from instrument.

The absence of a corporate seal on any deed, mortgage, lease, bond or other instrument or contract in writing shall not affect its validity, legality or character in any respect.

[1957 c 200 § 1.]

RCW 64.04.120
Registration of land titles.

See chapter 65.12 RCW.

RCW 64.04.130
Interests in land for purposes of conservation, protection, preservation, etc. -- Ownership by certain entities -- Conveyances.

A development right, easement, covenant, restriction, or other right, or any interest less than the fee simple, to protect, preserve, maintain, improve, restore, limit the future use of, or conserve for open space purposes, any land or improvement on the land, whether the right or interest be appurtenant or in gross, may be held or acquired by any state agency, federal agency, county, city, town, or metropolitan municipal corporation, nonprofit historic preservation corporation, or nonprofit nature conservancy corporation. Any such right or interest shall constitute and be classified as real property. All instruments for the conveyance thereof shall be substantially in the form required by law for the conveyance of any land or other real property.

As used in this section, "nonprofit nature conservancy corporation" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c)(3) (of the United States Internal Revenue Code of 1954, as amended) as it existed on June 25, 1976, and which has as one of its principal purposes the conducting or facilitating of scientific research; the conserving of natural resources, including but not limited to biological resources, for the general public; or the conserving of natural areas including but not limited to wildlife or plant habitat.

As used in this section, "nonprofit historic preservation corporation" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended, and which has as one of its principal purposes the conducting or facilitating of historic preservation activities within the state, including conservation or preservation of historic sites, districts, buildings, and artifacts.

[1987 c 341 § 1; 1979 ex.s. c 21 § 1.]

NOTES:

Acquisition of open space, land, or rights to future development by certain entities: RCW 84.34.200 through 84.34.250.

Property tax exemption for conservation futures on agricultural land: RCW 84.36.500.

RCW 64.04.135
Criteria for monitoring historical conformance not to exceed those in original donation agreement -- Exception.

The criteria for monitoring historical conformance shall not exceed those included in the original donation agreement, unless agreed to in writing between grantor and grantee.

[1987 c 341 § 4.]

RCW 64.04.140
Legislative declaration -- Solar energy systems -- Solar easements authorized.

The legislature declares that the potential economic and environmental benefits of solar energy use are considered to be in the public interest; therefore, local governments are authorized to encourage and protect access to direct sunlight for solar energy systems. The legislature further declares that solar easements appropriate to assuring continued access to direct sunlight for solar energy systems may be created and may be privately negotiated.

[1979 ex.s. c 170 § 1.]

NOTES:

Severability -- 1979 ex.s. c 170: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 170 § 15.]

RCW 64.04.150
Solar easements -- Definitions.

(1) As used in this chapter:

(a) "Solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

(i) The heating or cooling of a structure or building;

(ii) The heating or pumping of water;

(iii) Industrial, commercial, or agricultural processes; or

(iv) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall; and

(b) "Solar easement" means a right, expressed as an easement, restriction, covenant, or condition contained in any deed, contract, or other written instrument executed by or on behalf of any landowner for the purpose of assuring adequate access to direct sunlight for solar energy systems.

(2) A solar easement is an interest in real property, and shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements.

(3) A solar easement shall be appurtenant and run with the land or lands benefited and burdened, unless otherwise provided in the easement.

(4) Any instrument creating a solar easement shall include but not be limited to:

(a) A description of the real property subject to the solar easement and a description of the real property benefiting from the solar easement; and

(b) A description of the extent of the solar easement which is sufficiently certain to allow the owner of the real property subject to the easement to ascertain the extent of the easement. Such description may be made by describing the

vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the easement and the points from which those angles are to be measured, or the height over the property above which the solar easement extends, or a prohibited shadow pattern, or any other reasonably certain description.

(5) Any instrument creating a solar easement may include:

(a) The terms or conditions or both under which the solar easement is granted or will be terminated; and

(b) Any provisions for compensation to the owner of property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement, or compensation to the owner of the property subject to the solar easement for maintaining the solar easement.

[1979 ex.s. c 170 § 12.]

NOTES:

Severability -- 1979 ex.s. c 170: See note following RCW 64.04.140.

RCW 64.04.160
Solar easements -- Creation.

A solar easement created under this chapter may only be created by written agreement. Nothing in this chapter shall be deemed to create or authorize the creation of an implied easement or a prescriptive easement.

[1979 ex.s. c 170 § 14.]

NOTES:

Severability -- 1979 ex.s. c 170: See note following RCW 64.04.140.

RCW 64.04.170
Interference with solar easement -- Remedies.

In any action for interference with a solar easement, if the instrument creating the easement does not specify any appropriate and applicable remedies, the court may choose one or more remedies including but not limited to the following:

(1) Actual damages as measured by increased charges for supplemental energy, the capital cost of the solar energy system, and/or the cost of additional equipment necessary to supply sufficient energy:

(a) From the time the interference began until the actual or expected cessation of the interference; or

(b) If the interference is not expected to cease, in a lump sum which represents the present value of the damages from the time the interference began until the normally expected end of the useful life of the equipment which was interfered with;

(2) Reasonable and necessary attorney's fees as fixed by the court; and

(3) An injunction against the interference.

[1979 ex.s. c 170 § 13.]

NOTES:

Severability -- 1979 ex.s. c 170: See note following RCW 64.04.140.

RCW 64.04.175
Easements established by dedication -- Extinguishing or altering.

Easements established by a dedication are property rights that cannot be extinguished or altered without the approval of the easement owner or owners, unless the plat or other document creating the dedicated easement provides for an alternative method or methods to extinguish or alter the easement.

[1991 c 132 § 1.]

RCW 64.04.180
Railroad properties as public utility and transportation corridors -- Declaration of

availability for public use -- Acquisition of reversionary interest.

Railroad properties, including but not limited to rights-of-way, land held in fee and used for railroad operations, bridges, tunnels, and other facilities, are declared to be suitable for public use upon cessation of railroad operations on the properties. It is in the public interest of the state of Washington that such properties retain their character as public utility and transportation corridors, and that they may be made available for public uses including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. Nothing in this section or in RCW 64.04.190 authorizes a public agency or utility to acquire reversionary interests in public utility and transportation corridors without payment of just compensation.

[1988 c 16 § 1; 1984 c 143 § 22.]

RCW 64.04.190
Public utility and transportation corridors -- Defined.

Public utility and transportation corridors are railroad properties (1) on which railroad operations have ceased; (2) that have been found suitable for public use by an order of the Interstate Commerce Commission of the United States; and (3) that have been acquired by purchase, lease, donation, exchange, or other agreement by the state, one of its political subdivisions, or a public utility.

[1988 c 16 § 2; 1984 c 143 § 23.]

RCW 64.04.200
Existing rate or charge for energy conservation -- Seller's duty to disclose.

Prior to closing, the seller of real property subject to a rate or charge for energy conservation measures, services, or payments provided under a tariff approved by the utilities and transportation commission pursuant to RCW 80.28.065 shall disclose to the purchaser of the real property the existence of the obligation and the possibility that the purchaser may be responsible for the payment obligation.

[1993 c 245 § 3.]

NOTES:

Findings -- Intent -- 1993 c 245: See note following RCW 80.28.065.

Chapter 64.08 RCW Acknowledgments

RCW SECTIONS

64.08.010 Who may take acknowledgments.

64.08.020 Acknowledgments out of state -- Certificate.

64.08.040 Foreign acknowledgments, who may take.

64.08.050 Certificate of acknowledgment -- Evidence.

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64.08.090 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths -- Procedure.

64.08.100 Acknowledgments by persons unable to sign name.

NOTES:

Validating: See notes following chapter 64.04 RCW digest.

Acknowledgments
merchant seamen: RCW 73.20.010.
persons in the armed services: RCW 73.20.010.
persons outside United States in connection with war: RCW 73.20.010.

RCW 64.08.010
Who may take acknowledgments.

Acknowledgments of deeds, mortgages and other instruments in writing, required to be acknowledged may be taken in this state before a justice of the supreme court, or the clerk thereof, or the deputy of such clerk, before a judge of the court of appeals, or the clerk thereof, before a judge of the superior court, or qualified court commissioner thereof, or the clerk thereof, or the deputy of such clerk, or a county auditor, or the deputy of such auditor, or a qualified notary public, or a qualified United States commissioner appointed by any district court of the United States for this state, and all said instruments heretofore executed and acknowledged according to the provisions of this section are hereby declared legal and valid.

[1971 c 81 § 131; 1931 c 13 § 1; 1929 c 33 § 3; RRS § 10559. Prior: 1913 c 14 § 1; Code 1881 § 2315; 1879 p 110 § 1; 1877 p 317 § 5; 1875 p 107 § 1; 1873 p 466 § 5.]

RCW 64.08.020
Acknowledgments out of state -- Certificate.

Acknowledgments of deeds conveying or encumbering real estate situated in this state, or any interest therein, and other instruments in writing, required to be acknowledged, may be taken in any other state or territory of the United States, the District of Columbia, or in any possession of the United States, before any person authorized to take the acknowledgments of deeds by the laws of the state, territory, district or possession wherein the acknowledgment is taken, or before any commissioner appointed by the governor of this state, for that purpose, but unless such acknowledgment is taken before a commissioner so appointed by the governor, or before the clerk of a court of record of such state, territory, district or possession, or before a notary public or other officer having a seal of office, the instrument shall have attached thereto a certificate of the clerk of a court of record of the county, parish, or other political subdivision of such state, territory, district or possession wherein the acknowledgment was taken, under the seal of said court, certifying that the person who took the acknowledgment, and whose name is subscribed to the certificate thereof, was at the date thereof such officer as he represented himself to be, authorized by law to take acknowledgments of deeds, and that the clerk verily believes the signature of the person subscribed to the certificate of acknowledgment to be genuine.

[1929 c 33 § 4; RRS §§ 10560, 10561. Prior: Code 1881 §§ 2316, 2317; 1877 p 313 §§ 6, 7; 1873 p 466 §§ 6, 7; 1867 pp 93, 94 §§ 1, 2; 1866 p 89 § 1; 1865 p 25 § 1. Formerly RCW 64.08.020 and 64.08.030.]

RCW 64.08.040
Foreign acknowledgments, who may take.

Acknowledgments of deeds conveying or encumbering real estate situated in this state, or any interest therein and other instruments in writing, required to be acknowledged, may be taken in any foreign country before any minister, plenipotentiary, secretary of legation, charge d'affaires, consul general, consul, vice consul, consular agent, or commercial agent appointed by the United States government, or before any notary public, or before the judge, clerk, or other proper officer of any court of said country, or before the mayor or other chief magistrate of any city, town or other municipal corporation therein.

[1929 c 33 § 5; RRS § 10563, part. Prior: 1901 c 53 § 1; 1888 p 1 § 1; Code 1881 § 2319; 1875 p 108 § 2.]

RCW 64.08.050
Certificate of acknowledgment -- Evidence.

The officer, or person, taking an acknowledgment as in this chapter provided, shall certify the same by a certificate written upon or annexed to the instrument acknowledged and signed by him or her and sealed with his or her official seal, if any, and reciting in substance that the person, or persons, known to him or her as, or determined by satisfactory evidence to be, the person, or persons, whose name, or names, are signed to the instrument as executing the same, acknowledged before him or her on the date stated in the certificate that he, she, or they, executed the same freely and voluntarily. Such certificate shall be prima facie evidence of the facts therein recited. The officer or person taking the acknowledgment has satisfactory evidence that a person is the person whose name is signed on the instrument if that person: (1) Is personally known to the officer or person taking the acknowledgment; (2) is identified upon the oath or affirmation of a credible witness personally known to the officer or person taking the acknowledgment; or (3) is identified on the basis of identification documents.

[1988 c 69 § 1; 1929 c 33 § 6; RRS §§ 10564, 10565. Prior: Code 1881 §§ 2320, 2321; 1879 p 158 §§ 2, 3.]

RCW 64.08.060
Form of certificate for individual.

A certificate of acknowledgment for an individual, substantially in the following form or, after December 31, 1985, substantially in the form set forth in RCW 42.44.100(1), shall be sufficient for the purposes of this chapter and for any acknowledgment required to be taken in accordance with this chapter:

State of . . . . . |
ss.
County of . . . . . |
>
|
|

On this day personally appeared before me (here insert the name of grantor or grantors) to me known to be the individual, or individuals described in and who executed the within and foregoing instrument, and acknowledged that he (she or they) signed the same as his (her or their) free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this . . . . day of . . . . . ., 19. . . (Signature of officer and official seal)

If acknowledgment is taken before a notary public of this state the signature shall be followed by substantially the following: Notary Public in and for the state of Washington, residing at . . . . . ., (giving place of residence).

[1988 c 69 § 2; 1929 c 33 § 13; RRS § 10566. Prior: 1888 p 51 § 2; 1886 p 179 § 7.]

RCW 64.08.070
Form of certificate for corporation.

A certificate of acknowledgment for a corporation, substantially in the following form or, after December 31, 1985, substantially in the form set forth in RCW 42.44.100(2), shall be sufficient for the purposes of this chapter and for any acknowledgment required to be taken in

accordance with this chapter:

State of . . . . . |
ss.
County of . . . . . |
>
|
|

On this . . . . day of . . . . . ., 19. . ., before me personally appeared . . . . . ., to me known to be the (president, vice president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written. (Signature and title of officer with place of residence of notary public.)

[1988 c 69 § 3; 1929 c 33 § 14; RRS § 10567. Prior: 1903 c 132 § 1.]

RCW 64.08.090
Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths -- Procedure.

The superintendents, associate and assistant superintendents, business managers, records officers and camp superintendents of any correctional institution or facility operated by the state of Washington are hereby authorized and empowered to take acknowledgments on any instruments of writing, and certify the same in the manner required by law, and to administer all oaths required by law to be administered, all of the foregoing acts to have the same effect as if performed by a notary public: PROVIDED, That such authority shall only extend to taking acknowledgments for and administering oaths to officers, employees and residents of such institutions and facilities. None of the individuals herein empowered to take acknowledgments and administer oaths shall demand or accept any fee or compensation whatsoever for administering or taking any oath, affirmation, or acknowledgment under the authority conferred by this section.

In certifying any oath or in signing any instrument officially, an individual empowered to do so under this section shall, in addition to his name, state in writing his place of residence, the date of his action, and affix the seal of the institution where he is employed: PROVIDED, That in certifying any oath to be used in any of the courts of this state, it shall not be necessary to append an impression of the official seal of the institution.

[1972 ex.s. c 58 § 1.]

RCW 64.08.100
Acknowledgments by persons unable to sign name.

Any person who is otherwise competent but is physically unable to sign his or her name or make a mark may make an acknowledgment authorized under this chapter by orally directing the notary public or other authorized officer taking the acknowledgment to sign the person's name on his or her behalf. In taking an acknowledgment under this section, the notary public or other authorized officer shall, in addition to stating his or her name and place of residence, state that the signature in the acknowledgment was obtained under the authority of this section.

[1987 c 76 § 2.]

Chapter 64.34 RCW Condominium Act

RCW SECTIONS

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NOTES:

Condominiums created prior to July 1, 1990: Chapter 64.32 RCW.

ARTICLE 1

GENERAL PROVISIONS

RCW 64.34.005
Findings -- Intent -- 2004 c 201.

(1) The legislature finds, declares, and determines that:

(a) Washington's cities and counties under the growth management act are required to encourage urban growth in urban growth areas at densities that accommodate twenty-year growth projections;

(b) The growth management act's planning goals include encouraging the availability of affordable housing for all residents of the state and promoting a variety of housing types;

(c) Quality condominium construction needs to be encouraged to achieve growth management act mandated urban densities and to ensure that residents of the state, particularly in urban growth areas, have a broad range of ownership choices.

(2) It is the intent of the legislature that

limited changes be made to the condominium act to ensure that a broad range of affordable homeownership opportunities continue to be available to the residents of the state, and to assist cities' and counties' efforts to achieve the density mandates of the growth management act.

[2004 c 201 § 1.]

RCW 64.34.010
Applicability.

(1) This chapter applies to all condominiums created within this state after July 1, 1990. RCW 64.34.040 (separate titles and taxation), RCW 64.34.050 (applicability of local ordinances, regulations, and building codes), RCW 64.34.060 (condemnation), RCW 64.34.208 (construction and validity of declaration and bylaws), RCW 64.34.212 (description of units), RCW 64.34.304(1)(a) through (f) and (k) through (r) (powers of unit owners' association), RCW 64.34.308(1) (board of directors and officers), RCW 64.34.340 (voting—proxies), RCW 64.34.344 (tort and contract liability), RCW 64.34.354 (notification on sale of unit), RCW 64.34.360(3) (common expenses—assessments), RCW 64.34.364 (lien for assessments), RCW 64.34.372 (association records), RCW 64.34.425 (resales of units), RCW 64.34.455 (effect of violation on rights of action; attorney's fees), and RCW 64.34.020 (definitions) to the extent necessary in construing any of those sections, apply to all condominiums created in this state before July 1, 1990; but those sections apply only with respect to events and circumstances occurring after July 1, 1990, and do not invalidate or supersede existing, inconsistent provisions of the declaration, bylaws, or survey maps or plans of those condominiums.

(2) The provisions of chapter 64.32 RCW do not apply to condominiums created after July 1, 1990, and do not invalidate any amendment to the declaration, bylaws, and survey maps and plans of any condominium created before July 1, 1990, if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter 64.32 RCW. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter which are not otherwise provided for in the declaration or chapter 64.32 RCW, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(3) This chapter does not apply to condominiums or units located outside this state.

(4) RCW 64.34.400 (applicability—waiver), RCW 64.34.405 (liability for public offering statement requirements), RCW 64.34.410 (public offering statement—general provisions), RCW 64.34.415 (public offering statement—conversion condominiums), RCW 64.34.420 (purchaser's right to cancel), RCW 64.34.430 (escrow of deposits), RCW 64.34.440 (conversion condominiums—notice—tenants), and RCW 64.34.455 (effect of violations on rights of action—attorney's fees) apply with respect to all sales of units pursuant to purchase agreements entered into after July 1, 1990, in condominiums created before July 1, 1990, in which as of July 1, 1990, the declarant or an affiliate of the declarant owns or had the right to create at least ten units constituting at least twenty percent of the units in the condominium.

[1993 c 429 § 12; 1992 c 220 § 1; 1989 c 43 § 1-102.]

RCW 64.34.020
Definitions.

In the declaration and bylaws, unless specifically provided otherwise or the context requires otherwise, and in this chapter:

(1) "Affiliate" means any person who controls, is controlled by, or is under common control with the referenced person. A person "controls" another person if the person: (a) Is a general partner, officer, director, or employer of the referenced person; (b) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the referenced person; (c) controls in any manner the election of a majority of the directors of the referenced person; or (d) has contributed more than twenty percent of the capital of the referenced person. A person "is controlled by" another person if the other person: (i) Is a general partner, officer,

director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Assessment" means all sums chargeable by the association against a unit including, without limitation: (a) Regular and special assessments for common expenses, charges, and fines imposed by the association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the association in connection with the collection of a delinquent owner's account.

(4) "Association" or "unit owners' association" means the unit owners' association organized under RCW 64.34.300.

(5) "Board of directors" means the body, regardless of name, with primary authority to manage the affairs of the association.

(6) "Common elements" means all portions of a condominium other than the units.

(7) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(8) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to RCW 64.34.224.

(9) "Condominium" means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the unit owners, and unless a declaration and a survey map and plans have been recorded pursuant to this chapter.

(10) "Conversion condominium" means a condominium (a) that at any time before creation of the condominium was lawfully occupied wholly or partially by a tenant or subtenant for residential purposes pursuant to a rental agreement, oral or written, express or implied, for which the tenant or subtenant had not received the notice described in (b) of this subsection; or (b) that, at any time within twelve months before the conveyance of, or acceptance of an agreement to convey, any unit therein other than to a declarant or any affiliate of a declarant, was lawfully occupied wholly or partially by a residential tenant of a declarant or an affiliate of a declarant and such tenant was not notified in writing, prior to lawfully occupying a unit or executing a rental agreement, whichever event first occurs, that the unit was part of a condominium and subject to sale. "Conversion condominium" shall not include a condominium in which, before July 1, 1990, any unit therein had been conveyed or been made subject to an agreement to convey to any transferee other than a declarant or an affiliate of a declarant.

(11) "Conveyance" means any transfer of the ownership of a unit, including a transfer by deed or by real estate contract and, with respect to a unit in a leasehold condominium, a transfer by lease or assignment thereof, but shall not include a transfer solely for security.

(12) "Dealer" means a person who, together with such person's affiliates, owns or has a right to acquire either six or more units in a condominium or fifty percent or more of the units in a condominium containing more than two units.

(13) "Declarant" means:

(a) Any person who executes as declarant a declaration as defined in subsection (15) of this section; or

(b) Any person who reserves any special declarant right in the declaration; or

(c) Any person who exercises special declarant rights or to whom special declarant rights are transferred; or

(d) Any person who is the owner of a fee interest in the real property which is subjected to the declaration at the time of the recording of an instrument pursuant to RCW 64.34.316 and who directly or through one or more affiliates is materially involved in the construction, marketing, or sale of units in the condominium created by the recording of the instrument.

(14) "Declarant control" means the right of the declarant or persons designated by the declarant to appoint and remove officers and members of the board of directors, or to veto or approve a proposed action of the board or association, pursuant to RCW 64.34.308 (4) or (5).

(15) "Declaration" means the document, however denominated, that creates a condominium by setting forth the information required by RCW 64.34.216 and any amendments to that document.

(16) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to: (a) Add real property or improvements to a condominium; (b) create units, common elements, or limited common elements within real property included or added to a condominium; (c) subdivide units or convert units into common elements; (d) withdraw real property from a condominium; or (e) reallocate limited common elements with respect to units that have not been conveyed by the declarant.

(17) "Dispose" or "disposition" means a voluntary transfer or conveyance to a purchaser or lessee of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

(18) "Eligible mortgagee" means the holder of a mortgage on a unit that has filed with the secretary of the association a written request that it be given copies of notices of any action by the association that requires the consent of mortgagees.

(19) "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a mortgage or a deed in lieu thereof.

(20) "Identifying number" means the designation of each unit in a condominium.

(21) "Leasehold condominium" means a condominium in which all or a portion of the real property is subject to a lease, the expiration or termination of which will terminate the condominium or reduce its size.

(22) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of RCW 64.34.204 (2) or (4) for the exclusive use of one or more but fewer than all of the units.

(23) "Master association" means an organization described in RCW 64.34.276, whether or not it is also an association described in RCW 64.34.300.

(24) "Mortgage" means a mortgage, deed of trust or real estate contract.

(25) "Person" means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entity.

(26) "Purchaser" means any person, other than a declarant or a dealer, who by means of a disposition acquires a legal or equitable interest in a unit other than (a) a leasehold interest, including renewal options, of less than twenty years at the time of creation of the unit, or (b) as security for an obligation.

(27) "Real property" means any fee, leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. "Real property" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.

(28) "Residential purposes" means use for dwelling or recreational purposes, or both.

(29) "Special declarant rights" means rights reserved for the benefit of a declarant to: (a) Complete improvements indicated on survey maps and plans filed with the declaration under RCW 64.34.232; (b) exercise any development right under RCW 64.34.236; (c) maintain sales offices, management offices, signs advertising the condominium, and models under RCW 64.34.256; (d) use easements through the

common elements for the purpose of making improvements within the condominium or within real property which may be added to the condominium under RCW 64.34.260; (e) make the condominium part of a larger condominium or a development under RCW 64.34.280; (f) make the condominium subject to a master association under RCW 64.34.276; or (g) appoint or remove any officer of the association or any master association or any member of the board of directors, or to veto or approve a proposed action of the board or association, during any period of declarant control under RCW 64.34.308(4).

(30) "Timeshare" shall have the meaning specified in the timeshare act, RCW 64.36.010(11).

(31) "Unit" means a physical portion of the condominium designated for separate ownership, the boundaries of which are described pursuant to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit in a leasehold condominium under a lease that expires contemporaneously with any lease, the expiration or termination of which will remove the unit from the condominium.

(32) "Unit owner" means a declarant or other person who owns a unit or leases a unit in a leasehold condominium under a lease that expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person who has an interest in a unit solely as security for an obligation. "Unit owner" means the vendee, not the vendor, of a unit under a real estate contract.

[2004 c 201 § 9; 1992 c 220 § 2; 1990 c 166 § 1; 1989 c 43 § 1-103.]

NOTES:

Effective date -- 1990 c 166: "This act shall take effect July 1, 1990." [1990 c 166 § 16.]

RCW 64.34.030
Variation by agreement.

Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this chapter or the declaration.

[1989 c 43 § 1-104.]

RCW 64.34.040
Separate interests -- Taxation.

(1) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real property.

(2) If there is any unit owner other than a declarant, each unit together with its interest in the common elements must be separately taxed and assessed.

(3) If a development right has an ascertainable market value, the development right shall constitute a separate parcel of real property for property tax purposes and must be separately taxed and assessed to the declarant.

(4) If there is no unit owner other than a declarant, the real property comprising the condominium may be taxed and assessed in any manner provided by law.

[1992 c 220 § 3; 1989 c 43 § 1-105.]

RCW 64.34.050
Local ordinances, regulations, and building codes -- Applicability.

(1) A zoning, subdivision, building code, or other real property law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, building code, or other real property use law, ordinance, or regulation.

(2) This section shall not prohibit a county legislative authority from requiring the review and approval of declarations and amendments

thereto and termination agreements executed pursuant to RCW 64.34.268(2) by the county assessor solely for the purpose of allocating the assessed value and property taxes. The review by the assessor shall be done in a reasonable and timely manner.

[1989 c 43 § 1-106.]

RCW 64.34.060
Condemnation.

(1) If a unit is acquired by condemnation, or if part of a unit is acquired by condemnation leaving the unit owner with a remnant of a unit which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for the owner's unit and its appurtenant interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(2) Except as provided in subsection (1) of this section, if part of a unit is acquired by condemnation, the award must compensate the unit owner for the reduction in value of the unit and its appurtenant interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides: (a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and (b) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(3) If part of the common elements is acquired by condemnation the portion of the award attributable to the common elements taken shall be paid to the owners based on their respective interests in the common elements unless the declaration provides otherwise. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

(4) The court judgment shall be recorded in every county in which any portion of the condominium is located.

(5) Should the association not act, based on a right reserved to the association in the declaration, on the owners' behalf in a condemnation process, the affected owners may individually or jointly act on their own behalf.

[1989 c 43 § 1-107.]

RCW 64.34.070
Law applicable -- General principles.

The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, condemnation, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.

[1989 c 43 § 1-108.]

RCW 64.34.080
Contracts -- Unconscionability.

(1) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(2) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to

aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

(a) The commercial setting of the negotiations;

(b) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his or her interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

(c) The effect and purpose of the contract or clause; and

(d) If a sale, any gross disparity at the time of contracting between the amount charged for the real property and the value of the real property measured by the price at which similar real property was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real property measured by the price at which similar real property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

[1989 c 43 § 1-111.]

RCW 64.34.090
Obligation of good faith.

Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

[1989 c 43 § 1-112.]

RCW 64.34.100
Remedies liberally administered.

(1) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

(2) Except as otherwise provided in chapter 64.35 RCW, any right or obligation declared by this chapter is enforceable by judicial proceeding.

[2004 c 201 § 2; 1989 c 43 § 1-113.]

ARTICLE 2

CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

RCW 64.34.200
Creation of condominium.

(1) A condominium may be created pursuant to this chapter only by recording a declaration executed by the owner of the interest subject to this chapter in the same manner as a deed and by simultaneously recording a survey map and plans pursuant to RCW 64.34.232. The declaration and survey map and plans must be recorded in every county in which any portion of the condominium is located, and the condominium shall not have the same name as any other existing condominium, whether created under this chapter or under chapter 64.32 RCW, in any county in which the condominium is located.

(2) A declaration or an amendment to a declaration adding units to a condominium may not be recorded unless (a) all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed as evidenced by a recorded certificate of completion executed by the declarant which certificate may be included in the declaration or the amendment, the survey map and plans to be recorded pursuant to RCW 64.34.232, or a separately recorded written instrument, and (b) all horizontal and vertical boundaries of such units are substantially completed in accordance with the plans required to be recorded by RCW 64.34.232, as evidenced by a recorded certificate of completion executed by a licensed surveyor.

[1992 c 220 § 4; 1990 c 166 § 2; 1989 c 43 § 2-101.]

NOTES:

Effective date -- 1990 c 166: See note following RCW 64.34.020.

RCW 64.34.202
Reservation of condominium name.

Upon the filing of a written request with the county office in which the declaration is to be recorded, using such form of written request as may be required by the county office and paying such fee as the county office may establish not in excess of fifty dollars, a person may reserve the exclusive right to use a particular name for a condominium to be created in that county. The name being reserved shall not be identical to any other condominium or subdivision plat located in that county, and such name reservation shall automatically lapse unless within three hundred sixty-five days from the date on which the name reservation is filed the person reserving that name either records a declaration using the reserved name or files a new name reservation request.

[1992 c 220 § 5.]

RCW 64.34.204
Unit boundaries.

Except as provided by the declaration:

(1) The walls, floors, or ceilings are the boundaries of a unit, and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(3) Subject to the provisions of subsection (2) of this section, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but which are located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

[1992 c 220 § 6; 1989 c 43 § 2-102.]

RCW 64.34.208
Declaration and bylaws -- Construction and validity.

(1) All provisions of the declaration and bylaws are severable.

(2) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to RCW 64.34.304(1)(a).

(3) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

(4) The creation of a condominium shall not be impaired and title to a unit and common elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of the declaration or survey map and plans or any amendment thereto to comply with this chapter. Whether a significant failure impairs marketability shall not be determined by this chapter.

[1989 c 43 § 2-103.]

RCW 64.34.212
Description of units.

A description of a unit which sets forth the name of the condominium, the recording number for the declaration, the county in which the condominium is located, and the identifying number of the unit is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws.

[1989 c 43 § 2-104.]

RCW 64.34.216
Contents of declaration.

(1) The declaration for a condominium must contain:

(a) The name of the condominium, which must include the word "condominium" or be followed by the words "a condominium," and the name of the association;

(b) A legal description of the real property included in the condominium;

(c) A statement of the number of units which the declarant has created and, if the declarant has reserved the right to create additional units, the number of such additional units;

(d) The identifying number of each unit created by the declaration and a description of the boundaries of each unit if and to the extent they are different from the boundaries stated in RCW 64.34.204(1);

(e) With respect to each existing unit:

(i) The approximate square footage;

(ii) The number of bathrooms, whole or partial;

(iii) The number of rooms designated primarily as bedrooms;

(iv) The number of built-in fireplaces; and

(v) The level or levels on which each unit is located.

The data described in (ii), (iii), and (iv) of this subsection (1)(e) may be omitted with respect to units restricted to nonresidential use;

(f) The number of parking spaces and whether covered, uncovered, or enclosed;

(g) The number of moorage slips, if any;

(h) A description of any limited common elements, other than those specified in RCW 64.34.204 (2) and (4), as provided in RCW 64.34.232(2)(j);

(i) A description of any real property which may be allocated subsequently by the declarant as limited common elements, other than limited common elements specified in RCW 64.34.204 (2) and (4), together with a statement that they may be so allocated;

(j) A description of any development rights and other special declarant rights under RCW 64.34.020(29) reserved by the declarant, together with a description of the real property to which the development rights apply, and a time limit within which each of those rights must be exercised;

(k) If any development right may be exercised with respect to different parcels of real property at different times, a statement to that effect together with: (i) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards; and (ii) a statement as to whether, if any development right is exercised in any portion of the real property subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real property;

(l) Any other conditions or limitations under which the rights described in (j) of this subsection may be exercised or will lapse;

(m) An allocation to each unit of the allocated interests in the manner described in RCW 64.34.224;

(n) Any restrictions in the declaration on use, occupancy, or alienation of the units;

(o) A cross-reference by recording number to the survey map and plans for the units created by the declaration; and

(p) All matters required or permitted by RCW 64.34.220 through 64.34.232, 64.34.256, 64.34.260, 64.34.276, and 64.34.308(4).

(2) All amendments to the declaration shall contain a cross-reference by recording number to the declaration and to any prior amendments thereto. All amendments to the declaration adding units shall contain a cross-reference by

recording number to the survey map and plans relating to the added units and set forth all information required by RCW 64.34.216(1) with respect to the added units.

(3) The declaration may contain any other matters the declarant deems appropriate.

[1992 c 220 § 7; 1989 c 43 § 2-105.]

RCW 64.34.220
Leasehold condominiums.

(1) Any lease, the expiration or termination of which may terminate the condominium or reduce its size, or a memorandum thereof, shall be recorded. Every lessor of those leases must sign the declaration, and the declaration shall state:

(a) The recording number of the lease or a statement of where the complete lease may be inspected;

(b) The date on which the lease is scheduled to expire;

(c) A legal description of the real property subject to the lease;

(d) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

(e) Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(f) Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(2) The declaration may provide for the collection by the association of the proportionate rents paid on the lease by the unit owners and may designate the association as the representative of the unit owners on all matters relating to the lease.

(3) If the declaration does not provide for the collection of rents by the association, the lessor may not terminate the interest of a unit owner who makes timely payment of the owner's share of the rent and otherwise complies with all covenants other than the payment of rent which, if violated, would entitle the lessor to terminate the lease.

(4) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired and the owner thereof records a document confirming the merger.

(5) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with RCW 64.34.060(1) as though those units had been taken by condemnation. Reallocations shall be confirmed by an amendment to the declaration and survey map and plans prepared, executed, and recorded by the association.

[1989 c 43 § 2-106.]

RCW 64.34.224
Common element interests, votes, and expenses -- Allocation.

(1) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas or methods used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(2) If units may be added to or withdrawn from the condominium, the declaration shall state the formulas or methods to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(3) The declaration may provide: (a) For cumulative voting only for the purpose of electing members of the board of directors; and (b) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter,

nor may units constitute a class because they are owned by a declarant.

(4) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(5) Except where permitted by other sections of this chapter, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.

[1992 c 220 § 8; 1989 c 43 § 2-107.]

RCW 64.34.228
Limited common elements.

(1) Except for the limited common elements described in RCW 64.34.204 (2) and (4), the declaration shall specify to which unit or units each limited common element is allocated.

(2) Except in the case of a reallocation being made by a declarant pursuant to a development right reserved in the declaration, a limited common element may only be reallocated between units with the approval of the board of directors and by an amendment to the declaration executed by the owners of the units to which the limited common element was and will be allocated. The board of directors shall approve the request of the owner or owners under this subsection within thirty days, or within such other period provided by the declaration, unless the proposed reallocation does not comply with this chapter or the declaration. The failure of the board of directors to act upon a request within such period shall be deemed approval thereof. The amendment shall be recorded in the names of the parties and of the condominium.

(3) Unless otherwise provided in the declaration, the owners of units to which at least sixty-seven percent of the votes are allocated, including the owner of the unit to which the limited common element will be assigned or incorporated, must agree to reallocate a common element as a limited common element or to incorporate a common element or a limited common element into an existing unit. Such reallocation or incorporation shall be reflected in an amendment to the declaration, survey map, or plans.

[1992 c 220 § 9; 1989 c 43 § 2-108.]

RCW 64.34.232
Survey maps and plans.

(1) A survey map and plans executed by the declarant shall be recorded simultaneously with, and contain cross-references by recording number to, the declaration and any amendments. The survey map and plans must be clear and legible and contain a certification by the person making the survey or the plans that all information required by this section is supplied. All plans filed shall be in such style, size, form and quality as shall be prescribed by the recording authority of the county where filed, and a copy shall be delivered to the county assessor.

(2) Each survey map shall show or state:

(a) The name of the condominium and a legal description and a survey of the land in the condominium and of any land that may be added to the condominium;

(b) The boundaries of all land not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing buildings containing units on that land;

(c) The boundaries of any land subject to development rights, labeled "SUBJECT TO DEVELOPMENT RIGHTS SET FORTH IN THE DECLARATION"; any land that may be added to the condominium shall also be labeled "MAY BE ADDED TO THE CONDOMINIUM"; any land that may be withdrawn from the condominium shall also be labeled "MAY BE WITHDRAWN FROM THE CONDOMINIUM";

(d) The extent of any encroachments by or

upon any portion of the condominium;

(e) To the extent feasible, the location and dimensions of all recorded easements serving or burdening any portion of the condominium and any unrecorded easements of which a surveyor knows or reasonably should have known, based on standard industry practices, while conducting the survey;

(f) Subject to the provisions of subsection (8) of this section, the location and dimensions of any vertical unit boundaries not shown or projected on plans recorded under subsection (4) of this section and that unit's identifying number;

(g) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded under subsection (4) of this section and that unit's identifying number;

(h) The location and dimensions of any real property in which the unit owners will own only an estate for years, labeled as "leasehold real property";

(i) The distance between any noncontiguous parcels of real property comprising the condominium;

(j) The general location of any existing principal common amenities listed in a public offering statement under RCW 64.34.410(1)(j) and any limited common elements, including limited common element porches, balconies, patios, parking spaces, and storage facilities, but not including the other limited common elements described in RCW 64.34.204 (2) and (4);

(k) In the case of real property not subject to development rights, all other matters customarily shown on land surveys.

(3) A survey map may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

(4) To the extent not shown or projected on the survey map, plans of the existing units must show or project:

(a) Subject to the provisions of subsection (8) of this section, the location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;

(b) Any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(c) Any units in which the declarant has reserved the right to create additional units or common elements under RCW 64.34.236(3), identified appropriately.

(5) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and in such case need not be depicted on the survey map and plans.

(6) Upon exercising any development right, the declarant shall record either a new survey map and plans necessary to conform to the requirements of subsections (1), (2), and (3) of this section or new certifications of a survey map and plans previously recorded if the documents otherwise conform to the requirements of those subsections.

(7) Any survey map, plan, or certification required by this section shall be made by a licensed surveyor.

(8) In showing or projecting the location and dimensions of the vertical boundaries of a unit under subsections (2)(f) and (4)(a) of this section, it is not necessary to show the thickness of the walls constituting the vertical boundaries or otherwise show the distance of those vertical boundaries either from the exterior surface of the building containing that unit or from adjacent vertical boundaries of other units if: (a) The walls are designated to be the vertical boundaries of that unit; (b) the unit is located within a building, the location and dimensions of the building having been shown on the survey map under subsection (2)(b) of this section; and (c) the graphic general location of the vertical boundaries are shown in relation to the exterior surfaces of that building and to the vertical boundaries of other units within that building.

[1997 c 400 § 2; 1992 c 220 § 10; 1989 c 43 § 2-109.]

RCW 64.34.236
Development rights.

(1) To exercise any development right reserved under RCW 64.34.216(1)(j), the declarant shall prepare, execute, and record an amendment to the declaration under RCW 64.34.264, and comply with RCW 64.34.232. The declarant is the unit owner of any units thereby created. The amendment to the declaration shall assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (2) of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by RCW 64.34.228.

(2) Development rights may be reserved within any real property added to the condominium if the amendment adding that real property includes all matters required by RCW 64.34.216 or 64.34.220, as the case may be, and the survey map and plans include all matters required by RCW 64.34.232. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to RCW 64.34.216(1)(j).

(3) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(a) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by condemnation under RCW 64.34.060.

(b) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable and equitable manner prescribed by the declarant.

(4) If the declaration provides, pursuant to RCW 64.34.216(1)(j), that all or a portion of the real property is subject to the development right of withdrawal:

(a) If all the real property is subject to withdrawal, and the declaration or survey map or amendment thereto does not describe separate portions of real property subject to that right, none of the real property may be withdrawn if a unit in that portion of the real property is owned by a person other than the declarant; and

(b) If a portion or portions are subject to withdrawal as described in the declaration or in the survey map or in any amendment thereto, no portion may be withdrawn if a unit in that portion of the real property is owned by a person other than the declarant.

[1989 c 43 § 2-110.]

RCW 64.34.240
Alterations of units.

Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) May make any improvements or alterations to the owner's unit that do not affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the condominium;

(2) May not change the appearance of the common elements or the exterior appearance of a unit without permission of the association;

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit may, with approval of the board of directors, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not adversely affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this subsection is not a relocation of boundaries. The board of directors shall approve a unit owner's request, which request shall include the plans and specifications for the proposed removal or alteration, under this subsection within thirty days, or within such other period provided by the declaration, unless the proposed alteration does not comply with this chapter or the declaration or impairs the structural integrity or mechanical or

electrical systems in the condominium. The failure of the board of directors to act upon a request within such period shall be deemed approval thereof.

[1989 c 43 § 2-111.]

RCW 64.34.244
Relocation of boundaries -- Adjoining units.

(1) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may only be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the board of directors determines within thirty days, or such other period provided in the declaration, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and is recorded in the name of the grantor and the grantee.

(2) The association shall obtain and record survey maps or plans complying with the requirements of RCW 64.34.232(4) necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers.

[1989 c 43 § 2-112.]

RCW 64.34.248
Subdivision of units.

(1) If the declaration permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration, including survey maps and plans, subdividing that unit.

(2) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable and equitable manner prescribed by the owner of the subdivided unit.

[1989 c 43 § 2-113.]

RCW 64.34.252
Monuments as boundaries.

The physical boundaries of a unit constructed in substantial accordance with the original survey map and set of plans thereof become its boundaries rather than the metes and bounds expressed in the survey map or plans, regardless of settling or lateral movement of the building or minor variance between boundaries shown on the survey map or plans and those of the building. This section does not relieve a declarant or any other person of liability for failure to adhere to the survey map and plans.

[1989 c 43 § 2-114.]

RCW 64.34.256
Use by declarant.

A declarant may maintain sales offices, management offices, and models in units or on common elements in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, location, and relocation thereof. Any sales office, management office, or model not designated a unit by the declaration is a common element and, if a declarant ceases to be a unit owner, the declarant ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. The provisions of this section are subject to the provisions of other state law and to local ordinances.

[1992 c 220 § 11; 1989 c 43 § 2-115.]

RCW 64.34.260
Easement rights -- Common elements.

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration.

[1989 c 43 § 2-116.]

RCW 64.34.264
Amendment of declaration.

(1) Except in cases of amendments that may be executed by a declarant under RCW 64.34.232(6) or 64.34.236; the association under RCW 64.34.060, 64.34.220(5), 64.34.228(3), 64.34.244(1), 64.34.248, or 64.34.268(8); or certain unit owners under RCW 64.34.228(2), 64.34.244(1), 64.34.248(2), or 64.34.268(2), and except as limited by subsection (4) of this section, the declaration, including the survey maps and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(2) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(3) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located, and is effective only upon recording. An amendment shall be indexed in the name of the condominium and shall contain a cross-reference by recording number to the declaration and each previously recorded amendment thereto.

(4) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of the vote or agreement of the owner of each unit particularly affected and the owners of units to which at least ninety percent of the votes in the association are allocated other than the declarant or such larger percentage as the declaration provides.

(5) Amendments to the declaration required by this chapter to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(6) No amendment may restrict, eliminate, or otherwise modify any special declarant right provided in the declaration without the consent of the declarant and any mortgagee of record with a security interest in the special declarant right or in any real property subject thereto, excluding mortgagees of units owned by persons other than the declarant.

[1989 c 43 § 2-117.]

RCW 64.34.268
Termination of condominium.

(1) Except in the case of a taking of all the units by condemnation under RCW 64.34.060, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

(2) An agreement to terminate must be evidenced by the execution of a termination agreement or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date and shall contain a description of the manner in which the creditors of the association will be paid or provided for. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recording. A termination agreement may be amended by complying with all of the requirements of this section.

(3) A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real property in the condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(4) The association, on behalf of the unit owners, may contract for the sale of real property in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (1) and (2) of this section. If any real property in the condominium is to be sold following termination, title to that real property, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (7) of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real property, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real property that formerly constituted the owner's unit. During the period of that occupancy, each unit owner and the owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

(5) If the real property constituting the condominium is not to be sold following termination, title to all the real property in the condominium vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (7) of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real property that formerly constituted the owner's unit.

(6) Following termination of the condominium, the proceeds of any sale of real property, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units and creditors of the association as their interests may appear. No such proceeds or assets may be disbursed to the owners until all of the creditors of the association have been paid or provided for. Following termination, creditors of the association holding liens on the units, which were recorded or perfected under RCW 4.64.020 before termination, may enforce those liens in the same manner as any lien holder.

(7) The respective interests of unit owners referred to in subsections (4), (5), and (6) of this section are as follows:

(a) Except as provided in (b) of this subsection, the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved, within thirty days after distribution, by unit owners of units to which twenty-five percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(b) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(8) Except as provided in subsection (9) of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real property, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real property does not of itself withdraw that real property from the condominium, but the person taking title thereto has the right to require from the association, upon request, an amendment

excluding the real property from the condominium.

(9) If a lien or encumbrance against a portion of the real property that is withdrawable from the condominium has priority over the declaration, and the lien or encumbrance has not been partially released as to a unit, the purchaser at the foreclosure or such purchaser's successors may, upon foreclosure, record an instrument exercising the right to withdraw the real property subject to that lien or encumbrance from the condominium. The board of directors shall reallocate interests as if the foreclosed portion were condemned.

(10) The right of partition under chapter 7.52 RCW shall be suspended if an agreement to sell the property is provided for in the termination agreement pursuant to subsection (3) of this section. The suspension of the right to partition shall continue unless and until no binding obligation to sell exists three months after the recording of the termination agreement, the binding sale agreement is terminated, or one year after the termination agreement is recorded, whichever first occurs.

[1992 c 220 § 12; 1989 c 43 § 2-118.]

RCW 64.34.272
Rights of secured lenders.

The declaration may require that all or a specified number or percentage of the holders of mortgages encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (1) deny or delegate control over the general administrative affairs of the association by the unit owners or the board of directors, or (2) prevent the association or the board of directors from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to RCW 64.34.352. With respect to any action requiring the consent of a specified number or percentage of mortgagees, the consent of only eligible mortgagees holding a first lien mortgage need be obtained and the percentage shall be based upon the votes attributable to units with respect to which eligible mortgagees have an interest.

[1989 c 43 § 2-119.]

RCW 64.34.276
Master associations.

(1) If the declaration provides that any of the powers described in RCW 64.34.304 are to be exercised by or may be delegated to a profit or nonprofit corporation which exercises those or other powers on behalf of a development consisting of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section.

(2) Unless a master association is acting in the capacity of an association described in RCW 64.34.300, it may exercise the powers set forth in RCW 64.34.304(1)(b) only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(3) If the declaration of any condominium provides that the board of directors may delegate certain powers to a master association, the members of the board of directors have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in RCW 64.34.308, 64.34.332, 64.34.336, 64.34.340, and 64.34.348 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this chapter.

(5) Notwithstanding the provisions of RCW 64.34.308(6) with respect to the election of the board of directors of an association by all unit owners after the period of declarant control ends and even if a master association is also an association described in RCW 64.34.300, the certificate of incorporation or other instrument creating the master association and the declaration of each condominium, the powers of

which are assigned by the declaration or delegated to the master association, must provide that the board of directors of the master association shall be elected after the period of declarant control in any of the following ways:

(a) All unit owners of all condominiums subject to the master association may elect all members of that board of directors.

(b) All members of the boards of directors of all condominiums subject to the master association may elect all members of that board of directors.

(c) All unit owners of each condominium subject to the master association may elect specified members of that board of directors.

(d) All members of the board of directors of each condominium subject to the master association may elect specified members of that board of directors.

[1989 c 43 § 2-120.]

RCW 64.34.278
Delegation of power to subassociations.

(1) If the declaration provides that any of the powers described in RCW 64.34.304 are to be exercised by or may be delegated to a profit or nonprofit corporation that exercises those or other powers on behalf of unit owners owning less than all of the units in a condominium, and where those unit owners share the exclusive use of one or more limited common elements within the condominium or share some property or other interest in the condominium in common that is not shared by the remainder of the unit owners in the condominium, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section. The delegation of powers to a subassociation shall not be used to discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(2) A subassociation may exercise the powers set forth in RCW 64.34.304(1) only to the extent expressly permitted by the declaration of the condominium of which the units in the subassociation are a part of or expressly described in the delegations of power from that condominium to the subassociation.

(3) If the declaration of any condominium contains a delegation of certain powers to a subassociation, or provides that the board of directors of the condominium may make such a delegation, the members of the board of directors have no liability for the acts or omissions of the subassociation with respect to those powers so exercised by the subassociation following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in RCW 64.34.300 through 64.34.376 apply to the conduct of the affairs of a subassociation.

(5) Notwithstanding the provisions of RCW 64.34.308(6) with respect to the election of the board of directors of an association by all unit owners after the period of declarant control ends, the board of directors of the subassociation shall be elected after the period of declarant control by the unit owners of all of the units in the condominium subject to the subassociation.

(6) The declaration of the condominium creating the subassociation may provide that the authority of the board of directors of the subassociation is exclusive with regard to the powers and responsibilities delegated to it. In the alternative, the declaration may provide as to some or all such powers that the authority of the board of directors of a subassociation is concurrent with and subject to the authority of the board of directors of the unit owners' association, in which case the declaration shall also contain standards and procedures for the review of the decisions of the board of directors of the subassociation and procedures for resolving any dispute between the board of the unit owners' association and the board of the subassociation.

[1992 c 220 § 13.]

RCW 64.34.280
Merger or consolidation.

(1) Any two or more condominiums, by agreement of the unit owners as provided in subsection (2) of this section, may be merged or

consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(2) An agreement of two or more condominiums to merge or consolidate pursuant to subsection (1) of this section must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement must be recorded in every county in which a portion of the condominium is located and is not effective until recorded.

(3) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either (a) by stating the reallocations or the formulas upon which they are based or (b) by stating the portion of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the percentages allocated to each unit formerly comprising a part of the preexisting condominium in such portion must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

(4) All merged or consolidated condominiums under this section shall comply with this chapter.

[1989 c 43 § 2-121.]

ARTICLE 3

MANAGEMENT OF CONDOMINIUM

RCW 64.34.300
Unit owners' association -- Organization.

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners. Following termination of the condominium, the membership of the association shall consist of all of the unit owners at the time of termination entitled to distributions of proceeds under RCW 64.34.268 or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation. In case of any conflict between Title 23B RCW, the business corporation act, chapter 24.03 RCW, the nonprofit corporation act, or chapter 24.06 RCW, the nonprofit miscellaneous and mutual corporations act, and this chapter, this chapter shall control.

[1992 c 220 § 14; 1989 c 43 § 3-101.]

RCW 64.34.304
Unit owners' association -- Powers.

(1) Except as provided in subsection (2) of this section, and subject to the provisions of the declaration, the association may:

(a) Adopt and amend bylaws, rules, and regulations;

(b) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from unit owners;

(c) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;

(d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;

(e) Make contracts and incur liabilities;

(f) Regulate the use, maintenance, repair,

replacement, and modification of common elements;

(g) Cause additional improvements to be made as a part of the common elements;

(h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to RCW 64.34.348;

(i) Grant easements, leases, licenses, and concessions through or over the common elements and petition for or consent to the vacation of streets and alleys;

(j) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in RCW 64.34.204 (2) and (4), and for services provided to unit owners;

(k) Impose and collect charges for late payment of assessments pursuant to RCW 64.34.364(13) and, after notice and an opportunity to be heard by the board of directors or by such representative designated by the board of directors and in accordance with such procedures as provided in the declaration or bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule thereof adopted by the board of directors and furnished to the owners for violations of the declaration, bylaws, and rules and regulations of the association;

(l) Impose and collect reasonable charges for the preparation and recording of amendments to the declaration, resale certificates required by RCW 64.34.425, and statements of unpaid assessments;

(m) Provide for the indemnification of its officers and board of directors and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration provides;

(o) Join in a petition for the establishment of a parking and business improvement area, participate in the rate payers' board or other advisory body set up by the legislative authority for operation of a parking and business improvement area, and pay special assessments levied by the legislative authority on a parking and business improvement area encompassing the condominium property for activities and projects which benefit the condominium directly or indirectly;

(p) Exercise any other powers conferred by the declaration or bylaws;

(q) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

(r) Exercise any other powers necessary and proper for the governance and operation of the association.

(2) The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

[1993 c 429 § 11; 1990 c 166 § 3; 1989 c 43 § 3-102.]

NOTES:

Effective date -- 1990 c 166: See note following RCW 64.34.020.

RCW 64.34.308
Board of directors and officers.

(1) Except as provided in the declaration, the bylaws, subsection (2) of this section, or other provisions of this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors are required to exercise: (a) If appointed by the declarant, the care required of fiduciaries of the unit owners; or (b) if elected by the unit owners, ordinary and reasonable care.

(2) The board of directors shall not act on behalf of the association to amend the declaration in any manner that requires the vote or approval of the unit owners pursuant to RCW 64.34.264, to terminate the condominium pursuant to RCW 64.34.268, or to elect members

of the board of directors or determine the qualifications, powers, and duties, or terms of office of members of the board of directors pursuant to subsection (6) of this section; but the board of directors may fill vacancies in its membership for the unexpired portion of any term.

(3) Within thirty days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of units to which a majority of the votes in the association are allocated or any larger percentage specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

(4)(a) Subject to subsection (5) of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may: (i) Appoint and remove the officers and members of the board of directors; or (ii) veto or approve a proposed action of the board or association. A declarant's failure to veto or approve such proposed action in writing within thirty days after receipt of written notice of the proposed action shall be deemed approval by the declarant.

(b) Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) Sixty days after conveyance of seventy-five percent of the units which may be created to unit owners other than a declarant; (ii) two years after the last conveyance or transfer of record of a unit except as security for a debt; (iii) two years after any development right to add new units was last exercised; or (iv) the date on which the declarant records an amendment to the declaration pursuant to which the declarant voluntarily surrenders the right to further appoint and remove officers and members of the board of directors. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of that period pursuant to (i), (ii), and (iii) of this subsection (4)(b), but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(5) Not later than sixty days after conveyance of twenty-five percent of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the board of directors must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the board of directors must be elected by unit owners other than the declarant.

(6) Within thirty days after the termination of any period of declarant control, the unit owners shall elect a board of directors of at least three members, at least a majority of whom must be unit owners. The number of directors need not exceed the number of units then in the condominium. The board of directors shall elect the officers. Such members of the board of directors and officers shall take office upon election.

(7) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of the voting power in the association present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member appointed by the declarant. The declarant may not remove any member of the board of directors elected by the unit owners. Prior to the termination of the period of declarant control, the unit owners, other than the declarant, may remove by a two-thirds vote, any director elected by the unit owners.

[1992 c 220 § 15; 1989 c 43 § 3-103.]

RCW 64.34.312
Control of association -- Transfer.

(1) Within sixty days after the termination of the period of declarant control provided in RCW 64.34.308(4) or, in the absence of such period, within sixty days after the first conveyance of a unit in the condominium, the declarant shall deliver to the association all property of the unit owners and of the association held or controlled by the declarant including, but not limited to:

(a) The original or a photocopy of the recorded declaration and each amendment to the declaration;

(b) The certificate of incorporation and a copy or duplicate original of the articles of incorporation of the association as filed with the secretary of state;

(c) The bylaws of the association;

(d) The minute books, including all minutes, and other books and records of the association;

(e) Any rules and regulations that have been adopted;

(f) Resignations of officers and members of the board who are required to resign because the declarant is required to relinquish control of the association;

(g) The financial records, including canceled checks, bank statements, and financial statements of the association, and source documents from the time of incorporation of the association through the date of transfer of control to the unit owners;

(h) Association funds or the control of the funds of the association;

(i) All tangible personal property of the association, represented by the declarant to be the property of the association or ostensibly the property of the association, and an inventory of the property;

(j) Except for alterations to a unit done by a unit owner other than the declarant, a copy of the declarant's plans and specifications utilized in the construction or remodeling of the condominium, with a certificate of the declarant or a licensed architect or engineer that the plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized by the declarant in the construction or remodeling of the condominium;

(k) Insurance policies or copies thereof for the condominium and association;

(l) Copies of any certificates of occupancy that may have been issued for the condominium;

(m) Any other permits issued by governmental bodies applicable to the condominium in force or issued within one year before the date of transfer of control to the unit owners;

(n) All written warranties that are still in effect for the common elements, or any other areas or facilities which the association has the responsibility to maintain and repair, from the contractor, subcontractors, suppliers, and manufacturers and all owners' manuals or instructions furnished to the declarant with respect to installed equipment or building systems;

(o) A roster of unit owners and eligible mortgagees and their addresses and telephone numbers, if known, as shown on the declarant's records and the date of closing of the first sale of each unit sold by the declarant;

(p) Any leases of the common elements or areas and other leases to which the association is a party;

(q) Any employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or a responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service;

(r) A copy of any qualified warranty issued to the association as provided for in RCW 64.35.505; and

(s) All other contracts to which the association is a party.

(2) Upon the transfer of control to the unit owners, the records of the association shall be audited as of the date of transfer by an independent certified public accountant in accordance with generally accepted auditing standards unless the unit owners, other than the declarant, by two-thirds vote elect to waive the

audit. The cost of the audit shall be a common expense unless otherwise provided in the declaration. The accountant performing the audit shall examine supporting documents and records, including the cash disbursements and related paid invoices, to determine if expenditures were for association purposes and the billings, cash receipts, and related records to determine if the declarant was charged for and paid the proper amount of assessments.

[2004 c 201 § 10; 1989 c 43 § 3-104.]

RCW 64.34.316
Special declarant rights -- Transfer.

(1) No special declarant right, as described in RCW 64.34.020(29), created or reserved under this chapter may be transferred except by an instrument evidencing the transfer executed by the declarant or the declarant's successor and the transferee is recorded in every county in which any portion of the condominium is located. Each unit owner shall receive a copy of the recorded instrument, but the failure to furnish the copy shall not invalidate the transfer.

(2) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon the transferor by this chapter. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.

(b) If a successor to any special declarant right is an affiliate of a declarant as described in RCW 64.34.020(1), the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium.

(c) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights arising after the transfer.

(d) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(3) In case of foreclosure of a mortgage, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings of any unit owned by a declarant or real property in a condominium subject to development rights, a person acquiring title to all the real property being foreclosed or sold succeeds to all special declarant rights related to that real property held by that declarant and to any rights reserved in the declaration pursuant to RCW 64.34.256 and held by that declarant to maintain models, sales offices, and signs, unless such person requests that all or any of such rights not be transferred. The instrument conveying title shall describe any special declarant rights not being transferred.

(4) Upon foreclosure of a mortgage, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings of all units and other real property in a condominium owned by a declarant:

(a) The declarant ceases to have any special declarant rights; and

(b) The period of declarant control as described in RCW 64.34.308(4) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(5) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(a) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;

(b) A successor to any special declarant right, other than a successor described in (c) or (d) of this subsection, who is not an affiliate of a declarant is subject to all obligations and liabilities imposed by this chapter or the declaration:

(i) On a declarant which relate to such

successor's exercise or nonexercise of special declarant rights; or

(ii) On the declarant's transferor, other than:

(A) Misrepresentations by any previous declarant;

(B) Warranty obligations on improvements made by any previous declarant or made before the condominium was created;

(C) Breach of any fiduciary obligation by any previous declarant or the declarant's appointees to the board of directors; or

(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer;

(c) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs as described in RCW 64.34.256, if the successor is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement and any liability arising as a result thereof;

(d) A successor to all special declarant rights held by the successor's transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a foreclosure, a deed in lieu of foreclosure, or a judgment or instrument conveying title to units under subsection (3) of this section may declare his or her intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the successor's transferor to control the board of directors in accordance with the provisions of RCW 64.34.308(4) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, the successor is not subject to any liability or obligation as a declarant other than liability for the successor's acts and omissions under RCW 64.34.308(4);

(e) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration.

[1989 c 43 § 3-105.]

RCW 64.34.320
Contracts and leases -- Declarant -- Termination.

If entered into before the board of directors elected by the unit owners pursuant to RCW 64.34.308(6) takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the board of directors elected by the unit owners pursuant to RCW 64.34.308(6) takes office upon not less than ninety days' notice to the other party or within such lesser notice period provided for without penalty in the contract or lease. This section does not apply to any lease, the termination of which would terminate the condominium or reduce its size, unless the real property subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section.

[1989 c 43 § 3-106.]

RCW 64.34.324
Bylaws.

(1) Unless provided for in the declaration, the bylaws of the association shall provide for:

(a) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;

(b) Election by the board of directors of such officers of the association as the bylaws specify;

(c) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(d) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(e) The method of amending the bylaws; and

(f) A statement of the standard of care for officers and members of the board of directors imposed by RCW 64.34.308(1).

(2) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(3) In determining the qualifications of any officer or director of the association, notwithstanding the provision of RCW 64.34.020(32) the term "unit owner" in such context shall, unless the declaration or bylaws otherwise provide, be deemed to include any director, officer, partner in, or trustee of any person, who is, either alone or in conjunction with another person or persons, a unit owner. Any officer or director of the association who would not be eligible to serve as such if he or she were not a director, officer, partner in, or trustee of such a person shall be disqualified from continuing in office if he or she ceases to have any such affiliation with that person, or if that person would have been disqualified from continuing in such office as a natural person.

[2004 c 201 § 3; 1992 c 220 § 16; 1989 c 43 § 3-107.]

RCW 64.34.328
Upkeep of condominium.

(1) Except to the extent provided by the declaration, subsection (2) of this section, or RCW 64.34.352(7), the association is responsible for maintenance, repair, and replacement of the common elements, including the limited common elements, and each unit owner is responsible for maintenance, repair, and replacement of the owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through the owner's unit and limited common elements reasonably necessary for those purposes. If damage is inflicted on the common elements, or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, shall be liable for the repair thereof.

(2) In addition to the liability that a declarant as a unit owner has under this chapter, the declarant alone is liable for all expenses in connection with real property subject to development rights except that the declaration may provide that the expenses associated with the operation, maintenance, repair, and replacement of a common element that the owners have a right to use shall be paid by the association as a common expense. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real property subject to development rights inures to the declarant.

[1989 c 43 § 3-108.]

RCW 64.34.332
Meetings.

A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by unit owners having twenty percent or any lower percentage specified in the declaration or bylaws of the votes in the association. Not less than ten nor more than sixty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first class United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda to be voted on by the members, including the general nature of any proposed amendment to the declaration or bylaws, changes in the previously approved budget that result in a change in assessment obligations, and any proposal to remove a director or officer.

[1989 c 43 § 3-109.]

RCW 64.34.336
Quorums.

(1) Unless the bylaws specify a larger percentage, a quorum is present throughout any meeting of the association if the owners of units to which twenty-five percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting.

(2) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the board of directors if persons entitled to cast fifty percent of the votes on the board of directors are present at the beginning of the meeting.

[1989 c 43 § 3-110.]

RCW 64.34.340
Voting -- Proxies.

(1) If only one of the multiple owners of a unit is present at a meeting of the association or has delivered a written ballot or proxy to the association secretary, the owner is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present or has delivered a written ballot or proxy to the association secretary, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(2) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. Unless stated otherwise in the proxy, a proxy terminates eleven months after its date of issuance.

(3) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units: (a) The provisions of subsections (1) and (2) of this section apply to lessees as if they were unit owners; (b) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (c) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in RCW 64.34.332, of all meetings at which lessees may be entitled to vote.

(4) No votes allocated to a unit owned by the association may be cast, and in determining the percentage of votes required to act on any matter, the votes allocated to units owned by the association shall be disregarded.

[1992 c 220 § 17; 1989 c 43 § 3-111.]

RCW 64.34.344
Tort and contract liability.

Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any unit owner or any officer or director of the association. Unless the wrong was done by a unit owner other than the declarant, if the wrong by the association occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner: (1) For all tort losses not covered by insurance suffered by the association or that unit owner; and (2) for all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission by the association. If the declarant does not defend the action and is determined to be liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association in such defense. Any statute of limitations affecting

the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he or she is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by RCW 64.34.368.

[1989 c 43 § 3-112.]

RCW 64.34.348
Common elements -- Conveyance -- Encumbrance.

(1) Portions of the common elements which are not necessary for the habitability of a unit may be conveyed or subjected to a security interest by the association if the owners of units to which at least eighty percent of the votes in the association are allocated, including eighty percent of the votes allocated to units not owned by a declarant or an affiliate of a declarant, or any larger percentage the declaration specifies, agree to that action; but all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage, but not less than sixty-seven percent of the votes not held by a declarant or an affiliate of a declarant, only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale or financing are an asset of the association. The declaration may provide for a special allocation or distribution of the proceeds of the sale or refinancing of a limited common element.

(2) An agreement to convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recording.

(3) The association, on behalf of the unit owners, may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (1) and (2) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(4) Any purported conveyance, encumbrance, or other voluntary transfer of common elements, unless made pursuant to this section, is void.

(5) A conveyance or encumbrance of common elements pursuant to this section shall not deprive any unit of its rights of access and support.

(6) A conveyance or encumbrance of common elements pursuant to this section shall not affect the priority or validity of preexisting encumbrances.

[1989 c 43 § 3-113.]

RCW 64.34.352
Insurance.

(1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(a) Property insurance on the condominium, which may, but need not, include equipment, improvements, and betterments in a unit installed by the declarant or the unit owners, insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall be not less than eighty percent, or such greater amount specified in the declaration, of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Liability insurance, including medical payments insurance, in an amount determined by the board of directors but not less than the amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or

maintenance of the common elements.

(2) If the insurance described in subsection (1) of this section is not reasonably available, or is modified, canceled, or not renewed, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by first class United States mail to all unit owners, to each eligible mortgagee, and to each mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

(3) Insurance policies carried pursuant to subsection (1) of this section shall provide that:

(a) Each unit owner is an insured person under the policy with respect to liability arising out of the owner's interest in the common elements or membership in the association;

(b) The insurer waives its right to subrogation under the policy against any unit owner, member of the owner's household, and lessee of the owner;

(c) No act or omission by any unit owner, unless acting within the scope of the owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(4) Any loss covered by the property insurance under subsection (1)(a) of this section must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a mortgage. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (7) of this section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the condominium is terminated.

(5) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit.

(6) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner or holder of a mortgage. The insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of chapter 48.18 RCW pertaining to the cancellation or nonrenewal of contracts of insurance. The insurer shall not modify the amount or the extent of the coverage of the policy, or cancel or refuse to renew the policy without complying with this section.

(7) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless: (a) The condominium is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If all of the damaged or destroyed portions of the condominium are not repaired or replaced: (i) The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium; (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear; and (iii) the remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically

reallocated upon the vote as if the unit had been condemned under RCW 64.34.060(1), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, RCW 64.34.268 governs the distribution of insurance proceeds if the condominium is terminated.

(8) The provisions of this section may be varied or waived as provided in the declaration if all units of a condominium are restricted to nonresidential use.

[1992 c 220 § 18; 1990 c 166 § 4; 1989 c 43 § 3-114.]

NOTES:

Effective date -- 1990 c 166: See note following RCW 64.34.020.

RCW 64.34.354
Insurance -- Conveyance.

Promptly upon the conveyance of a unit, the new unit owner shall notify the association of the date of the conveyance and the unit owner's name and address. The association shall notify each insurance company that has issued an insurance policy to the association for the benefit of the owners under RCW 64.34.352 of the name and address of the new owner and request that the new owner be made a named insured under such policy.

[1990 c 166 § 8.]

NOTES:

Effective date -- 1990 c 166: See note following RCW 64.34.020.

RCW 64.34.356
Surplus funds.

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves shall, in the discretion of the board of directors, either be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

[1989 c 43 § 3-115.]

RCW 64.34.360
Common expenses -- Assessments.

(1) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made against all units, based on a budget adopted by the association.

(2) Except for assessments under subsections (3), (4), and (5) of this section, all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to RCW 64.34.224(1). Any past due common expense assessment or installment thereof bears interest at the rate established by the association pursuant to RCW 64.34.364.

(3) To the extent required by the declaration:

(a) Any common expense associated with the operation, maintenance, repair, or replacement of a limited common element shall be paid by the owner of or assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited;

(c) The costs of insurance must be assessed in proportion to risk; and

(d) The costs of utilities must be assessed in proportion to usage.

(4) Assessments to pay a judgment against the association pursuant to RCW 64.34.368(1) may be made only against the units in the condominium at the time the judgment was entered in proportion to their allocated common expense liabilities at the time the judgment was entered.

(5) To the extent that any common expense is

caused by the misconduct of any unit owner, the association may assess that expense against the owner's unit.

(6) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

[1990 c 166 § 5; 1989 c 43 § 3-116.]

NOTES:

Effective date -- 1990 c 166: See note following RCW 64.34.020.

RCW 64.34.364
Lien for assessments.

(1) The association has a lien on a unit for any unpaid assessments levied against a unit from the time the assessment is due.

(2) A lien under this section shall be prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recording of the declaration; (b) a mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the unit. A lien under this section is not subject to the provisions of chapter 6.13 RCW.

(3) Except as provided in subsections (4) and (5) of this section, the lien shall also be prior to the mortgages described in subsection (2)(b) of this section to the extent of assessments for common expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the association pursuant to RCW 64.34.360(1) which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the association or a mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract.

(4) The priority of the association's lien against units encumbered by a mortgage held by an eligible mortgagee or by a mortgagee which has given the association a written request for a notice of delinquent assessments shall be reduced by up to three months if and to the extent that the lien priority under subsection (3) of this section includes delinquencies which relate to a period after such holder becomes an eligible mortgagee or has given such notice and before the association gives the holder a written notice of the delinquency. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

(5) If the association forecloses its lien under this section nonjudicially pursuant to chapter 61.24 RCW, as provided by subsection (9) of this section, the association shall not be entitled to the lien priority provided for under subsection (3) of this section.

(6) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(7) Recording of the declaration constitutes record notice and perfection of the lien for assessments. While no further recording of any claim of lien for assessment under this section shall be required to perfect the association's lien, the association may record a notice of claim of lien for assessments under this section in the real property records of any county in which the condominium is located. Such recording shall not constitute the written notice of delinquency to a mortgagee referred to in subsection (2) of this section.

(8) A lien for unpaid assessments and the personal liability for payment of assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three years after the amount of the assessments sought to be recovered becomes due.

(9) The lien arising under this section may be enforced judicially by the association or its authorized representative in the manner set forth in chapter 61.12 RCW. The lien arising under this section may be enforced nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust if the declaration (a) contains a grant of the condominium in trust to a trustee qualified under

RCW 61.24.010 to secure the obligations of the unit owners to the association for the payment of assessments, (b) contains a power of sale, (c) provides in its terms that the units are not used principally for agricultural or farming purposes, and (d) provides that the power of sale is operative in the case of a default in the obligation to pay assessments. The association or its authorized representative shall have the power, unless prohibited by the declaration, to purchase the unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this section shall prohibit an association from taking a deed in lieu of foreclosure.

(10) From the time of commencement of an action by the association to foreclose a lien for nonpayment of delinquent assessments against a unit that is not occupied by the owner thereof, the association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the unit as and when due. If the rental is not paid, the receiver may obtain possession of the unit, refurbish it for rental up to a reasonable standard for rental units in this type of condominium, rent the unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent assessments. Only a receiver may take possession and collect rents under this subsection, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the association of the foregoing rights shall not affect the priority of preexisting liens on the unit.

(11) Except as provided in subsection (3) of this section, the holder of a mortgage or other purchaser of a unit who obtains the right of possession of the unit through foreclosure shall not be liable for assessments or installments thereof that became due prior to such right of possession. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners, including such mortgagee or other purchaser of the unit. Foreclosure of a mortgage does not relieve the prior owner of personal liability for assessments accruing against the unit prior to the date of such sale as provided in this subsection.

(12) In addition to constituting a lien on the unit, each assessment shall be the joint and several obligation of the owner or owners of the unit to which the same are assessed as of the time the assessment is due. In a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Suit to recover a personal judgment for any delinquent assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

(13) The association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent assessments or installments thereof. In the absence of another established nonusurious rate, delinquent assessments shall bear interest from the date of delinquency at the maximum rate permitted under RCW 19.52.020 on the date on which the assessments became delinquent.

(14) The association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

(15) The association upon written request shall furnish to a unit owner or a mortgagee a statement signed by an officer or authorized agent of the association setting forth the amount of unpaid assessments against that unit. The statement shall be furnished within fifteen days after receipt of the request and is binding on the association, the board of directors, and every unit owner, unless and to the extent known by the recipient to be false.

(16) To the extent not inconsistent with this section, the declaration may provide for such

additional remedies for collection of assessments as may be permitted by law.

[1990 c 166 § 6; 1989 c 43 § 3-117.]

NOTES:

Effective date -- 1990 c 166: See note following RCW 64.34.020.

RCW 64.34.368
Liens -- General provisions.

(1) Except as provided in subsection (2) of this section, a judgment for money against the association perfected under RCW 4.64.020 is a lien in favor of the judgment lienholder against all of the units in the condominium and their interest in the common elements at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(2) If the association has granted a security interest in the common elements to a creditor of the association pursuant to RCW 64.34.348, the holder of that security interest shall exercise its right first against such common elements before its judgment lien on any unit may be enforced.

(3) Whether perfected before or after the creation of the condominium, if a lien other than a mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to the owner's unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's allocated common expense liability bears to the allocated common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(4) A judgment against the association shall be filed in the name of the condominium and the association and, when so filed, is notice of the lien against the units.

[1989 c 43 § 3-118.]

RCW 64.34.372
Association records -- Funds.

(1) The association shall keep financial records sufficiently detailed to enable the association to comply with RCW 64.34.425. All financial and other records of the association, including but not limited to checks, bank records, and invoices, are the property of the association, but shall be made reasonably available for examination and copying by the manager of the association, any unit owner, or the owner's authorized agents. At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association in accordance with generally accepted accounting principles. The financial statements of condominiums consisting of fifty or more units shall be audited at least annually by a certified public accountant. In the case of a condominium consisting of fewer than fifty units, an annual audit is also required but may be waived annually by unit owners other than the declarant of units to which sixty percent of the votes are allocated, excluding the votes allocated to units owned by the declarant.

(2) The funds of an association shall be kept in accounts in the name of the association and shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds. Any reserve funds of an association shall be kept in a segregated account and any transaction affecting such funds, including the issuance of checks, shall require the signature of at least two persons who are officers or directors of the association.

[1992 c 220 § 19; 1990 c 166 § 7; 1989 c 43 § 3-119.]

NOTES:

Effective date -- 1990 c 166: See note following RCW 64.34.020.

RCW 64.34.376
Association as trustee.

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

[1989 c 43 § 3-120.]

ARTICLE 4

PROTECTION OF CONDOMINIUM PURCHASERS

RCW 64.34.400
Applicability -- Waiver.

(1) This article applies to all units subject to this chapter, except as provided in subsection (2) of this section and unless and to the extent otherwise agreed to in writing by the seller and purchasers of those units that are restricted to nonresidential use in the declaration.

(2) This article shall not apply in the case of:

(a) A conveyance by gift, devise, or descent;

(b) A conveyance pursuant to court order;

(c) A disposition by a government or governmental agency;

(d) A conveyance by foreclosure;

(e) A disposition of all of the units in a condominium in a single transaction;

(f) A disposition to other than a purchaser as defined in RCW 64.34.020(26); or

(g) A disposition that may be canceled at any time and for any reason by the purchaser without penalty.

[1992 c 220 § 20; 1990 c 166 § 9; 1989 c 43 § 4-101.]

NOTES:

Effective date -- 1990 c 166: See note following RCW 64.34.020.

RCW 64.34.405
Public offering statement -- Requirements -- Liability.

(1) Except as provided in subsection (2) of this section or when no public offering statement is required, a declarant shall prepare a public offering statement conforming to the requirements of RCW 64.34.410 and 64.34.415.

(2) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant pursuant to RCW 64.34.316 or to a dealer who intends to offer units in the condominium for the person's own account.

(3) Any declarant or dealer who offers a unit for the person's own account to a purchaser shall deliver a public offering statement in the manner prescribed in RCW 64.34.420(1). Any agent, attorney, or other person assisting the declarant or dealer in preparing the public offering statement may rely upon information provided by the declarant or dealer without independent investigation. The agent, attorney, or other person shall not be liable for any material misrepresentation in or omissions of material facts from the public offering statement unless the person had actual knowledge of the misrepresentation or omission at the time the public offering statement was prepared. The declarant or dealer shall be liable for any misrepresentation contained in the public offering statement or for any omission of material fact therefrom if the declarant or dealer had actual knowledge of the misrepresentation or omission or, in the exercise of reasonable care, should have known of the misrepresentation or omission.

(4) If a unit is part of a condominium and is part of another real property regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this state, a single public offering statement, conforming to the requirements of RCW 64.34.410 and 64.34.415 as those requirements relate to all real property regimes in which the unit is located and conforming to any other requirements imposed under the laws of this state, may be prepared and delivered in lieu of providing two or more public offering statements.

[1989 c 43 § 4-102.]

RCW 64.34.410
Public offering statement -- General provisions.

(1) A public offering statement shall contain the following information:

(a) The name and address of the condominium;

(b) The name and address of the declarant;

(c) The name and address of the management company, if any;

(d) The relationship of the management company to the declarant, if any;

(e) A list of up to the five most recent condominium projects completed by the declarant or an affiliate of the declarant within the past five years, including the names of the condominiums, their addresses, and the number of existing units in each. For the purpose of this section, a condominium is "completed" when any one unit therein has been rented or sold;

(f) The nature of the interest being offered for sale;

(g) A brief description of the permitted uses and use restrictions pertaining to the units and the common elements;

(h) A brief description of the restrictions, if any, on the renting or leasing of units by the declarant or other unit owners, together with the rights, if any, of the declarant to rent or lease at least a majority of units;

(i) The number of existing units in the condominium and the maximum number of units that may be added to the condominium;

(j) A list of the principal common amenities in the condominium which materially affect the value of the condominium and those that will or may be added to the condominium;

(k) A list of the limited common elements assigned to the units being offered for sale;

(l) The identification of any real property not in the condominium, the owner of which has access to any of the common elements, and a description of the terms of such access;

(m) The identification of any real property not in the condominium to which unit owners have access and a description of the terms of such access;

(n) The status of construction of the units and common elements, including estimated dates of completion if not completed;

(o) The estimated current common expense liability for the units being offered;

(p) An estimate of any payment with respect to the common expense liability for the units being offered which will be due at closing;

(q) The estimated current amount and purpose of any fees not included in the common expenses and charged by the declarant or the association for the use of any of the common elements;

(r) Any assessments which have been agreed to or are known to the declarant and which, if not paid, may constitute a lien against any units or common elements in favor of any governmental agency;

(s) The identification of any parts of the condominium, other than the units, which any individual owner will have the responsibility for maintaining;

(t) If the condominium involves a conversion condominium, the information required by RCW 64.34.415;

(u) Whether timesharing is restricted or

prohibited, and if restricted, a general description of such restrictions;

(v) A list of all development rights reserved to the declarant and all special declarant rights reserved to the declarant, together with the dates such rights must terminate, and a copy of or reference by recording number to any recorded transfer of a special declarant right;

(w) A description of any material differences in terms of furnishings, fixtures, finishes, and equipment between any model unit available to the purchaser at the time the agreement for sale is executed and the unit being offered;

(x) Any liens on real property to be conveyed to the association required to be disclosed pursuant to RCW 64.34.435(2)(b);

(y) A list of any physical hazards known to the declarant which particularly affect the condominium or the immediate vicinity in which the condominium is located and which are not readily ascertainable by the purchaser;

(z) A brief description of any construction warranties to be provided to the purchaser;

(aa) Any building code violation citations received by the declarant in connection with the condominium which have not been corrected;

(bb) A statement of any unsatisfied judgments or pending suits against the association, a statement of the status of any pending suits material to the condominium of which the declarant has actual knowledge, and a statement of any litigation brought by an owners' association, unit owner, or governmental entity in which the declarant or any affiliate of the declarant has been a defendant, arising out of the construction, sale, or administration of any condominium within the previous five years, together with the results thereof, if known;

(cc) Any rights of first refusal to lease or purchase any unit or any of the common elements;

(dd) The extent to which the insurance provided by the association covers furnishings, fixtures, and equipment located in the unit;

(ee) A notice which describes a purchaser's right to cancel the purchase agreement or extend the closing under RCW 64.34.420, including applicable time frames and procedures;

(ff) Any reports or statements required by RCW 64.34.415 or 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering statement of a condominium in connection with which a final certificate of occupancy was issued more than sixty calendar months prior to the preparation of the public offering statement whether or not the condominium is a conversion condominium as defined in RCW 64.34.020(10);

(gg) A list of the documents which the prospective purchaser is entitled to receive from the declarant before the rescission period commences;

(hh) A notice which states: A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or by any person identified in the public offering statement as the declarant's agent;

(ii) A notice which states: This public offering statement is only a summary of some of the significant aspects of purchasing a unit in this condominium and the condominium documents are complex, contain other important information, and create binding legal obligations. You should consider seeking the assistance of legal counsel;

(jj) Any other information and cross-references which the declarant believes will be helpful in describing the condominium to the recipients of the public offering statement, all of which may be included or not included at the option of the declarant;

(kk) A notice that addresses compliance or noncompliance with the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995;

(ll) A notice that is substantially in the form required by RCW 64.50.050; and

(mm) A statement, as required by RCW 64.35.210, as to whether the units or common elements of the condominium are covered by a qualified warranty, and a history of claims under any such warranty.

(2) The public offering statement shall

include copies of each of the following documents: The declaration, the survey map and plans, the articles of incorporation of the association, bylaws of the association, rules and regulations, if any, current or proposed budget for the association, and the balance sheet of the association current within ninety days if assessments have been collected for ninety days or more.

If any of the foregoing documents listed in this subsection are not available because they have not been executed, adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of a unit, the purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1)(g), (k), (s), (u), (v), and (cc) of this section shall also contain a reference to specific sections in the condominium documents which further explain the information disclosed.

(4) The disclosures required by subsection (1)(ee), (hh), (ii), and (ll) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size.

(5) A declarant shall promptly amend the public offering statement to reflect any material change in the information required by this section.

[2004 c 201 § 11; 2002 c 323 § 10; 1997 c 400 § 1; 1992 c 220 § 21; 1989 c 43 § 4-103.]

RCW 64.34.415
Public offering statement -- Conversion condominiums.

(1) The public offering statement of a conversion condominium shall contain, in addition to the information required by RCW 64.34.410:

(a) Either a copy of a report prepared by an independent, licensed architect or engineer, or a statement by the declarant based on such report, which report or statement describes, to the extent reasonably ascertainable, the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;

(b) A statement by the declarant of the expected useful life of each item reported on in (a) of this subsection or a statement that no representations are made in that regard; and

(c) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations. Unless the purchaser waives in writing the curing of specific violations, the extent to which the declarant will cure such violations prior to the closing of the sale of a unit in the condominium shall be included.

(2) This section applies only to condominiums containing units that may be occupied for residential use.

[1992 c 220 § 22; 1990 c 166 § 10; 1989 c 43 § 4-104.]

NOTES:

Effective date -- 1990 c 166: See note following RCW 64.34.020.

RCW 64.34.417
Public offering statement -- Use of single disclosure document.

If a unit is offered for sale for which the delivery of a public offering statement or other disclosure document is required under the laws of any state or the United States, a single disclosure document conforming to the requirements of RCW 64.34.410 and 64.34.415 and conforming to any other requirement imposed under such laws, may be prepared and delivered in lieu of providing two or more disclosure documents.

[1990 c 166 § 11.]

NOTES:

Effective date -- 1990 c 166: See note following RCW 64.34.020.

RCW 64.34.418

Public offering statement -- Contract of sale -- Restriction on interest conveyed.

In the case of a sale of a unit where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until (1) the declaration and survey map and plans which create the condominium in which that unit is located are recorded pursuant to RCW 64.34.200 and 64.34.232 and (2) the unit is substantially completed and available for occupancy, unless the declarant and purchaser have otherwise specifically agreed in writing as to the extent to which the unit will not be substantially completed and available for occupancy at the time of conveyance.

[1990 c 166 § 15.]

NOTES:

Effective date -- 1990 c 166: See note following RCW 64.34.020.

RCW 64.34.420
Purchaser's right to cancel.

(1) A person required to deliver a public offering statement pursuant to RCW 64.34.405(3) shall provide a purchaser of a unit with a copy of the public offering statement and all material amendments thereto before conveyance of that unit. Unless a purchaser is given the public offering statement more than seven days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, shall have the right to cancel the contract within seven days after first receiving the public offering statement and, if necessary to have seven days to review the public offering statement and cancel the contract, to extend the closing date for conveyance to a date not more than seven days after first receiving the public offering statement. The purchaser shall have no right to cancel the contract upon receipt of an amendment unless the purchaser would have that right under generally applicable legal principles.

(2) If a purchaser elects to cancel a contract pursuant to subsection (1) of this section, the purchaser may do so by hand-delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his or her agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(3) If a person required to deliver a public offering statement pursuant to RCW 64.34.405(3) fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all material amendments thereto as required by subsection (1) of this section, the purchaser is entitled to receive from that person an amount equal to the greater of (a) actual damages, or (b) ten percent of the sales price of the unit for a willful failure by the declarant or three percent of the sales price of the unit for any other failure. There shall be no liability for failure to deliver any amendment unless such failure would have entitled the purchaser under generally applicable legal principles to cancel the contract for the purchase of the unit had the undisclosed information been evident to the purchaser before the closing of the purchase.

[1989 c 43 § 4-106.]

RCW 64.34.425
Resale of unit.

(1) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under RCW 64.34.400(2), a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a resale certificate, signed by an officer or authorized agent of the association and based on the books and records of the association and the actual knowledge of the person signing the certificate, containing:

(a) A statement disclosing any right of first refusal or other restraint on the free alienability of the unit contained in the declaration;

(b) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and a statement of any special assessments that have been levied against the unit which have not been paid even though not yet due;

(c) A statement, which shall be current to within forty-five days, of any common expenses or special assessments against any unit in the condominium that are past due over thirty days;

(d) A statement, which shall be current to within forty-five days, of any obligation of the association which is past due over thirty days;

(e) A statement of any other fees payable by unit owners;

(f) A statement of any anticipated repair or replacement cost in excess of five percent of the annual budget of the association that has been approved by the board of directors;

(g) A statement of the amount of any reserves for repair or replacement and of any portions of those reserves currently designated by the association for any specified projects;

(h) The annual financial statement of the association, including the audit report if it has been prepared, for the year immediately preceding the current year;

(i) A balance sheet and a revenue and expense statement of the association prepared on an accrual basis, which shall be current to within one hundred twenty days;

(j) The current operating budget of the association;

(k) A statement of any unsatisfied judgments against the association and the status of any pending suits or legal proceedings in which the association is a plaintiff or defendant;

(l) A statement describing any insurance coverage provided for the benefit of unit owners;

(m) A statement as to whether there are any alterations or improvements to the unit or to the limited common elements assigned thereto that violate any provision of the declaration;

(n) A statement of the number of units, if any, still owned by the declarant, whether the declarant has transferred control of the association to the unit owners, and the date of such transfer;

(o) A statement as to whether there are any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the condominium;

(p) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof;

(q) A copy of the declaration, the bylaws, the rules or regulations of the association, and any other information reasonably requested by mortgagees of prospective purchasers of units. Information requested generally by the federal national mortgage association, the federal home loan bank board, the government national mortgage association, the veterans administration and the department of housing and urban development shall be deemed reasonable, provided such information is reasonably available to the association; and

(r) A statement, as required by RCW 64.35.210, as to whether the units or common elements of the condominium are covered by a qualified warranty, and a history of claims under any such warranty.

(2) The association, within ten days after a request by a unit owner, and subject to payment of any fee imposed pursuant to RCW 64.34.304(1)(l), shall furnish a resale certificate signed by an officer or authorized agent of the association and containing the information necessary to enable the unit owner to comply with this section. For the purposes of this chapter, a reasonable charge for the preparation of a resale certificate may not exceed one hundred fifty dollars. The association may charge a unit owner a nominal fee for updating a resale certificate within six months of the unit owner's request. The unit owner shall also sign the certificate but the unit owner is not liable to the purchaser for any erroneous information provided by the association and included in the certificate unless and to the extent the unit owner had actual knowledge thereof.

(3) A purchaser is not liable for any unpaid assessment or fee against the unit as of the date of the certificate greater than the amount set forth in the certificate prepared by the association unless and to the extent such purchaser had actual knowledge thereof. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the

certificate in a timely manner, but the purchaser's contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever occurs first.

[2004 c 201 § 4; 1992 c 220 § 23; 1990 c 166 § 12; 1989 c 43 § 4-107.]

NOTES:

Effective date -- 1990 c 166: See note following RCW 64.34.020.

RCW 64.34.430
Escrow of deposits.

Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to RCW 64.34.405(3) shall be placed in escrow and held in this state in an escrow or trust account designated solely for that purpose by a licensed title insurance company, an attorney, a real estate broker, an independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until: (1) Delivered to the declarant at closing; (2) delivered to the declarant because of purchaser's default under a contract to purchase the unit; (3) refunded to the purchaser; or (4) delivered to a court in connection with the filing of an interpleader action.

[1992 c 220 § 24; 1989 c 43 § 4-108.]

RCW 64.34.435
Release of liens -- Conveyance.

(1) At the time of the first conveyance of each unit, every mortgage, lien, or other encumbrance affecting that unit and any other unit or units or real property, other than the percentage of undivided interest of that unit in the common elements, shall be paid and satisfied of record, or the unit being conveyed and its undivided interest in the common elements shall be released therefrom by partial release duly recorded or the purchaser of that unit shall receive title insurance from a licensed title insurance company against such mortgage, lien or other encumbrance. This subsection does not apply to any real property which a declarant has the right to withdraw.

(2) Before conveying real property to the association the declarant shall have that real property released from: (a) All liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units; and (b) all other liens on that real property unless the public offering statement describes certain real property which may be conveyed subject to liens in specified amounts.

[1989 c 43 § 4-109.]

RCW 64.34.440
Conversion condominiums -- Notice -- Tenants.

(1) A declarant of a conversion condominium, and any dealer who intends to offer units in such a condominium, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion condominium notice of the conversion and provide those persons with the public offering statement no later than ninety days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and shall be delivered pursuant to notice requirements set forth in RCW 59.12.040. No tenant or subtenant may be required to vacate upon less than ninety days' notice, except by reason of nonpayment of rent, waste, conduct that disturbs other tenants' peaceful enjoyment of the premises, or act of unlawful detainer as defined in RCW 59.12.030, and the terms of the tenancy may not be altered during that period. Nothing in this subsection shall be deemed to waive or repeal RCW 59.18.200(2). Failure to give notice as required by this section is a defense to an action for possession.

(2) For sixty days after delivery or mailing of the notice described in subsection (1) of this section, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that sixty-day period, the offeror may offer to dispose of an interest in that unit during

the following one hundred eighty days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant only if: (a) Such offeror, by written notice mailed to the tenant's last known address, offers to sell an interest in that unit at the more favorable price and terms, and (b) such tenant fails to accept such offer in writing within ten days following the mailing of the offer to the tenant. This subsection does not apply to any unit in a conversion condominium if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(3) If a seller, in violation of subsection (2) of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recording of the deed conveying the unit extinguishes any right a tenant may have to purchase that unit but does not affect the right of a tenant to recover damages from the seller for a violation of subsection (2) of this section.

(4) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of this chapter and chapter 59.18 RCW, the notice also constitutes a notice to vacate specified by that statute.

(5) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

(6) Notwithstanding RCW 64.34.050(1), a city or county may by appropriate ordinance require with respect to any conversion condominium within the jurisdiction of such city or county that:

(a) In addition to the statement required by RCW 64.34.415(1)(a), the public offering statement shall contain a copy of the written inspection report prepared by the appropriate department of such city or county, which report shall list any violations of the housing code or other governmental regulation, which code or regulation is applicable regardless of whether the real property is owned as a condominium or in some other form of ownership; said inspection shall be made within forty-five days of the declarant's written request therefor and said report shall be issued within fourteen days of said inspection being made. Such inspection may not be required with respect to any building for which a final certificate of occupancy has been issued by the city or county within the preceding twenty-four months; and any fee imposed for the making of such inspection may not exceed the fee that would be imposed for the making of such an inspection for a purpose other than complying with this subsection (6)(a);

(b) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) All violations disclosed in the inspection report provided for in (a) of this subsection, and not otherwise waived by such city or county, shall be repaired, and (ii) a certification shall be obtained from such city or county that such repairs have been made, which certification shall be based on a reinspection to be made within seven days of the declarant's written request therefor and which certification shall be issued within seven days of said reinspection being made;

(c) The repairs required to be made under (b) of this subsection shall be warranted by the declarant against defects due to workmanship or materials for a period of one year following the completion of such repairs;

(d) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) The declarant shall establish and maintain, during the one-year warranty period provided under (c) of this subsection, an account containing a sum equal to ten percent of the actual cost of making the repairs required under (b) of this subsection; (ii) during the one-year warranty period, the funds in such account shall be used exclusively for paying the actual cost of making repairs required, or for otherwise satisfying claims made, under such warranty; (iii) following the expiration of the one-year warranty period, any funds remaining in such account shall be immediately disbursed to the declarant; and (iv) the declarant shall notify in writing the association and such city or county as to the location of such account and any disbursements therefrom; and

(e) Relocation assistance not to exceed five hundred dollars per unit shall be paid to tenants and subtenants who elect not to purchase a unit and who are in lawful occupancy for residential purposes of a unit and whose monthly household

income from all sources, on the date of the notice described in subsection (1) of this section, was less than an amount equal to eighty percent of (i) the monthly median income for comparably sized households in the standard metropolitan statistical area, as defined and established by the United States department of housing and urban development, in which the condominium is located, or (ii) if the condominium is not within a standard metropolitan statistical area, the monthly median income for comparably sized households in the state of Washington, as defined and determined by said department. The household size of a unit shall be based on the number of persons actually in lawful occupancy of the unit. The tenant or subtenant actually in lawful occupancy of the unit shall be entitled to the relocation assistance. Relocation assistance shall be paid on or before the date the tenant or subtenant vacates and shall be in addition to any damage deposit or other compensation or refund to which the tenant is otherwise entitled. Unpaid rent or other amounts owed by the tenant or subtenant to the landlord may be offset against the relocation assistance.

(7) Violations of any city or county ordinance adopted as authorized by subsection (6) of this section shall give rise to such remedies, penalties, and causes of action which may be lawfully imposed by such city or county. Such violations shall not invalidate the creation of the condominium or the conveyance of any interest therein.

[1992 c 220 § 25; 1990 c 166 § 13; 1989 c 43 § 4-110.]

NOTES:

Effective date -- 1990 c 166: See note following RCW 64.34.020.

RCW 64.34.443
Express warranties of quality.

(1) Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(a) Any written affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the condominium that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the condominium creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

(b) Any model or written description of the physical characteristics of the condominium at the time the purchase agreement is executed, including plans and specifications of or for improvements, creates an express warranty that the condominium will conform to the model or description except pursuant to *RCW 64.34.410(1)(v);

(c) Any written description of the quantity or extent of the real property comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances; and

(d) A written provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful.

(2) Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty are necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty. A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or declarant's agent identified in the public offering statement.

(3) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by previous sellers.

[1989 c 428 § 2.]

NOTES:

***Reviser's note:** RCW 64.34.410 was amended by 1997 c 400 § 1, changing subsection (1)(v) to subsection (1)(w).

Captions -- 1989 c 428: "Section captions as used in this act do not constitute any part of the law." [1989 c 428 § 6.]

Effective date -- 1989 c 428: "*Sections 1 through 4 of this act shall take effect July 1, 1990." [1989 c 428 § 7.]

***Reviser's note:** Sections 1, 3, and 4 of this act were vetoed by the governor.

RCW 64.34.445
Implied warranties of quality -- Breach.

(1) A declarant and any dealer warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear and damage by casualty or condemnation excepted.

(2) A declarant and any dealer impliedly warrants that a unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by such declarant or dealer will be:

(a) Free from defective materials;

(b) Constructed in accordance with sound engineering and construction standards;

(c) Constructed in a workmanlike manner; and

(d) Constructed in compliance with all laws then applicable to such improvements.

(3) A declarant and any dealer warrants to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(4) Warranties imposed by this section may be excluded or modified as specified in RCW 64.34.450.

(5) For purposes of this section, improvements made or contracted for by an affiliate of a declarant, as defined in RCW 64.34.020(1), are made or contracted for by the declarant.

(6) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.

(7) In a judicial proceeding for breach of any of the obligations arising under this section, the plaintiff must show that the alleged breach has adversely affected or will adversely affect the performance of that portion of the unit or common elements alleged to be in breach. As used in this subsection, an "adverse effect" must be more than technical and must be significant to a reasonable person. To establish an adverse effect, the person alleging the breach is not required to prove that the breach renders the unit or common element uninhabitable or unfit for its intended purpose.

(8) Proof of breach of any obligation arising under this section is not proof of damages. Damages awarded for a breach of an obligation arising under this section are the cost of repairs. However, if it is established that the cost of such repairs is clearly disproportionate to the loss in market value caused by the breach, then damages shall be limited to the loss in market value.

[2004 c 201 § 5; 1992 c 220 § 26; 1989 c 43 § 4-112.]

NOTES:

Application -- 2004 c 201 §§ 5 and 6: "Sections 5 and 6 of this act apply only to condominiums created by declarations recorded on or after July 1, 2004." [2004 c 201 § 12.]

RCW 64.34.450
Implied warranties of quality -- Exclusion -- Modification -- Disclaimer -- Express written warranty.

(1) For units intended for nonresidential use, implied warranties of quality:

(a) May be excluded or modified by written agreement of the parties; and

(b) Are excluded by written expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(2) For units intended for residential use, no disclaimer of implied warranties of quality is

effective, except that a declarant or dealer may disclaim liability in writing, in type that is bold faced, capitalized, underlined, or otherwise set out from surrounding material so as to be conspicuous, and separately signed by the purchaser, for a specified defect or specified failure to comply with applicable law, if: (a) The declarant or dealer knows or has reason to know that the specific defect or failure exists at the time of disclosure; (b) the disclaimer specifically describes the defect or failure; and (c) the disclaimer includes a statement as to the effect of the defect or failure.

(3) A declarant or dealer may offer an express written warranty of quality only if the express written warranty does not reduce protections provided to the purchaser by the implied warranty set forth in RCW 64.34.445.

[2004 c 201 § 6; 1989 c 43 § 4-113.]

NOTES:

Application -- 2004 c 201 §§ 5 and 6: See note following RCW 64.34.445.

RCW 64.34.452
Warranties of quality -- Breach -- Actions for construction defect claims.

(1) A judicial proceeding for breach of any obligations arising under RCW 64.34.443, 64.34.445, and 64.34.450 must be commenced within four years after the cause of action accrues: PROVIDED, That the period for commencing an action for a breach accruing pursuant to subsection (2)(b) of this section shall not expire prior to one year after termination of the period of declarant control, if any, under RCW 64.34.308(4). Such periods may not be reduced by either oral or written agreement, or through the use of contractual claims or notice procedures that require the filing or service of any claim or notice prior to the expiration of the period specified in this section.

(2) Subject to subsection (3) of this section, a cause of action or [for] breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(a) As to a unit, the date the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or the date of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(b) As to each common element, at the latest of (i) the date the first unit in the condominium was conveyed to a bona fide purchaser, (ii) the date the common element was completed, or (iii) the date the common element was added to the condominium.

(3) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

(4) If a written notice of claim is served under RCW 64.50.020 within the time prescribed for the filing of an action under this chapter, the statutes of limitation in this chapter and any applicable statutes of repose for construction-related claims are tolled until sixty days after the period of time during which the filing of an action is barred under RCW 64.50.020.

(5) Nothing in this section affects the time for filing a claim under chapter 64.35 RCW.

[2004 c 201 § 7; 2002 c 323 § 11; 1990 c 166 § 14.]

NOTES:

Effective date -- 1990 c 166: See note following RCW 64.34.020.

RCW 64.34.455
Effect of violations on rights of action -- Attorney's fees.

If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award reasonable attorney's fees to the prevailing party.

[1989 c 43 § 4-115.]

RCW 64.34.460
Labeling of promotional material.

If any improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a survey map or plan, or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as "NEED NOT BE BUILT."

[1989 c 43 § 4-116.]

RCW 64.34.465
Improvements -- Declarant's duties.

(1) The declarant shall complete all improvements labeled "MUST BE BUILT" on survey maps or plans prepared pursuant to RCW 64.34.232.

(2) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium damaged by the exercise of rights reserved pursuant to or created by RCW 64.34.236, 64.34.240, 64.34.244, 64.34.248, 64.34.256, and 64.34.260.

[1989 c 43 § 4-117.]

ARTICLE 5

MISCELLANEOUS

RCW 64.34.900
Short title.

This chapter shall be known and may be cited as the Washington condominium act or the condominium act.

[1989 c 43 § 1-101.]

RCW 64.34.910
Section captions.

Section captions as used in this chapter do not constitute any part of the law.

[1989 c 43 § 4-119.]

RCW 64.34.920
Severability -- 1989 c 43.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1989 c 43 § 4-120.]

RCW 64.34.921
Severability -- 2004 c 201.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2004 c 201 § 13.]

RCW 64.34.930
Effective date -- 1989 c 43.

This act shall take effect July 1, 1990.

[1989 c 43 § 4-124.]

RCW 64.34.931
Effective date -- 2004 c 201 §§ 1-13.

Sections 1 through 13 of this act take effect July 1, 2004.

[2004 c 201 § 14.]

RCW 64.34.940
Construction against implicit repeal.

This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

[1989 c 43 § 1-109.]

RCW 64.34.950
Uniformity of application and construction.

This chapter shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

[1989 c 43 § 1-110.]

Chapter 65.08 RCW Recording

RCW SECTIONS

65.08.030 Recorded irregular instrument imparts notice.

65.08.050 Recording land office receipts.

65.08.060 Terms defined.

65.08.070 Real property conveyances to be recorded.

65.08.090 Letters patent.

65.08.095 Conveyances of fee title by public bodies.

65.08.100 Certified copies.

65.08.110 Certified copies -- Effect.

65.08.120 Assignment of mortgage -- Notice.

65.08.130 Revocation of power of attorney.

65.08.140 No liability for error in recording when properly indexed.

65.08.150 Duty to record.

65.08.160 Recording master form instruments and mortgages or deeds of trust incorporating master form provisions.

65.08.170 Notice of additional water or sewer facility tap or connection charges -- Required -- Contents.

65.08.180 Notice of additional water or sewer facility tap or connection charges -- Duration -- Certificate of payment and release.

NOTES:

Corporate seals, effect of absence from instrument: RCW 64.04.105.

Powers of appointment: Chapter 11.95 RCW.

RCW 65.08.030
Recorded irregular instrument imparts notice.

An instrument in writing purporting to convey or encumber real estate or any interest therein, which has been recorded in the auditor's office of the county in which the real estate is situated, although the instrument may not have been executed and acknowledged in accordance with the law in force at the time of its execution, shall impart the same notice to third persons, from the date of recording, as if the instrument had been executed, acknowledged, and recorded, in accordance with the laws regulating the execution, acknowledgment, and recording of the instrument then in force.

[1953 c 115 § 1. Prior: 1929 c 33 § 8; RRS § 10599.]

RCW 65.08.050
Recording land office receipts.

Every cash or final receipt from any receiver, and every cash or final certificate from any register of the United States land office, evidencing that final payment has been made to the United States as required by law, or that the person named in such certificate is entitled, on presentation thereof, to a patent from the United States for land within the state of Washington, shall be recorded by the county auditor of the county wherein such land lies, on request of any party presenting the same, and any record heretofore made of any such cash or final receipt or certificate shall, from the date when this section becomes a law, and every record hereafter made of any such receipt or certificate shall, from the date of recording, impart to third persons and all the world, full notice of all the rights and equities of the person named in said cash or final receipt or certificate in the land described in such receipt or certificate.

[1890 p 92 § 1; RRS § 10613.]

RCW 65.08.060
Terms defined.

(1) The term "real property" as used in RCW 65.08.060 through 65.08.150 includes lands, tenements and hereditaments and chattels real and mortgage liens thereon except a leasehold for a term not exceeding two years.

(2) The term "purchaser" includes every

person to whom any estate or interest in real property is conveyed for a valuable consideration and every assignee of a mortgage, lease or other conditional estate.

(3) The term "conveyance" includes every written instrument by which any estate or interest in real property is created, transferred, mortgaged or assigned or by which the title to any real property may be affected, including an instrument in execution of a power, although the power be one of revocation only, and an instrument releasing in whole or in part, postponing or subordinating a mortgage or other lien; except a will, a lease for a term of not exceeding two years, and an instrument granting a power to convey real property as the agent or attorney for the owner of the property. "To convey" is to execute a "conveyance" as defined in this subdivision.

(4) The term "recording officer" means the county auditor or, in charter counties, the county official charged with the responsibility for recording instruments in the county records.

[1999 c 233 § 16; 1984 c 73 § 1; 1927 c 278 § 1; RRS § 10596-1.]

NOTES:

Effective date -- 1999 c 233: See note following RCW 4.28.320.

RCW 65.08.070
Real property conveyances to be recorded.

A conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his heirs or devisees, of the same real property or any portion thereof whose conveyance is first duly recorded. An instrument is deemed recorded the minute it is filed for record.

[1927 c 278 § 2; RRS § 10596-2. Prior: 1897 c 5 § 1; Code 1881 § 2314; 1877 p 312 § 4; 1873 p 465 § 4; 1863 p 430 § 4; 1860 p 299 § 4; 1858 p 28 § 1; 1854 p 403 § 4.]

NOTES:

RCW 65.08.070 applicable to rents and profits of real property: RCW 7.28.230.

RCW 65.08.090
Letters patent.

Letters patent from the United States or the state of Washington granting real property may be recorded in the office of the recording officer of the county where such property is situated in the same manner and with like effect as a conveyance that is entitled to be recorded.

[1927 c 278 § 4; RRS § 10596-4.]

RCW 65.08.095
Conveyances of fee title by public bodies.

Every conveyance of fee title to real property hereafter executed by the state or by any political subdivision or municipal corporation thereof shall be recorded by the grantor, after having been reviewed as to form by the grantee, at the expense of the grantee at the time of delivery to the grantee, and shall constitute legal delivery at the time of filing for record.

[1963 c 49 § 1.]

RCW 65.08.100
Certified copies.

A copy of a conveyance of or other instrument affecting real property recorded or filed in the office of the secretary of state or the commissioner of public lands, or of the record thereof, when certified in the manner required to entitle the same to be read in evidence, may be recorded with the certificate in the office of any recording officer of the state.

[1927 c 278 § 5; RRS § 10596-5.]

RCW 65.08.110
Certified copies -- Effect.

A copy of a record, when certified or authenticated to entitle it to be read in evidence, may be recorded in any office where the original instrument would be entitled to be recorded. Such record has the same effect as if the original were so recorded. A copy of the record of a conveyance of or other instrument affecting separate parcels of real property situated in more than one county, when certified or authenticated to entitle it to be read in evidence may be recorded in the office of the recording officer of any county in which any such parcel is situated with the same effect as though the original instrument were so recorded.

[1927 c 278 § 6; RRS § 10596-6.]

RCW 65.08.120
Assignment of mortgage -- Notice.

The recording of an assignment of a mortgage is not in itself notice to the mortgagor, his heirs, assigns or personal representatives, to invalidate a payment made by any of them to a prior holder of the mortgage.

[1927 c 278 § 7; RRS § 10596-7.]

RCW 65.08.130
Revocation of power of attorney.

A power of attorney or other instrument recorded pursuant to RCW 65.08.060 through 65.08.150 is not deemed revoked by any act of the party by whom it was executed unless the instrument of revocation is also recorded in the same office in which the instrument granting the power was recorded.

[1927 c 278 § 8; RRS § 10596-8.]

RCW 65.08.140
No liability for error in recording when properly indexed.

A recording officer is not liable for recording an instrument in a wrong book, volume or set of records if the instrument is properly indexed with a reference to the volume and page or recording number where the instrument is actually of record.

[1999 c 233 § 17; 1927 c 278 § 9; RRS § 10596-9. Formerly RCW 65.04.120.]

NOTES:

Effective date -- 1999 c 233: See note following RCW 4.28.320.

RCW 65.08.150
Duty to record.

A recording officer, upon payment or tender to him of the lawful fees therefor, shall record in his office any instrument authorized or permitted to be so recorded by the laws of this state or by the laws of the United States.

[1943 c 23 § 1; 1927 c 278 § 10; RRS § 10596-10. Formerly RCW 65.04.010.]

RCW 65.08.160
Recording master form instruments and mortgages or deeds of trust incorporating master form provisions.

A mortgage or deed of trust of real estate may be recorded and constructive notice of the same and the contents thereof given in the following manner:

(1) An instrument containing a form or forms of covenants, conditions, obligations, powers, and other clauses of a mortgage or deed of trust may be recorded in the office of the county auditor of any county and the auditor of such county, upon the request of any person, on tender of the lawful fees therefor, shall record the same. Every such instrument shall be entitled on the face thereof as a "Master form recorded by . . . (name of person causing the instrument to be recorded)." Such instrument need not be acknowledged to be entitled to record.

(2) When any such instrument is recorded, the county auditor shall index such instrument under the name of the person causing it to be recorded in the manner provided for miscellaneous instruments relating to real estate.

(3) Thereafter any of the provisions of such master form instrument may be incorporated by reference in any mortgage or deed of trust of real

estate situated within this state, if such reference in the mortgage or deed of trust states that the master form instrument was recorded in the county in which the mortgage or deed of trust is offered for record, the date when and the book and page or pages or recording number where such master form instrument was recorded, and that a copy of such master form instrument was furnished to the person executing the mortgage or deed of trust. The recording of any mortgage or deed of trust which has so incorporated by reference therein any of the provisions of a master form instrument recorded as provided in this section shall have like effect as if such provisions of the master form so incorporated by reference had been set forth fully in the mortgage or deed of trust.

(4) Whenever a mortgage or deed of trust is presented for recording on which is set forth matter purporting to be a copy or reproduction of such master form instrument or of part thereof, identified by its title as provided in subsection (1) of this section and stating the date when it was recorded and the book and page where it was recorded, preceded by the words "do not record" or "not to be recorded," and plainly separated from the matter to be recorded as a part of the mortgage or deed of trust in such manner that it will not appear upon a photographic reproduction of any page containing any part of the mortgage or deed of trust, such matter shall not be recorded by the county auditor to whom the instrument is presented for recording; in such case the county auditor shall record only the mortgage or deed of trust apart from such matter and shall not be liable for so doing, any other provisions of law to the contrary notwithstanding.

[1999 c 233 § 18; 1967 c 148 § 1.]

NOTES:

Effective date -- 1999 c 233: See note following RCW 4.28.320.

RCW 65.08.170
Notice of additional water or sewer facility tap or connection charges -- Required -- Contents.

When any municipality as defined in RCW 35.91.020 or any county has levied or intends to levy a charge on property pertaining to:

(1) The amount required by the provisions of a contract pursuant to RCW 35.91.020 under which the water or sewer facilities so tapped into or used were constructed; or

(2) Any connection charges which are in fact reimbursement for the cost of facilities constructed by the sale of revenue bonds; or

(3) The additional connection charge authorized in RCW 35.92.025;

such municipality or county shall record in the office in which deeds are recorded of the county or counties in which such facility is located a notice of additional tap or connection charges. Such notice shall contain either the legal description of the land affected by such additional tap or connection charges or a map making appropriate references to the United States government survey showing in outline the land affected or to be affected by such additional tap or connection charges.

[1977 c 72 § 1.]

RCW 65.08.180
Notice of additional water or sewer facility tap or connection charges -- Duration -- Certificate of payment and release.

The notice required by RCW 65.08.170, when duly recorded, shall be effective until there is recorded in the same office in which the notice was recorded a certificate of payment and release executed by the municipality or county. Such certificate shall contain a legal description of the particular parcel of land so released and shall be recorded within thirty days of the date of payment thereof.

[1977 c 72 § 2.]

Chapter 79.90 RCW Aquatic Lands -- In General

RCW SECTIONS

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79.90.520 Aquatic lands -- Administrative review of proposed rent.

79.90.525 Aquatic lands -- Security for leases for more than one year.

79.90.530 Aquatic lands -- Payment of rent.

79.90.535 Aquatic lands -- Interest rate.

79.90.540 Adoption of rules.

79.90.545 Application to existing property rights -- Application of Shoreline Management Act.

79.90.550 Aquatic land disposal sites -- Legislative findings.

79.90.555 Aquatic land dredged material disposal site account.

79.90.560 Fees for use of aquatic land dredged material disposal sites authorized.

79.90.565 Archaeological activities on state-owned aquatic lands -- Agreements, leases, or other conveyances.

79.90.570 Bush act/Callow act lands.

79.90.575 Charge for term of easement -- Recovery of costs.

79.90.580 Gifts of aquatic land -- Procedures and criteria.

79.90.900 Savings -- Captions -- Severability -- Effective dates -- 1982 1st ex.s. c 21.

79.90.901 Severability -- 1984 c 221.

79.90.902 Effective date -- 1984 c 221.

RCW 79.90.010
"Aquatic lands."

Whenever used in chapters 79.90 through 79.96 RCW the term "aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters.

[1982 1st ex.s. c 21 § 1.]

RCW 79.90.015
"Outer harbor line."

Whenever used in chapters 79.90 through 79.96 RCW the term "outer harbor line" means a line located and established in navigable waters as provided in section 1 of Article XV of the state Constitution, beyond which the state shall never sell or lease any rights whatever to private persons.

[1982 1st ex.s. c 21 § 2.]

RCW 79.90.020
"Harbor area."

Whenever used in chapters 79.90 through 79.96 RCW the term "harbor area" means the area of navigable waters determined as provided in section 1 of Article XV of the state Constitution, which shall be forever reserved for landings, wharves, streets and other conveniences of navigation and commerce.

[1982 1st ex.s. c 21 § 3.]

RCW 79.90.025
"Inner harbor line."

Whenever used in chapters 79.90 through 79.96 RCW the term "inner harbor line" means a line located and established in navigable waters between the line of ordinary high tide or ordinary high water and the outer harbor line, constituting the inner boundary of the harbor area.

[1982 1st ex.s. c 21 § 4.]

RCW 79.90.030
"First class tidelands."

Whenever used in chapters 79.90 through 79.96 RCW the term "first class tidelands" means the shores of navigable tidal waters belonging to the state, lying within or in front of the corporate limits of any city, or within one mile thereof upon either side and between the line of ordinary high tide and the inner harbor line; and within two miles of the corporate limits on either side and between the line of ordinary high tide and the line of extreme low tide.

[1982 1st ex.s. c 21 § 5.]

RCW 79.90.035
"Second class tidelands."

Whenever used in chapters 79.90 through 79.96 RCW the term "second class tidelands" means the shores of navigable tidal waters belonging to the state, lying outside of and more than two miles from the corporate limits of any city, and between the line of ordinary high tide and the line of extreme low tide.

[1982 1st ex.s. c 21 § 6.]

RCW 79.90.040
"First class shorelands."

Whenever used in chapters 79.90 through 79.96 RCW the term "first class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, or inner harbor line where established and within or in front of the corporate limits of any city or within two miles thereof upon either side.

[1982 1st ex.s. c 21 § 7.]

RCW 79.90.045
"Second class shorelands."

Whenever used in chapters 79.90 through 79.96 RCW the term "second class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, and more than two miles from the corporate limits of any city.

[1982 1st ex.s. c 21 § 8.]

RCW 79.90.050
"Beds of navigable waters."

Whenever used in chapters 79.90 through 79.96 RCW, the term "beds of navigable waters" means those lands lying waterward of and below the line of navigability on rivers and lakes not subject to tidal flow, or extreme low tide mark in navigable tidal waters, or the outer harbor line where harbor area has been created.

[1982 1st ex.s. c 21 § 9.]

RCW 79.90.055
"Improvements."

Whenever used in chapters 79.90 through 79.96 RCW the term "improvements" when referring to aquatic lands means anything considered a fixture in law placed within, upon or attached to such lands that has changed the value of those lands, or any changes in the previous condition of the fixtures that changes the value of the land.

[1982 1st ex.s. c 21 § 10.]

RCW 79.90.060
"Valuable materials."

Whenever used in chapters 79.90 through 79.96 RCW the term "valuable materials" when referring to aquatic lands means any product or material within or upon said lands, such as forest products, forage, stone, gravel, sand, peat, agricultural crops, and all other materials of value except mineral, coal, petroleum, and gas as provided for under *chapters 79.01 and 79.14 RCW.

[1982 1st ex.s. c 21 § 11.]

NOTES:

***Reviser's note:** The reference to "chapters 79.01 and 79.14 RCW" is erroneous. The reference should be to "chapter 79.14 RCW" only.

RCW 79.90.065
"Person."

Whenever used in chapters 79.90 through 79.96 RCW the term "person" means any private individual, partnership, association, organization, cooperative, firm, corporation, the state or any agency or political subdivision thereof, any public or municipal corporation, or any unit of government, however designated.

[1982 1st ex.s. c 21 § 12.]

RCW 79.90.070
Harbor line commission.

The board of natural resources shall constitute the commission provided for in section 1 of Article XV of the state Constitution to locate and establish outer harbor lines beyond which the state shall never sell or lease any rights whatever to private persons, and to locate and establish the inner harbor line, thereby defining the width of the harbor area between such harbor lines. The harbor area shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce.

[1982 1st ex.s. c 21 § 13.]

RCW 79.90.080
Board of natural resources -- Records -- Rules and regulations.

The board of natural resources acting as the harbor line commission shall keep a full and complete record of its proceedings relating to the establishment of harbor lines and the

determination of harbor areas. The board shall have the power from time to time to make and enforce rules and regulations for the carrying out of the provisions of chapters 79.90 through 79.96 RCW relating to its duties not inconsistent with law.

[1982 1st ex.s. c 21 § 14.]

RCW 79.90.090
Sale and lease of state-owned aquatic lands -- Blank forms of applications.

The department of natural resources shall prepare, and furnish to applicants, blank forms of applications for the purchase of tide or shore lands belonging to the state, otherwise permitted by RCW 79.94.150 to be sold, and the purchase of valuable material situated thereon, and the lease of tidelands, shorelands and harbor areas belonging to the state, which forms shall contain such instructions as will inform and aid the applicants.

[1982 1st ex.s. c 21 § 15.]

RCW 79.90.100
Who may purchase or lease -- Application -- Fees.

Any person desiring to purchase any tide or shore lands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, or to purchase any valuable material situated thereon, or to lease any aquatic lands, shall file with the department of natural resources an application, on the proper form which shall be accompanied by reasonable fees to be prescribed by the board of natural resources in its rules and regulations, in an amount sufficient to defray the cost of performing or otherwise providing for the processing, review, or inspection of the applications or activities permitted pursuant to the applications for each category of services performed. These fees shall be credited to the resource management cost account (RMCA) fund in the general fund.

[1982 1st ex.s. c 21 § 16.]

RCW 79.90.105
Private recreational docks -- Mooring buoys.

(1) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain without charge a dock on such areas if used exclusively for private recreational purposes and the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.94.070, 79.94.260, 79.94.280, and 79.95.010. The dock cannot be sold or leased separately from the upland residence. The dock cannot be used to moor boats for commercial or residential use. This permission is subject to applicable local, state, and federal rules and regulations governing location, design, construction, size, and length of the dock. Nothing in this subsection (1) prevents the abutting owner from obtaining a lease if otherwise provided by law.

(2) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain a mooring buoy without charge if the boat that is moored to the buoy is used for private recreational purposes, the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.94.070, 79.94.260, 79.94.280, and 79.95.010, and the buoy will not obstruct the use of mooring buoys previously authorized by the department.

(a) The buoy must be located as near to the upland residence as practical, consistent with applicable rules and regulations and the provisions of this section. The buoy must be located, or relocated if necessary, to accommodate the use of lawfully installed and maintained buoys.

(b) If two or more residential owners, who otherwise qualify for free use under the provisions of this section, are in dispute over assertion of rights to install and maintain a mooring buoy in the same location, they may seek formal settlement through adjudication in superior court for the county in which the buoy site is located. In the adjudication, preference must be given to the residential owner that first installed and continually maintained and used a buoy on that site, if it meets all applicable rules,

regulations, and provisions of this section, and then to the owner of the residential property nearest the site. Nothing in this section requires the department to mediate or otherwise resolve disputes between residential owners over the use of the same site for a mooring buoy.

(c) The buoy cannot be sold or leased separately from the abutting residential property. The buoy cannot be used to moor boats for commercial or residential use, nor to moor boats over sixty feet in length.

(d) If the department determines that it is necessary for secure moorage, the abutting residential owner may install and maintain a second mooring buoy, under the same provisions as the first, the use of which is limited to a second mooring line to the boat moored at the first buoy.

(e) The permission granted in this subsection (2) is subject to applicable local, state, and federal rules and regulations governing location, design, installation, maintenance, and operation of the mooring buoy, anchoring system, and moored boat. Nothing in this subsection (2) prevents a boat owner from obtaining a lease if otherwise provided by law. This subsection (2) also applies to areas that have been designated by the commissioner of public lands or the fish and wildlife commission as aquatic reserves.

(3) This permission to install and maintain a recreational dock or mooring buoy may be revoked by the department, or the department may direct the owner of a recreational dock or mooring buoy to relocate their dock or buoy, if the department makes a finding of public necessity to protect waterward access, ingress rights of other landowners, public health or safety, or public resources. Circumstances prompting a finding of public necessity may include, but are not limited to, the dock, buoy, anchoring system, or boat posing a hazard or obstruction to navigation or fishing, contributing to degradation of aquatic habitat, or contributing to decertification of shellfish beds otherwise suitable for commercial or recreational harvest. The revocation may be appealed as provided for under RCW 79.90.400.

(4) Nothing in this section authorizes a boat owner to abandon a vessel at a recreational dock, mooring buoy, or elsewhere.

[2002 c 304 § 1; 2001 c 277 § 1; 1989 c 175 § 170; 1983 2nd ex.s. c 2 § 2.]

NOTES:

Effective date -- 1989 c 175: See note following RCW 34.05.010.

RCW 79.90.110
Date of sale limited by time of appraisal.

In no case shall any tide or shore lands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, or any valuable materials situated within or upon any tidelands, shorelands or beds of navigable waters belonging to the state, be offered for sale unless the same shall have been appraised by the department of natural resources within ninety days prior to the date fixed for the sale.

[1982 1st ex.s. c 21 § 17.]

RCW 79.90.120
Survey to determine areas subject to sale or lease.

The department of natural resources may cause any aquatic lands to be surveyed for the purpose of ascertaining and determining the area subject to sale or lease.

[1982 1st ex.s. c 21 § 18.]

RCW 79.90.130
Valuable materials from Columbia river -- Agreements with Oregon.

The department is authorized and empowered to confer with and enter into any agreements with the public authorities of the state of Oregon, which in the judgment of the department will assist the state of Washington and the state of Oregon in securing the maximum revenues for sand, gravel or other valuable materials taken from the bed of the Columbia river where said river forms the boundary line between said states.

[1991 c 322 § 24; 1982 1st ex.s. c 21 § 19.]

NOTES:

Findings -- Intent -- 1991 c 322: See note following RCW 86.12.200.

RCW 79.90.150
Material removed for channel or harbor improvement or flood control -- Use for public purpose.

When gravel, rock, sand, silt or other material from any aquatic lands is removed by any public agency or under public contract for channel or harbor improvement, or flood control, use of such material may be authorized by the department of natural resources for a public purpose on land owned or leased by the state or any municipality, county, or public corporation: PROVIDED, That when no public land site is available for deposit of such material, its deposit on private land with the landowner's permission is authorized and may be designated by the department of natural resources to be for a public purpose. Prior to removal and use, the state agency, municipality, county, or public corporation contemplating or arranging such use shall first obtain written permission from the department of natural resources. No payment of royalty shall be required for such gravel, rock, sand, silt, or other material used for such public purpose, but a charge will be made if such material is subsequently sold or used for some other purpose: PROVIDED, That the department may authorize such public agency or private landowner to dispose of such material without charge when necessary to implement disposal of material. No charge shall be required for any use of the material obtained under the provisions of this chapter when used solely on an authorized site. No charge shall be required for any use of the material obtained under the provisions of this chapter if the material is used for public purposes by local governments. Public purposes include, but are not limited to, construction and maintenance of roads, dikes, and levies. Nothing in this section shall repeal or modify the provisions of RCW 77.55.100 or eliminate the necessity of obtaining a permit for such removal from other state or federal agencies as otherwise required by law.

[2003 c 39 § 41; 1991 c 337 § 1; 1982 1st ex.s. c 21 § 21.]

RCW 79.90.160
Mt. St. Helen's eruption -- Dredge spoils -- Sale by certain landowners.

The legislature finds and declares that, due to the extraordinary volume of material washed down onto state-owned beds and shorelands in the Toutle river, Coweeman river, and portions of the Cowlitz river, the dredge spoils placed upon adjacent publicly and privately owned property in such areas, if further disposed, will be of nominal value to the state and that it is in the best interests of the state to allow further disposal without charge.

All dredge spoil or materials removed from the state-owned beds and shores of the Toutle river, Coweeman river and that portion of the Cowlitz river from two miles above the confluence of the Toutle river to its mouth deposited on adjacent public and private lands during the years 1980 through December 31, 1995, as a result of dredging of these rivers for navigation and flood control purposes may be sold, transferred, or otherwise disposed of by owners of such lands without the necessity of any charge by the department of natural resources and free and clear of any interest of the department of natural resources of the state of Washington.

[2000 c 13 § 2; 1989 c 213 § 4; 1985 c 307 § 7; 1985 c 12 § 1; 1982 1st ex.s. c 21 § 22.]

RCW 79.90.170
Sale procedure -- Fixing date, place, and time of sale -- Notice -- Publication and posting -- Direct sale to applicant without notice, when.

When the department of natural resources shall have decided to sell any tidelands or shorelands belonging to the state, otherwise permitted by RCW 79.94.150 to be sold, or any valuable materials situated within or upon any aquatic lands, it shall be the duty of the department to forthwith fix the date, place, and the time of sale, and no sale shall be had on any day which is a legal holiday.

The department shall give notice of the sale by advertisement published once a week for four consecutive weeks immediately preceding the date fixed for sale in said notice, in at least one

newspaper published and of general circulation in the county in which the whole or any part of any lot, block, or tract of land to be sold (or the valuable materials thereon) is to be sold is situated, and by causing a copy of said notice to be posted in a conspicuous place in the department's Olympia office and the area headquarters administering such sale, and in the office of the county auditor of such county; which notice shall specify the place and time of sale, the appraised value thereof, and describe with particularity each parcel of land to be sold, or from which valuable materials are to be sold, and in the case of material sales the estimated volume thereof, and specify that the terms of sale will be posted in the area headquarters and the department's Olympia office: PROVIDED, That any sale of valuable material of an appraised value of one thousand dollars or less may be sold directly to the applicant for cash at the appraised value without notice or advertising.

[1982 1st ex.s. c 21 § 23.]

RCW 79.90.180
Sale procedure -- Pamphlet list of lands or materials -- Notice of sale -- Proof of publishing and posting.

The department of natural resources shall cause to be printed a list of all tidelands and shorelands belonging to the state, otherwise permitted by RCW 79.94.150 to be sold, or valuable materials contained within or upon aquatic lands, and the appraised value thereof, that are to be sold in the several counties of the state, said lists to be issued at least four weeks prior to the date of any sale of the lands and materials enumerated thereon, such materials to be listed under the name of the county wherein located, in alphabetical order giving the appraised values, the character of the same and such other information as may be of interest to prospective buyers. Said department shall cause to be distributed to the auditor of each county in the state a sufficient number of such lists to supply the demands made upon them respectively as reported by such auditors. And said county auditors shall keep the list so furnished in a conspicuous place or receptacle on the counter of the public office of their respective departments, and, when requested so to do, shall mail copies of such lists to residents of their counties. The department shall retain for free distribution in its office in Olympia and the area offices sufficient copies of said lists, to be kept in a conspicuous place or receptacle on the counter of the general office of the department of natural resources, and the areas, and, when requested so do to, shall mail copies of said list as issued to any applicant therefor. Proof of publication of the notice of sale shall be made by affidavit of the publisher, or person in charge, of the newspaper publishing the same and proof of posting the notice of sale and the receipt of the lists shall be made by certificate of the county auditor which shall forthwith be sent to and filed with the department of natural resources.

[1982 1st ex.s. c 21 § 24.]

RCW 79.90.190
Sale procedure -- Additional advertising expense.

The department of natural resources is authorized to expend any sum in additional advertising of such sale as shall be determined to be in the best interests of the state.

[1982 1st ex.s. c 21 § 25.]

RCW 79.90.200
Sale procedure -- Place of sale -- Hours -- Reoffer -- Continuance.

When sales are made by the county auditor, they shall take place at such place on county property as the county legislative authority may direct in the county in which the whole, or the greater part, of each lot, block, or tract of land, or the material thereon, to be sold, is situated. All other sales shall be held at the departmental area offices having jurisdiction over the respective sales. All sales shall be conducted between the hours of ten o'clock a.m. and four o'clock p.m.

Any sale which has been offered, and for which there are no bids received shall not be reoffered until it has been readvertised as specified in RCW 79.90.170, 79.90.180, and 79.90.190. If all sales cannot be offered within the specified time on the advertised date, the sale shall continue on the following day between the hours of ten o'clock a.m. and four o'clock p.m.

[1982 1st ex.s. c 21 § 26.]

RCW 79.90.210
Sale procedure -- Sales at auction or by sealed bid -- Minimum price -- Exception as to minor sale of valuable materials at auction.

All sales of tidelands and shorelands belonging to the state, otherwise permitted by RCW 79.94.150 to be sold, shall be at public auction and all sales of valuable materials shall be at public auction or by sealed bid to the highest responsible bidder, on the terms prescribed by law and as specified in the notice provided, and no land or materials shall be sold for less than their appraised value: PROVIDED, That when valuable material has been appraised at an amount not exceeding one hundred thousand dollars, the department of natural resources, when authorized by the board of natural resources, may arrange for the sale at public auction of said valuable material and for its removal under such terms and conditions as the department may prescribe, after the department shall have caused to be published not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to the property to be sold. However, any sale of valuable material on aquatic lands of an appraised value of ten thousand dollars or less may be sold directly to the applicant for cash without notice or advertising.

[1990 c 163 § 1; 1982 1st ex.s. c 21 § 27.]

RCW 79.90.215
Highest responsible bidder -- Determination.

(1) To determine the "highest responsible bidder" under RCW 79.90.210, the department of natural resources shall be entitled to consider, in addition to price, the following:

(a) The financial and technical ability of the bidder to perform the contract;

(b) Whether the bid contains material defects;

(c) Whether the bidder has previously or is currently complying with terms and conditions of any other contracts with the state or relevant contracts with entities other than the state;

(d) Whether the bidder was the "highest responsible bidder" for a sale within the previous five years but failed to complete the sale, such as by not entering into a resulting contract or by not paying the difference between the deposit and the total amount due. However, sales that were bid prior to January 1, 2003, may not be considered for the purposes of this subsection (1)(d);

(e) Whether the bidder has been convicted of a crime relating to the public lands or natural resources of the state of Washington, the United States, or any other state, tribe, or country, where "conviction" shall include a guilty plea, or unvacated forfeiture of bail;

(f) Whether the bidder is owned, controlled, or managed by any person, partnership, or corporation that is not responsible under this statute; and

(g) Whether the subcontractors of the bidder, if any, are responsible under this statute.

(2) Whenever the department has reason to believe that the apparent high bidder is not a responsible bidder, the department may award the sale to the next responsible bidder or the department may reject all bids pursuant to RCW 79.90.240.

[2003 c 28 § 1; 1990 c 163 § 2.]

RCW 79.90.220
Sale procedure -- Conduct of sales -- Deposits -- Bid bonds -- Memorandum of purchase.

Sales by public auction under this chapter shall be conducted under the direction of the department of natural resources, by its authorized representative or by the county auditor of the county in which the sale is held. The department's representative and the county auditor are hereinafter referred to as auctioneers. On or before the time specified in the notice of sale each bidder shall deposit with the auctioneer, in cash or by certified check, cashier's check, or postal money order payable to the order of the department of natural resources, or by bid guarantee in the form of bid bond acceptable to the department, an amount equal to the deposit specified in the notice of sale. The deposit shall include a specified amount of the

appraised price for the valuable materials offered for sale, together with any fee required by law for the issuance of contracts or bills of sale. Said deposit may, when prescribed in the notice of sale, be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale. The successful bidder's deposit will be retained by the auctioneer and the difference, if any, between the deposit and the total amount due shall on the day of the sale be paid in cash, certified check, cashier's check, draft, postal money order or by personal check made payable to the department. If a bid bond is used, the share of the total deposit due guaranteed by the bid bond shall, within ten days of the day of sale, be paid in cash, certified check, cashier's check, draft or postal money order payable to the department. Other deposits, if any, shall be returned to the respective bidders at the conclusion of each sale. The auctioneer shall deliver to the purchaser a memorandum of his purchase containing a description of the land or materials purchased, the price bid, and the terms of the sale. The auctioneer shall at once send to the department the cash, certified check, cashier's check, draft, postal money order, or bid guarantee received from the purchaser, and a copy of the memorandum delivered to the purchaser, together with such additional report of his proceedings with reference to such sales as may be required by the department.

[1982 1st ex.s. c 21 § 28.]

RCW 79.90.230
Sale procedure -- Readvertisement of lands not sold.

If any tide or shore land, when otherwise permitted under RCW 79.94.150 to be sold, so offered for sale be not sold, the same may again be advertised for sale, as provided in this chapter, whenever in the opinion of the department of natural resources it shall be expedient so to do, and such land shall be again advertised and offered for sale as herein provided, whenever any person shall apply to the commissioner in writing to have such land offered for sale and shall agree to pay, at least the appraised value thereof and shall deposit with the department at the time of making such application a sufficient sum of money to pay the cost of advertising such sale.

[1982 1st ex.s. c 21 § 29.]

RCW 79.90.240
Sale procedure -- Confirmation of sale.

(1) A sale of valuable materials or tidelands or shorelands otherwise permitted by RCW 79.94.150 to be sold shall be confirmed if:

(a) No affidavit showing that the interest of the state in such sale was injuriously affected by fraud or collusion, is filed with the commissioner of public lands within ten days from the receipt of the report of the auctioneer conducting the sale;

(b) It shall appear from such report that the sale was fairly conducted, that the purchaser was the highest responsible bidder at such sale, and that the sale price is not less than the appraised value of the property sold;

(c) The commissioner is satisfied that the lands or material sold would not, upon being readvertised and offered for sale, sell for a substantially higher price; and

(d) The payment required by law to be made at the time of making the sale has been made, and that the best interests of the state may be subserved thereby.

(2) Upon confirming a sale, the commissioner shall enter upon his records the confirmation of sale and thereupon issue to the purchaser a contract of sale or bill of sale as the case may be, as is provided for in this chapter.

[1990 c 163 § 3; 1982 1st ex.s. c 21 § 30.]

RCW 79.90.245
Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom -- Aquatic lands enhancement project grant requirements -- Aquatic lands enhancement account.

After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.92.110(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands

shall be deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to such lands; and for volunteer cooperative fish and game projects.

In providing grants for aquatic lands enhancement projects, the department shall require grant recipients to incorporate the environmental benefits of the project into their grant applications, and the department shall utilize the statement of environmental benefits in its prioritization and selection process. The department shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grants. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The department shall consult with affected interest groups in implementing this section.

During the fiscal biennium ending June 30, 2005, the funds may be appropriated for boating safety, settlement costs for aquatic lands cleanup, and shellfish management, enforcement, and enhancement.

[2004 c 276 § 914; 2002 c 371 § 923; 2001 c 227 § 7; 1999 c 309 § 919; 1997 c 149 § 913; 1995 2nd sp.s. c 18 § 923; 1994 c 219 § 12; 1993 sp.s. c 24 § 927; 1987 c 350 § 1; 1985 c 57 § 79; 1984 c 221 § 24; 1982 2nd ex.s. c 8 § 4; 1969 ex.s. c 273 § 12; 1967 ex.s. c 105 § 3; 1961 c 167 § 9. Formerly RCW 79.24.580.]

NOTES:

Severability -- Effective date--2004 c 276: See notes following RCW 43.330.167.

Severability -- Effective date -- 2002 c 371: See notes following RCW 9.46.100.

Findings -- Intent -- 2001 c 227: See note following RCW 43.41.270.

Severability -- Effective date -- 1999 c 309: See notes following RCW 41.06.152.

Severability -- Effective date -- 1997 c 149: See notes following RCW 43.08.250.

Severability -- Effective date -- 1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Finding -- 1994 c 219: See note following RCW 43.88.030.

Severability -- Effective dates--1993 sp.s. c 24: See notes following RCW 28A.310.020.

Effective date -- 1987 c 350: "This act shall take effect July 1, 1989." [1987 c 350 § 3.]

Effective date -- 1985 c 57: See note following RCW 18.04.105.

Severability -- Effective date -- 1984 c 221: See RCW 79.90.901 and 79.90.902.

RCW 79.90.250
Sale procedure -- Terms of payment -- Deferred payments, rate of interest.

All tidelands and shorelands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, shall be sold on the following terms: One-tenth to be paid on the date of sale; one-tenth to be paid one year from the date of the issuance of the contract of sale; and one-tenth annually thereafter until the full purchase price has been made; but any purchaser may make full payment at any time. All deferred payments shall draw interest at such rate as may be fixed, from time to time, by rule adopted by the board of natural resources, and the rate of interest, as so fixed at the date of each sale, shall be stated in all advertising for and notice of said sale and in the contract of sale. The first installment of interest shall become due and payable one year after the date of the contract of sale and thereafter all interest shall become due and payable annually on said date, and all remittances for payment of either principal or interest shall be forwarded to the department of natural resources.

[1982 1st ex.s. c 21 § 31.]

RCW 79.90.260

Sale procedure -- Certificate to governor of payment in full -- Deed.

When the entire purchase price of any tidelands or shorelands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, shall have been fully paid, the department of natural resources shall certify such fact to the governor, and shall cause a deed signed by the governor and attested by the secretary of state, with the seal of the state attached thereto, to be issued to the purchaser and to be recorded in the office of the commissioner of public lands, and no fee shall be required for any deed issued by the governor other than the fee provided for in this chapter.

[1982 1st ex.s. c 21 § 32.]

RCW 79.90.270
Sale procedure -- Reservation in contract.

Each and every contract for the sale of (and each deed to) tidelands or shorelands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, shall contain the reservation contained in RCW 79.11.210.

[2003 c 334 § 601; 1982 1st ex.s. c 21 § 33.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

RCW 79.90.280
Sale procedure -- Form of contract -- Forfeiture -- Extension of time.

The purchaser of tidelands or shorelands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, except in cases where the full purchase price is paid at the time of the purchase, shall enter into and sign a contract with the state to be signed by the commissioner of public lands on behalf of the state, with his seal of office attached, and in a form to be prescribed by the attorney general, and under those terms and conditions provided in *RCW 79.01.228.

[1982 1st ex.s. c 21 § 34.]

NOTES:

***Reviser's note:** RCW 79.01.228 was recodified as RCW 79.11.200 pursuant to 2003 c 334 § 556.

RCW 79.90.290
Bill of sale for valuable material sold separately.

When valuable materials shall have been sold separate from aquatic lands and the purchase price is paid in full, the department of natural resources shall cause a bill of sale, signed by the commissioner of public lands and attested by the seal of his office, setting forth the time within which such material shall be removed. The bill of sale shall be issued to the purchaser and shall be recorded in the office of the commissioner of public lands, upon the payment of the fee provided for in this chapter.

[1982 1st ex.s. c 21 § 35.]

RCW 79.90.300
Sale of rock, gravel, sand, silt, and other valuable materials.

The department of natural resources, upon application by any person or when determined by the department to be in the best interest of the state, may enter into a contract or lease providing for the removal and sale of rock, gravel, sand, and silt, or other valuable materials located within or upon beds of navigable waters, or upon any tidelands or shorelands belonging to the state and providing for payment to be made therefor by such royalty as the department may fix, by negotiation, by sealed bid, or at public auction. If application is made for the purchase of any valuable material situated within or upon aquatic lands the department shall inspect and appraise the value of the material in the application.

[1991 c 322 § 26; 1982 1st ex.s. c 21 § 36.]

NOTES:

Findings -- Intent -- 1991 c 322: See note following RCW 86.12.200.

RCW 79.90.310
Sale of rock, gravel, sand and silt -- Application -- Terms of lease or contract -- Bond -- Payment -- Reports.

Each application made pursuant to RCW 79.90.300 shall set forth the estimated quantity and kind of materials desired to be removed and shall be accompanied by a map or plat showing the area from which the applicant wishes to remove such materials. The department of natural resources may in its discretion include in any lease or contract entered into pursuant to RCW 79.90.300 through 79.90.320, such terms and conditions deemed necessary by the department to protect the interests of the state. In each such lease or contract the department shall provide for a right of forfeiture by the state, upon a failure to operate under the lease or contract or pay royalties or rent for periods therein stipulated, and the department shall require a bond with a surety company authorized to transact a surety business in this state, as surety to secure the performance of the terms and conditions of such contract or lease including the payment of royalties. The right of forfeiture shall be exercised by entry of a declaration of forfeiture in the records of the department. The amount of rock, gravel, sand or silt taken under the contract or lease shall be reported monthly by the purchaser to the department and payment therefor made on the basis of the royalty provided in the lease or contract.

[1982 1st ex.s. c 21 § 37.]

RCW 79.90.320
Sale of rock, gravel, sand and silt -- Investigation, audit of books of person removing.

The department of natural resources may inspect and audit books, contracts, and accounts of each person removing rock, gravel, sand, or silt pursuant to any such lease or contract under RCW 79.90.300 and 79.90.310 and make such other investigation and secure or receive any other evidence necessary to determine whether or not the state is being paid the full amount payable to it for the removal of such materials.

[1982 1st ex.s. c 21 § 38.]

RCW 79.90.325
Contract for sale of rock, gravel, etc. -- Royalties -- Consideration of flood protection value.

Whenever, pursuant to RCW 79.15.300, the commissioner enters into a contract for the sale and removal of rock, gravel, sand, or silt out of a riverbed, the commissioner shall, when establishing a royalty, take into consideration flood protection value to the public that will arise as a result of such removal.

[2003 c 334 § 602; 1984 c 212 § 10. Formerly RCW 79.01.135.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

RCW 79.90.330
Leases and permits for prospecting and contracts for mining valuable minerals and specific materials from aquatic lands.

The department may issue permits and leases for prospecting, placer mining contracts, and contracts for the mining of valuable minerals and specific materials, except rock, gravel, sand, silt, coal, or hydrocarbons, upon and from any aquatic lands belonging to the state, or which have been sold and the minerals thereon reserved by the state in tracts not to exceed six hundred forty acres or an entire government-surveyed section. The procedures contained at RCW 79.14.300 through 79.14.450, inclusive, shall apply thereto.

[2003 c 334 § 603; 1987 c 20 § 16; 1982 1st ex.s. c 21 § 39.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

RCW 79.90.340
Option contracts for prospecting and leases for mining and extraction of coal from aquatic lands.

The department is authorized to execute option contracts for prospecting purposes and leases for the mining and extraction of coal from any aquatic lands owned by the state or from which it may hereafter acquire title, or from any aquatic lands sold or leased by the state the minerals of which have been reserved by the state. The procedures contained at RCW 79.14.470 through 79.14.580, inclusive, shall apply thereto.

[2003 c 334 § 604; 1982 1st ex.s. c 21 § 40.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

RCW 79.90.350
Subdivision of leases -- Fee.

Whenever the holder of any contract to purchase any tidelands or shorelands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, or the holder of any lease of any such lands, except for mining of valuable minerals, or coal, or extraction of petroleum or gas, shall surrender the same to the department of natural resources with the request to have it divided into two or more contracts or leases, the department may divide the same and issue new contracts, or leases: PROVIDED, That no new contract or lease shall issue while there is due and unpaid any rental, taxes, or assessments on the land held under such contract or lease, nor in any case where the department is of the opinion that the state's security would be impaired or endangered by the proposed division. For all such new contracts, or leases, a fee as determined by the board of natural resources for each new contract or lease issued, shall be paid by the applicant and such fee shall be paid into the state treasury to the resource management cost account in the general fund, pursuant to RCW 79.64.020.

[1982 1st ex.s. c 21 § 41.]

RCW 79.90.360
Effect of mistake or fraud.

Any sale or lease of tidelands or shorelands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, made by mistake, or not in accordance with law, or obtained by fraud or misrepresentation, shall be void, and the contract of purchase, or lease, issued thereon shall be of no effect, and the holder of such contract, or lease, shall be required to surrender the same to the department of natural resources, which, except in the case of fraud on the part of the purchaser, or lessee, shall cause the money paid on account of such surrendered contract, or lease, to be refunded to the holder thereof, provided the same has not been paid into the state treasury.

[1982 1st ex.s. c 21 § 42.]

RCW 79.90.370
Assignment of contracts or leases.

All contracts of purchase of tidelands or shorelands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, and all leases of tidelands, shorelands, or beds of navigable waters belonging to the state issued by the department of natural resources shall be assignable in writing by the contract holder or lessee. The assignee shall be subject to the provisions of law applicable to the purchaser, or lessee, of whom he is the assignee, and shall have the same rights in all respects as the original purchaser, or lessee, of the lands, but only if the assignment is first approved by the department and entered upon the records in the office of the commissioner of public lands.

[1982 1st ex.s. c 21 § 43.]

RCW 79.90.380
Abstracts of state-owned aquatic lands.

The department shall cause full and correct abstracts of all aquatic lands, to be made and kept in the same manner as provided for in RCW 79.02.200.

[2003 c 334 § 605; 1982 1st ex.s. c 21 § 44.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

RCW 79.90.390
Distraint or sale of improvements for taxes.

Whenever improvements have been made on state-owned tidelands, shorelands or beds of navigable waters, in front of cities or towns, prior to the location of harbor lines in front of such cities or towns, and the reserved harbor area as located include such improvements, no distraint or sale of such improvements for taxes shall be had until six months after said lands have been leased or offered for lease: PROVIDED, That this section shall not affect or impair the lien for taxes on said improvements.

[1982 1st ex.s. c 21 § 45.]

RCW 79.90.400
Aquatic lands -- Court review of actions.

Any applicant to purchase, or lease, any aquatic lands of the state, or any valuable materials thereon, and any person whose property rights or interest will be affected by such sale or lease, feeling himself or herself aggrieved by any order or decision of the board, or the commissioner, concerning the same, may appeal therefrom in the manner provided in RCW 79.02.030.

[2003 c 334 § 606; 1982 1st ex.s. c 21 § 46.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

RCW 79.90.410
Reconsideration of official acts.

The department of natural resources may review and reconsider any of its official acts relating to the aquatic lands of the state until such time as a lease, contract, or deed shall have been made, executed, and finally issued, and the department may recall any lease, contract, or deed issued for the purpose of correcting mistakes or errors, or supplying omissions.

[1982 1st ex.s. c 21 § 47.]

RCW 79.90.450
Aquatic lands -- Findings.

The legislature finds that state-owned aquatic lands are a finite natural resource of great value and an irreplaceable public heritage. The legislature recognizes that the state owns these aquatic lands in fee and has delegated to the department of natural resources the responsibility to manage these lands for the benefit of the public. The legislature finds that water-dependent industries and activities have played a major role in the history of the state and will continue to be important in the future. The legislature finds that revenues derived from leases of state-owned aquatic lands should be used to enhance opportunities for public recreation, shoreline access, environmental protection, and other public benefits associated with the aquatic lands of the state. The legislature further finds that aquatic lands are faced with conflicting use demands. The purpose of RCW 79.90.450 through 79.90.545 is to articulate a management philosophy to guide the exercise of the state's ownership interest and the exercise of the department's management authority, and to establish standards for determining equitable and predictable lease rates for users of state-owned aquatic lands.

[1984 c 221 § 1.]

RCW 79.90.455
Aquatic lands -- Management guidelines.

The management of state-owned aquatic lands shall be in conformance with constitutional and statutory requirements. The manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all citizens of the state. The public benefits provided by aquatic lands are varied and include:

(1) Encouraging direct public use and access;

(2) Fostering water-dependent uses;

(3) Ensuring environmental protection;

(4) Utilizing renewable resources.

Generating revenue in a manner consistent

with subsections (1) through (4) of this section is a public benefit.

[1984 c 221 § 2.]

RCW 79.90.456
Fostering use of aquatic environment -- Limitation.

The department shall foster the commercial and recreational use of the aquatic environment for production of food, fibre, income, and public enjoyment from state-owned aquatic lands under its jurisdiction and from associated waters, and to this end the department may develop and improve production and harvesting of seaweeds and sealife attached to or growing on aquatic land or contained in aquaculture containers, but nothing in this section shall alter the responsibility of other state agencies for their normal management of fish, shellfish, game, and water.

[2003 c 334 § 541; 1971 ex.s. c 234 § 8. Formerly RCW 79.68.080.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

RCW 79.90.457
Authority to exchange state-owned tidelands and shorelands -- Rules -- Limitation.

The department of natural resources may exchange state-owned tidelands and shorelands with private and other public landowners if the exchange is in the public interest and will actively contribute to the public benefits established in RCW 79.90.455. The board of natural resources shall adopt rules which establish criteria for determining when a proposed exchange is in the public interest and actively contributes to the public benefits established in RCW 79.90.455. The department may not exchange state-owned harbor areas or waterways.

[1995 c 357 § 1.]

RCW 79.90.458
Exchange of bedlands -- Cowlitz river.

(1) The department is authorized to exchange bedlands abandoned through rechanneling of the Cowlitz river near the confluence of the Columbia river so that the state obtains clear title to the Cowlitz river as it now exists or where it may exist in the future through the processes of erosion and accretion.

(2) The department is also authorized to exchange bedlands and enter into boundary line agreements to resolve any disputes that may arise over the location of state-owned lands now comprising the dike that was created in the 1920s.

(3) For purposes of chapter 150, Laws of 2001, "Cowlitz river near the confluence of the Columbia river" means those tidelands and bedlands of the Cowlitz river fronting and abutting sections 10, 11, and 14, township 7 north, range 2 west, Willamette Meridian and fronting and abutting the Huntington Donation Land Claim No. 47 and the Blakeny Donation Land Claim No. 43, township 7 north, range 2 west, Willamette Meridian.

(4) Nothing in chapter 150, Laws of 2001 shall be deemed to convey to the department the power of eminent domain.

[2003 c 334 § 454; 2001 c 150 § 2. Formerly RCW 79.08.260.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

Findings -- 2001 c 150: "(1) The legislature finds that in the 1920s the Cowlitz river near the confluence of the Columbia river in Longview, Washington was diverted from its original course by dredging and construction of a dike. As a result, a portion of the original bed of the Cowlitz river became a nonnavigable body of shallow water. Another portion of the original bed of the Cowlitz river became part of a dike and is indistinguishable from existing islands. The main channel of the Cowlitz river was diverted over uplands to the south of the original bed and has continued as a navigable channel.

(2) The legislature finds that continued ownership of the nonnavigable portion of the original bed of the Cowlitz river near the confluence of the Columbia river no longer serves the state's interest in navigation. Ownership of the existing navigable bed of the Cowlitz river would better serve the state's interest in navigation. It is also in the state's interest to resolve any disputes that have arisen because state-owned land is now indistinguishable from privately owned land within the dike." [2001 c 150 § 1.]

Severability -- 2001 c 150: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 150 § 3.]

RCW 79.90.460
Aquatic lands -- Preservation and enhancement of water-dependent uses -- Leasing authority.

(1) The management of state-owned aquatic lands shall preserve and enhance water-dependent uses. Water-dependent uses shall be favored over other uses in aquatic land planning and in resolving conflicts between competing lease applications. In cases of conflict between water-dependent uses, priority shall be given to uses which enhance renewable resources, water-borne commerce, and the navigational and biological capacity of the waters, and to statewide interests as distinguished from local interests.

(2) Nonwater-dependent use of state-owned aquatic lands is a low-priority use providing minimal public benefits and shall not be permitted to expand or be established in new areas except in exceptional circumstances where it is compatible with water-dependent uses occurring in or planned for the area.

(3) The department shall consider the natural values of state-owned aquatic lands as wildlife habitat, natural area preserve, representative ecosystem, or spawning area prior to issuing any initial lease or authorizing any change in use. The department may withhold from leasing lands which it finds to have significant natural values, or may provide within any lease for the protection of such values.

(4) The power to lease state-owned aquatic lands is vested in the department of natural resources, which has the authority to make leases upon terms, conditions, and length of time in conformance with the state Constitution and chapters 79.90 through 79.96 RCW.

(5) State-owned aquatic lands shall not be leased to persons or organizations which discriminate on the basis of race, color, creed, religion, sex, age, or physical or mental handicap.

[1984 c 221 § 3.]

RCW 79.90.465
Definitions.

The definitions in this section apply throughout chapters 79.90 through 79.96 RCW.

(1) "Water-dependent use" means a use which cannot logically exist in any location but on the water. Examples include, but are not limited to, water-borne commerce; terminal and transfer facilities; ferry terminals; watercraft sales in conjunction with other water-dependent uses; watercraft construction, repair, and maintenance; moorage and launching facilities; aquaculture; log booming; and public fishing piers and parks.

(2) "Water-oriented use" means a use which historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, fish processing, petroleum refining, sand and gravel processing, log storage, and house boats. For the purposes of determining rent under this chapter, water-oriented uses shall be classified as water-dependent uses if the activity either is conducted on state-owned aquatic lands leased on October 1, 1984, or was actually conducted on the state-owned aquatic lands for at least three years before October 1, 1984. If, after October 1, 1984, the activity is changed to a use other than a water-dependent use, the activity shall be classified as a nonwater-dependent use. If continuation of the existing use requires leasing additional state-owned aquatic lands and is

permitted under the shoreline management act of 1971, chapter 90.58 RCW, the department may allow reasonable expansion of the water-oriented use.

(3) "Nonwater-dependent use" means a use which can operate in a location other than on the waterfront. Examples include, but are not limited to, hotels, condominiums, apartments, restaurants, retail stores, and warehouses not part of a marine terminal or transfer facility.

(4) "Log storage" means the water storage of logs in rafts or otherwise prepared for shipment in water-borne commerce, but does not include the temporary holding of logs to be taken directly into a vessel or processing facility.

(5) "Log booming" means placing logs into and taking them out of the water, assembling and disassembling log rafts before or after their movement in water-borne commerce, related handling and sorting activities taking place in the water, and the temporary holding of logs to be taken directly into a processing facility. "Log booming" does not include the temporary holding of logs to be taken directly into a vessel.

(6) "Department" means the department of natural resources.

(7) "Port district" means a port district created under Title 53 RCW.

(8) The "real rate of return" means the average for the most recent ten calendar years of the average rate of return on conventional real property mortgages as reported by the federal home loan bank board or any successor agency, minus the average inflation rate for the most recent ten calendar years.

(9) The "inflation rate" for a given year is the percentage rate of change in the previous calendar year's all commodity producer price index of the bureau of labor statistics of the United States department of commerce. If the index ceases to be published, the department shall designate by rule a comparable substitute index.

(10) "Public utility lines" means pipes, conduits, and similar facilities for distribution of water, electricity, natural gas, telephone, other electronic communication, and sewers, including sewer outfall lines.

(11) "Terminal" means a point of interchange between land and water carriers, such as a pier, wharf, or group of such, equipped with facilities for care and handling of cargo and/or passengers.

(12) "State-owned aquatic lands" means those aquatic lands and waterways administered by the department of natural resources or managed under RCW 79.90.475 by a port district. "State-owned aquatic lands" does not include aquatic lands owned in fee by, or withdrawn for the use of, state agencies other than the department of natural resources.

[1984 c 221 § 4.]

RCW 79.90.470
Aquatic lands -- Use for public utility lines -- Recovery of costs -- Use for public parks or public recreation purposes -- Lease of tidelands in front of public parks -- Use granted by easement -- Recovery of commodity costs.

(1) The use of state-owned aquatic lands for public utility lines owned by a governmental entity shall be granted by an agreement, permit, or other instrument if the use is consistent with the purposes of RCW 79.90.450 through 79.90.460 and does not obstruct navigation or other public uses. The department may recover only its reasonable direct administrative costs incurred in processing and approving the request or application, and reviewing plans for construction of public utility lines. For purposes of this section, "direct administrative costs" means the cost of hours worked directly on an application or request, based on salaries and benefits, plus travel reimbursement and other actual out-of-pocket costs. Direct administrative costs recovered by the department must be deposited into the resource management cost account. Use for public parks or public recreation purposes shall be granted without charge if the aquatic lands and improvements are available to the general public on a first-come, first-served basis and are not managed to produce a profit for the operator or a concessionaire. The department may lease state-owned tidelands that are in front of state parks only with the approval of the state parks and recreation commission. The department may lease bedlands in front of state parks only after

the department has consulted with the state parks and recreation commission.

(2) The use of state-owned aquatic lands for local public utility lines owned by a nongovernmental entity will be granted by easement if the use is consistent with the purpose of RCW 79.90.450 through 79.90.460 and does not obstruct navigation or other public uses. The total charge for the easement will be determined under RCW 79.90.575.

(3) Nothing in this section limits the ability of the department to obtain payment for commodity costs, such as lost revenue from renewable resources, resulting from the granted use of state-owned aquatic lands for public utility lines.

[2002 c 152 § 2; 1984 c 221 § 5.]

NOTES:

Findings -- Severability -- 2002 c 152: See notes following RCW 79.90.575.

RCW 79.90.475
Management of certain aquatic lands by port district -- Agreement -- Rent -- Model management agreement.

Upon request of a port district, the department and port district may enter into an agreement authorizing the port district to manage state-owned aquatic lands abutting or used in conjunction with and contiguous to uplands owned, leased, or otherwise managed by a port district, for port purposes as provided in Title 53 RCW. Such agreement shall include, but not be limited to, provisions defining the specific area to be managed, the term, conditions of occupancy, reservations, periodic review, and other conditions to ensure consistency with the state Constitution and the policies of this chapter. If a port district acquires operating management, lease, or ownership of real property which abuts state-owned aquatic lands currently under lease from the state to a person other than the port district, the port district shall manage such aquatic lands if: (1) The port district acquires the leasehold interest in accordance with state law, or (2) the current lessee and the department agree to termination of the current lease to accommodate management by the port. The administration of aquatic lands covered by a management agreement shall be consistent with the aquatic land policies of chapters 79.90 through 79.96 RCW and the implementing regulations adopted by the department. The administrative procedures for management of the lands shall be those of Title 53 RCW.

No rent shall be due the state for the use of state-owned aquatic lands managed under this section for water-dependent or water-oriented uses. If a port district manages state-owned aquatic lands under this section and either leases or otherwise permits any person to use such lands, the rental fee attributable to such aquatic land only shall be comparable to the rent charged lessees for the same or similar uses by the department: PROVIDED, That a port district need not itemize for the lessee any charges for state-owned aquatic lands improved by the port district for use by carriers by water. If a port leases state-owned aquatic lands to any person for nonwater-dependent use, eighty-five percent of the revenue attributable to the rent of the state-owned aquatic land only shall be paid to the state.

Upon application for a management agreement, and so long as the application is pending and being diligently pursued, no rent shall be due the department for the lease by the port district of state-owned aquatic lands included within the application for water-dependent or water-oriented uses.

The department and representatives of the port industry shall develop a proposed model management agreement which shall be used as the basis for negotiating the management agreements required by this section. The model management agreement shall be reviewed and approved by the board of natural resources.

[1984 c 221 § 6.]

RCW 79.90.480
Determination of annual rent rates for lease of aquatic lands for water-dependent uses -- Marina leases.

Except as otherwise provided by this chapter, annual rent rates for the lease of state-owned aquatic lands for water-dependent uses shall be determined as follows:

(1)(a) The assessed land value, exclusive of improvements, as determined by the county assessor, of the upland tax parcel used in conjunction with the leased area or, if there are no such uplands, of the nearest upland tax parcel used for water-dependent purposes divided by the parcel area equals the upland value.

(b) The upland value times the area of leased aquatic lands times thirty percent equals the aquatic land value.

(2) As of July 1, 1989, and each July 1 thereafter, the department shall determine the real capitalization rate to be applied to water-dependent aquatic land leases commencing or being adjusted under subsection (3)(a) of this section in that fiscal year. The real capitalization rate shall be the real rate of return, except that until June 30, 1989, the real capitalization rate shall be five percent and thereafter it shall not change by more than one percentage point in any one year or be more than seven percent or less than three percent.

(3) The annual rent shall be:

(a) Determined initially, and redetermined every four years or as otherwise provided in the lease, by multiplying the aquatic land value times the real capitalization rate; and

(b) Adjusted by the inflation rate each year in which the rent is not determined under subsection (3)(a) of this section.

(4) If the upland parcel used in conjunction with the leased area is not assessed or has an assessed value inconsistent with the purposes of the lease, the nearest comparable upland parcel used for similar purposes shall be substituted and the lease payment determined in the same manner as provided in this section.

(5) For the purposes of this section, "upland tax parcel" is a tax parcel, some portion of which has upland characteristics. Filled tidelands or shorelands with upland characteristics which abut state-owned aquatic land shall be considered as uplands in determining aquatic land values.

(6) The annual rent for filled state-owned aquatic lands that have the characteristics of uplands shall be determined in accordance with RCW 79.90.500 in those cases in which the state owns the fill and has a right to charge for the fill.

(7)(a) For leases for marina uses only, as of July 1, 2004, lease rates will be a percentage of the annual gross revenues generated by that marina. It is the intent of the legislature that additional legislation be enacted prior to July 1, 2004, to establish the percentage of gross revenues that will serve as the basis for a marina's rent and a definition of gross revenues. Annual rent must be recalculated each year based upon the marina's gross revenues from the previous year, as reported to the department consistent with this subsection (7).

(b) By December 31, 2003, the department will develop a recommended formula for calculating marina rents consistent with this subsection (7) and report the recommendation to the legislature. The formula recommended by the department must include a percentage or a range of percentages of gross revenues, a system for implementing such percentages, and the designation of revenue sources to be considered for rent calculation purposes. The department must also ensure, given the available information, that the rent formula recommended by the department is initially calculated to maintain state proceeds from marina rents as of July 1, 2003, and that if the department does not receive income reporting forms representing at least ninety percent of the projected annual marina revenue and at least seventy-five percent of all marinas, the current model for calculating marina rents, as described in subsections (1) through (6) of this section, will continue to be the method used to calculate marina rents, and the income method, as described in (a) of this subsection, will not be applied. In addition to the percent of marina income, the department shall determine its direct administrative costs (cost of hours worked directly on applications and leases, based on salaries and benefits, plus travel reimbursement and other actual out-of-pocket costs) to calculate, audit, execute, and monitor marina leases, and shall recover these costs from lessees. All administrative costs recovered by the department must be deposited into the resource management cost account created in RCW 79.64.020. Prior to making recommendations to the legislature, a work session consisting of the department, marina owners, and stakeholders must be convened to discuss the rate-setting criteria. The legislature directs the department to deliver recommendations to the legislature by December 2003, including any minority reports

by the participating parties.

(c) When developing its recommendation for a marina lease formula consistent with this subsection (7), the department shall ensure that the percentage of revenue established is applied to the income of the direct lessee, as well as to the income of any person or entity that subleases, or contracts to operate the marina, with the direct lessee, less the amount paid by the sublease to the direct lessee.

(d) All marina operators under lease with the department must return to the department an income reporting form, provided by the department, and certified by a licensed certified public accountant, before July 1, 2003, and again annually on a date set by the department. On the income reporting form, the department may require a marina to disclose to the department any information about income from all marina-related sources, excluding restaurants and bars. All income reports submitted to the department are subject to either audit or verification, or both, by the department, and the department may inspect all of the lessee's books, records, and documents, including state and federal income tax returns relating to the operation of the marina and leased aquatic lands at all reasonable times. If the lessee fails to submit the required income reporting form once the new method for calculating marina rents is effective, the department may conduct an audit at the lessee's expense or cancel the lease.

(e) Initially, the marina rent formula developed by the department pursuant to (b) of this subsection will be applied to each marina on its anniversary date, beginning on July 1, 2004, and will be based on that marina's 2003 income information. Thereafter, rents will be recalculated each year, based on the marina's gross revenue from the previous year.

(f) No marina lease may be for less than five hundred dollars plus direct administrative costs.

(8) For all new leases for other water-dependent uses, issued after December 31, 1997, the initial annual water-dependent rent shall be determined by the methods in subsections (1) through (6) of this section.

[2003 c 310 § 1; 1998 c 185 § 2; 1984 c 221 § 7.]

NOTES:

Effective date -- 2003 c 310: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2003]." [2003 c 310 § 2.]

Findings -- Report -- 1998 c 185: "(1) The legislature finds that the current method for determining water-dependent rental rates for aquatic land leases may not be achieving the management goals in RCW 79.90.455. The current method for setting rental rates, as well as alternatives to the current methods, should be evaluated in light of achieving management goals for aquatic lands leases. The legislature further finds that there should be no further increases in water-dependent rental rates for marina leases before the completion of this evaluation.

(2) The department of natural resources shall study and prepare a report to the legislature on alternatives to the current method for determination of water-dependent rent set forth in RCW 79.90.480. The report shall be prepared with the assistance of appropriate outside economic expertise and stakeholder involvement. Affected stakeholders shall participate with the department by providing information necessary to complete this study. For each alternative, the report shall:

(a) Describe each method and the costs and benefits of each;

(b) Compare each with the current method of calculating rents;

(c) Provide the private industry perspective;

(d) Describe the public perspective;

(e) Analyze the impact on state lease revenue;

(f) Evaluate the impacts of water-dependent rates on economic development in economically distressed counties; and

(g) Evaluate the ease of administration.

(3) The report shall be presented to the legislature by November 1, 1998, with the

recommendations of the department clearly identified. The department's recommendations shall include draft legislation as necessary for implementation of its recommendations." [1998 c 185 § 1.]

RCW 79.90.485
Log storage rents.

(1) Until June 30, 1989, the log storage rents per acre shall be the average rents the log storage leases in effect on July 1, 1984, would have had under the formula for water-dependent leases as set out in RCW 79.90.480, except that the aquatic land values shall be thirty percent of the assessed value of the abutting upland parcels exclusive of improvements, if they are assessed. If the abutting upland parcel is not assessed, the nearest assessed upland parcel shall be used.

(2) On July 1, 1989, and every four years thereafter, the base log storage rents established under subsection (1) of this section shall be adjusted in proportion to the change in average water-dependent lease rates per acre since the date the log storage rates were last established under this section.

(3) The annual rent shall be adjusted by the inflation rate each year in which the rent is not determined under subsection (1) or (2) of this section.

(4) If the lease provides for seasonal use so that portions of the leased area are available for public use without charge part of the year, the annual rent may be discounted to reflect such public use in accordance with rules adopted by the board of natural resources.

[1984 c 221 § 8.]

RCW 79.90.490
Rent for leases in effect October 1, 1984.

For leases in effect on October 1, 1984, the rent shall remain at the annual rate in effect on September 30, 1984, until the next lease anniversary date, at which time rent established under RCW 79.90.480 or 79.90.485 shall become effective. If the first rent amount established is an increase of more than one hundred dollars and is more than thirty-three percent above the rent in effect on September 30, 1984, the annual rent shall not increase in any year by more than thirty-three percent of the difference between the previous rent and the rent established under RCW 79.90.480 or 79.90.485. If the first rent amount established under RCW 79.90.480 or 79.90.485 is more than thirty-three percent below the rent in effect on September 30, 1984, the annual rent shall not decrease in any year by more than thirty-three percent of the difference between the previous rent and the rent established under RCW 79.90.480 or 79.90.485. Thereafter, notwithstanding any other provision of this title, the annual rental established under RCW 79.90.480 or 79.90.485 shall not increase more than fifty percent in any year.

This section applies only to leases of state-owned aquatic lands subject to RCW 79.90.480 or 79.90.485.

[1984 c 221 § 9.]

RCW 79.90.495
Rents and fees for aquatic lands used for aquaculture production and harvesting.

If state-owned aquatic lands are used for aquaculture production or harvesting, rents and fees shall be established through competitive bidding or negotiation.

[1984 c 221 § 10.]

RCW 79.90.500
Aquatic lands -- Rents for nonwater-dependent uses -- Rents and fees for the recovery of mineral or geothermal resources.

Leases for nonwater-dependent uses of state-owned aquatic lands shall be charged the fair market rental value of the leased lands, determined in accordance with appraisal techniques specified by rule. However, rents for nonwater-dependent uses shall always be more than the amount that would be charged as rent for a water-dependent use of the same parcel. Rents and fees for the mining or other recovery of mineral or geothermal resources shall be established through competitive bidding, negotiations, or as otherwise provided by statute.

[1984 c 221 § 11.]

RCW 79.90.505
Aquatic lands -- Rents for multiple uses.

If water-dependent and nonwater-dependent uses occupy separate portions of the same leased parcel of state-owned aquatic land, the rental rate for each use shall be that established for such use by this chapter, prorated in accordance with the proportion of the whole parcel that each use occupies. If water-dependent and nonwater-dependent uses occupy the same portion of a leased parcel of state-owned aquatic land, the rental rate for such parcel shall be subject to negotiation with the department taking into account the proportion of the improvements each use occupies.

[1984 c 221 § 12.]

RCW 79.90.510
Aquatic lands -- Lease for water-dependent use -- Rental for nonwater-dependent use.

If a parcel leased for water-dependent uses is used for an extended period of time, as defined by rule of the department, for a nonwater-dependent use, the rental for the nonwater-dependent use shall be negotiated with the department.

[1984 c 221 § 13.]

RCW 79.90.515
Aquatic lands -- Rent for improvements.

Except as agreed between the department and the lessee prior to construction of the improvements, rent shall not be charged under any lease of state-owned aquatic lands for improvements, including fills, authorized by the department or installed by the lessee or its predecessor before June 1, 1971, so long as the lands remain under a lease or succession of leases without a period of three years in which no lease is in effect or a bona fide application for a lease is pending.

If improvements were installed under a good faith belief that a state aquatic lands lease was not necessary, rent shall not be charged for the improvements if, within ninety days after specific written notification by the department that a lease is required, the owner either applies for a lease or files suit to determine if a lease is required.

[1984 c 221 § 14.]

RCW 79.90.520
Aquatic lands -- Administrative review of proposed rent.

The manager shall, by rule, provide for an administrative review of any aquatic land rent proposed to be charged. The rules shall require that the lessee or applicant for release file a request for review within thirty days after the manager has notified the lessee or applicant of the rent due. For leases issued by the department, the final authority for the review rests with the board of natural resources. For leases managed under RCW 79.90.475, the final authority for the review rests with the appropriate port commission. If the request for review is made within thirty days after the manager's final determination as to the rental, the lessee may pay rent at the preceding year's rate pending completion of the review, and shall pay any additional rent or be entitled to a refund, with interest thirty days after announcement of the decision. The interest rate shall be fixed, from time to time, by rule adopted by the board of natural resources and shall not be less than six percent per annum. Nothing in this section abrogates the right of an aggrieved party to pursue legal remedies. For purposes of this section, "manager" is the department except where state-owned aquatic lands are managed by a port district, in which case "manager" is the port district.

[1991 c 64 § 1; 1984 c 221 § 15.]

RCW 79.90.525
Aquatic lands -- Security for leases for more than one year.

For any lease for a term of more than one year, the department may require that the rent be secured by insurance, bond, or other security satisfactory to the department in an amount not exceeding two years' rent. The department may require additional security for other lease

provisions. The department shall not require cash deposits exceeding one-twelfth of the annual rental.

[1984 c 221 § 16.]

RCW 79.90.530
Aquatic lands -- Payment of rent.

If the annual rent charged for the use of a parcel of state-owned aquatic lands exceeds four thousand dollars, the lessee may pay on a prorated quarterly basis. If the annual rent exceeds twelve thousand dollars, the lessee may pay on a prorated monthly basis.

[1984 c 221 § 17.]

RCW 79.90.535
Aquatic lands -- Interest rate.

The interest rate and all interest rate guidelines shall be fixed, from time to time, by rule adopted by the board of natural resources and shall not be less than six percent per annum.

[1991 c 64 § 2; 1984 c 221 § 18.]

RCW 79.90.540
Adoption of rules.

The department shall adopt such rules as are necessary to carry out the purposes of RCW 79.90.450 through 79.90.535, specifically including criteria for determining under RCW 79.90.480(4) when an abutting upland parcel has been inappropriately assessed and for determining the nearest comparable upland parcel used for water-dependent uses.

[1984 c 221 § 19.]

RCW 79.90.545
Application to existing property rights -- Application of Shoreline Management Act.

Nothing in this chapter or RCW 79.93.040 or 79.93.060 shall modify or affect any existing legal rights involving the boundaries of, title to, or vested property rights in aquatic lands or waterways. Nothing in this chapter shall modify, alter, or otherwise affect the applicability of chapter 90.58 RCW.

[1984 c 221 § 20.]

RCW 79.90.550
Aquatic land disposal sites -- Legislative findings.

The legislature finds that the department of natural resources provides, manages, and monitors aquatic land disposal sites on state-owned aquatic lands for materials dredged from rivers, harbors, and shipping lanes. These disposal sites are approved through a cooperative planning process by the departments of natural resources and ecology, the United States corps of engineers, and the United States environmental protection agency in cooperation with the *Puget Sound water quality authority. These disposal sites are essential to the commerce and well being of the citizens of the state of Washington. Management and environmental monitoring of these sites are necessary to protect environmental quality and to assure appropriate use of state-owned aquatic lands. The creation of an aquatic land dredged material disposal site account is a reasonable means to enable and facilitate proper management and environmental monitoring of these disposal sites.

[1987 c 259 § 1.]

NOTES:

***Reviser's note:** The Puget Sound water quality authority and its powers and duties, pursuant to the Sunset Act, chapter 43.131 RCW, were terminated June 30, 1995, and repealed June 30, 1996. See 1990 c 115 §§ 11 and 12. Powers, duties, and functions of the Puget Sound water quality authority pertaining to cleanup and protection of Puget Sound transferred to the Puget Sound action team by 1996 c 138 § 11. See RCW 90.71.903.

Effective date -- 1987 c 259: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public

institutions, and shall take effect on July 1, 1987." [1987 c 259 § 5.]

RCW 79.90.555
Aquatic land dredged material disposal site account.

The aquatic land dredged material disposal site account is hereby established in the state treasury. The account shall consist of funds appropriated to the account; funds transferred or paid to the account pursuant to settlements; court or administrative agency orders or judgments; gifts and grants to the account; and all funds received by the department of natural resources from users of aquatic land dredged material disposal sites. After appropriation, moneys in the fund may be spent only for the management and environmental monitoring of aquatic land dredged material disposal sites. The account is subject to the allotment procedure provided under chapter 43.88 RCW.

[1991 sp.s. c 13 § 63; 1987 c 259 § 2.]

NOTES:

Effective dates -- Severability -- 1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date -- 1987 c 259: See note following RCW 79.90.550.

RCW 79.90.560
Fees for use of aquatic land dredged material disposal sites authorized.

The department of natural resources shall, from time to time, estimate the costs of site management and environmental monitoring at aquatic land dredged material disposal sites and may, by rule, establish fees for use of such sites in amounts no greater than necessary to cover the estimated costs. All such revenues shall be placed in the aquatic land dredged material disposal site account under RCW 79.90.555.

[1987 c 259 § 3.]

NOTES:

Effective date -- 1987 c 259: See note following RCW 79.90.550.

RCW 79.90.565
Archaeological activities on state-owned aquatic lands -- Agreements, leases, or other conveyances.

After consultation with the director of community, trade, and economic development, the department of natural resources may enter into agreements, leases, or other conveyances for archaeological activities on state-owned aquatic lands. Such agreements, leases, or other conveyances may contain such conditions as are required for the department of natural resources to comply with its legal rights and duties. All such agreements, leases, or other conveyances, shall be issued in accordance with the terms of chapters 79.90 through 79.96 RCW.

[1995 c 399 § 210; 1988 c 124 § 9.]

NOTES:

Severability -- Intent -- Application -- 1988 c 124: See RCW 27.53.901 and notes following RCW 27.53.030.

RCW 79.90.570
Bush act/Callow act lands.

(1) A person in possession of real property conveyed by the state of Washington pursuant to the authority of chapter 24, Laws of 1895 (Bush act) or chapter 25, Laws of 1895 (Callow act), wherein such lands are subject to a possibility of reversion, shall heretofore have and are granted the further right to use all of the property for the purpose of cultivating and propagating clams and any shellfish.

(2) The rights granted under subsection (1) of this section do not include the right to use subtidal portions of Bush act and Callow act lands for the harvest and cultivation of any species of shellfish that had not commenced prior to December 31, 2001.

(3) For the purposes of this section, harvest and cultivation of any species of shellfish shall not be deemed to have commenced unless the

subtidal portions of the land had been planted with that species of shellfish prior to December 31, 2001.

(4) No vested rights in shellfish cultivation may be impaired by any of the provisions of chapter 123, Laws of 2002, nor is anything other than what is stated in subsection (2) of this section intended to grant any further rights in the subtidal lands than what was originally included under the intent of the Bush and Callow acts.

[2002 c 123 § 2.]

NOTES:

Findings -- 2002 c 123: "The legislature declares that shellfish farming provides a consistent source of quality food, offers opportunities of new jobs, increases farm income stability, and improves balance of trade. The legislature also finds that many areas of the state of Washington are scientifically and biologically suitable for shellfish farming, and therefore the legislature has encouraged and promoted shellfish farming activities, programs, and development with the same status as other agricultural activities, programs, and development within the state. It being the policy of this state to encourage the development and expansion of shellfish farming within the state and to promote the development of a diverse shellfish farming industry, the legislature finds that the uncertainty surrounding reversionary clauses contained in Bush act and Callow act deeds is interfering with this policy. The legislature finds that uncertainty of the grant of rights for the claim and other shellfish culture as contained in chapter 166, Laws of 1919 must be fully and finally resolved. It is not the intent of this act to impair any vested rights in shellfish cultivation or current shellfish aquaculture activities to which holders of Bush act and Callow act lands are entitled." [2002 c 123 § 1.]

RCW 79.90.575
Charge for term of easement -- Recovery of costs.

(1) Until July 1, 2008, the charge for the term of an easement granted under RCW 79.90.470(2) will be determined as follows and will be paid in advance upon grant of the easement:

(a) Five thousand dollars for individual easement crossings that are no longer than one mile in length;

(b) Twelve thousand five hundred dollars for individual easement crossings that are more than one mile but less than five miles in length; or

(c) Twenty thousand dollars for individual easement crossings that are five miles or more in length.

(2) The charge for easements under subsection (1) of this section must be adjusted annually by the rate of yearly increase in the most recently published consumer price index, all urban consumers, for the Seattle-Everett SMSA, over the consumer price index for the preceding year, as compiled by the bureau of labor statistics, United States department of labor for the state of Washington rounded up to the nearest fifty dollars.

(3) The term of the easement is thirty years.

(4) In addition to the charge for the easement under subsection (1) of this section, the department may recover its reasonable direct administrative costs incurred in receiving an application for the easement, approving the easement, and reviewing plans for and construction of the public utility lines. For the purposes of this subsection, "direct administrative costs" means the cost of hours worked directly on an application, based on salaries and benefits, plus travel reimbursement and other actual out-of-pocket costs. Direct administrative costs recovered by the department must be deposited into the resource management cost account.

(5) Applicants under RCW 79.90.470(2) providing a residence with an individual service connection for electrical, natural gas, cable television, or telecommunications service are not required to pay the charge for the easement under subsection (1) of this section but shall pay administrative costs under subsection (4) of this section.

(6) A final decision on applications for an easement must be made within one hundred twenty days after the department receives the completed application and after all applicable regulatory permits for the aquatic easement have been acquired. This subsection applies to

applications submitted before June 13, 2002, as well as to applications submitted on or after June 13, 2002. Upon request of the applicant, the department may reach a decision on an application within sixty days and charge an additional fee for an expedited processing. The fee for an expedited processing is the greater of: (a) Ten percent of the combined total of the easement charge and direct administrative costs; or (b) the cost of staff overtime, calculated at time and one-half, associated with the expedited processing.

[2002 c 152 § 3.]

NOTES:

Findings -- 2002 c 152: "The legislature finds that local public utilities provide essential services to all of the residents of the state and that the construction and improvement of local utility infrastructure is critical to the public health, safety, and welfare, community and economic development, and installation of modern and reliable communication and energy technology. The legislature further finds that local utility lines must cross state-owned aquatic lands in order to reach all state residents and that, for the benefit of such residents, the state should permit the crossings, consistent with all applicable state environmental laws, in a nondiscriminatory, economic, and timely manner. The legislature further finds that this act and the valuation methodology in section 3 of this act applies only to the uses listed in section 2 of this act, and does not establish a precedent for valuation for any other uses on state-owned aquatic lands." [2002 c 152 § 1.]

Severability -- 2002 c 152: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 152 § 4.]

RCW 79.90.580
Gifts of aquatic land -- Procedures and criteria.

(1) The department is authorized to accept gifts of aquatic land within the state, including tidelands, shorelands, harbor areas, and the beds of navigable waters, which shall become part of the state-owned aquatic land base. Consistent with RCW 79.90.455, the department must develop procedures and criteria that state the manner in which gifts of aquatic land, received after July 27, 2003, may occur. No gift of aquatic land may be accepted until: (a) An appraisal of the value of the land has been prepared; (b) an environmental site assessment has been conducted; and (c) the title property report has been examined and approved by the attorney general of the state. The results of the appraisal, the site assessment, and the examination of the title property report must be submitted to the board of natural resources before the department may accept a gift of aquatic land.

(2) The authorization to accept gifts of aquatic land within the state extends to aquatic land accepted as gifts prior to July 27, 2003.

[2003 c 176 § 1.]

RCW 79.90.900
Savings -- Captions -- Severability -- Effective dates -- 1982 1st ex.s. c 21.

See RCW 79.96.901 through 79.96.905.

RCW 79.90.901
Severability -- 1984 c 221.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1984 c 221 § 31.]

RCW 79.90.902
Effective date -- 1984 c 221.

This act shall take effect on October 1, 1984.

[1984 c 221 § 32.]

Chapter 79.91 RCW Aquatic Lands -- Easements And Rights Of Way

RCW SECTIONS

79.91.010 Certain aquatic lands subject to easements for removal of valuable materials.

79.91.020 Certain aquatic lands subject to easements for removal of valuable materials -- Private easements subject to common use in removal of valuable materials.

79.91.030 Certain state and aquatic lands subject to easements for removal of valuable materials -- Reasonable facilities and service for transporting must be furnished.

79.91.040 Certain state and aquatic lands subject to easements for removal of valuable materials -- Duty of utilities and transportation commission.

79.91.050 Certain state and aquatic lands subject to easements for removal of valuable materials -- Penalty for violation of orders.

79.91.060 Certain state and aquatic lands subject to easements for removal of valuable materials -- Application for right of way.

79.91.070 Certain state and aquatic lands subject to easements for removal of valuable materials -- Forfeiture for nonuser.

79.91.080 United States of America, state agency, county, or city right of way for roads and streets over, and wharves over and upon aquatic lands.

79.91.090 Railroad bridge rights of way across navigable streams.

79.91.100 Public bridges or trestles across waterways and aquatic lands.

79.91.110 Common carriers may bridge or trestle state waterways.

79.91.120 Location and plans of bridge or trestle to be approved -- Future alterations.

79.91.130 Right of way for utility pipelines, transmission lines, etc.

79.91.140 Right of way for utility pipelines, transmission lines, etc. -- Procedure to acquire.

79.91.150 Right of way for utility pipelines, transmission lines, etc. -- Appraisal -- Certificate -- Reversion for nonuser.

79.91.160 Right of way for irrigation, diking, and drainage purposes.

79.91.170 Right of way for irrigation, diking, and drainage purposes -- Procedure to acquire.

79.91.180 Right of way for irrigation, diking, and drainage purposes -- Appraisal -- Certificate.

79.91.190 Grant of overflow rights.

79.91.200 Construction of RCW 79.91.010 through 79.91.190 relating to rights of way and overflow rights.

79.91.210 Grant of such easements and rights of way as applicant may acquire in private lands by eminent domain.

79.91.900 Savings -- Captions -- Severability -- Effective dates -- 1982 1st ex.s. c 21.

RCW 79.91.010
Certain aquatic lands subject to easements for removal of valuable materials.

All tide and shore lands originally belonging to the state, and which were granted, sold, or leased at any time after June 15, 1911, and which contain any valuable materials or are contiguous to or in proximity of state lands or other tide or shore lands which contain any valuable materials, shall be subject to the right of the state or any grantee or lessee thereof who has acquired such other lands, or any valuable materials thereon, after June 15, 1911, to acquire the right of way over such lands so granted, sold, or leased, for private railroads, skid roads, flumes, canals, watercourses, or other easements for the purpose of, and to be used in, transporting and moving such valuable materials from such other lands, over and across the lands so granted or leased in accordance with the provisions of RCW 79.36.370.

[2003 c 334 § 607; 1982 1st ex.s. c 21 § 48.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

RCW 79.91.020
Certain aquatic lands subject to easements for removal of valuable materials -- Private easements subject to common use in removal of valuable materials.

Every right of way for a private railroad, skid road, canal, flume, or watercourse, or other easement, over and across any tide or shore lands belonging to the state, for the purpose of, and to be used in, transporting and moving valuable materials of the land, granted after June 15, 1911, shall be subject to joint and common use in accordance with the provisions of *RCW 79.01.316.

[1982 1st ex.s. c 21 § 49.]

NOTES:

***Reviser's note:** RCW 79.01.316 was recodified as RCW 79.36.380 pursuant to 2003 c 334 § 563.

RCW 79.91.030
Certain state and aquatic lands subject to easements for removal of valuable materials -- Reasonable facilities and service for transporting must be furnished.

Any person having acquired a right of way or easement as provided in RCW 79.91.010 and 79.91.020 over any tidelands or shorelands belonging to the state or over or across beds of any navigable water or stream for the purpose of transporting or moving valuable materials and being engaged in such business, or any grantee or lessee thereof acquiring after June 15, 1911, state lands or tide or shore lands containing valuable materials, where said land is contiguous to or in proximity of such right of way or easement, shall accord to the state or any person acquiring after June 15, 1911, valuable materials upon any such lands, proper and reasonable facilities and service for transporting and moving such valuable materials under reasonable rules and upon payment of just and reasonable charges thereof in accordance with the provisions of RCW 79.36.390.

[2003 c 334 § 608; 1982 1st ex.s. c 21 § 50.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

RCW 79.91.040
Certain state and aquatic lands subject to easements for removal of valuable materials -- Duty of utilities and transportation commission.

Should the owner or operator of any private railroad, skid road, flume, canal, watercourse, or other right of way or easement provided for in RCW 79.91.020 and 79.91.030 fail to agree with the state or any grantee or lessee thereof, as to the reasonable and proper rules and charges, concerning the transportation and movement of valuable materials from those lands contiguous to or in proximity to the lands over which such private right of way or easement is operated, the state or any grantee or lessee thereof, owning and desiring to have such valuable materials transported or moved, may apply to the Washington state utilities and transportation commission for an inquiry into the reasonableness of the rules, investigate the same, and make such binding reasonable, proper, and just rates and regulations in accordance with the provisions of RCW 79.36.400.

[2003 c 334 § 609; 1982 1st ex.s. c 21 § 51.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

RCW 79.91.050
Certain state and aquatic lands subject to easements for removal of valuable materials -- Penalty for violation of orders.

Any person owning or operating any right of way or easement subject to the provisions of RCW 79.91.020 through 79.91.040, over and across any tidelands or shorelands belonging to

the state or across any beds of navigable waters, and violating or failing to comply with any rule or order made by the utilities and transportation commission, after inquiry, investigation, and a hearing as provided in RCW 79.91.040, shall be subject to the same penalties provided in RCW 79.36.410.

[2003 c 334 § 610; 1982 1st ex.s. c 21 § 52.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

RCW 79.91.060
Certain state and aquatic lands subject to easements for removal of valuable materials -- Application for right of way.

Any person engaged in the business of logging or lumbering, quarrying, mining, or removing sand, gravel, or other valuable materials from land, and desirous of obtaining a right of way or easement provided for in RCW 79.91.010 through 79.91.030 over and across any tide or shore lands belonging to the state, or beds of navigable waters or any such lands sold or leased by the state since June 15, 1911, shall file with the department upon a form to be furnished for that purpose, a written application for such right of way in accordance with the provisions of RCW 79.36.350.

[2003 c 334 § 611; 1982 1st ex.s. c 21 § 53.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

RCW 79.91.070
Certain state and aquatic lands subject to easements for removal of valuable materials -- Forfeiture for nonuser.

Any such right of way or easement granted under the provisions of RCW 79.91.010 through 79.91.030 which has never been used, or for a period of two years has ceased to be used for the purpose for which it was granted, shall be deemed forfeited. The forfeiture of any such right of way heretofore granted or granted under the provisions of RCW 79.91.010 through 79.91.030, shall be rendered effective by the mailing of a notice of such forfeiture to the grantee thereof at his last known post office address and by posting a copy of such certificate, or other record of the grant, in the office of the commissioner of public lands with the word "canceled" and the date of such cancellation.

[1982 1st ex.s. c 21 § 54.]

RCW 79.91.080
United States of America, state agency, county, or city right of way for roads and streets over, and wharves over and upon aquatic lands.

Any county or city or the United States of America or any state agency desiring to locate, establish, and construct a road or street over and across any aquatic lands, or wharf over any tide or shore lands, belonging to the state, shall by resolution of the legislative body of such county, or city council or other governing body of such city, or proper agency of the United States of America or state agency, cause to be filed with the department a petition for a right of way for such road or street or wharf in accordance with the provisions of RCW 79.36.440.

The department may grant the petition if it deems it in the best interest of the state and upon payment for such right of way and any damages to the affected aquatic lands.

[2003 c 334 § 612; 1982 1st ex.s. c 21 § 55.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

RCW 79.91.090
Railroad bridge rights of way across navigable streams.

Any railroad company heretofore or hereafter organized under the laws of the territory or state of Washington, or under any other state or territory of the United States, or under any act of the congress of the United States, and authorized

to do business in the state and to construct and operate railroads therein, shall have the right to construct bridges across the navigable streams within this state over which the line or lines of its railway shall run for the purpose of being made a part of said railway line, or for the more convenient use thereof, if said bridges are so constructed as not to interfere with, impede, or obstruct navigation on such streams: PROVIDED, That payment for any such right of way and any damages to those aquatic lands affected be first paid.

[1982 1st ex.s. c 21 § 56.]

RCW 79.91.100
Public bridges or trestles across waterways and aquatic lands.

Counties, cities, towns, and other municipalities shall have the right to construct bridges and trestles across waterways heretofore or hereafter laid out under the authority of the state of Washington, and over and across any tide or shore lands and harbor areas of the state adjacent thereto over which the projected line or lines of highway will run, if such bridges or trestles are constructed in good faith for the purpose of being made a part of the constructed line of such a highway, upon payment for any such right of way and upon payment for any damages to those aquatic lands affected.

[1982 1st ex.s. c 21 § 57.]

RCW 79.91.110
Common carriers may bridge or trestle state waterways.

Any person authorized by any state or municipal law or ordinance to construct and operate railroads, interurban railroads or street railroads as common carriers within this state, shall have the right to construct bridges or trestles across waterways laid out under the authority of the state of Washington, over which the projected line or lines of railroad will run. The bridges or trestles shall be constructed in good faith for the purpose of being made a part of the constructed line of such railroad, and may also include a roadway for the accommodation of vehicles and foot passengers. Full payment for any such right of way and any damages to those aquatic lands affected by the right of way shall first be made.

[1982 1st ex.s. c 21 § 58.]

RCW 79.91.120
Location and plans of bridge or trestle to be approved -- Future alterations.

The location and plans of any bridge, draw bridge, or trestle proposed to be constructed under RCW 79.91.090 through 79.91.110 shall be submitted to and approved by the department of natural resources before construction is commenced: PROVIDED, That in case the portion of such waterway, river, stream, or watercourse, at the place to be so crossed is navigable water of the United States, or otherwise within the jurisdiction of the United States, such location and plans shall also be submitted to and approved by the United States Corps of Engineers before construction is commenced. When plans for any bridge or trestle have been approved by the department of natural resources and the United States Corps of Engineers, it shall be unlawful to deviate from such plans either before or after the completion of such structure, unless the modification of such plans has previously been submitted to, and received the approval of the department of natural resources and the United States Corps of Engineers, as the case may be. Any structure hereby authorized and approved as indicated in this section shall remain within the jurisdiction of the respective officer or officers approving the same, and shall be altered or changed from time to time at the expense of the municipality owning the highway, or at the expense of the common carriers, at the time owning the railway or road using such structure, to meet the necessities of navigation and commerce in such manner as may be from time to time ordered by the respective officer or officers at such time having jurisdiction of the same, and such orders may be enforced by appropriate action at law or in equity at the suit of the state.

[1982 1st ex.s. c 21 § 59.]

RCW 79.91.130
Right of way for utility pipelines, transmission lines, etc.

A right of way through, over and across any tidelands, shorelands, beds of navigable waters, oyster reserves belonging to the state, or the reversionary interest of the state in oyster lands may be granted to any person or the United States of America, constructing or proposing to construct, or which has heretofore constructed, any telephone line, ditch, flume, or pipeline for the domestic water supply of any municipal corporation or transmission line for the purpose of generating or transmitting electricity for light, heat or power.

[1982 1st ex.s. c 21 § 60.]

RCW 79.91.140
Right of way for utility pipelines, transmission lines, etc. -- Procedure to acquire.

In order to obtain the benefits of the grant made in RCW 79.91.130, the person or the United States of America constructing or proposing to construct, or which has heretofore constructed, such telephone line, ditch, flume, pipeline, or transmission line, shall file, with the department of natural resources, a map accompanied by the field notes of the survey and location of such telephone line, ditch, flume, pipeline, or transmission line, and shall make payment therefor as provided in RCW 79.91.150. The land within the right of way shall be limited to an amount necessary for the construction of said telephone line, ditch, flume, pipeline, or transmission line sufficient for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the same. The grant shall also include the right to cut all standing timber outside the right of way marked as danger trees located on public lands upon full payment of the appraised value thereof.

[1982 1st ex.s. c 21 § 61.]

RCW 79.91.150
Right of way for utility pipelines, transmission lines, etc. -- Appraisal -- Certificate -- Reversion for nonuser.

On the filing of the plat and field notes, as provided in RCW 79.91.140, the land applied for and any improvements included in the right of way applied for, if any, shall be appraised as in the case of an application to purchase state lands. Upon full payment of the appraised value of the aquatic land applied for, or upon payment of an annual rental when the department of natural resources deems a rental to be in the best interests of the state, and upon full payment of the appraised value of any danger trees and improvements, if any, the department shall issue to the applicant a certificate of the grant of such right of way stating the terms and conditions thereof and shall enter the same in the abstracts and records in the office of the commissioner of public lands, and thereafter any sale or lease of the lands affected by such right of way shall be subject to the easement of such right of way: PROVIDED, That should the person or the United States of America securing such right of way ever abandon the use of the same for the purposes for which it was granted, the right of way shall revert to the state, or the state's grantee.

[1982 1st ex.s. c 21 § 62.]

RCW 79.91.160
Right of way for irrigation, diking, and drainage purposes.

A right of way through, over, and across any tide or shore lands belonging to the state is hereby granted to any irrigation district, or irrigation company duly organized under the laws of this state, and to any person, or the United States of America, constructing or proposing to construct an irrigation ditch or pipeline for irrigation, or to any diking and drainage district or any diking and drainage improvement district proposing to construct a dike or drainage ditch.

[1982 1st ex.s. c 21 § 63.]

RCW 79.91.170
Right of way for irrigation, diking, and drainage purposes -- Procedure to acquire.

In order to obtain the benefits of the grant provided for in RCW 79.91.160, the irrigation district, irrigation company, person, or the United States of America, constructing or proposing to construct such irrigation ditch or pipeline for irrigation, or the diking and drainage district or diking and drainage improvement district constructing or proposing to construct

any dike or drainage ditch, shall file with the department of natural resources a map accompanied by the field notes of the survey and location of the proposed irrigation ditch, pipeline, dike, or drainage ditch, and shall pay to the state as provided in RCW 79.91.180, the amount of the appraised value of the said lands used for or included within such right of way. The land within such right of way shall be limited to an amount necessary for the construction of the irrigation ditch, pipeline, dike, or drainage ditch for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the same.

[1982 1st ex.s. c 21 § 64.]

RCW 79.91.180
Right of way for irrigation, diking, and drainage purposes -- Appraisal -- Certificate.

Upon the filing of the plat and field notes as in RCW 79.91.170, the lands included within the right of way applied for shall be appraised as in the case of an application to purchase such lands, at full market value thereof. Upon full payment of the appraised value of the lands the department of natural resources shall issue to the applicant a certificate of right of way, and enter the same in the records in the office of the commissioner of public lands and thereafter any sale or lease by the state of the lands affected by such right of way shall be subject thereto.

[1982 1st ex.s. c 21 § 65.]

RCW 79.91.190
Grant of overflow rights.

The department shall have the power and authority to grant to any person, the right, privilege, and authority to perpetually back and hold water upon or over any state-owned tidelands or shorelands, and to overflow and inundate the same, whenever the department shall deem it necessary for the purpose of erecting, constructing, maintaining, or operating any water power plant, reservoir, or works for impounding water for power purposes, irrigation, mining, or other public use in accordance with the provisions of RCW 79.36.570.

[2003 c 334 § 613; 1982 1st ex.s. c 21 § 66.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

RCW 79.91.200
Construction of RCW 79.91.010 through 79.91.190 relating to rights of way and overflow rights.

RCW 79.91.010 through 79.91.190, relating to the acquiring of rights of way and overflow rights through, over, and across aquatic lands belonging to the state, shall not be construed as exclusive or as affecting the right of municipal and public service corporations to acquire lands belonging to or under the control of the state, or rights of way or other rights thereover, by condemnation proceedings.

[1982 1st ex.s. c 21 § 67.]

RCW 79.91.210
Grant of such easements and rights of way as applicant may acquire in private lands by eminent domain.

The department may grant to any person such easements and rights in tidelands and shorelands and oyster reserves owned by the state as the applicant may acquire in privately or publicly owned lands through proceedings in eminent domain in accordance with the provisions of RCW 79.36.355.

[2003 c 334 § 614; 1982 1st ex.s. c 21 § 68.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

RCW 79.91.900
Savings -- Captions -- Severability -- Effective dates -- 1982 1st ex.s. c 21.

See RCW 79.96.901 through 79.96.905.

Chapter 79.92 RCW Aquatic Lands -- Harbor Areas

RCW SECTIONS

79.92.010 Harbor lines and areas to be established.

79.92.020 Relocation of harbor lines by the harbor line commission.

79.92.030 Relocation of harbor lines authorized by legislature.

79.92.035 Modification of harbor lines in Port Gardner Bay.

79.92.060 Terms of harbor area leases.

79.92.070 Construction or extension of docks, wharves, etc., in harbor areas -- New lease.

79.92.080 Re-leases of harbor areas.

79.92.090 Procedure to re-lease harbor areas.

79.92.100 Regulation of wharfage, dockage, and other tolls.

79.92.110 Harbor areas and tidelands within towns -- Distribution of rents to municipal authorities.

79.92.900 Savings -- Captions -- Severability -- Effective dates -- 1982 1st ex.s. c 21.

RCW 79.92.010
Harbor lines and areas to be established.

It shall be the duty of the board of natural resources acting as the harbor line commission to locate and establish harbor lines and determine harbor areas, as required by section 1 of Article XV of the state Constitution, where such harbor lines and harbor areas have not heretofore been located and established.

[1982 1st ex.s. c 21 § 69.]

RCW 79.92.020
Relocation of harbor lines by the harbor line commission.

Whenever it appears that the inner harbor line of any harbor area heretofore determined has been so established as to overlap or fall inside the government meander line, or for any other good cause, the board of natural resources acting as the harbor line commission is empowered to relocate and reestablish said inner harbor line so erroneously established, outside of the meander line. All tidelands or shorelands within said inner harbor line so reestablished and relocated, shall belong to the state and may be sold or leased as other tidelands or shorelands of the first class in accordance with the provisions of RCW 79.94.150: PROVIDED, That in all other cases, authority to relocate the inner harbor line or outer harbor line, or both, shall first be obtained from the legislature.

[1982 1st ex.s. c 21 § 70.]

RCW 79.92.030
Relocation of harbor lines authorized by legislature.

The commission on harbor lines is hereby authorized to change, relocate, or reestablish harbor lines in Guemes Channel and Fidalgo Bay in front of the city of Anacortes, Skagit county; in Grays Harbor in front of the cities of Aberdeen, Hoquiam, and Cosmopolis, Grays Harbor county; Bellingham Bay in front of the city of Bellingham and in Drayton Harbor in front of the city of Blaine, Whatcom county; in Elliott Bay, Puget Sound and Lake Union within, and in front of the city of Seattle, King county, and within one mile of the limits of such city; Port Angeles harbor in front of the city of Port Angeles, Clallam county; in Lake Washington in front of the cities of Renton and Lake Forest Park, King county; Commencement Bay in front of the city of Tacoma, Pierce county; and within one mile of the limits of such city; Budd Inlet in front of the city of Olympia, Thurston county; the Columbia river in front of the city of Kalama, Cowlitz county; Port Washington Narrows and Sinclair Inlet in front of the city of Bremerton, Kitsap county; Sinclair Inlet in front of the city of Port Orchard, Kitsap county; in Liberty Bay in front of the city of Poulsbo, Kitsap county; the Columbia river in front of the city of Vancouver, Clark county; Port Townsend Bay in front of the city of Port Townsend, Jefferson county; the Swinomish Channel in front of the city of La Conner, Skagit county; and Port Gardner Bay in

front of the city of Everett, except no harbor lines shall be established in Port Gardener Bay west of the easterly shoreline of Jetty Island as presently situated or west of a line extending S 37° 09' 38" W from the Snohomish River Light (5), and in front of the city of Edmonds, Snohomish county; in Oakland Bay in front of the city of Shelton, Mason county; and within one mile of the limits of such city; in Gig Harbor in front of the city of Gig Harbor, Pierce county; and within one mile of the limits of such city, at the entrance to the Columbia river in front of the city of Ilwaco, Pacific county; in the Columbia river in front of the city of Pasco, Franklin county; and in the Columbia river in front of the city of Kennewick, Benton county.

[2004 c 219 § 1; 1989 c 79 § 1; 1982 1st ex.s. c 21 § 71.]

RCW 79.92.035
Modification of harbor lines in Port Gardner Bay.

The harbor line commission shall modify harbor lines in Port Gardner Bay as necessary to facilitate the conveyance through exchange authorized in RCW 79.94.450.

[1987 c 271 § 5.]

NOTES:

Severability -- 1987 c 271: See note following RCW 79.95.050.

RCW 79.92.060
Terms of harbor area leases.

Applications, leases, and bonds of lessees shall be in such form as the department of natural resources shall prescribe. Every lease shall provide that the rental shall be payable to the department, and for cancellation by the department upon sixty days' written notice for any breach of the conditions thereof. Every lessee shall furnish a bond, with surety satisfactory to the department, with such penalty as the department may prescribe, but not less than five hundred dollars, conditioned upon the faithful performance of the terms of the lease and the payment of the rent when due. If the department shall at any time deem any bond insufficient, it may require the lessee to file a new and sufficient bond within thirty days after receiving notice to do so.

Applications for leases of harbor areas upon tidal waters shall be accompanied by such plans and drawings and other data concerning the proposed wharves, docks, or other structures or improvements thereof as the department shall require. Every lease of harbor areas shall provide that, wharves, docks, or other conveniences of navigation and commerce adequate for the public needs, to be specified in such lease, shall be constructed within such time as may be fixed in each case by the department. In no case shall the construction be commenced more than two years from the date of such lease and shall be completed within such reasonable time as the department shall fix, any of which times may be extended by the department either before or after their expiration, and the character of the improvements may be changed either before or after completion with the approval of the department: PROVIDED, That if in its opinion improvements existing upon such harbor area or the tidelands adjacent thereto are adequate for public needs of commerce and navigation, the department shall require the maintenance of such existing improvements and need not require further improvements.

[1982 1st ex.s. c 21 § 74.]

RCW 79.92.070
Construction or extension of docks, wharves, etc., in harbor areas -- New lease.

If the owner of any harbor area lease upon tidal waters shall desire to construct thereon any wharf, dock, or other convenience of navigation or commerce, or to extend, enlarge, or substantially improve any existing structure used in connection with such harbor area, and shall deem the required expenditure not warranted by his or her right to occupy such harbor area during the remainder of the term of his or her lease, the lease owner may make application to the department of natural resources for a new lease of such harbor area for a period not exceeding thirty years. Upon the filing of such application accompanied by such proper plans, drawings or other data, the department shall forthwith investigate the same and if it shall determine that

the proposed work or improvement is in the public interest and reasonably adequate for the public needs, it shall by order fix the terms and conditions and the rate of rental for such new lease, such rate of rental shall be a fixed percentage, during the term of such lease, on the true and fair value in money of such harbor area determined from time to time by the department. The department may propose modifications of the proposed wharf, dock, or other convenience or extensions, enlargements, or improvements thereon. The department shall, within ninety days from the filing of such application notify the applicant in writing of the terms and conditions upon which such new lease will be granted, and of the rental to be paid, and if the applicant shall within ninety days thereafter elect to accept a new lease of such harbor area upon the terms and conditions, and at the rental prescribed by the department, the department shall make a new lease for such harbor area for the term applied for and the existing lease shall thereupon be surrendered and canceled.

[2000 c 11 § 27; 1982 1st ex.s. c 21 § 75.]

RCW 79.92.080
Re-leases of harbor areas.

Upon the expiration of any harbor area lease upon tidal waters hereafter expiring, the owner thereof may apply for a re-lease of such harbor area for a period not exceeding thirty years. Such application shall be accompanied with maps showing the existing improvements upon such harbor area and the tidelands adjacent thereto and with proper plans, drawings, and other data showing any proposed extensions or improvements of existing structures. Upon the filing of such application the department of natural resources shall forthwith investigate the same and if it shall determine that the character of the wharves, docks or other conveniences of commerce and navigation are reasonably adequate for the public needs and in the public interest, it shall by order fix and determine the terms and conditions upon which such re-lease shall be granted and the rate of rental to be paid, which rate shall be a fixed percentage during the term of such lease on the true and fair value in money of such harbor area as determined from time to time by the department of natural resources.

[2000 c 11 § 28; 1982 1st ex.s. c 21 § 76.]

RCW 79.92.090
Procedure to re-lease harbor areas.

Upon completion of the valuation of any tract of harbor area applied for under RCW 79.92.080, the department of natural resources shall notify the applicant of the terms and conditions upon which the re-lease will be granted and of the rental fixed. The applicant or his successor in interest shall have the option for the period of sixty days from the date of the service of notice in which to accept a lease on the terms and conditions and at the rental so fixed and determined by the department. If the terms and conditions and rental are accepted a new lease shall be granted for the term applied for. If the terms and conditions are not accepted by the applicant within the period of time, or within such further time, not exceeding three months, as the department shall grant, the same shall be deemed rejected by the applicant, and the department shall give eight weeks' notice by publication once a week in one or more newspapers of general circulation in the county in which the harbor area is located, that a lease of the harbor area will be sold on such terms and conditions and at such rental, at a time and place specified in the notice (which shall not be more than three months from the date of the first publication of the notice) to the person offering at the public sale to pay the highest sum as a cash bonus at the time of sale of such lease. Notice of the sale shall be served upon the applicant at least six weeks prior to the date thereof. The person paying the highest sum as a cash bonus shall be entitled to lease the harbor area: PROVIDED, That if the lease is not sold at the public sale the department may at any time or times again fix the terms, conditions and rental, and again advertise the lease for sale as above provided and upon similar notice: AND PROVIDED FURTHER, That upon failure to secure any sale of the lease as above prescribed, the department may issue revocable leases without requirement of improvements for one year periods at a minimum rate of two percent.

[1985 c 469 § 61; 1982 1st ex.s. c 21 § 77.]

RCW 79.92.100

Regulation of wharfage, dockage, and other tolls.

The state of Washington shall ever retain and does hereby reserve the right to regulate the rates of wharfage, dockage, and other tolls to be imposed by the lessee or his assigns upon commerce for any of the purposes for which the leased area may be used and the right to prevent extortion and discrimination in such use thereof.

[1982 1st ex.s. c 21 § 78.]

RCW 79.92.110
Harbor areas and tidelands within towns -- Distribution of rents to municipal authorities.

(1) Where any leased harbor area or tideland is situated within the limits of a town, whether or not the harbor area or tideland lies within a port district, the rents from such leases shall be paid by the state treasurer to the municipal authorities of the town to be expended for water-related improvements.

(2) The state treasurer is hereby authorized and directed to make payments to the respective towns on the first days of July and January of each year, of all moneys payable under the terms of this section.

[1984 c 221 § 25; 1983 c 153 § 1; 1982 2nd ex.s. c 8 § 2; 1982 1st ex.s. c 21 § 79.]

NOTES:

Severability -- Effective date -- 1984 c 221: See RCW 79.90.901 and 79.90.902.

Effective date -- 1983 c 153: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983." [1983 c 153 § 2.]

Effective date -- 1982 2nd ex.s. c 8 § 2: "Section 2 of this act shall take effect July 1, 1983." [1982 2nd ex.s. c 8 § 3.]

RCW 79.92.900

Savings -- Captions -- Severability -- Effective dates -- 1982 1st ex.s. c 21.

See RCW 79.96.901 through 79.96.905.

Chapter 79.93 RCW Aquatic Lands -- Waterways And Streets

RCW SECTIONS

79.93.010 First class tide and shore lands to be platted -- Public waterways and streets.

79.93.020 Streets, waterways, etc., validated.

79.93.030 Street slopes on tide or shore lands.

79.93.040 Permits to use waterways.

79.93.050 Excavation of waterways -- Waterways open to public -- Tide gates or locks.

79.93.060 Vacation of waterways -- Extension of streets.

79.93.070 Copies of waterway permits or leases existing on October 1, 1984, to be delivered to the department -- Exception.

79.93.900 Savings -- Captions -- Severability -- Effective dates -- 1982 1st ex.s. c 21.

RCW 79.93.010
First class tide and shore lands to be platted -- Public waterways and streets.

It shall be the duty of the department of natural resources simultaneously with the establishment of harbor lines and the determination of harbor areas in front of any city or town, or as soon thereafter as practicable, to survey and plat all tide and shore lands of the first class not heretofore platted, and in platting the same to lay out streets which shall thereby be dedicated to public use, subject to the control of the cities or towns in which they are situated.

The department shall also establish one or more public waterways not less than fifty nor more than one thousand feet wide, beginning at the outer harbor line and extending inland across the tidelands belonging to the state. These waterways shall include within their boundaries, as nearly as practicable, all navigable streams running through such tidelands, and shall be located at such other places as in the judgment of the department may be necessary for the present and future convenience of commerce and navigation. All waterways shall be reserved from sale or lease and remain as public highways for watercraft until vacated as provided for in this chapter.

The department shall appraise the value of such platted tide and shore lands and enter such appraisals in its records in the office of the commissioner of public lands.

[1982 1st ex.s. c 21 § 80.]

RCW 79.93.020
Streets, waterways, etc., validated.

All alleys, streets, avenues, boulevards, waterways, and other public places and highways heretofore located and platted on the tide and shore lands of the first class, or harbor areas, as provided by law, and not heretofore vacated as provided by law, are hereby validated as public highways and dedicated to the use of the public for the purposes for which they were intended, subject however to vacation as provided for in this chapter.

[1982 1st ex.s. c 21 § 81.]

RCW 79.93.030
Street slopes on tide or shore lands.

The department of natural resources shall have power to approve plans for and authorize the construction of slopes, with rock, riprap, or other protection, upon any state owned aquatic lands incident to the improvement of any abutting or adjacent street or avenue by any city or town in this state.

[1982 1st ex.s. c 21 § 82.]

RCW 79.93.040
Permits to use waterways.

If the United States government has established pierhead lines within a waterway created under the laws of this state at any distance from the boundaries established by the state, structures may be constructed in that strip of waterway between the waterway boundary and the nearest

pierhead line only with the consent of the department of natural resources and upon such plans, terms, and conditions and for such term as determined by the department. However, no permit shall extend for a period longer than thirty years.

The department may cancel any permit upon sixty days' notice for a substantial breach by the permittee of any of the permit conditions.

If a waterway is within the territorial limits of a port district, the duties assigned by this section to the department may be exercised by the port commission of such port district as provided in RCW 79.90.475.

Nothing in this section shall confer upon, create, or recognize in any abutting owner any right or privilege in or to any strip of waterway abutting any street and between prolongations of the lines of such street, but the control of and the right to use such strip is hereby reserved to the state of Washington, except as authorized by RCW 79.90.475.

[1984 c 221 § 21; 1982 1st ex.s. c 21 § 83.]

NOTES:

Severability -- Effective date -- 1984 c 221: See RCW 79.90.901 and 79.90.902.

Application to existing property rights: RCW 79.90.545.

RCW 79.93.050
Excavation of waterways -- Waterways open to public -- Tide gates or locks.

All waterways excavated through any tide or shore lands belonging to the state of Washington by virtue of the provisions of chapter 99, Laws of 1893, so far as they run through said tide or shore lands, are hereby declared to be public waterways, free to all citizens upon equal terms, and subject to the jurisdiction of the proper authorities, as otherwise provided by law: PROVIDED, That where tide gates or locks are considered by the contracting parties excavating any waterways to be necessary to the efficiency of the same, the department of natural resources may, in its discretion, authorize such tide gates or locks to be constructed and may authorize the parties constructing the same to operate them and collect a reasonable toll from vessels passing through said tide gates or locks: PROVIDED FURTHER, That the state of Washington or the United States of America can, at any time, appropriate said tide gates or locks upon payment to the parties erecting them of the reasonable value of the same at the date of such appropriation, said reasonable value to be ascertained and determined as in other cases of condemnation of private property for public use.

[1982 1st ex.s. c 21 § 84.]

RCW 79.93.060
Vacation of waterways -- Extension of streets.

If a waterway established under the laws of this state, or any portion of the waterway, has not been excavated, or is not used for navigation, or is not required in the public interest to exist as a waterway, such waterway or portion thereof may be vacated by written order of the commissioner of public lands upon request by ordinance or resolution of the city council of the city in which such waterway is located or by resolution of the port commission of the port district in which the waterway is located. If the waterway or portion thereof which is vacated is navigable water of the United States, or otherwise within the jurisdiction of the United States, a copy of such resolution or ordinance, together with a copy of the vacation order of the commissioner of public lands shall be submitted to the United States Army Corps of Engineers for their approval, and if they approve, the waterway or portion thereof is vacated: PROVIDED, That if a port district owns property abutting the waterway and the provisions of this section are otherwise satisfied, the waterway, or the portion thereof that abuts the port district property, shall be vacated.

Upon such vacation of a waterway, the commissioner of public lands shall notify the city in which the waterway is located, and the city has the right, if otherwise permitted by RCW 79.94.150, to extend across the portions so vacated any existing streets, or to select such portions of the waterway as the city may desire for street purposes, in no case to exceed one hundred fifty feet in width for any one street. Such selection shall be made within sixty days subsequent to the receipt of notice of the vacation of the portion of the waterway.

If the city fails to make a selection within

such time, or selects only a portion of the waterway, the title of the remaining portions of the vacated waterway shall vest in the state, unless the waterway is located within the territorial limits of a port district, in which event, if otherwise permitted by RCW 79.94.150, the title shall vest in the port district. The title is subject to any railroad or street railway crossings existing at the time of such vacation.

[1984 c 221 § 22; 1982 1st ex.s. c 21 § 85.]

NOTES:

Severability -- Effective date -- 1984 c 221: See RCW 79.90.901 and 79.90.902.

Application to existing property rights: RCW 79.90.545.

RCW 79.93.070
Copies of waterway permits or leases existing on October 1, 1984, to be delivered to the department -- Exception.

Copies of waterway permits or leases in existence on October 1, 1984, shall be delivered to the department of natural resources except in those cases in which the port district enters into an agreement authorizing management of state-owned aquatic land as provided in RCW 79.90.475.

[1984 c 221 § 23.]

NOTES:

Severability -- Effective date -- 1984 c 221: See RCW 79.90.901 and 79.90.902.

RCW 79.93.900
Savings -- Captions -- Severability -- Effective dates -- 1982 1st ex.s. c 21.

See RCW 79.96.901 through 79.96.905.

Chapter 79.94 RCW Aquatic Lands -- Tidelands And Shorelands

RCW SECTIONS

79.94.010 Survey to determine area subject to sale or lease.

79.94.020 First class tidelands and shorelands to be platted.

79.94.030 Second class tidelands and shorelands may be platted.

79.94.040 Tidelands and shorelands of the first class and second class -- Plats -- Record.

79.94.050 Tidelands and shorelands of the first class and second class -- Appraisal -- Record.

79.94.060 Tidelands and shorelands of the first class and second class -- Notice of filing plat and record of appraisal -- Appeal.

79.94.070 Tidelands and shorelands of the first class -- Preference right of upland owner -- How exercised.

79.94.080 Tide and shore lands -- Sale of remaining lands.

79.94.090 Sale of tidelands other than first class.

79.94.100 Tidelands and shorelands of the first and second class -- Petition for replat -- Replatting and reappraisal -- Vacation by replat.

79.94.110 Tidelands and shorelands of the first and second class -- Dedication of replat -- All interests must join.

79.94.120 Tidelands and shorelands of the first and second class -- Vacation by replat -- Preference right of tideland or shoreland owner.

79.94.130 Tidelands and shorelands of the first and second class -- Vacation procedure cumulative.

79.94.140 Tidelands and shorelands of the first and second class -- Effect of replat.

79.94.150 First and second class tidelands and shorelands and waterways of state to be sold only to public entities -- Leasing -- Limitation.

79.94.160 Sale of state-owned tide or shore lands to municipal corporation or state agency -- Authority to execute agreements, deeds, etc.

79.94.170 Construction of RCW 79.94.150 and 79.94.170 -- Use and occupancy fee where unauthorized improvements placed on publicly owned aquatic lands.

79.94.175 Grant of lands for city park or playground purposes.

79.94.181 Exchange of lands to secure city parks and playgrounds.

79.94.185 Director of ecology to assist city parks.

79.94.210 Second class shorelands on navigable lakes -- Sale.

79.94.220 Second class shorelands -- Boundary of shorelands when water lowered -- Certain shorelands granted to city of Seattle.

79.94.230 Second class shorelands -- Platting -- Selection for slips, docks, wharves, etc.

79.94.240 Second class shorelands -- Platting of certain shorelands of Lake Washington for use as harbor area -- Effect.

79.94.250 Second class shorelands -- Platting of certain shorelands of Lake Washington for use as harbor area -- Selection for slips, docks, wharves, etc. -- Vesting of title.

79.94.260 Second class shorelands -- Sale or lease when in best public interest -- Preference right of upland owner -- Procedure upon determining sale or lease not in best public interest or where transfer made for public use -- Platting.

79.94.270 Second class tide or shore lands detached from uplands by navigable water -- Sale.

79.94.280 First class unplatted tide or shore lands -- Lease preference right to upland owners -- Lease for booming purposes.

79.94.290 Second class tide or shore lands -- Lease for booming purposes.

79.94.300 First and second class tide or shore lands -- Preference rights, time limit on exercise.

79.94.310 First and second class tide or shore lands -- Accretions -- Lease.

79.94.320 Tide or shore lands of the first or second class -- Failure to re-lease tide or shore lands -- Appraisal of improvements.

79.94.330 Location of line dividing tidelands from shorelands in tidal rivers.

79.94.390 Certain tidelands reserved for recreational use and taking of fish and shellfish.

79.94.400 Access to and from tidelands reserved for recreational use and taking of fish and shellfish.

79.94.410 Tidelands and shorelands -- Use of tide and shore lands granted to United States -- Purposes -- Limitations.

79.94.420 Tidelands and shorelands -- Use of tide and shore lands granted to United States -- Application -- Proof of upland use -- Conveyance.

79.94.430 Tidelands and shorelands -- Use of tide and shore lands granted to United States -- Easements over tide or shore lands to United States.

79.94.440 Tidelands and shorelands -- Use of tide and shore lands granted to United States -- Reversion on cessation of use.

79.94.450 United States Navy base -- Exchange of property -- Procedure.

79.94.900 Savings -- Captions -- Severability -- Effective dates -- 1982 1st ex.s. c 21.

RCW 79.94.010
Survey to determine area subject to sale or lease.

The department of natural resources may cause any tide or shore lands belonging to the state to be surveyed and platted for the purpose of ascertaining and determining the area subject to sale or lease.

[1982 1st ex.s. c 21 § 86.]

RCW 79.94.020
First class tidelands and shorelands to be platted.

It shall be the duty of the department of natural resources simultaneously with the establishment of harbor lines and the determination of harbor areas in front of any city or town or as soon thereafter as practicable to survey and plat all tidelands and shorelands of the first class not heretofore platted as provided in RCW 79.93.010.

[1982 1st ex.s. c 21 § 87.]

RCW 79.94.030
Second class tidelands and shorelands may be platted.

The department of natural resources may survey and plat any tidelands and shorelands of the second class not heretofore platted.

[1982 1st ex.s. c 21 § 88.]

RCW 79.94.040
Tidelands and shorelands of the first class and second class -- Plats -- Record.

The department of natural resources shall prepare plats showing all tidelands and shorelands of the first class and second class, surveyed, platted, and appraised by it in the respective counties, on which shall be marked the location of all such aquatic lands, with reference to the lines of the United States survey of the abutting upland, and shall prepare in well bound books a record of its proceedings, including a list of said tidelands and shorelands surveyed, platted, or replatted, and appraised by it and its appraisal of the same, which plats and books shall be in triplicate and the department shall file one copy of such plats and records in the office of the commissioner of public lands, and file one copy in the office of the county auditor of the county where the lands platted, or replatted, and appraised are situated, and file one copy in the office of the city engineer of the city

in which, or within two miles of which, the lands platted, or replatted, are situated.

[1982 1st ex.s. c 21 § 89.]

RCW 79.94.050
Tidelands and shorelands of the first class and second class -- Appraisal -- Record.

In appraising tidelands or shorelands of the first class or second class platted or replatted after March 26, 1895, the department of natural resources shall appraise each lot, tract or piece of land separately, and shall enter in a well bound book to be kept in the office of the commissioner of public lands a description of each lot, tract or piece of tide or shore land of the first or second class, its full appraised value, the area and rate per acre at which it was appraised, and if any lot is covered in whole or in part by improvements in actual use for commerce, trade, residence, or business, on or prior to, the date of the plat or replat, the department shall enter the name of the owner, or reputed owner, the nature of the improvements, the area covered by the improvements, the portion of each lot, tract or piece of land covered, and the appraised value of the land covered, with and exclusive of, the improvements.

[1982 1st ex.s. c 21 § 90.]

RCW 79.94.060
Tidelands and shorelands of the first class and second class -- Notice of filing plat and record of appraisal -- Appeal.

The department of natural resources shall, before filing in the office of the commissioner of public lands the plat and record of appraisal of any tidelands or shorelands of the first or second class platted and appraised by it, cause a notice to be published once each week for four consecutive weeks in a newspaper published and of general circulation in the county wherein the land covered by such plat and record are situated, stating that such plat and record, describing it, is complete and subject to inspection at the office of the commissioner of public lands, and will be filed on a certain day to be named in the notice.

Any person entitled to purchase under RCW 79.94.150 and claiming a preference right of purchase of any of the tidelands or shorelands platted and appraised by the department, and who feels aggrieved at the appraisement fixed by the department upon such lands, or any part thereof, may within sixty days after the filing of such plat and record in the office of the commissioner (which shall be done on the day fixed in said notice), appeal from such appraisement to the superior court of the county in which the tide or shore lands are situated, in the manner provided for taking appeals from orders or decisions under RCW 79.90.400.

The prosecuting attorney of any county, or city attorney of any city, in which such aquatic lands are located, shall at the request of the governor, or of ten freeholders of the county or city, in which such lands are situated, appeal on behalf of the state, or the county, or city, from any such appraisal in the manner provided in this section. Notice of such appeal shall be served upon the department of natural resources through the administrator, and it shall be his duty to immediately notify all persons entitled to purchase under RCW 79.94.150 and claiming a preference right to purchase the lands subject to the appraisement.

Any party, other than the state or the county or city appealing, shall execute a bond to the state with sufficient surety, to be approved by the department of natural resources, in the sum of two hundred dollars conditioned for the payment of costs on appeal.

The superior court to which an appeal is taken shall hear evidence as to the value of the lands appraised and enter an order confirming, or raising, or lowering the appraisal appealed from, and the clerk of the court shall file a certified copy thereof in the office of the commissioner of public lands. The appraisal fixed by the court shall be final.

[1982 1st ex.s. c 21 § 91.]

RCW 79.94.070
Tidelands and shorelands of the first class -- Preference right of upland owner -- How exercised.

Upon platting and appraisal of tidelands or shorelands of the first class as in this chapter provided, if the department of natural resources

shall deem it for the best public interest to offer said tide or shore lands of the first class for lease, the department shall cause a notice to be served upon the owner of record of uplands fronting upon the tide or shore lands to be offered for lease if he or she be a resident of the state, or if he or she be a nonresident of the state, shall mail to his or her last known post office address, as reflected in the county records, a copy of the notice notifying him or her that the state is offering such tide or shore lands for lease, giving a description of those lands and the department's appraised fair market value of such tide or shore lands for lease, and notifying such owner that he or she has a preference right to apply to lease said tide or shore lands at the appraised value for the lease thereof for a period of sixty days from the date of service of mailing of said notice. If at the expiration of sixty days from the service or mailing of the notice, as above provided, there being no conflicting applications filed, and the owner of the uplands fronting upon the tide or shore lands offered for lease, has failed to avail himself or herself of his or her preference right to apply to lease or to pay to the department the appraised value for lease of the tide or shore lands described in said notice, then in that event, said tide or shore lands may be offered for lease to any person and may be leased in the manner provided for in the case of lease of state lands.

If at the expiration of sixty days two or more claimants asserting a preference right to lease shall have filed applications to lease any tract, conflicting with each other, the conflict between the claimants shall be equitably resolved by the department of natural resources as the best interests of the state require in accord with the procedures prescribed by chapter 34.05 RCW: PROVIDED, That any contract purchaser of lands or rights therein, which upland qualifies the owner for a preference right under this section, shall have first priority for such preference right.

[2000 c 11 § 29; 1982 1st ex.s. c 21 § 92.]

RCW 79.94.080
Tide and shore lands -- Sale of remaining lands.

Any tide or shore lands of the first class remaining unsold, and where there is no pending application for the purchase of the same under claim of any preference right, when otherwise permitted under RCW 79.94.150 to be sold, shall be sold on the same terms and in the same manner as provided for the sale of state lands for not less than the appraised value fixed at the time of the application to purchase, and the department of natural resources whenever it shall deem it advisable and for the best interest of the state may reappraise such lands in the same manner as provided for the appraisal of state lands.

[1982 1st ex.s. c 21 § 93.]

RCW 79.94.090
Sale of tidelands other than first class.

All tidelands, other than first class, shall be offered for sale, when otherwise permitted under RCW 79.94.150 to be sold, and sold in the same manner as state lands, other than capitol building lands, but for not less than five dollars per lineal chain, measured on the United States meander line bounding the inner shore limit of such tidelands, and each applicant shall furnish a copy of the United States field notes, certified to by the officer in charge thereof, of said meander line with his application, and shall pay one-tenth of the purchase price on the date of sale.

[1982 1st ex.s. c 21 § 94.]

RCW 79.94.100
Tidelands and shorelands of the first and second class -- Petition for replat -- Replatting and reappraisal -- Vacation by replat.

Whenever all of the owners and other persons having a vested interest in those tidelands or shorelands embraced within any plat of tide or shore lands of the first or second class, heretofore or hereafter platted or replatted, or within any portion of any such plat in which there are unsold tide or shore lands belonging to the state, shall file a petition with the department of natural resources accompanied by proof of service of such petition upon the city council, or other governing body, of the city or town in which the tide or shore lands described in the petition are situated, or upon the legislative body of the county in which such tide or shore lands outside of any incorporated city or town are situated, asking for a replat of such tide or shore

lands, the department is authorized and empowered to replat said tide or shore lands described in such petition, and all unsold tide or shore lands situated within such replat shall be reappraised as provided for the original appraisal of tide or shore lands: PROVIDED, That any streets or alleys embraced within such plat or portion of plat, vacated by the replat hereby authorized shall vest in the owner or owners of the lands abutting thereon.

[1982 1st ex.s. c 21 § 95.]

RCW 79.94.110
Tidelands and shorelands of the first and second class -- Dedication of replat -- All interests must join.

If in the preparation of a replat provided for in RCW 79.94.100 by the department of natural resources, it becomes desirable to appropriate any tidelands or shorelands heretofore sold for use as streets, alleys, waterways, or other public places, all persons interested in the title to such tidelands or shorelands desired for public places shall join in the dedication of such replat before it shall become effective.

[1982 1st ex.s. c 21 § 96.]

RCW 79.94.120
Tidelands and shorelands of the first and second class -- Vacation by replat -- Preference right of tideland or shoreland owner.

If any street, alley, waterway, or other public place theretofore platted, is vacated by a replat as provided for in RCW 79.94.100 and 79.94.110, or any new street, alley, waterway, or other public place is so laid out as to leave unsold tidelands or shorelands between such new street, alley, waterway, or other public place, and tidelands or shorelands theretofore sold, the owner of the adjacent tidelands or shorelands theretofore sold shall have the preference right for sixty days after the final approval of such plat to purchase the unsold tidelands or shorelands so intervening at the appraised value thereof, if otherwise permitted under RCW 79.94.150 to be sold.

[1982 1st ex.s. c 21 § 97.]

RCW 79.94.130
Tidelands and shorelands of the first and second class -- Vacation procedure cumulative.

RCW 79.94.100 through 79.94.120 are intended to afford a method of procedure, in addition to other methods provided in this chapter for the vacation of streets, alleys, waterways, and other public places platted on tidelands or shorelands of the first or second class.

[1982 1st ex.s. c 21 § 98.]

RCW 79.94.140
Tidelands and shorelands of the first and second class -- Effect of replat.

A replat of tidelands or shorelands of the first or second class heretofore, or hereafter, platted shall be in full force and effect and shall constitute a vacation of streets, alleys, waterways, and other public places theretofore dedicated, when otherwise permitted by RCW 79.94.150, and the dedication of new streets, alleys, waterways, and other public places appearing upon such replat, when the same is recorded and filed as in the case of original plats.

[1982 1st ex.s. c 21 § 99.]

RCW 79.94.150
First and second class tidelands and shorelands and waterways of state to be sold only to public entities -- Leasing -- Limitation.

(1) This section shall apply to:

(a) First class tidelands as defined in RCW 79.90.030;

(b) Second class tidelands as defined in RCW 79.90.035;

(c) First class shorelands as defined in RCW 79.90.040;

(d) Second class shorelands as defined in RCW 79.90.045, except as included within RCW

79.94.210;

(e) Waterways as described in RCW 79.93.010.

(2) Notwithstanding any other provision of law, from and after August 9, 1971, all tidelands and shorelands enumerated in subsection (1) of this section owned by the state of Washington shall not be sold except to public entities as may be authorized by law and they shall not be given away.

(3) Tidelands and shorelands enumerated in subsection (1) of this section may be leased for a period not to exceed fifty-five years: PROVIDED, That nothing in this section shall be construed as modifying or canceling any outstanding lease during its present term.

(4) Nothing in this section shall:

(a) Be construed to cancel an existing sale contract;

(b) Prohibit sale or exchange of beds and shorelands where the water course has changed and the area now has the characteristics of uplands;

(c) Prevent exchange involving state-owned tide and shore lands.

[1982 1st ex.s. c 21 § 100.]

RCW 79.94.160
Sale of state-owned tide or shore lands to municipal corporation or state agency -- Authority to execute agreements, deeds, etc.

The department of natural resources may with the advice and approval of the board of natural resources sell state-owned tide or shore lands at the appraised market value to any municipal corporation or agency of the state of Washington when said land is to be used solely for municipal or state purposes: PROVIDED, That the department shall with the advice and approval of the attorney general, execute such agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to affect such sale or exchange.

[1982 1st ex.s. c 21 § 101.]

RCW 79.94.170
Construction of RCW 79.94.150 and 79.94.170 -- Use and occupancy fee where unauthorized improvements placed on publicly owned aquatic lands.

Nothing in RCW 79.94.150 and 79.94.170 shall be construed to prevent the assertion of public ownership rights in any publicly owned aquatic lands, or the leasing of such aquatic lands when such leasing is not contrary to the statewide public interest.

The department of natural resources may require the payment of a use and occupancy fee in lieu of a lease where improvements have been placed without authorization on publicly owned aquatic lands.

[1982 1st ex.s. c 21 § 102.]

RCW 79.94.175
Grant of lands for city park or playground purposes.

Whenever application is made to the department by any incorporated city or town or metropolitan park district for the use of any state owned tide or shore lands within the corporate limits of said city or town or metropolitan park district for municipal park and/or playground purposes, the department shall cause such application to be entered in the records of its office, and shall then forward the same to the governor, who shall appoint a committee of five representative citizens of the city or town, in addition to the commissioner and the director of ecology, both of whom shall be ex officio members of the committee, to investigate the lands and determine whether they are suitable and needed for such purposes; and, if they so find, the commissioner shall certify to the governor that the property shall be deeded, when in accordance with RCW 79.94.150 and 79.94.160, to the city or town or metropolitan park district and the governor shall then execute a deed in the name of the state of Washington, attested by the secretary of state, conveying the use of such lands to the city or town or metropolitan park district for said purposes for so long as it shall continue to hold, use, and maintain the lands for such purposes.

[2003 c 334 § 447; 1988 c 127 § 33; 1939 c 157 § 1; RRS § 7993-1. Formerly RCW 79.08.080.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

RCW 79.94.181
Exchange of lands to secure city parks and playgrounds.

In the event there are no state-owned tide or shore lands in any such city or town or metropolitan park district suitable for the purposes of RCW 79.94.175 and the committee finds other lands therein which are suitable and needed therefor, the department is hereby authorized to secure the same by exchanging state-owned tide or shore lands in the same county of equal value therefor, and the use of the lands so secured shall be conveyed to any such city or town or metropolitan park district as provided for in RCW 79.94.175. In all such exchanges the department is hereby authorized and directed, with the assistance of the attorney general, to execute such agreements, writings, relinquishments, and deeds as are necessary or proper for the purpose of carrying such exchanges into effect. Upland owners shall be notified of such state-owned tide or shore lands to be exchanged.

[2003 c 334 § 448; 1939 c 157 § 2; RRS § 7993-2. Formerly RCW 79.08.090.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

RCW 79.94.185
Director of ecology to assist city parks.

The director of ecology, in addition to serving as an ex officio member of any such committee, is hereby authorized and directed to assist any such city or town or metropolitan park district in the development and decoration of any lands so conveyed and to furnish trees, grass, flowers and shrubs therefor.

[1988 c 127 § 34; 1939 c 157 § 3; RRS § 7993-3. Formerly RCW 79.08.100.]

RCW 79.94.210
Second class shorelands on navigable lakes -- Sale.

(1) The legislature finds that maintaining public lands in public ownership is often in the public interest. However, when second class shorelands on navigable lakes have minimal public value, the sale of those shorelands to the abutting upland owner may not be contrary to the public interest: PROVIDED, That the purpose of this section is to remove the prohibition contained in RCW 79.94.150 regarding the sale of second class shorelands to abutting owners, whose uplands front on the shorelands. Nothing contained in this section shall be construed to otherwise affect the rights of interested parties relating to public or private ownership of shorelands within the state.

(2) Notwithstanding the provisions of RCW 79.94.150, the department of natural resources may sell second class shorelands on navigable lakes to abutting owners whose uplands front upon the shorelands in cases where the board of natural resources has determined that these sales would not be contrary to the public interest. These shorelands shall be sold at fair market value, but not less than five percent of the fair market value of the abutting upland, less improvements, to a maximum depth of one hundred and fifty feet landward from the line of ordinary high water.

(3) Review of the decision of the department regarding the sale price established for a shoreland to be sold pursuant to this section may be obtained by the upland owner by filing a petition with the board of tax appeals created in accordance with chapter 82.03 RCW within thirty days after the mailing of notification by the department to the owner regarding the price. The board of tax appeals shall review such cases in an adjudicative proceeding as described in chapter 34.05 RCW, the administrative procedure act, and the board's review shall be de novo. Decisions of the board of tax appeals regarding fair market values determined pursuant to this section shall be final unless appealed to the superior court pursuant to RCW 34.05.510 through 34.05.598.

[1989 c 378 § 3; 1989 c 175 § 171; 1982 1st ex.s. c 21 § 106.]

NOTES:

Reviser's note: This section was amended by 1989 c 175 § 171 and by 1989 c 378 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date -- 1989 c 175: See note following RCW 34.05.010.

RCW 79.94.220
Second class shorelands -- Boundary of shorelands when water lowered -- Certain shorelands granted to city of Seattle.

In every case where the state of Washington had prior to June 13, 1913, sold to any purchaser from the state any second class shorelands bordering upon navigable waters of this state by description wherein the water boundary of the shorelands so purchased is not defined, such water boundary shall be the line of ordinary navigation in such water; and whenever such waters have been or shall hereafter be lowered by any action done or authorized either by the state of Washington or the United States, such water boundary shall thereafter be the line of ordinary navigation as the same shall be found in such waters after such lowering, and there is hereby granted and confirmed to every such purchaser, his heirs and assigns, all such lands: PROVIDED HOWEVER, That RCW 79.94.220 and 79.94.230 shall not apply to such portions of such second class shorelands which shall, as provided by RCW 79.94.230, be selected by the department of natural resources for harbor areas, slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys, or other public purposes: PROVIDED FURTHER, That all shorelands and the bed of Lake Washington from the southerly margin of the plat of Lake Washington shorelands southerly along the westerly shore of said lake to a line three hundred feet south of and parallel with the east and west center line of section 35, township 24 north, range 4 east, W.M., are hereby reserved for public uses and are hereby granted and donated to the city of Seattle for public park, parkway and boulevard purposes, and as a part of its public park, parkway, and boulevard system and any diversion or attempted diversion of such lands so donated from such purposes shall cause the title to said lands to revert to the state.

[1982 1st ex.s. c 21 § 107.]

RCW 79.94.230
Second class shorelands -- Platting -- Selection for slips, docks, wharves, etc.

It shall be the duty of the department of natural resources to survey such second class shorelands and in platting such survey to designate thereon as selected for public use all of such shorelands as in the opinion of the department is available, convenient or necessary to be selected for the use of the public as harbor areas, sites for slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys, and other public purposes.

Upon the filing of such plat in the office of the commissioner of public lands, the title to all harbor areas so selected shall remain in the state, the title to all selections for streets, avenues, and alleys shall vest in any city or town within the corporate limits of which they may be then situate, otherwise in the county in which situate, the title to and control of any lands so selected and designated upon such plat for parkways and boulevard purposes shall, if the same lie outside of the corporate limits of any city or town and if the same form a part of the general parkway and boulevard system of a city of the first class, be in such city, and the title to all selections for slips, docks, wharves, warehouses and other public purposes shall vest in the port district if they be situate in a port district, otherwise in the county in which situate.

[1982 1st ex.s. c 21 § 108.]

RCW 79.94.240
Second class shorelands -- Platting of certain shorelands of Lake Washington for use as harbor area -- Effect.

It shall be the duty of the department of natural resources to plat for the public use harbor area in front of such portions of the shorelands of Lake Washington heretofore sold as second class shorelands by the state of Washington as in the

opinion of the department are necessary for the use of the public as harbor area: PROVIDED HOWEVER, That RCW 79.94.240 and 79.94.250 shall not be construed to authorize the department to change the location of any inner or outer harbor line or the boundaries or location of, or to replat any harbor area heretofore platted under and by virtue of sections 1 and 2, chapter 183, Laws of 1913, and the title to all shorelands heretofore purchased from the state as second class shorelands is hereby confirmed to such purchaser, his heirs and assigns, out to the inner harbor line heretofore established and platted under sections 1 and 2, chapter 183, Laws of 1913, or which shall be established and platted under RCW 79.94.230 and 79.94.250, and all reservations shown upon the plat made and filed pursuant to sections 1 and 2, chapter 183, Laws of 1913, are declared null and void, except reservations shown thereon for harbor area, and reservations in such harbor area, and reservations across shorelands for traversed streets which were extensions of streets existing across shorelands at the time of filing of such plat. Said department shall in platting said harbor area make a new plat showing all the harbor area on Lake Washington already platted under said sections 1 and 2, chapter 183, Laws of 1913, and under sections 1 and 2, chapter 150, Laws of 1917, and upon the adoption of any new plat by the board of natural resources acting as the harbor line commission, and the filing of said plat in the office of the commissioner of public lands, the title to all such harbor areas so selected shall remain in the state of Washington, and such harbor areas shall not be sold, but may be leased as provided for by law relating to the leasing of such harbor area.

[1982 1st ex.s. c 21 § 109.]

RCW 79.94.250
Second class shorelands -- Platting of certain shorelands of Lake Washington for use as harbor area -- Selection for slips, docks, wharves, etc. -- Vesting of title.

Immediately after establishing the harbor area provided for in RCW 79.94.240, it shall be the duty of the department of natural resources to make a plat designating thereon all shorelands, of the first and second class, not theretofore sold by the state of Washington, and to select for the use of the public out of such shorelands, or out of harbor areas in front thereof, sites for slips, docks, wharves, warehouses, streets, avenues, parkways, boulevards, alleys, commercial waterways, and other public purposes, insofar as such shorelands may be available for any or all such public purposes.

Upon the filing of such plat of shorelands with such reservations and selections thereon in the office of the commissioner of public lands, the title to all selections for streets, avenues, and alleys shall vest in any city or town within the corporate limits of which they may be then situate, otherwise in the county in which they are situate. The title to and control of any land so selected and designated upon such plat for parkway and boulevard purposes shall, if the same lie outside the corporate limits of any city or town, and if the same form a part of the general parkway and boulevard system of the city of the first class, be in such city. The title to all selections for commercial waterway purposes shall vest in the commercial waterway district in which situate, or for which selected, and the title to all selections for slips, docks, wharves, warehouses and other purposes shall vest in the port district if they be situate in a port district, otherwise in the county in which situated, and any sales of such shorelands when otherwise permitted by law shall be made subject to such selection and reservation for public use.

[1982 1st ex.s. c 21 § 110.]

RCW 79.94.260
Second class shorelands -- Sale or lease when in best public interest -- Preference right of upland owner -- Procedure upon determining sale or lease not in best public interest or where transfer made for public use -- Platting.

If application is made to purchase or lease any shorelands of the second class and the department of natural resources shall deem it for the best public interest to offer said shorelands of the second class for sale or lease, the department shall cause a notice to be served upon the abutting upland owner if he be a resident of the state, or if the upland owner be a nonresident of the state, shall mail to his last known post office address, as reflected in the county records a copy of a notice notifying him that the state is offering such shorelands for sale or lease, giving a description of the department's appraised fair

market value of such shorelands for sale or lease, and notifying such upland owner that he has a preference right to purchase, if such purchase is otherwise permitted under RCW 79.94.150, or lease said shorelands at the appraised value thereof for a period of thirty days from the date of the service or mailing of said notice. If at the expiration of the thirty days from the service or mailing of the notice, as provided in this section, the abutting upland owner has failed to avail himself of his preference right to purchase, as otherwise permitted under RCW 79.94.150, or lease, or to pay to the department the appraised value for sale or lease of the shorelands described in said notice, then in that event, except as otherwise provided in this section, said shorelands may be offered for sale, when otherwise permitted under RCW 79.94.150, or offered for lease, and sold or leased in the manner provided for the sale or lease of state lands, as otherwise permitted under this chapter.

The department of natural resources shall authorize the sale or lease, whether to abutting upland owners or others, only if such sale or lease would be in the best public interest and is otherwise permitted under RCW 79.94.150. It is the intent of the legislature that whenever it is in the best public interest, the shorelands of the second class managed by the department of natural resources shall not be sold but shall be maintained in public ownership for the use and benefit of the people of the state.

In all cases where application is made for the lease of any second class shorelands adjacent to upland, under the provisions of this section, the same shall be leased per lineal chain frontage, and the United States field notes of the meander line shall accompany each application as required for the sale of such lands, and when application is made for the lease of second class shorelands separated from the upland by navigable waters, the application shall be accompanied by the plat and field notes of a survey of the lands applied for, as required with applications for the purchase of such lands.

If, following an application by the abutting upland owner to either purchase as otherwise permitted under RCW 79.94.150 or to obtain an exclusive lease at appraised full market value or rental, the department deems that such sale or lease is not in the best public interest, or if property rights in state-owned second class shorelands are at any time withdrawn, sold, or assigned in any manner authorized by law to a public agency for a use by the general public, the department shall within one hundred and eighty days from receipt of such application to purchase or lease, or on reaching a decision to withdraw, sell or assign such shorelands to a public agency, and: (1) Make a formal finding that the body of water adjacent to such shorelands is navigable; (2) find that the state or the public has an overriding interest inconsistent with a sale or exclusive lease to a private person, and specifically identify such interest and the factor or factors amounting to such inconsistency; and (3) provide for the review of said decision in accordance with the procedures prescribed by chapter 34.05 RCW.

Notwithstanding the above provisions, the department may cause any of such shorelands to be platted as is provided for the platting of shorelands of the first class, and when so platted such lands shall be sold, when otherwise permitted under RCW 79.94.150 to be sold, or leased in the manner provided for the sale or lease of shorelands of the first class.

[1982 1st ex.s. c 21 § 111.]

RCW 79.94.270
Second class tide or shore lands detached from uplands by navigable water -- Sale.

Tide or shore lands of the second class which are separated from the upland by navigable waters shall be sold, when otherwise permitted under RCW 79.94.150 to be sold, but in no case at less than five dollars per acre. An applicant to purchase such tide or shore lands shall, at his own expense, survey and file with his application a plat of the surveys of the land applied for, which survey shall be connected with, and the plat shall show, two or more connections with the United States survey of the uplands, and the applicant shall file the field notes of the survey of said land with his application. The department of natural resources shall examine and test said plat and field notes of the survey, and if found incorrect or indefinite, it shall cause the same to be corrected or may reject the same and cause a new survey to be made.

[1982 1st ex.s. c 21 § 112.]

RCW 79.94.280
First class unplatted tide or shore lands -- Lease preference right to upland owners -- Lease for booming purposes.

The department of natural resources is authorized to lease to the abutting upland owner any unplatted first class tide or shore lands.

The department shall, prior to the issuance of any lease under the provisions of this section, fix the annual rental for said tide or shore lands and prescribe the terms and conditions of the lease. No lease issued under the provisions of this section shall be for a longer term than ten years from the date thereof, and every such lease shall be subject to termination upon ninety days' notice to the lessee in the event that the department shall decide that it is in the best interest of the state that such tide or shore lands be surveyed and platted. At the expiration of any lease issued under the provisions of this section, the lessee or his successors or assigns shall have a preference right to re-lease the lands covered by the original lease or any portion thereof, if the department shall deem it to be in the best interests of the state to re-lease the same, for succeeding periods not exceeding five years each at such rental and upon such terms and conditions as may be prescribed by said department.

In case the abutting uplands are not improved and occupied for residential purposes and the abutting upland owner has not filed an application for the lease of such lands, the department may lease the same to any person for booming purposes under the terms and conditions of this section: PROVIDED, That failure to use for booming purposes any lands leased under this section for such purposes for a period of one year shall work a forfeiture of such lease and such land shall revert to the state without any notice to the lessee upon the entry of a declaration of forfeiture in the records of the department of natural resources.

[1982 1st ex.s. c 21 § 113.]

RCW 79.94.290
Second class tide or shore lands -- Lease for booming purposes.

The department of natural resources is authorized to lease any second class tide or shore lands, whether reserved from sale, or from lease for other purposes, by or under authority of law, or not, except any oyster reserve containing oysters in merchantable quantities, to any person, for booming purposes, for any term not exceeding ten years from the date of such lease, for such annual rental and upon such terms and conditions as the department may fix and determine, and may also provide for forfeiture and termination of any such lease at any time for failure to pay the fixed rental or for any violation of the terms or conditions thereof.

The lessee of any such lands for booming purposes shall receive, hold, and sort the logs and other timber products of all persons requesting such service and upon the same terms and without discrimination, and may charge and collect tolls for such service not to exceed seventy-five cents per thousand feet scale measure on all logs, spars, or other large timber and reasonable rates on all other timber products, and shall be subject to the same duties and liabilities, so far as the same are applicable, as are imposed upon boom companies organized under the laws of the state: PROVIDED, That failure to use any lands leased under the provisions of this section for booming purposes for a period of one year shall work a forfeiture of such lease, and such lands shall revert to the state without any notice to the lessee upon the entry of a declaration of forfeiture in the records of the department.

At the expiration of any lease issued under the provisions of this section, the lessee shall have the preference right to re-lease the lands covered by his original lease for a further term, not exceeding ten years, at such rental and upon such terms and conditions as may be prescribed by the department of natural resources.

[1982 1st ex.s. c 21 § 114.]

RCW 79.94.300
First and second class tide or shore lands -- Preference rights, time limit on exercise.

All preference rights to purchase tide or shore lands of the first or second class, when otherwise permitted by RCW 79.94.150 to be purchased, awarded by the department of natural resources,

or by the superior court in case of appeal from the award of the department, shall be exercised by the parties to whom the award is made within thirty days from the date of the service of notice of the award by registered mail, by the payment to the department of the sums required by law to be paid for a contract, or deed, as in the case of the sale of state lands, other than capitol building lands, and upon failure to make such payment such preference rights shall expire.

[1982 1st ex.s. c 21 § 115.]

RCW 79.94.310
First and second class tide or shore lands -- Accretions -- Lease.

Any accretions that may be added to any tract or tracts of tide or shore lands of the first or second class heretofore sold, or that may hereafter be sold, by the state, shall belong to the state and shall not be sold, or offered for sale, unless otherwise permitted by this chapter to be sold, and unless the accretions shall have been first surveyed under the direction of the department of natural resources: PROVIDED, That the owner of the adjacent tide or shore lands shall have the preference right to purchase said lands produced by accretion, when otherwise permitted by RCW 79.94.150 to be sold, for thirty days after said owner of the adjacent tide or shore lands shall have been notified by registered mail of his preference right to purchase such accreted lands.

[1982 1st ex.s. c 21 § 116.]

RCW 79.94.320
Tide or shore lands of the first or second class -- Failure to re-lease tide or shore lands -- Appraisal of improvements.

In case any lessee of tide or shore lands, for any purpose except mining of valuable minerals or coal, or extraction of petroleum or gas, or his successor in interest, shall after the expiration of any lease, fail to purchase, when otherwise permitted under RCW 79.94.150 to be purchased, or re-lease from the state the tide or shore lands formerly covered by his lease, when the same are offered for sale or re-lease, then and in that event the department of natural resources shall appraise and determine the value of all improvements existing upon such tide or shore lands at the expiration of the lease which are not capable of removal without damage to the land, including the cost of filling and raising said property above high tide, or high water, whether filled or raised by the lessee or his successors in interest, or by virtue of any contract made with the state, and also including the then value to the land of all existing local improvements paid for by such lessee or his successors in interest. In case the lessee or his successor in interest is dissatisfied with the appraised value of such improvements as determined by the department, he shall have the right of appeal to the superior court of the county wherein said tide or shore lands are situated, within the time and according to the method prescribed in RCW 79.90.400 for taking appeals from decisions of the department.

In case such tide or shore lands are leased, or sold, to any person other than such lessee or his successor in interest, within three years from the expiration of the former lease, the bid of such subsequent lessee or purchaser shall not be accepted until payment is made by such subsequent lessee or purchaser of the appraised value of the improvements as determined by the department, or as may be determined on appeal, to such former lessee or his successor in interest.

In case such tide or shore lands are not leased, or sold, within three years after the expiration of such former lease, then in that event, such improvements existing on the lands at the time of any subsequent lease, shall belong to the state and be considered a part of the land, and shall be taken into consideration in appraising the value, or rental value, of the land and sold or leased with the land.

[1982 1st ex.s. c 21 § 117.]

RCW 79.94.330
Location of line dividing tidelands from shorelands in tidal rivers.

The department of natural resources is hereby authorized to locate in all navigable rivers in this state which are subject to tidal flow, the line dividing the tidelands in such river from the shorelands in such river, and such classification or the location of such dividing line shall be final and not subject to review, and the department shall enter the location of said line upon the plat of the tide and shore lands affected.

[1982 1st ex.s. c 21 § 118.]

RCW 79.94.390
Certain tidelands reserved for recreational use and taking of fish and shellfish.

The following described tidelands, being public lands of the state, are withdrawn from sale or lease and reserved as public areas for recreational use and for the taking of fish and shellfish for personal use as defined in RCW 77.08.010:

Parcel No. 1. (Point Whitney) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to or abutting upon lots 3, 4, and 5, section 7, township 26 north, range 1 west, W.M., with a frontage of 72.45 lineal chains, more or less.

Excepting, however, those portions of the above described tidelands of the second class conveyed to the state of Washington, department of fish and wildlife through deed issued May 14, 1925, under application No. 8136, records of department of public lands.

Parcel No. 2. (Point Whitney) The tidelands of the second class lying below the line of mean low tide, owned by the state of Washington, situate in front of lot 1, section 6, township 26 north, range 1 west, W.M., with a frontage of 21.00 lineal chains, more or less; also

The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to or abutting upon lots 6 and 7, and that portion of lot 5, section 1, township 26 north, range 1 west, W.M., lying south of a line running due west from a point on the government meander line which is S 22° E 1.69 chains from an angle point in said meander line which is S 15° W 1.20 chains, more or less, from the point of intersection of the north line of said lot 5 and said meander line, with a frontage of 40.31 lineal chains, more or less.

Parcel No. 3. (Toandos Peninsula) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, and 3, section 5, lots 1, 2, and 3, section 4, and lot 1, section 3, all in township 25 north, range 1 west, W.M., with a frontage of 158.41 lineal chains, more or less.

Parcel No. 4. (Shine) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, 3 and that portion of lot 4 lying north of the south 8.35 chains thereof as measured along the government meander line, all in section 35, township 28 north, range 1 east, W.M., with a frontage of 76.70 lineal chains, more or less.

Subject to an easement for right of way for county road granted to Jefferson county December 8, 1941 under application No. 1731, records of department of public lands.

Parcel No. 5. (Lilliwaup) The tidelands of the second class, owned by the state of Washington, lying easterly of the east line of vacated state oyster reserve plat No. 133 produced southerly and situate in front of, adjacent to or abutting upon lot 9, section 30, lot 8, section 19 and lot 5 and the south 20 acres of lot 4, section 20, all in township 23 north, range 3 west, W.M., with a frontage of 62.46 lineal chains, more or less.

Subject to easements for rights of way for state road granted through the filing of state road plats No. 374 December 15, 1930, No. 661, March 29, 1949, and No. 666 August 25, 1949, records of department of public lands.

Parcel No. 6. (Nemah) Those portions of the tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 5, 6, and 7, section 3 and lots 1, 2, and 3, section 4, township 12 north, range 10 west, W.M., lots 1, 2, 3, and 4, section 34, section 27 and lots 1, 2, 3 and 4, section 28, township 13 north, range 10 west, W.M., lying easterly of the easterly line of the Nemah Oyster reserve and easterly of the easterly line of a tract of tidelands of the second class conveyed through deed issued July 28, 1938, pursuant to the provisions of chapter 24, Laws of 1895, under application No. 9731, with a frontage of 326.22 lineal chains, more or less.

Parcels No. 7 and 8. (Penn Cove) The unplatted tidelands of the first class, and tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1 and 2, section 33, lots 1, 2, 3, and 4, section 32, lots 2 and 3 and the B.P. Barstow D.L.C. No. 49, sections 30 and 31 and that portion of the R.H. Lansdale D.L.C. No. 54 in section 30, lying west of the east 3.00 chains

thereof as measured along the government meander line, all in township 32 north, range 1 east, W.M., with a frontage of 260.34 lineal chains, more or less.

Excepting, however, the tidelands above the line of mean low tide in front of said lot 1, section 32 which were conveyed as tidelands of the second class through deed issued December 29, 1908, application No. 4957, records of department of public lands.

Subject to an easement for right of way for transmission cable line granted to the United States of America Army Engineers June 7, 1943, under application No. 17511, records of department of public lands.

Parcel No. 9. (South of Penn Cove) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 2, 3 and 4, section 17 and lots 1, 2 and 3, section 20, township 31 north, range 2 east, W.M., with a frontage of 129.97 lineal chains, more or less.

Parcel No. 10. (Mud Bay--Lopez Island) The tidelands of the second class, owned by the state of Washington situate in front of, adjacent to, or abutting upon lots 5, 6 and 7, section 18, lot 5, section 7 and lots 3, 4, and 5, section 8, all in township 34 north, range 1 west, W.M., with a frontage of 172.11 lineal chains, more or less.

Excepting, however, any tideland of the second class in front of said lot 3, section 8 conveyed through deeds issued April 14, 1909, pursuant to the provisions of chapter 24, Laws of 1895, under application No. 4985, records of department of public lands.

Parcel No. 11. (Cattle Point) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lot 1, section 6, lots 1, 3, 4, 5, 6, 7, 8, 9, and 10, section 7, lots 1, 2, 3, 4, 5, 6 and 7, section 8 and lot 1, section 5, all in township 34 north, range 2 west, W.M., with a frontage of 463.88 lineal chains, more or less.

Excepting, however, any tidelands of the second class in front of said lot 10, section 7 conveyed through deed issued June 1, 1912, under application No. 6906, records of department of public lands.

Parcel No. 12. (Spencer Spit) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 3, and 4, section 7, and lot 5, section 18 all in township 35 north, range 1 west, W.M., with a frontage of 118.80 lineal chains, more or less.

[2003 c 39 § 42; 1994 c 264 § 66; 1983 1st ex.s. c 46 § 181; 1982 1st ex.s. c 21 § 124.]

NOTES:

Tidelands -- Upland owner use: "The state department of fisheries is authorized to permit designated portions of the following described tidelands to be used by the upland owners thereof for the purpose of building and maintaining docks: Tidelands of the second class owned by the state of Washington situated in front of, adjacent to, or abutting upon, the entire west side of lot 1, section 5, Township 34 North, Range 2 West, W.M., to the northernmost tip of said lot, and lots 2 and 3, section 8, Township 34 North, Range 2 West, W.M. (Cattle Point)." [1967 ex.s. c 128 § 1.]

RCW 79.94.400
Access to and from tidelands reserved for recreational use and taking of fish and shellfish.

The director of fish and wildlife may take appropriate action to provide public and private access, including roads and docks, to and from the tidelands described in RCW 79.94.390.

[1994 c 264 § 67; 1982 1st ex.s. c 21 § 125.]

RCW 79.94.410
Tidelands and shorelands -- Use of tide and shore lands granted to United States -- Purposes -- Limitations.

The use of any tide and shore lands belonging to the state, and adjoining and bordering on any tract, piece or parcel of land, which may have been reserved or acquired, or which may hereafter be reserved or acquired, by the government of the United States, for the purposes of erecting and maintaining thereon forts, magazines, arsenals, dockyards, navy

yards, prisons, penitentiaries, lighthouses, fog signal stations, aviation fields, or other aids to navigation, be and the same is hereby granted to the United States, upon payment for such rights, so long as the upland adjoining such tide or shore lands shall continue to be held by the government of the United States for any of the public purposes above mentioned: PROVIDED, That this grant shall not extend to or include any aquatic lands covered by more than four fathoms of water at ordinary low tide; and shall not be construed to prevent any citizen of the state from using said lands for the taking of food fishes so long as such fishing does not interfere with the public use of them by the United States.

[1982 1st ex.s. c 21 § 126.]

RCW 79.94.420
Tidelands and shorelands -- Use of tide and shore lands granted to United States -- Application -- Proof of upland use -- Conveyance.

Whenever application is made to the department of natural resources by any department of the United States government for the use of any tide or shore lands belonging to the state and adjoining and bordering on any upland held by the United States for any of the purposes mentioned in RCW 79.94.410, upon proof being made to said department of natural resources, that such uplands are so held by the United States for such purposes, and upon payment for such land, it shall cause such fact to be entered in the records of the office of the commissioner of public lands and the department shall certify such fact to the governor who will execute a deed in the name of the state, attested by the secretary of state, conveying the use of such lands, for such purposes, to the United States, so long as it shall continue to hold for said public purposes the uplands adjoining said tide and shore lands.

[1982 1st ex.s. c 21 § 127.]

RCW 79.94.430
Tidelands and shorelands -- Use of tide and shore lands granted to United States -- Easements over tide or shore lands to United States.

Whenever application is made to the department of natural resources, by any department of the United States government, for the use of any tide or shore lands belonging to the state, for any public purpose, and said department shall be satisfied that the United States requires or may require the use of such tide or shore lands for such public purposes, said department may reserve such tide or shore lands from public sale and grant the use of them to the United States, upon payment for such land, so long as it may require the use of them for such public purposes. In such a case, the department shall execute an easement to the United States, which grants the use of said tide or shore lands to the United States, so long as it shall require the use of them for said public purpose.

[1982 1st ex.s. c 21 § 128.]

RCW 79.94.440
Tidelands and shorelands -- Use of tide and shore lands granted to United States -- Reversion on cessation of use.

Whenever the United States shall cease to hold and use any uplands for the use and purposes mentioned in RCW 79.94.410, or shall cease to use any tide or shore lands for the purpose mentioned in RCW 79.94.430, the grant or easement of such tide or shore lands shall be terminated thereby, and said tide or shore lands shall revert to the state without resort to any court or tribunal.

[1982 1st ex.s. c 21 § 129.]

RCW 79.94.450
United States Navy base -- Exchange of property -- Procedure.

The department is authorized to deed, by exchanges of property, to the United States Navy those tidelands necessary to facilitate the location of the United States Navy base in Everett. In carrying out this authority, the department shall request that the governor execute the deed in the name of the state attested to by the secretary of state. The department will follow the requirements outlined in RCW 79.17.050 in making the exchange. The department must exchange the state's tidelands for lands of equal value, and the land received in

the exchange must be suitable for natural preserves, recreational purposes, or have commercial value. The lands must not have been previously used as a waste disposal site. Choice of the site must be made with the advice and approval of the board.

[2003 c 334 § 615; 1987 c 271 § 4.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

Severability -- 1987 c 271: See note following RCW 79.95.050.

RCW 79.94.900
Savings -- Captions -- Severability -- Effective dates -- 1982 1st ex.s. c 21.

See RCW 79.96.901 through 79.96.905.

Chapter 79.95 RCW Aquatic Lands -- Beds Of Navigable Waters

RCW SECTIONS

79.95.010 Lease of beds of navigable waters.

79.95.020 Lease of beds of navigable waters -- Terms and conditions of lease -- Forfeiture for nonuser.

79.95.030 Lease of beds of navigable waters -- Improvements -- Federal permit -- Forfeiture -- Plans and specifications.

79.95.040 Lease of beds of navigable waters -- Preference right to re-lease.

79.95.050 United States Navy base -- Legislative findings and declaration.

79.95.060 Lease of bedlands in Port Gardner Bay for dredge spoil site -- Conditions.

79.95.900 Savings -- Captions -- Severability -- Effective dates -- 1982 1st ex.s. c 21.

RCW 79.95.010
Lease of beds of navigable waters.

Except as provided in RCW 79.95.060, the department of natural resources may lease to the abutting tide or shore land owner or lessee, the beds of navigable waters lying below the line of extreme low tide in waters where the tide ebbs and flows, and below the line of navigability in lakes and rivers claimed by the state and defined in section 1, Article XVII, of the Constitution of the state.

In case the abutting tide or shore lands or the abutting uplands are not improved or occupied for residential or commercial purposes, the department may lease such beds to any person for a period not exceeding ten years for booming purposes.

Nothing in this chapter shall change or modify any of the provisions of the state Constitution or laws of the state which provide for the leasing of harbor areas and the reservation of lands lying in front thereof.

[1987 c 271 § 2; 1982 1st ex.s. c 21 § 130.]

NOTES:

Severability -- 1987 c 271: See note following RCW 79.95.050.

RCW 79.95.020
Lease of beds of navigable waters -- Terms and conditions of lease -- Forfeiture for nonuser.

The department of natural resources shall, prior to the issuance of any lease under the provisions of this chapter, fix the annual rental and prescribe the terms and conditions of the lease: PROVIDED, That in fixing such rental, the department shall not take into account the value of any improvements heretofore or hereafter placed upon the lands by the lessee.

No lease issued under the provisions of this chapter shall be for a term longer than thirty years from the date thereof if in front of second class tide or shore lands; or a term longer than ten years if in front of unplatted first class tide or shore lands leased under the provisions of RCW 79.94.280, in which case said lease shall be subject to the same terms and conditions as provided for in the lease of such unplatted first class tide or shore lands. Failure to use those beds leased under the provisions of this chapter for booming purposes, for a period of two years shall work a forfeiture of said lease and the land shall revert to the state without notice to the lessee upon the entry of a declaration of forfeiture in the records of the commissioner of public lands.

[1982 1st ex.s. c 21 § 131.]

RCW 79.95.030
Lease of beds of navigable waters -- Improvements -- Federal permit -- Forfeiture -- Plans and specifications.

The applicant for a lease under the provisions of this chapter shall first obtain from the United States Army Corps of Engineers or other federal regulatory agency, a permit to place structures or improvements in said navigable waters and file with the department of natural resources a copy

of said permit. No structures or improvements shall be constructed beyond a point authorized by the Corps of Engineers or the department of natural resources and any construction beyond authorized limits will work a forfeiture of all rights granted by the terms of any lease issued under the provisions of this chapter. The applicant shall also file plans and specifications of any proposed improvements to be placed upon such areas with the department of natural resources, said plans and specifications to be the same as provided for in the case of the lease of harbor areas.

[1982 1st ex.s. c 21 § 132.]

RCW 79.95.040
Lease of beds of navigable waters -- Preference right to re-lease.

At the expiration of any lease issued under the provisions of this chapter, the lessee or his successors or assigns, shall have a preference right to re-lease the area covered by the original lease or any portion thereof if the department of natural resources deems it to be in the best interest of the state to re-lease the same. Such re-lease shall be for such term as specified by the provisions of this chapter, and at such rental and upon such conditions as may be prescribed by the department: PROVIDED, That if such preference right is not exercised, the rights and obligations of the lessee, the department of natural resources, and any subsequent lessee shall be the same as provided in RCW 79.94.320 relating to failure to re-lease tide or shore lands. Any person who prior to June 11, 1953, had occupied and improved an area subject to lease under this chapter and has secured a permit for such improvements from the United States Army Corps of Engineers, or other federal regulatory agency, shall have the rights and obligations of a lessee under this section upon the filing of a copy of such permit together with plans and specifications of such improvements with the department of natural resources.

[1982 1st ex.s. c 21 § 133.]

RCW 79.95.050
United States Navy base -- Legislative findings and declaration.

The legislature recognizes the importance of economic development in the state of Washington, and finds that the location of a United States Navy base in Everett, Washington will enhance economic development. The legislature finds that the state should not assume liability or risks resulting from any action taken by the United States Navy, now or in the future associated with the dredge disposal program for that project known as confined aquatic disposal (CAD). The legislature also recognizes the importance of improving water quality and cleaning up pollution in Puget Sound. The legislature hereby declares these actions to be a public purpose necessary to protect the health, safety, and welfare of its citizens, and to promote economic growth and improve environmental quality in the state of Washington. The United States Navy proposes to commence the Everett home port project immediately.

[1987 c 271 § 1.]

NOTES:

Severability -- 1987 c 271: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 271 § 6.]

RCW 79.95.060
Lease of bedlands in Port Gardner Bay for dredge spoil site -- Conditions.

(1) Upon application by the United States Navy, and upon verification of the legal description and compliance with the intent of this chapter, the commissioner of public lands is authorized to lease bedlands in Port Gardner Bay for a term of thirty years so the United States Navy can utilize a dredge spoil site solely for purposes related to construction of the United States Navy base at Everett.

(2) The lease shall reserve for the state uses of the property and associated waters which are not inconsistent with the use of the bed by the Navy as a disposal site. The lease shall include conditions under which the Navy:

(a) Will agree to hold the state of Washington harmless for any damage and liability relating to,

or resulting from, the use of the property by the Navy; and

(b) Will agree to comply with all terms and conditions included in the applicable state of Washington section 401 water quality certification issued under the authority of the Federal Clean Water Act (33 U.S.C. Sec. 1251, et seq.), all terms and conditions of the Army Corps of Engineers section 404 permit (33 U.S.C. Sec. 1344), and all requirements of statutes, regulations, and permits relating to water quality and aquatic life in Puget Sound and Port Gardner Bay, including all reasonable and appropriate terms and conditions of any permits issued under the authority of the Washington state shoreline management act (chapter 90.58 RCW) and any applicable shoreline master program.

(3) The ability of the state of Washington to enforce the terms and conditions specified in subsection (2)(b) of this section shall include, but not be limited to: (a) The terms and conditions of the lease; (b) the section 401 water quality certification under the Clean Water Act, 33 U.S.C. Sec. 1251, et seq.; (c) the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sec. 9601, et seq.; (d) the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et seq.; or (e) any other applicable federal or state law.

[1987 c 271 § 3.]

NOTES:

Severability -- 1987 c 271: See note following RCW 79.95.050.

RCW 79.95.900
Savings -- Captions -- Severability -- Effective dates -- 1982 1st ex.s. c 21.

See RCW 79.96.901 through 79.96.905.

Chapter 79.96 RCW Aquatic Lands -- Oysters, Geoducks, Shellfish, And Other Aquacultural Uses

RCW SECTIONS

79.96.010 Leasing beds of tidal waters for shellfish cultivation or other aquaculture use.

79.96.020 Leasing lands for shellfish cultivation or other aquaculture use -- Who may lease -- Application -- Deposit.

79.96.030 Leasing lands for shellfish cultivation or other aquaculture use -- Inspection and report by director of fish and wildlife -- Rental and term -- Commercial harvest of subtidal hardshell clams by hydraulic escalating.

79.96.040 Leasing lands for shellfish cultivation or other aquaculture use -- Survey and boundary markers.

79.96.050 Leasing lands for shellfish cultivation or other aquaculture use -- Renewal lease.

79.96.060 Leasing lands for shellfish cultivation or other aquaculture use -- Reversion for use other than cultivation of shellfish.

79.96.070 Leasing lands for shellfish cultivation or other aquaculture use -- Abandonment -- Application for other lands.

79.96.080 Geoduck harvesting -- Agreements, regulation.

79.96.085 Geoduck harvesting -- Designation of aquatic lands.

79.96.090 Lease of tidelands set aside as oyster reserves.

79.96.100 Inspection and report by director of fish and wildlife.

79.96.110 Vacation of reserve -- Lease of lands -- Designated state oyster reserve lands.

79.96.120 Sale of reserved or reversionary rights in tidelands.

79.96.130 Wrongful taking of shellfish from public lands -- Civil remedies.

79.96.140 Leasing beds for geoduck harvest/cultivation -- Survey by private party.

79.96.200 Seaweed--Marine aquatic plants defined.

79.96.210 Seaweed--Personal use limit -- Commercial harvesting prohibited -- Exception -- Import restriction.

79.96.220 Seaweed--Harvest and possession violations -- Penalties and damages.

79.96.230 Seaweed--Enforcement.

79.96.901 Savings -- 1982 1st ex.s. c 21.

79.96.902 Captions -- 1982 1st ex.s. c 21.

79.96.903 Severability -- 1982 1st ex.s. c 21.

79.96.904 Effective date -- 1982 1st ex.s. c 21 §§ 176 and 179.

79.96.905 Effective date -- 1982 1st ex.s. c 21.

79.96.906 Intensive management plan for geoducks -- Evaluation of program -- Report -- 1984 c 221.

RCW 79.96.010
Leasing beds of tidal waters for shellfish cultivation or other aquaculture use.

The beds of all navigable tidal waters in the state lying below extreme low tide, except as prohibited by section 1, Article XV, of the Washington state Constitution shall be subject to lease for the purposes of planting and cultivating oyster beds, or for the purpose of cultivating clams or other edible shellfish, or for other aquaculture use, for periods not to exceed thirty years.

Nothing in this section shall prevent any person from leasing more than one parcel, as offered by the department.

[1993 c 295 § 1; 1982 1st ex.s. c 21 § 134.]

RCW 79.96.020
Leasing lands for shellfish cultivation or other aquaculture use -- Who may lease -- Application -- Deposit.

Any person desiring to lease tidelands or beds of navigable waters for the purpose of planting and cultivating oyster beds, or for the purpose of cultivating clams and other edible shellfish, shall file with the department of natural resources, on a proper form, an application in writing signed by the applicant and accompanied by a map of the lands desired to be leased, describing the lands by metes and bounds tied to at least two United States government corners, and by such reference to local geography as shall suffice to convey a knowledge of the location of the lands with reasonable accuracy to persons acquainted with the vicinity, and accompanied by a deposit of ten dollars which deposit shall be returned to the applicant in case a lease is not granted.

[1982 1st ex.s. c 21 § 135.]

RCW 79.96.030
Leasing lands for shellfish cultivation or other aquaculture use -- Inspection and report by director of fish and wildlife -- Rental and term -- Commercial harvest of subtidal hardshell clams by hydraulic escalating.

(1) The department of natural resources, upon the receipt of an application for a lease for the purpose of planting and cultivating oyster beds or for the purpose of cultivating clams or other edible shellfish, shall notify the director of fish and wildlife of the filing of the application describing the tidelands or beds of navigable waters applied for. The director of fish and wildlife shall cause an inspection of the lands applied for to be made and shall make a full report to the department of natural resources of his or her findings as to whether it is necessary, in order to protect existing natural oyster beds, and to secure adequate seeding thereof, to retain the lands described in the application for lease or any part thereof, and in the event the director deems it advisable to retain the lands or any part thereof for the protection of existing natural oyster beds or to guarantee the continuance of an adequate seed stock for existing natural oyster beds, the same shall not be subject to lease. However, if the director determines that the lands applied for or any part thereof may be leased, the director shall so notify the department of natural resources and the director shall cause an examination of the lands to be made to determine the presence, if any, of natural oysters, clams, or other edible shellfish on said lands, and to fix the rental value of the lands for use for oyster, clam, or other edible shellfish cultivation. In his or her report to the department, the director shall recommend a minimum rental for said lands and an estimation of the value of the oysters, clams, or other edible shellfish, if any, then present on the lands applied for. The lands approved by the director for lease may then be leased to the applicant for a period of not less than five years nor more than ten years at a rental not less than the minimum rental recommended by the director of fish and wildlife. In addition, before entering upon possession of the land, the applicant shall pay the value of the oysters, clams, or other edible shellfish, if any, then present on the land as determined by the director, plus the expense incurred by the director in investigating the quantity of oysters, clams, or other edible shellfish, present on the land applied for.

(2) When issuing new leases or reissuing existing leases the department shall not permit the commercial harvest of subtidal hardshell clams by means of hydraulic escalating when the upland within five hundred feet of any lease tract is zoned for residential development.

[1994 c 264 § 68; 1987 c 374 § 1; 1982 1st ex.s. c 21 § 136.]

RCW 79.96.040
Leasing lands for shellfish cultivation or other aquaculture use -- Survey and boundary markers.

Before entering into possession of any leased tidelands or beds of navigable waters, the applicant shall cause the same to be surveyed by a registered land surveyor, and he or she shall furnish to the department of natural resources and to the director of fish and wildlife, a map of the leased premises signed and certified by the registered land surveyor. The lessee shall also cause the boundaries of the leased premises to be marked by piling monuments or other markers of a permanent nature as the director of fish and wildlife may direct.

[1994 c 264 § 69; 1982 1st ex.s. c 21 § 137.]

RCW 79.96.050

Leasing lands for shellfish cultivation or other aquaculture use -- Renewal lease.

The department of natural resources may, upon the filing of an application for a renewal lease, cause the tidelands or beds of navigable waters to be inspected, and if he or she deems it in the best interests of the state to re-lease said lands, he or she shall issue to the applicant a renewal lease for such further period not exceeding thirty years and under such terms and conditions as may be determined by the department: PROVIDED, That in the case of an application for a renewal lease it shall not be necessary for the lands to be inspected and reported upon by the director of fish and wildlife.

[1994 c 264 § 70; 1993 c 295 § 2; 1982 1st ex.s. c 21 § 138.]

RCW 79.96.060
Leasing lands for shellfish cultivation or other aquaculture use -- Reversion for use other than cultivation of shellfish.

All leases of tidelands and beds of navigable waters for the purpose of planting and cultivating oysters, clams, or other edible shellfish shall expressly provide that if at any time after the granting of said lease, the lands described therein shall cease to be used for the purpose of oyster beds, clam beds, or other edible shellfish beds, they shall thereupon revert to and become the property of the state and that the same are leased only for the purpose of cultivating oysters, clams, or other edible shellfish thereon, and that the state reserves the right to enter upon and take possession of said lands if at any time the same are used for any other purpose than the cultivation of oysters, clams, or other edible shellfish.

[1982 1st ex.s. c 21 § 139.]

RCW 79.96.070
Leasing lands for shellfish cultivation or other aquaculture use -- Abandonment -- Application for other lands.

If from any cause any lands leased for the purpose of planting and cultivating oysters, clams, or other edible shellfish shall become unfit and valueless for any such purposes, the lessee or his assigns, upon certifying such fact under oath to the department of natural resources, together with the fact that he has abandoned such land, shall be entitled to make application for other lands for such purposes.

[1982 1st ex.s. c 21 § 140.]

RCW 79.96.080
Geoduck harvesting -- Agreements, regulation.

(1) Geoducks shall be sold as valuable materials under the provisions of chapter 79.90 RCW. After confirmation of the sale, the department of natural resources may enter into an agreement with the purchaser for the harvesting of geoducks. The department of natural resources may place terms and conditions in the harvesting agreements as the department deems necessary. The department of natural resources may enforce the provisions of any harvesting agreement by suspending or canceling the harvesting agreement or through any other means contained in the harvesting agreement. Any geoduck harvester may terminate a harvesting agreement entered into pursuant to this subsection if actions of a governmental agency, beyond the control of the harvester, its agents, or its employees, prohibit harvesting, for a period exceeding thirty days during the term of the harvesting agreement, except as provided within the agreement. Upon such termination of the agreement by the harvester, the harvester shall be reimbursed by the department of natural resources for the cost paid to the department on the agreement, less the value of the harvest already accomplished by the harvester under the agreement.

(2) Harvesting agreements under this title for the purpose of harvesting geoducks shall require the harvester and the harvester's agent or representatives to comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists or as hereafter amended (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.): PROVIDED, That for the purposes of this section and RCW 77.60.070 as now or hereafter

amended, all persons who dive for geoducks are deemed to be employees as defined by the federal occupational safety and health act. All harvesting agreements shall provide that failure to comply with these standards is cause for suspension or cancellation of the harvesting agreement: PROVIDED FURTHER, That for the purposes of this subsection if the harvester contracts with another person or entity for the harvesting of geoducks, the harvesting agreement shall not be suspended or canceled if the harvester terminates its business relationship with such entity until compliance with this subsection is secured.

[2003 c 39 § 43; 1990 c 163 § 4; 1982 1st ex.s. c 21 § 141.]

RCW 79.96.085
Geoduck harvesting -- Designation of aquatic lands.

The department of natural resources shall designate the areas of aquatic lands owned by the state that are available for geoduck harvesting by licensed geoduck harvesters in accordance with chapter 79.90 RCW.

[1990 c 163 § 5; 1983 1st ex.s. c 46 § 129; 1979 ex.s. c 141 § 5. Formerly RCW 75.28.286.]

NOTES:

Commercial harvesting of geoducks: RCW 77.60.070, 77.65.410.

RCW 79.96.090
Lease of tidelands set aside as oyster reserves.

The department of natural resources is hereby authorized to lease first or second class tidelands which have heretofore or which may hereafter be set aside as state oyster reserves in the same manner as provided elsewhere in this chapter for the lease of those lands.

[1982 1st ex.s. c 21 § 142.]

RCW 79.96.100
Inspection and report by director of fish and wildlife.

The department of natural resources, upon the receipt of an application for the lease of any first or second class tidelands owned by the state which have heretofore or which may hereafter be set aside as state oyster reserves, shall notify the director of fish and wildlife of the filing of the application describing the lands applied for. It shall be the duty of the director of fish and wildlife to cause an inspection of the reserve to be made for the purpose of determining whether said reserve or any part thereof should be retained as a state oyster reserve or vacated.

[1994 c 264 § 71; 1982 1st ex.s. c 21 § 143.]

RCW 79.96.110
Vacation of reserve -- Lease of lands -- Designated state oyster reserve lands.

(1) In the event that the fish and wildlife commission approves the vacation of the whole or any part of a reserve, the department of natural resources may vacate and offer for lease such parts or all of the reserve as it deems to be for the best interest of the state, and all moneys received for the lease of such lands shall be paid to the department of natural resources.

(2) Notwithstanding RCW 77.60.020, subsection (1) of this section, or any other provision of state law, the state oyster reserves in Eld Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or Thurston counties shall permanently be designated as state oyster reserve lands.

[2001 c 273 § 4; 2000 c 11 § 30; 1994 c 264 § 72; 1982 1st ex.s. c 21 § 144.]

RCW 79.96.120
Sale of reserved or reversionary rights in tidelands.

Upon an application to purchase the reserved and reversionary rights of the state in any tidelands sold under the provisions of chapter 24 of the Laws of 1895, or chapter 25 of the Laws of 1895, or chapter 165 of the Laws of 1919, or either such reserved or reversionary right if only one exists, being filed in the office of the commissioner of public lands by the owner of such tidelands, accompanied by an abstracter's certificate, or other evidence of the applicant's

title to such lands, the department of natural resources, if it finds the applicant is the owner of the tidelands, is authorized to inspect, appraise, and sell, if otherwise permitted under RCW 79.94.150, for not less than the appraised value, such reserved or reversionary rights of the state to the applicant, and upon payment of the purchase price to cause a deed to be issued therefor as in the case of the sale of state lands, or upon the payment of one-fifth of the purchase price, to issue a contract of sale therefor, providing that the remainder of the purchase price may be paid in four equal annual installments, with interest on deferred payments at the rate of six percent per annum, or sooner at the election of the contract holder, which contract shall be subject to cancellation by the department of natural resources for failure to comply with its provisions, and upon the completion of the payments as provided in such contract to cause a deed to the lands described in the contract to be issued to the holder thereof as in the case of the sale of state lands.

[1982 1st ex.s. c 21 § 145.]

RCW 79.96.130
Wrongful taking of shellfish from public lands -- Civil remedies.

(1) If a person wrongfully takes shellfish or causes shellfish to be wrongfully taken from the public lands and the wrongful taking is intentional and knowing, then the person shall be liable for damages of treble the fair market retail value of the amount of shellfish wrongfully taken. If a person wrongfully takes shellfish from the public lands under other circumstances, then the person shall be liable for damages of double the fair market value of the amount of shellfish wrongfully taken.

(2) For purposes of this section, a person "wrongfully takes" shellfish from public lands if the person takes shellfish: (a) Above the limits of any applicable laws that govern the harvest of shellfish from public lands; (b) without reporting the harvest to the department of fish and wildlife or the department of natural resources where such reporting is required by law or contract; (c) outside the area or above the limits that an agreement or contract from the department of natural resources allows the harvest of shellfish from public lands; or (d) without a lease or purchase of the shellfish where such lease or purchase is required by law prior to harvest of the shellfish.

(3) The remedies in this section are for civil damages and shall be proved by a preponderance of the evidence. The department of natural resources may file a civil action in Thurston county superior court or the county where the shellfish were taken against any person liable under this section. Damages recovered under this section shall be applied in the same way as received under geoduck harvesting agreements authorized by RCW 79.96.080.

(4) For purposes of the remedies created by this section, the amount of shellfish wrongfully taken by a person may be established either:

(a) By surveying the aquatic lands to reasonably establish the amount of shellfish taken from the immediate area where a person is shown to have been wrongfully taking shellfish;

(b) By weighing the shellfish on board any vessel or in possession of a person shown to be wrongfully taking shellfish; or

(c) By any other evidence that reasonably establishes the amount of shellfish wrongfully taken.

The amount of shellfish established by (a) or (b) of this subsection shall be presumed to be the amount wrongfully taken unless the defendant shows by a preponderance of evidence that the shellfish were lawfully taken or that the defendant did not take the shellfish presumed to have been wrongfully taken. Whenever there is reason to believe that shellfish in the possession of any person were wrongfully taken, the department of natural resources or the department of fish and wildlife may require the person to proceed to a designated off-load point and to weigh all shellfish in possession of the person or on board the person's vessel.

(5) This civil remedy is supplemental to the state's power to prosecute any person for theft of shellfish, for other crimes where shellfish are involved, or for violation of regulations of the department of fish and wildlife.

[1994 c 264 § 73; 1990 c 163 § 9.]

RCW 79.96.140
Leasing beds for geoduck harvest/cultivation -- Survey by private party.

Beds of navigable waters held under contract or deed from the state of Washington upon which a private party is harvesting or cultivating geoduck shall be surveyed by the private party and a record of survey filed in compliance with chapter 58.09 RCW prior to harvest. Property corners will be placed in sufficient quantity and location to aid in relocation of the oyster tract lines occurring or extending below extreme low tide. Buoys on anchors must be placed intervisibly along and at angle points on any ownership boundaries that extend below extreme low tide, for the harvest term. The survey of privately owned beds of navigable waters will be established on the Washington coordinate system in compliance with chapter 58.20 RCW and property corners labeled with their coordinates on the record of survey.

[2002 c 123 § 3.]

NOTES:

Findings -- 2002 c 123: See note following RCW 79.90.570.

RCW 79.96.200
Seaweed--Marine aquatic plants defined.

Unless the context clearly requires otherwise, the definition in this section applies throughout this chapter.

"Marine aquatic plants" means saltwater marine plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free-floating state. Marine aquatic plants include but are not limited to seaweed of the classes Chlorophyta, Phaeophyta, and Rhodophyta.

[1993 c 283 § 2. Formerly RCW 79.01.800.]

NOTES:

Findings -- 1993 c 283: "The legislature finds that the plant resources of marine aquatic ecosystems have inherent value and provide essential habitat. These resources are also becoming increasingly valuable as economic commodities and may be declining. The legislature further finds that the regulation of harvest of these resources is currently inadequate to afford necessary protection." [1993 c 283 § 1.]

RCW 79.96.210
Seaweed--Personal use limit -- Commercial harvesting prohibited -- Exception -- Import restriction.

(1) The maximum daily wet weight harvest or possession of seaweed for personal use from all aquatic lands as defined under RCW 79.90.010 and all privately owned tidelands is ten pounds per person. The department in cooperation with the department of fish and wildlife may establish seaweed harvest limits of less than ten pounds for conservation purposes. This section shall in no way affect the ability of any state agency to prevent harvest of any species of marine aquatic plant from lands under its control, ownership, or management.

(2) Except as provided under subsection (3) of this section, commercial harvesting of seaweed from aquatic lands as defined under RCW 79.90.010, and all privately owned tidelands is prohibited. This subsection shall in no way affect commercial seaweed aquaculture.

(3) Upon mutual approval by the department and the department of fish and wildlife, seaweed species of the genus Macrocystis may be commercially harvested for use in the herring spawn-on-kelp fishery.

(4) Importation of seaweed species of the genus Macrocystis into Washington state for the herring spawn-on-kelp fishery is subject to the fish and shellfish disease control policies of the department of fish and wildlife. Macrocystis shall not be imported from areas with fish or shellfish diseases associated with organisms that are likely to be transported with Macrocystis. The department shall incorporate this policy on Macrocystis importation into its overall fish and shellfish disease control policies.

[2003 c 334 § 442; 1996 c 46 § 1; 1994 c 286 § 1; 1993 c 283 § 3. Formerly RCW 79.01.805.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

Effective date -- 1994 c 286: "This act shall take effect July 1, 1994." [1994 c 286 § 6.]

Findings -- 1993 c 283: See note following RCW 79.96.200.

RCW 79.96.220
Seaweed--Harvest and possession violations -- Penalties and damages.

(1) It is unlawful to exceed the harvest and possession restrictions imposed under RCW 79.96.210.

(2) A violation of this section is a misdemeanor, and a violation taking place on aquatic lands is subject to the provisions of RCW 79.02.300.

(3) A person committing a violation of this section on private tidelands which he or she owns is liable to the state for treble the amount of damages to the seaweed resource, and a person trespassing on private tidelands and committing a violation of this section is liable to the private tideland owner for treble the amount of damages to the seaweed resource. Damages recoverable include, but are not limited to, damages for the market value of the seaweed, for injury to the aquatic ecosystem, and for the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs.

[2003 c 334 § 443; 2003 c 53 § 380; 1994 c 286 § 2; 1993 c 283 § 4. Formerly RCW 79.01.810.]

NOTES:

Reviser's note: This section was amended by 2003 c 53 § 380 and by 2003 c 334 § 443, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent -- 2003 c 334: See note following RCW 79.02.010.

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Effective date -- 1994 c 286: See note following RCW 79.96.210.

Findings -- 1993 c 283: See note following RCW 79.96.200.

RCW 79.96.230
Seaweed--Enforcement.

The department of fish and wildlife and law enforcement authorities may enforce the provisions of RCW 79.96.210 and 79.96.220.

[2003 c 334 § 444; 1994 c 286 § 3; 1993 c 283 § 5. Formerly RCW 79.01.815.]

NOTES:

Intent -- 2003 c 334: See note following RCW 79.02.010.

Effective date -- 1994 c 286: See note following RCW 79.96.210.

Findings -- 1993 c 283: See note following RCW 79.96.200.

RCW 79.96.901
Savings -- 1982 1st ex.s. c 21.

The enactment of this act including all repeals, decodifications, and amendments shall not be construed as affecting any existing right acquired under the statutes repealed, decodified, or amended or under any rule, regulation, or order issued pursuant thereto; nor as affecting any proceeding instituted thereunder.

[1982 1st ex.s. c 21 § 181.]

RCW 79.96.902
Captions -- 1982 1st ex.s. c 21.

Chapter and section headings as used in this act do not constitute any part of the law.

[1982 1st ex.s. c 21 § 182.]

RCW 79.96.903
Severability -- 1982 1st ex.s. c 21.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1982 1st ex.s. c 21 § 184.]

RCW 79.96.904
Effective date -- 1982 1st ex.s. c 21 §§ 176 and 179.

Sections 176 (amending RCW 79.01.525) and 179 (creating a new section providing for an aquatic lands joint legislative committee) of this act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

[1982 1st ex.s. c 21 § 185.]

RCW 79.96.905
Effective date -- 1982 1st ex.s. c 21.

Except as provided in RCW 79.96.904, this act shall take effect July 1, 1983.

[1982 1st ex.s. c 21 § 186.]

RCW 79.96.906
Intensive management plan for geoducks -- Evaluation of program -- Report -- 1984 c 221.

The department of natural resources may enter into agreements with the department of fish and wildlife for the development of an intensive management plan for geoducks including the development and operation of a geoduck hatchery.

The department of natural resources shall evaluate the progress of the intensive geoduck management program and provide a written report to the legislature by December 1, 1990, for delivery to the appropriate standing committees. The evaluation shall determine the benefits and costs of continued operation of the program, and shall discuss alternatives including continuance, modification, and termination of the intensive geoduck management program.

[1994 c 264 § 74; 1984 c 221 § 26.]

NOTES:

Severability -- Effective date -- 1984 c 221: See RCW 79.90.901 and 79.90.902

RCW 84.40.170
Plat of irregular subdivided tracts -- Notice to owner -- Surveys -- Costs.

(1) In all cases of irregular subdivided tracts or lots of land other than any regular government subdivision the assessor shall outline a plat of such tracts or lots and notify the owner or owners thereof with a request to have the same surveyed by the county engineer, and cause the same to be platted into numbered (or lettered) lots or tracts. If any county has in its possession the correct field notes of any such tract or lot of land a new survey shall not be necessary and such tracts may be mapped from such field notes. In case the owner of such tracts or lots neglects or refuses to have the same surveyed or platted, the assessor shall notify the county legislative authority in and for the county, who may order and direct the county engineer to make the proper survey and plat of the tracts and lots. A plat shall be made on which said tracts or lots of land shall be accurately described by lines, and numbered (or lettered), which numbers (or letters) together with number of the section, township and range shall be distinctly marked on such plat, and the field notes of all such tracts or lots of land shall describe each tract or lot according to the survey, and such tract or lot shall be numbered (or lettered) to correspond with its number (or letter) on the map. The plat shall be given a designated name by the surveyor thereof. When the survey, plat, field notes and name of plat, shall have been approved by the county legislative authority, the plat and field notes shall be filed and recorded in the office of the county auditor, and the description of any tract or lot of land described in said plats by number (or letter), section, township and range, shall be a sufficient and legal description for revenue and all other purposes.

(2) Upon the request of eighty percent of the owners of the property to be surveyed and the approval of the county legislative authority, the county assessor may charge for actual costs and file a lien against the subject property if the costs are not repaid within ninety days of notice of completion, which may be collected as if such charges had been levied as a property tax.

[1994 c 301 § 39; 1994 c 124 § 23; 1961 c 15 § 84.40.170. Prior: 1925 ex.s. c 130 § 53; 1901 c 124 §§ 1, 2, 3; 1891 c 140 § 45; RRS § 11136.]

NOTES:

Reviser's note: This section was amended by 1994 c 124 § 23 and by 1994 c 301 § 39, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Chapter 90.58 RCW Shoreline Management Act Of 1971

RCW SECTIONS

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90.58.900 Liberal construction -- 1971 ex.s. c 286.

90.58.910 Severability -- 1971 ex.s. c 286.

90.58.911 Severability -- 1983 c 138.

90.58.920 Effective date -- 1971 ex.s. c 286.

NOTES:

Marine oil pollution -- Baseline study program: RCW 43.21A.405 through 43.21A.420.

RCW 90.58.010
Short title.

This chapter shall be known and may be cited as the "Shoreline Management Act of 1971".

[1971 ex.s. c 286 § 1.]

RCW 90.58.020
Legislative findings -- State policy enunciated -- Use preference.

The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and

protecting private property rights consistent with the public interest. There is, therefor, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

(1) Recognize and protect the statewide interest over local interest;

(2) Preserve the natural character of the shoreline;

(3) Result in long term over short term benefit;

(4) Protect the resources and ecology of the shoreline;

(5) Increase public access to publicly owned areas of the shorelines;

(6) Increase recreational opportunities for the public in the shoreline;

(7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

[1995 c 347 § 301; 1992 c 105 § 1; 1982 1st ex.s. c 13 § 1; 1971 ex.s. c 286 § 2.]

NOTES:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

RCW 90.58.030
Definitions and concepts.

As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:

(1) Administration:

(a) "Department" means the department of ecology;

(b) "Director" means the director of the department of ecology;

(c) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to this chapter;

(d) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated;

(e) "Hearing board" means the shoreline hearings board established by this chapter.

(2) Geographical:

(a) "Extreme low tide" means the lowest line on the land reached by a receding tide;

(b) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

(c) "Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within the state;

(d) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

(e) "Shorelines of statewide significance" means the following shorelines of the state:

(i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

(A) Nisqually Delta -- from DeWolf Bight to Tatsolo Point,

(B) Birch Bay -- from Point Whitehorn to Birch Point,

(C) Hood Canal -- from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area -- from Brown Point to Yokeko Point, and

(E) Padilla Bay -- from March Point to William Point;

(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

(iv) Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

(vi) Those shorelands associated with (i), (ii), (iv), and (v) of this subsection (2)(e);

(f) "Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.

(i) Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom.

(ii) Any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforest land use, on lands subject to the provisions of this subsection (2)(f)(ii) are not subject to additional regulations under this chapter;

(g) "Floodway" means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition. The floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state;

(h) "Wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

(3) Procedural terms:

(a) "Guidelines" means those standards adopted to implement the policy of this chapter for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria to local governments and the department in developing master programs;

(b) "Master program" shall mean the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020;

(c) "State master program" is the cumulative total of all master programs approved or adopted by the department of ecology;

(d) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;

(e) "Substantial development" shall mean any

development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. The following shall not be considered substantial developments for the purpose of this chapter:

(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

(ii) Construction of the normal protective bulkhead common to single family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(v) Construction or modification of navigational aids such as channel markers and anchor buoys;

(vi) Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(vii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in fresh waters, the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter;

(viii) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water for the irrigation of lands;

(ix) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(A) The activity does not interfere with the normal public use of the surface waters;

(B) The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(C) The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(D) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(E) The activity is not subject to the permit requirements of RCW 90.58.550;

(xii) The process of removing or controlling an aquatic noxious weed, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department jointly with other state agencies under chapter 43.21C RCW.

[2003 c 321 § 2; 2002 c 230 § 2; 1996 c 265 § 1. Prior: 1995 c 382 § 10; 1995 c 255 § 5; 1995 c 237 § 1; 1987 c 474 § 1; 1986 c 292 § 1; 1982 1st ex.s. c 13 § 2; 1980 c 2 § 3; 1979 ex.s. c 84 § 3; 1975 1st ex.s. c 182 § 1; 1973 1st ex.s. c 203 § 1; 1971 ex.s. c 286 § 3.]

NOTES:

Finding -- Intent -- 2003 c 321: "(1) The legislature finds that the final decision and order in *Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology*, Case No. 02-3-0009c, issued on January 9, 2003, by the central Puget Sound growth management hearings board was a case of first impression interpreting the addition of the shoreline management act into the growth management act, and that the board considered the appeal and issued its final order and decision without the benefit of shorelines guidelines to provide guidance on the implementation of the shoreline management act and the adoption of shoreline master programs.

(2) This act is intended to affirm the legislature's intent that:

(a) The shoreline management act be read, interpreted, applied, and implemented as a whole consistent with decisions of the shoreline hearings board and Washington courts prior to the decision of the central Puget Sound growth management hearings board in *Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology*;

(b) The goals of the growth management act, including the goals and policies of the shoreline management act, set forth in RCW 36.70A.020 and included in RCW 36.70A.020 by RCW 36.70A.480, continue to be listed without an order of priority; and

(c) Shorelines of statewide significance may include critical areas as defined by RCW 36.70A.030(5), but that shorelines of statewide significance are not critical areas simply because they are shorelines of statewide significance.

(3) The legislature intends that critical areas within the jurisdiction of the shoreline management act shall be governed by the shoreline management act and that critical areas outside the jurisdiction of the shoreline management act shall be governed by the growth management act. The legislature further intends that the quality of information currently required by the shoreline management act to be applied to the protection of critical areas within shorelines of the state shall not be limited or changed by the provisions of the growth management act." [2003 c 321 § 1.]

Finding -- Intent -- 2002 c 230: "The legislature finds that the dollar threshold for what constitutes substantial development under the shoreline management act has not been changed since 1986. The legislature recognizes that the effects of inflation have brought in many activities under the jurisdiction of chapter 90.58 RCW that would have been exempted under its original provisions. It is the intent of the legislature to modify the current dollar threshold for what constitutes substantial development under the shoreline management act, and to have this threshold readjusted on a five-year basis." [2002 c 230 § 1.]

Severability -- Effective date -- 1995 c 255: See RCW 17.26.900 and 17.26.901.

Severability -- 1986 c 292: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 292 § 5.]

Intent -- 1980 c 2; 1979 ex.s. c 84: "The legislature finds that high tides and hurricane force winds on February 13, 1979, caused conditions resulting in the catastrophic destruction of the Hood Canal bridge on state route 104, a state highway on the federal-aid system; and, as a consequence, the state of Washington has sustained a sudden and complete failure of a major segment of highway system with a disastrous impact on transportation services between the counties of Washington's Olympic peninsula and the remainder of the state. The governor has by proclamation found that these conditions constitute an emergency. To minimize the economic loss and hardship to residents of the Puget Sound and Olympic peninsula regions, it is the intent of 1979 ex.s. c 84 to authorize the department of transportation to undertake immediately all necessary actions to restore interim transportation services across Hood Canal and Puget Sound and upon the Kitsap and Olympic peninsulas and to design and reconstruct a permanent bridge at the site of the original Hood Canal bridge. The department of transportation is directed to proceed with such actions in an environmentally responsible manner that would meet the substantive objectives of the state environmental policy act and the shorelines management act, and shall consult with the department of ecology in the planning process. The exemptions from the state environmental policy act and the shorelines management act contained in RCW 43.21C.032 and 90.58.030 are intended to approve and ratify the timely actions of the department of transportation taken and to be taken to restore interim transportation services and to reconstruct a permanent Hood Canal bridge without procedural delays." [1980 c 2 § 1; 1979 ex.s. c 84 § 1.]

RCW 90.58.040
Program applicable to shorelines of the state.

The shoreline management program of this chapter shall apply to the shorelines of the state as defined in this chapter.

[1971 ex.s. c 286 § 4.]

RCW 90.58.045
Environmental excellence program agreements -- Effect on chapter.

Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW.

[1997 c 381 § 28.]

NOTES:

Purpose -- 1997 c 381: See RCW 43.21K.005.

RCW 90.58.050
Program as cooperative between local government and state -- Responsibilities differentiated.

This chapter establishes a cooperative program of shoreline management between local government and the state. Local government shall have the primary responsibility for initiating the planning required by this chapter and administering the regulatory program consistent with the policy and provisions of this chapter. The department shall act primarily in a supportive and review capacity with an emphasis on providing assistance to local government and on insuring compliance with the policy and provisions of this chapter.

[1995 c 347 § 303; 1971 ex.s. c 286 § 5.]

NOTES:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

RCW 90.58.060
Review and adoption of guidelines -- Public hearings, notice of -- Amendments.

(1) The department shall periodically review and adopt guidelines consistent with RCW 90.58.020, containing the elements specified in RCW 90.58.100 for:

(a) Development of master programs for regulation of the uses of shorelines; and

(b) Development of master programs for regulation of the uses of shorelines of statewide significance.

(2) Before adopting or amending guidelines under this section, the department shall provide an opportunity for public review and comment as follows:

(a) The department shall mail copies of the proposal to all cities, counties, and federally recognized Indian tribes, and to any other person who has requested a copy, and shall publish the proposed guidelines in the Washington state register. Comments shall be submitted in writing to the department within sixty days from the date the proposal has been published in the register.

(b) The department shall hold at least four public hearings on the proposal in different locations throughout the state to provide a reasonable opportunity for residents in all parts of the state to present statements and views on the proposed guidelines. Notice of the hearings shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in each county of the state. If an amendment to the guidelines addresses an issue limited to one geographic area, the number and location of hearings may be adjusted consistent with the intent of this subsection to assure all parties a reasonable opportunity to comment on the proposed amendment. The department shall accept written comments on the proposal during the sixty-day public comment period and for seven days after the final public hearing.

(c) At the conclusion of the public comment period, the department shall review the comments received and modify the proposal consistent with the provisions of this chapter. The proposal shall then be published for adoption pursuant to the provisions of chapter 34.05 RCW.

(3) The department may adopt amendments to the guidelines not more than once each year. Such amendments shall be limited to: (a) Addressing technical or procedural issues that result from the review and adoption of master programs under the guidelines; or (b) issues of guideline compliance with statutory provisions.

[2003 c 262 § 1; 1995 c 347 § 304; 1971 ex.s. c 286 § 6.]

NOTES:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

RCW 90.58.065
Application of guidelines and master programs to agricultural activities.

(1) The guidelines adopted by the department and master programs developed or amended by local governments according to RCW 90.58.080 shall not require modification of or limit agricultural activities occurring on agricultural lands. In jurisdictions where agricultural activities occur, master programs developed or amended after June 13, 2002, shall include provisions addressing new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and development not meeting the definition of agricultural activities. Nothing in this section limits or changes the terms of the *current exception to the definition of substantial development in RCW 90.58.030(3)(e)(iv). This section applies only to this chapter, and shall not affect any other authority of local governments.

(2) For the purposes of this section:

(a) "Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market

conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation;

(b) "Agricultural products" includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including but not limited to meat, upland finfish, poultry and poultry products, and dairy products;

(c) "Agricultural equipment" and "agricultural facilities" includes, but is not limited to: (i) The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains; (ii) corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands; (iii) farm residences and associated equipment, lands, and facilities; and (iv) roadside stands and on-farm markets for marketing fruit or vegetables; and

(d) "Agricultural land" means those specific land areas on which agriculture activities are conducted.

(3) The department and local governments shall assure that local shoreline master programs use definitions consistent with the definitions in this section.

[2002 c 298 § 1.]

NOTES:

***Reviser's note:** "Current" first appears in chapter 298, Laws of 2002.

Implementation -- 2002 c 298: "The provisions of this act do not become effective until the earlier of either January 1, 2004, or the date the department of ecology amends or updates chapter 173-16 or 173-26 WAC." [2002 c 298 § 2.]

RCW 90.58.070
Local governments to submit letters of intent -- Department to act upon failure of local government.

(1) Local governments are directed with regard to shorelines of the state in their various jurisdictions to submit to the director of the department, within six months from June 1, 1971, letters stating that they propose to complete an inventory and develop master programs for these shorelines as provided for in RCW 90.58.080.

(2) If any local government fails to submit a letter as provided in subsection (1) of this section, or fails to adopt a master program for the shorelines of the state within its jurisdiction in accordance with the time schedule provided in this chapter, the department shall carry out the requirements of RCW 90.58.080 and adopt a master program for the shorelines of the state within the jurisdiction of the local government.

[1971 ex.s. c 286 § 7.]

RCW 90.58.080
Timetable for local governments to develop or amend master programs -- Review of master programs -- Grants.

(1) Local governments shall develop or amend a master program for regulation of uses of the shorelines of the state consistent with the required elements of the guidelines adopted by the department in accordance with the schedule established by this section.

(2)(a) Subject to the provisions of subsections (5) and (6) of this section, each local government subject to this chapter shall develop or amend its master program for the regulation of uses of shorelines within its jurisdiction according to the

following schedule:

(i) On or before December 1, 2005, for the city of Port Townsend, the city of Bellingham, the city of Everett, Snohomish county, and Whatcom county;

(ii) On or before December 1, 2009, for King county and the cities within King county greater in population than ten thousand;

(iii) Except as provided by (a)(i) and (ii) of this subsection, on or before December 1, 2011, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(iv) On or before December 1, 2012, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(v) On or before December 1, 2013, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(vi) On or before December 1, 2014, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(b) Nothing in this subsection (2) shall preclude a local government from developing or amending its master program prior to the dates established by this subsection (2).

(3)(a) Following approval by the department of a new or amended master program, local governments required to develop or amend master programs on or before December 1, 2009, as provided by subsection (2)(a)(i) and (ii) of this section, shall be deemed to have complied with the schedule established by subsection (2)(a)(iii) of this section and shall not be required to complete master program amendments until seven years after the applicable dates established by subsection (2)(a)(iii) of this section. Any jurisdiction listed in subsection (2)(a)(i) of this section that has a new or amended master program approved by the department on or after March 1, 2002, but before July 27, 2003, shall not be required to complete master program amendments until seven years after the applicable date provided by subsection (2)(a)(iii) of this section.

(b) Following approval by the department of a new or amended master program, local governments choosing to develop or amend master programs on or before December 1, 2009, shall be deemed to have complied with the schedule established by subsection (2)(a)(iii) through (vi) of this section and shall not be required to complete master program amendments until seven years after the applicable dates established by subsection (2)(a)(iii) through (vi) of this section.

(4) Local governments shall conduct a review of their master programs at least once every seven years after the applicable dates established by subsection (2)(a)(iii) through (vi) of this section. Following the review required by this subsection (4), local governments shall, if necessary, revise their master programs. The purpose of the review is:

(a) To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and

(b) To assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

(5) Local governments are encouraged to begin the process of developing or amending their master programs early and are eligible for grants from the department as provided by RCW 90.58.250, subject to available funding. Except for those local governments listed in subsection (2)(a)(i) and (ii) of this section, the deadline for completion of the new or amended master programs shall be two years after the date the grant is approved by the department. Subsequent master program review dates shall not be altered by the provisions of this subsection.

(6)(a) Grants to local governments for developing and amending master programs pursuant to the schedule established by this section shall be provided at least two years before the adoption dates specified in subsection (2) of this section. To the extent possible, the department shall allocate grants within the amount appropriated for such purposes to provide reasonable and adequate funding to local

governments that have indicated their intent to develop or amend master programs during the biennium according to the schedule established by subsection (2) of this section. Any local government that applies for but does not receive funding to comply with the provisions of subsection (2) of this section may delay the development or amendment of its master program until the following biennium.

(b) Local governments with delayed compliance dates as provided in (a) of this subsection shall be the first priority for funding in subsequent biennia, and the development or amendment compliance deadline for those local governments shall be two years after the date of grant approval.

(c) Failure of the local government to apply in a timely manner for a master program development or amendment grant in accordance with the requirements of the department shall not be considered a delay resulting from the provisions of (a) of this subsection.

(7) Notwithstanding the provisions of this section, all local governments subject to the requirements of this chapter that have not developed or amended master programs on or after March 1, 2002, shall, no later than December 1, 2014, develop or amend their master programs to comply with guidelines adopted by the department after January 1, 2003.

[2003 c 262 § 2; 1995 c 347 § 305; 1974 ex.s. c 61 § 1; 1971 ex.s. c 286 § 8.]

NOTES:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

RCW 90.58.090
Approval of master program or segments or amendments -- Procedure -- Departmental alternatives when shorelines of statewide significance -- Later adoption of master program supersedes departmental program.

(1) A master program, segment of a master program, or an amendment to a master program shall become effective when approved by the department. Within the time period provided in RCW 90.58.080, each local government shall have submitted a master program, either totally or by segments, for all shorelines of the state within its jurisdiction to the department for review and approval.

(2) Upon receipt of a proposed master program or amendment, the department shall:

(a) Provide notice to and opportunity for written comment by all interested parties of record as a part of the local government review process for the proposal and to all persons, groups, and agencies that have requested in writing notice of proposed master programs or amendments generally or for a specific area, subject matter, or issue. The comment period shall be at least thirty days, unless the department determines that the level of complexity or controversy involved supports a shorter period;

(b) In the department's discretion, conduct a public hearing during the thirty-day comment period in the jurisdiction proposing the master program or amendment;

(c) Within fifteen days after the close of public comment, request the local government to review the issues identified by the public, interested parties, groups, and agencies and provide a written response as to how the proposal addresses the identified issues;

(d) Within thirty days after receipt of the local government response pursuant to (c) of this subsection, make written findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020 and the applicable guidelines, provide a response to the issues identified in (c) of this subsection, and either approve the proposal as submitted, recommend specific changes necessary to make the proposal approvable, or deny approval of the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW 90.58.020 and the applicable guidelines. The written findings and conclusions shall be provided to the local government, all interested persons, parties, groups, and agencies of record on the proposal;

(e) If the department recommends changes to the proposed master program or amendment, within thirty days after the department mails the written findings and conclusions to the local

government, the local government may:

(i) Agree to the proposed changes. The receipt by the department of the written notice of agreement constitutes final action by the department approving the amendment; or

(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with the purpose and intent of the changes originally submitted by the department and with this chapter it shall approve the changes and provide written notice to all recipients of the written findings and conclusions. If the department determines the proposal is not consistent with the purpose and intent of the changes proposed by the department, the department may resubmit the proposal for public and agency review pursuant to this section or reject the proposal.

(3) The department shall approve the segment of a master program relating to shorelines unless it determines that the submitted segments are not consistent with the policy of RCW 90.58.020 and the applicable guidelines.

(4) The department shall approve the segment of a master program relating to critical areas as defined by RCW 36.70A.030(5) provided the master program segment is consistent with RCW 90.58.020 and applicable shoreline guidelines, and if the segment provides a level of protection of critical areas at least equal to that provided by the local government's critical areas ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2).

(5) The department shall approve those segments of the master program relating to shorelines of statewide significance only after determining the program provides the optimum implementation of the policy of this chapter to satisfy the statewide interest. If the department does not approve a segment of a local government master program relating to a shoreline of statewide significance, the department may develop and by rule adopt an alternative to the local government's proposal.

(6) In the event a local government has not complied with the requirements of RCW 90.58.070 it may thereafter upon written notice to the department elect to adopt a master program for the shorelines within its jurisdiction, in which event it shall comply with the provisions established by this chapter for the adoption of a master program for such shorelines.

Upon approval of such master program by the department it shall supersede such master program as may have been adopted by the department for such shorelines.

(7) A master program or amendment to a master program takes effect when and in such form as approved or adopted by the department. Shoreline master programs that were adopted by the department prior to July 22, 1995, in accordance with the provisions of this section then in effect, shall be deemed approved by the department in accordance with the provisions of this section that became effective on that date. The department shall maintain a record of each master program, the action taken on any proposal for adoption or amendment of the master program, and any appeal of the department's action. The department's approved document of record constitutes the official master program.

[2003 c 321 § 3; 1997 c 429 § 50; 1995 c 347 § 306; 1971 ex.s. c 286 § 9.]

NOTES:

Finding -- Intent -- 2003 c 321: See note following RCW 90.58.030.

Severability -- 1997 c 429: See note following RCW 36.70A.3201.

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

RCW 90.58.100
Programs as constituting use regulations -- Duties when preparing programs and amendments thereto -- Program contents.

(1) The master programs provided for in this chapter, when adopted or approved by the department shall constitute use regulations for the various shorelines of the state. In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible:

(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;

(b) Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;

(c) Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

(d) Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;

(e) Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

(f) Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.

(2) The master programs shall include, when appropriate, the following:

(a) An economic development element for the location and design of industries, industrial projects of statewide significance, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state;

(b) A public access element making provision for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element;

(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;

(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;

(h) An element that gives consideration to the statewide interest in the prevention and minimization of flood damages; and

(i) Any other element deemed appropriate or necessary to effectuate the policy of this chapter.

(3) The master programs shall include such map or maps, descriptive text, diagrams and charts, or other descriptive material as are necessary to provide for ease of understanding.

(4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same.

(5) Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW 90.58.020. Any such varying shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. The concept of this subsection shall be incorporated in the rules adopted by the department relating to the establishment of a permit system as provided in RCW 90.58.140(3).

(6) Each master program shall contain standards governing the protection of single family residences and appurtenant structures against damage or loss due to shoreline erosion. The standards shall govern the issuance of substantial development permits for shoreline protection, including structural methods such as construction of bulkheads, and nonstructural methods of protection. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single family residences and appurtenant structures due to shoreline erosion. The standards shall provide a preference for permit issuance for measures to protect single family residences occupied prior to January 1, 1992, where the proposed measure is designed to minimize harm to the shoreline natural environment.

[1997 c 369 § 7; 1995 c 347 § 307; 1992 c 105 § 2; 1991 c 322 § 32; 1971 ex.s. c 286 § 10.]

NOTES:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

Findings -- Intent -- 1991 c 322: See note following RCW 86.12.200.

Industrial project of statewide significance -- Defined: RCW 43.157.010.

RCW 90.58.110
Development of program within two or more adjacent local government jurisdictions -- Development of program in segments, when.

(1) Whenever it shall appear to the director that a master program should be developed for a region of the shorelines of the state which includes lands and waters located in two or more adjacent local government jurisdictions, the director shall designate such region and notify the appropriate units of local government thereof. It shall be the duty of the notified units to develop cooperatively an inventory and master program in accordance with and within the time provided in RCW 90.58.080.

(2) At the discretion of the department, a local government master program may be adopted in segments applicable to particular areas so that immediate attention may be given to those areas of the shorelines of the state in most need of a use regulation.

[1971 ex.s. c 286 § 11.]

RCW 90.58.120
Adoption of rules, programs, etc., subject to RCW 34.05.310 through 34.05.395 -- Public hearings, notice of -- Public inspection after approval or adoption.

All rules, regulations, designations, and guidelines, issued by the department, and master programs and amendments adopted by the department pursuant to RCW 90.58.070(2) or *90.58.090(4) shall be adopted or approved in accordance with the provisions of RCW 34.05.310 through 34.05.395 insofar as such provisions are not inconsistent with the provisions of this chapter. In addition:

(1) Prior to the adoption by the department of a master program, or portion thereof pursuant to RCW 90.58.070(2) or *90.58.090(4), at least one public hearing shall be held in each county affected by a program or portion thereof for the purpose of obtaining the views and comments of the public. Notice of each such hearing shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in the county in which the hearing is to be held.

(2) All guidelines, regulations, designations, or master programs adopted or approved under this chapter shall be available for public inspection at the office of the department or the appropriate county and city. The terms "adopt" and "approve" for purposes of this section, shall include modifications and rescission of guidelines.

[1995 c 347 § 308; 1989 c 175 § 182; 1975 1st ex.s. c 182 § 2; 1971 ex.s. c 286 § 12.]

NOTES:

***Reviser's note:** RCW 90.58.090 was amended by 2003 c 321 § 3, changing subsection (4) to subsection (5).

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

Effective date -- 1989 c 175: See note following RCW 34.05.010.

RCW 90.58.130
Involvement of all persons and entities having interest, means.

To insure that all persons and entities having an interest in the guidelines and master programs developed under this chapter are provided with a full opportunity for involvement in both their development and implementation, the department and local governments shall:

(1) Make reasonable efforts to inform the people of the state about the shoreline management program of this chapter and in the performance of the responsibilities provided in this chapter, shall not only invite but actively encourage participation by all persons and private groups and entities showing an interest in shoreline management programs of this chapter; and

(2) Invite and encourage participation by all agencies of federal, state, and local government, including municipal and public corporations, having interests or responsibilities relating to the shorelines of the state. State and local agencies are directed to participate fully to insure that their interests are fully considered by the department and local governments.

[1971 ex.s. c 286 § 13.]

RCW 90.58.140
Development permits -- Grounds for granting -- Administration by local government, conditions -- Applications -- Notices -- Rescission -- Approval when permit for variance or conditional use.

(1) A development shall not be undertaken on the shorelines of the state unless it is consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, rules, or master program.

(2) A substantial development shall not be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter.

A permit shall be granted:

(a) From June 1, 1971, until such time as an applicable master program has become effective, only when the development proposed is consistent with: (i) The policy of RCW 90.58.020; and (ii) after their adoption, the guidelines and rules of the department; and (iii) so far as can be ascertained, the master program being developed for the area;

(b) After adoption or approval, as appropriate, by the department of an applicable master program, only when the development proposed is consistent with the applicable master program and this chapter.

(3) The local government shall establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section. The administration of the system so established shall be performed exclusively by the local government.

(4) Except as otherwise specifically provided in subsection (11) of this section, the local government shall require notification of the public of all applications for permits governed by any permit system established pursuant to subsection (3) of this section by ensuring that notice of the application is given by at least one of the following methods:

(a) Mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the substantial development is proposed;

(b) Posting of the notice in a conspicuous manner on the property upon which the project is to be constructed; or

(c) Any other manner deemed appropriate by local authorities to accomplish the objectives of reasonable notice to adjacent landowners and the public.

The notices shall include a statement that any person desiring to submit written comments

concerning an application, or desiring to receive notification of the final decision concerning an application as expeditiously as possible after the issuance of the decision, may submit the comments or requests for decisions to the local government within thirty days of the last date the notice is to be published pursuant to this subsection. The local government shall forward, in a timely manner following the issuance of a decision, a copy of the decision to each person who submits a request for the decision.

If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.

(5) The system shall include provisions to assure that construction pursuant to a permit will not begin or be authorized until twenty-one days from the date the permit decision was filed as provided in subsection (6) of this section; or until all review proceedings are terminated if the proceedings were initiated within twenty-one days from the date of filing as defined in subsection (6) of this section except as follows:

(a) In the case of any permit issued to the state of Washington, department of transportation, for the construction and modification of SR 90 (I-90) on or adjacent to Lake Washington, the construction may begin after thirty days from the date of filing, and the permits are valid until December 31, 1995;

(b) Construction may be commenced no sooner than thirty days after the date of the appeal of the board's decision is filed if a permit is granted by the local government and (i) the granting of the permit is appealed to the shorelines hearings board within twenty-one days of the date of filing, (ii) the hearings board approves the granting of the permit by the local government or approves a portion of the substantial development for which the local government issued the permit, and (iii) an appeal for judicial review of the hearings board decision is filed pursuant to chapter 34.05 RCW. The appellant may request, within ten days of the filing of the appeal with the court, a hearing before the court to determine whether construction pursuant to the permit approved by the hearings board or to a revised permit issued pursuant to the order of the hearings board should not commence. If, at the conclusion of the hearing, the court finds that construction pursuant to such a permit would involve a significant, irreversible damaging of the environment, the court shall prohibit the permittee from commencing the construction pursuant to the approved or revised permit until all review proceedings are final. Construction pursuant to a permit revised at the direction of the hearings board may begin only on that portion of the substantial development for which the local government had originally issued the permit, and construction pursuant to such a revised permit on other portions of the substantial development may not begin until after all review proceedings are terminated. In such a hearing before the court, the burden of proving whether the construction may involve significant irreversible damage to the environment and demonstrating whether such construction would or would not be appropriate is on the appellant;

(c) If the permit is for a substantial development meeting the requirements of subsection (11) of this section, construction pursuant to that permit may not begin or be authorized until twenty-one days from the date the permit decision was filed as provided in subsection (6) of this section.

If a permittee begins construction pursuant to subsections (a), (b), or (c) of this subsection, the construction is begun at the permittee's own risk. If, as a result of judicial review, the courts order the removal of any portion of the construction or the restoration of any portion of the environment involved or require the alteration of any portion of a substantial development constructed pursuant to a permit, the permittee is barred from recovering damages or costs involved in adhering to such requirements from the local government that granted the permit, the hearings board, or any appellant or intervener.

(6) Any decision on an application for a permit under the authority of this section, whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with the department and the attorney general. With regard to a permit other than a permit governed by subsection (10) of this section, "date of filing" as used herein means the date of actual receipt by the department. With regard to a permit for a variance or a conditional use, "date of filing" means the date a decision of the department

rendered on the permit pursuant to subsection (10) of this section is transmitted by the department to the local government. The department shall notify in writing the local government and the applicant of the date of filing.

(7) Applicants for permits under this section have the burden of proving that a proposed substantial development is consistent with the criteria that must be met before a permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.180 (1) and (2), the person requesting the review has the burden of proof.

(8) Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. If the department is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee. If the department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescission of the permit upon written notice of the petition to the local government and the permittee if the request by the department is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.

(9) The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be required to obtain a permit under this section.

(10) Any permit for a variance or a conditional use by local government under approved master programs must be submitted to the department for its approval or disapproval.

(11)(a) An application for a substantial development permit for a limited utility extension or for the construction of a bulkhead or other measures to protect a single family residence and its appurtenant structures from shoreline erosion shall be subject to the following procedures:

(i) The public comment period under subsection (4) of this section shall be twenty days. The notice provided under subsection (4) of this section shall state the manner in which the public may obtain a copy of the local government decision on the application no later than two days following its issuance;

(ii) The local government shall issue its decision to grant or deny the permit within twenty-one days of the last day of the comment period specified in (i) of this subsection; and

(iii) If there is an appeal of the decision to grant or deny the permit to the local government legislative authority, the appeal shall be finally determined by the legislative authority within thirty days.

(b) For purposes of this section, a limited utility extension means the extension of a utility service that:

(i) Is categorically exempt under chapter 43.21C RCW for one or more of the following: Natural gas, electricity, telephone, water, or sewer;

(ii) Will serve an existing use in compliance with this chapter; and

(iii) Will not extend more than twenty-five hundred linear feet within the shorelines of the state.

[1995 c 347 § 309; 1992 c 105 § 3; 1990 c 201 § 2; 1988 c 22 § 1; 1984 c 7 § 386; 1977 ex.s. c 358 § 1; 1975-'76 2nd ex.s. c 51 § 1; 1975 1st ex.s. c 182 § 3; 1973 2nd ex.s. c 19 § 1; 1971 ex.s. c 286 § 14.]

NOTES:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

Finding -- Intent -- 1990 c 201: "The legislature finds that delays in substantial development permit review for the extension of vital utility services to existing and lawful uses within the shorelines of the state have caused hardship upon existing residents without serving any of the purposes and policies of the shoreline management act. It is the intent of this act to provide a more expeditious permit review process for that limited category of utility

extension activities only, while fully preserving safeguards of public review and appeal rights regarding permit applications and decisions." [1990 c 201 § 1.]

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 90.58.143
Time requirements -- Substantial development permits, variances, conditional use permits.

(1) The time requirements of this section shall apply to all substantial development permits and to any development authorized pursuant to a variance or conditional use permit authorized under this chapter. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and this chapter, local government may adopt different time limits from those set forth in subsections (2) and (3) of this section as a part of action on a substantial development permit.

(2) Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the substantial development permit and to the department.

(3) Authorization to conduct construction activities shall terminate five years after the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the department.

(4) The effective date of a substantial development permit shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods in subsections (2) and (3) of this section do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

[1997 c 429 § 51; 1996 c 62 § 1.]

NOTES:

Severability -- 1997 c 429: See note following RCW 36.70A.3201.

RCW 90.58.147
Substantial development permit -- Exemption for projects to improve fish or wildlife habitat or fish passage.

(1) A public or private project that is designed to improve fish or wildlife habitat or fish passage shall be exempt from the substantial development permit requirements of this chapter when all of the following apply:

(a) The project has been approved by the department of fish and wildlife;

(b) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW; and

(c) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

(2) Fish habitat enhancement projects that conform to the provisions of RCW 77.55.290 are determined to be consistent with local shoreline master programs.

[2003 c 39 § 49; 1998 c 249 § 4; 1995 c 333 § 1.]

NOTES:

Findings -- Purpose -- Report -- Effective date -- 1998 c 249: See notes following RCW 77.55.290.

RCW 90.58.150
Selective commercial timber cutting, when.

With respect to timber situated within two hundred feet abutting landward of the ordinary high water mark within shorelines of statewide significance, the department or local government shall allow only selective commercial timber cutting, so that no more than thirty percent of the merchantable trees may be harvested in any ten year period of time: PROVIDED, That other timber harvesting methods may be permitted in those limited instances where the topography, soil conditions or silviculture practices necessary for regeneration render selective logging ecologically detrimental: PROVIDED FURTHER, That clear cutting of timber which is solely incidental to the preparation of land for other uses authorized by this chapter may be permitted.

[1971 ex.s. c 286 § 15.]

RCW 90.58.160
Prohibition against surface drilling for oil or gas, where.

Surface drilling for oil or gas is prohibited in the waters of Puget Sound north to the Canadian boundary and the Strait of Juan de Fuca seaward from the ordinary high water mark and on all lands within one thousand feet landward from said mark.

[1971 ex.s. c 286 § 16.]

RCW 90.58.170
Shorelines hearings board -- Established -- Members -- Chairman -- Quorum for decision -- Expenses of members.

A shorelines hearings board sitting as a quasi judicial body is hereby established within the environmental hearings office under RCW 43.21B.005. The shorelines hearings board shall be made up of six members: Three members shall be members of the pollution control hearings board; two members, one appointed by the association of Washington cities and one appointed by the association of county commissioners, both to serve at the pleasure of the associations; and the commissioner of public lands or his or her designee. The chairman of the pollution control hearings board shall be the chairman of the shorelines hearings board. Except as provided in RCW 90.58.185, a decision must be agreed to by at least four members of the board to be final. The members of the shorelines board shall receive the compensation, travel, and subsistence expenses as provided in RCW 43.03.050 and 43.03.060.

[1994 c 253 § 1; 1988 c 128 § 76; 1979 ex.s. c 47 § 6; 1971 ex.s. c 286 § 17.]

NOTES:

Intent -- 1979 ex.s. c 47: See note following RCW 43.21B.005.

RCW 90.58.175
Rules and regulations.

The shorelines hearings board may adopt rules and regulations governing the administrative practice and procedure in and before the board.

[1973 1st ex.s. c 203 § 3.]

RCW 90.58.180
Appeals from granting, denying, or rescinding permits -- Board to act -- Local government appeals to board -- Grounds for declaring rule, regulation, or guideline invalid -- Appeals to court.

(1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may, except as otherwise provided in chapter 43.21L RCW, seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of filing as defined in RCW 90.58.140(6).

Within seven days of the filing of any petition for review with the board as provided in this section pertaining to a final decision of a local government, the petitioner shall serve copies of

the petition on the department, the office of the attorney general, and the local government. The department and the attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with at any time within fifteen days from the date of the receipt by the department or the attorney general of a copy of the petition for review filed pursuant to this section. The shorelines hearings board shall schedule review proceedings on the petition for review without regard as to whether the period for the department or the attorney general to intervene has or has not expired.

(2) The department or the attorney general may obtain review of any final decision granting a permit, or granting or denying an application for a permit issued by a local government by filing a written petition with the shorelines hearings board and the appropriate local government within twenty-one days from the date the final decision was filed as provided in RCW 90.58.140(6).

(3) The review proceedings authorized in subsections (1) and (2) of this section are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. Judicial review of such proceedings of the shorelines hearings board is governed by chapter 34.05 RCW. The board shall issue its decision on the appeal authorized under subsections (1) and (2) of this section within one hundred eighty days after the date the petition is filed with the board or a petition to intervene is filed by the department or the attorney general, whichever is later. The time period may be extended by the board for a period of thirty days upon a showing of good cause or may be waived by the parties.

(4) Any person may appeal any rules, regulations, or guidelines adopted or approved by the department within thirty days of the date of the adoption or approval. The board shall make a final decision within sixty days following the hearing held thereon.

(5) The board shall find the rule, regulation, or guideline to be valid and enter a final decision to that effect unless it determines that the rule, regulation, or guideline:

(a) Is clearly erroneous in light of the policy of this chapter; or

(b) Constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or

(c) Is arbitrary and capricious; or

(d) Was developed without fully considering and evaluating all material submitted to the department during public review and comment; or

(e) Was not adopted in accordance with required procedures.

(6) If the board makes a determination under subsection (5)(a) through (e) of this section, it shall enter a final decision declaring the rule, regulation, or guideline invalid, remanding the rule, regulation, or guideline to the department with a statement of the reasons in support of the determination, and directing the department to adopt, after a thorough consultation with the affected local government and any other interested party, a new rule, regulation, or guideline consistent with the board's decision.

(7) A decision of the board on the validity of a rule, regulation, or guideline shall be subject to review in superior court, if authorized pursuant to chapter 34.05 RCW. A petition for review of the decision of the shorelines hearings board on a rule, regulation, or guideline shall be filed within thirty days after the date of final decision by the shorelines hearings board.

[2003 c 393 § 22; 1997 c 199 § 1; 1995 c 347 § 310; 1994 c 253 § 3; 1989 c 175 § 183; 1986 c 292 § 2; 1975-'76 2nd ex.s. c 51 § 2; 1975 1st ex.s. c 182 § 4; 1973 1st ex.s. c 203 § 2; 1971 ex.s. c 286 § 18.]

NOTES:

Implementation -- Effective date -- 2003 c 393: See RCW 43.21L.900 and 43.21L.901.

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

Effective date -- 1989 c 175: See note following RCW 34.05.010.

Severability -- 1986 c 292: See note following RCW 90.58.030.

Appeal under this chapter also subject of appeal under state environmental policy act: RCW 43.21C.075.

RCW 90.58.185
Appeals involving single family residences -- Composition of board -- Rules to expedite appeals.

(1) In the case of an appeal involving a single family residence or appurtenance to a single family residence, including a dock or pier designed to serve a single family residence, the request for review may be heard by a panel of three board members, at least one and not more than two of whom shall be members of the pollution control hearings board. Two members of the three must agree to issue a final decision of the board.

(2) The board shall define by rule alternative processes to expedite appeals. These alternatives may include: Mediation, upon agreement of all parties; submission of testimony by affidavit; or other forms that may lead to less formal and faster resolution of appeals.

[1994 c 253 § 2.]

RCW 90.58.190
Appeal of department's decision to adopt or amend a master program.

(1) The appeal of the department's decision to adopt a master program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(5) is governed by RCW 34.05.510 through 34.05.598.

(2)(a) The department's decision to approve, reject, or modify a proposed master program or amendment adopted by a local government planning under RCW 36.70A.040 shall be appealed to the growth management hearings board with jurisdiction over the local government. The appeal shall be initiated by filing a petition as provided in RCW 36.70A.250 through 36.70A.320.

(b) If the appeal to the growth management hearings board concerns shorelines, the growth management hearings board shall review the proposed master program or amendment solely for compliance with the requirements of this chapter, the policy of RCW 90.58.020 and the applicable guidelines, the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4),35.63.125 , and 35A.63.105, and chapter 43.21C RCW as it relates to the adoption of master programs and amendments under chapter 90.58 RCW.

(c) If the appeal to the growth management hearings board concerns a shoreline of statewide significance, the board shall uphold the decision by the department unless the board, by clear and convincing evidence, determines that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(d) The appellant has the burden of proof in all appeals to the growth management hearings board under this subsection.

(e) Any party aggrieved by a final decision of a growth management hearings board under this subsection may appeal the decision to superior court as provided in RCW 36.70A.300.

(3)(a) The department's decision to approve, reject, or modify a proposed master program or master program amendment by a local government not planning under RCW 36.70A.040 shall be appealed to the shorelines hearings board by filing a petition within thirty days of the date of the department's written notice to the local government of the department's decision to approve, reject, or modify a proposed master program or master program amendment as provided in RCW 90.58.090(2).

(b) In an appeal relating to shorelines, the shorelines hearings board shall review the proposed master program or master program amendment and, after full consideration of the presentations of the local government and the department, shall determine the validity of the local government's master program or amendment in light of the policy of RCW 90.58.020 and the applicable guidelines.

(c) In an appeal relating to shorelines of statewide significance, the shorelines hearings board shall uphold the decision by the department unless the board determines, by clear and convincing evidence that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(d) Review by the shorelines hearings board

shall be considered an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act. The aggrieved local government shall have the burden of proof in all such reviews.

(e) Whenever possible, the review by the shorelines hearings board shall be heard within the county where the land subject to the proposed master program or master program amendment is primarily located. The department and any local government aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in chapter 34.05 RCW.

(4) A master program amendment shall become effective after the approval of the department or after the decision of the shorelines hearings board to uphold the master program or master program amendment, provided that the board may remand the master program or master program adjustment to the local government or the department for modification prior to the final adoption of the master program or master program amendment.

[2003 c 321 § 4; 1995 c 347 § 311; 1989 c 175 § 184; 1986 c 292 § 3; 1971 ex.s. c 286 § 19.]

NOTES:

Finding -- Intent -- 2003 c 321: See note following RCW 90.58.030.

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

Effective date -- 1989 c 175: See note following RCW 34.05.010.

Severability -- 1986 c 292: See note following RCW 90.58.030.

RCW 90.58.195
Shoreline master plan review -- Local governments with coastal waters or coastal shorelines.

(1) The department of ecology, in cooperation with other state agencies and coastal local governments, shall prepare and adopt ocean use guidelines and policies to be used in reviewing, and where appropriate, amending, shoreline master programs of local governments with coastal waters or coastal shorelines within their boundaries. These guidelines shall be finalized by April 1, 1990.

(2) After the department of ecology has adopted the guidelines required in subsection (1) of this section, counties, cities, and towns with coastal waters or coastal shorelines shall review their shoreline master programs to ensure that the programs conform with RCW 43.143.010 and 43.143.030 and with the department of ecology's ocean use guidelines. Amended master programs shall be submitted to the department of ecology for its approval under RCW 90.58.090 by June 30, 1991.

[1989 1st ex.s. c 2 § 13.]

RCW 90.58.200
Rules and regulations.

The department and local governments are authorized to adopt such rules as are necessary and appropriate to carry out the provisions of this chapter.

[1971 ex.s. c 286 § 20.]

RCW 90.58.210
Court actions to insure against conflicting uses and to enforce -- Civil penalty -- Review.

(1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, the attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state in conflict with the provisions and programs of this chapter, and to otherwise enforce the provisions of this chapter.

(2) Any person who shall fail to conform to the terms of a permit issued under this chapter or who shall undertake development on the shorelines of the state without first obtaining any permit required under this chapter shall also be subject to a civil penalty not to exceed one thousand dollars for each violation. Each permit violation or each day of continued development

without a required permit shall constitute a separate violation.

(3) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department or local government, describing the violation with reasonable particularity and ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

(4) Within thirty days after the notice is received, the person incurring the penalty may apply in writing to the department for remission or mitigation of such penalty. Upon receipt of the application, the department or local government may remit or mitigate the penalty upon whatever terms the department or local government in its discretion deems proper. Any penalty imposed pursuant to this section by the department shall be subject to review by the shorelines hearings board. Any penalty imposed pursuant to this section by local government shall be subject to review by the local government legislative authority. Any penalty jointly imposed by the department and local government shall be appealed to the shorelines hearings board.

[1995 c 403 § 637; 1986 c 292 § 4; 1971 ex.s. c 286 § 21.]

NOTES:

Findings -- Short title -- Intent -- 1995 c 403: See note following RCW 34.05.328.

Part headings not law -- Severability -- 1995 c 403: See RCW 43.05.903 and 43.05.904.

Severability -- 1986 c 292: See note following RCW 90.58.030.

RCW 90.58.220
General penalty.

In addition to incurring civil liability under RCW 90.58.210, any person found to have wilfully engaged in activities on the shorelines of the state in violation of the provisions of this chapter or any of the master programs, rules, or regulations adopted pursuant thereto shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than twenty-five nor more than one thousand dollars or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment: PROVIDED, That the fine for the third and all subsequent violations in any five-year period shall be not less than five hundred nor more than ten thousand dollars: PROVIDED FURTHER, That fines for violations of RCW 90.58.550, or any rule adopted thereunder, shall be determined under RCW 90.58.560.

[1983 c 138 § 3; 1971 ex.s. c 286 § 22.]

RCW 90.58.230
Violators liable for damages resulting from violation -- Attorney's fees and costs.

Any person subject to the regulatory program of this chapter who violates any provision of this chapter or permit issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The attorney general or local government attorney shall bring suit for damages under this section on behalf of the state or local governments. Private persons shall have the right to bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by a violation the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the prevailing party.

[1971 ex.s. c 286 § 23.]

RCW 90.58.240
Additional authority granted department and local governments.

In addition to any other powers granted hereunder, the department and local governments may:

(1) Acquire lands and easements within shorelines of the state by purchase, lease, or gift, either alone or in concert with other governmental entities, when necessary to achieve implementation of master programs adopted hereunder;

(2) Accept grants, contributions, and appropriations from any agency, public or private, or individual for the purposes of this chapter;

(3) Appoint advisory committees to assist in carrying out the purposes of this chapter;

(4) Contract for professional or technical services required by it which cannot be performed by its employees.

[1972 ex.s. c 53 § 1; 1971 ex.s. c 286 § 24.]

RCW 90.58.250
Intent -- Department to cooperate with local governments -- Grants for development of master programs.

(1) The legislature intends to eliminate the limits on state funding of shoreline master program development and amendment costs. The legislature further intends that the state will provide funding to local governments that is reasonable and adequate to accomplish the costs of developing and amending shoreline master programs consistent with the schedule established by RCW 90.58.080. Except as specifically described herein, nothing in chapter 262, Laws of 2003 is intended to alter the existing obligation, duties, and benefits provided by chapter 262, Laws of 2003 to local governments and the department.

(2) The department is directed to cooperate fully with local governments in discharging their responsibilities under this chapter. Funds shall be available for distribution to local governments on the basis of applications for preparation of master programs and the provisions of RCW 90.58.080(7). Such applications shall be submitted in accordance with regulations developed by the department. The department is authorized to make and administer grants within appropriations authorized by the legislature to any local government within the state for the purpose of developing a master shorelines program.

[2003 c 262 § 3; 1971 ex.s. c 286 § 25.]

RCW 90.58.260
State to represent its interest before federal agencies, interstate agencies and courts.

The state, through the department of ecology and the attorney general, shall represent its interest before water resource regulation management, development, and use agencies of the United States, including among others, the federal power commission, environmental protection agency, corps of engineers, department of the interior, department of agriculture and the atomic energy commission, before interstate agencies and the courts with regard to activities or uses of shorelines of the state and the program of this chapter. Where federal or interstate agency plans, activities, or procedures conflict with state policies, all reasonable steps available shall be taken by the state to preserve the integrity of its policies.

[1971 ex.s. c 286 § 26.]

RCW 90.58.270
Nonapplication to certain structures, docks, developments, etc., placed in navigable waters -- Nonapplication to certain rights of action, authority.

(1) Nothing in this statute shall constitute authority for requiring or ordering the removal of any structures, improvements, docks, fills, or developments placed in navigable waters prior to December 4, 1969, and the consent and authorization of the state of Washington to the impairment of public rights of navigation, and corollary rights incidental thereto, caused by the retention and maintenance of said structures, improvements, docks, fills or developments are hereby granted: PROVIDED, That the consent herein given shall not relate to any structures, improvements, docks, fills, or developments placed on tidelands, shorelands, or beds underlying said waters which are in trespass or in violation of state statutes.

(2) Nothing in this section shall be construed as altering or abridging any private right of

action, other than a private right which is based upon the impairment of public rights consented to in subsection (1) hereof.

(3) Nothing in this section shall be construed as altering or abridging the authority of the state or local governments to suppress or abate nuisances or to abate pollution.

(4) Subsection (1) of this section shall apply to any case pending in the courts of this state on June 1, 1971 relating to the removal of structures, improvements, docks, fills, or developments based on the impairment of public navigational rights.

[1971 ex.s. c 286 § 27.]

RCW 90.58.280
Application to all state agencies, counties, public and municipal corporations.

The provisions of this chapter shall be applicable to all agencies of state government, counties, and public and municipal corporations and to all shorelines of the state owned or administered by them.

[1971 ex.s. c 286 § 28.]

RCW 90.58.290
Restrictions as affecting fair market value of property.

The restrictions imposed by this chapter shall be considered by the county assessor in establishing the fair market value of the property.

[1971 ex.s. c 286 § 29.]

RCW 90.58.300
Department as regulating state agency -- Special authority.

The department of ecology is designated the state agency responsible for the program of regulation of the shorelines of the state, including coastal shorelines and the shorelines of the inner tidal waters of the state, and is authorized to cooperate with the federal government and sister states and to receive benefits of any statutes of the United States whenever enacted which relate to the programs of this chapter.

[1971 ex.s. c 286 § 30.]

RCW 90.58.310
Designation of shorelines of statewide significance by legislature -- Recommendation by director, procedure.

Additional shorelines of the state shall be designated shorelines of statewide significance only by affirmative action of the legislature.

The director of the department may, however, from time to time, recommend to the legislature areas of the shorelines of the state which have statewide significance relating to special economic, ecological, educational, developmental, recreational, or aesthetic values to be designated as shorelines of statewide significance.

Prior to making any such recommendation the director shall hold a public hearing in the county or counties where the shoreline under consideration is located. It shall be the duty of the county commissioners of each county where such a hearing is conducted to submit their views with regard to a proposed designation to the director at such date as the director determines but in no event shall the date be later than sixty days after the public hearing in the county.

[1971 ex.s. c 286 § 31.]

RCW 90.58.320
Height limitation respecting permits.

No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

[1971 ex.s. c 286 § 32.]

RCW 90.58.340
Use policies for land adjacent to shorelines, development of.

All state agencies, counties, and public and municipal corporations shall review administrative and management policies, regulations, plans, and ordinances relative to lands under their respective jurisdictions adjacent to the shorelines of the state so as the [to] achieve a use policy on said land consistent with the policy of this chapter, the guidelines, and the master programs for the shorelines of the state. The department may develop recommendations for land use control for such lands. Local governments shall, in developing use regulations for such areas, take into consideration any recommendations developed by the department as well as any other state agencies or units of local government.

[1971 ex.s. c 286 § 34.]

RCW 90.58.350
Nonapplication to treaty rights.

Nothing in this chapter shall affect any rights established by treaty to which the United States is a party.

[1971 ex.s. c 286 § 35.]

RCW 90.58.355
Hazardous substance remedial actions -- Procedural requirements not applicable.

The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090.

[1994 c 257 § 20.]

NOTES:

Severability -- 1994 c 257: See note following RCW 36.70A.270.

RCW 90.58.360
Existing requirements for permits, certificates, etc., not obviated.

Nothing in this chapter shall obviate any requirement to obtain any permit, certificate, license, or approval from any state agency or local government.

[1971 ex.s. c 286 § 36.]

RCW 90.58.370
Processing of permits or authorizations for emergency water withdrawal and facilities to be expedited.

All state and local agencies with authority under this chapter to issue permits or other authorizations in connection with emergency water withdrawals and facilities authorized under RCW 43.83B.410 shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application.

[1989 c 171 § 11; 1987 c 343 § 5.]

NOTES:

Severability -- 1989 c 171: See note following RCW 43.83B.400.

Severability -- 1987 c 343: See note following RCW 43.83B.300.

RCW 90.58.380
Adoption of wetland manual.

The department by rule shall adopt a manual for the delineation of wetlands under this chapter that implements and is consistent with the 1987 manual in use on January 1, 1995, by the United

States army corps of engineers and the United States environmental protection agency. If the corps of engineers and the environmental protection agency adopt changes to or a different manual, the department shall consider those changes and may adopt rules implementing those changes.

[1995 c 382 § 11.]

RCW 90.58.390
Certain secure community transition facilities not subject to chapter. *(Expires June 30, 2009.)*

An emergency has been caused by the need to expeditiously site facilities to house sexually violent predators who have been committed under chapter 71.09 RCW. To meet this emergency, secure community transition facilities sited pursuant to the preemption provisions of RCW 71.09.342 and secure facilities sited pursuant to the preemption provisions of RCW 71.09.250 are not subject to the provisions of this chapter.

This section expires June 30, 2009.

[2002 c 68 § 13.]

NOTES:

Purpose -- Severability -- Effective date -- 2002 c 68: See notes following RCW 36.70A.200.

RCW 90.58.515
Watershed restoration projects -- Exemption.

Watershed restoration projects as defined in RCW 89.08.460 are exempt from the requirement to obtain a substantial development permit. Local government shall review the projects for consistency with the locally adopted shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving a complete consolidated application form from the applicant. No fee may be charged for accepting and processing applications for watershed restoration projects as used in this section.

[1995 c 378 § 16.]

RCW 90.58.550
Oil or natural gas exploration in marine waters -- Definitions -- Application for permit -- Requirements -- Review -- Enforcement.

(1) Within this section the following definitions apply:

(a) "Exploration activity" means reconnaissance or survey work related to gathering information about geologic features and formations underlying or adjacent to marine waters;

(b) "Marine waters" include the waters of Puget Sound north to the Canadian border, the waters of the Strait of Juan de Fuca, the waters between the western boundary of the state and the ordinary high water mark, and related bays and estuaries;

(c) "Vessel" includes ships, boats, barges, or any other floating craft.

(2) A person desiring to perform oil or natural gas exploration activities by vessel located on or within marine waters of the state shall first obtain a permit from the department of ecology. The department may approve an application for a permit only if it determines that the proposed activity will not:

(a) Interfere materially with the normal public uses of the marine waters of the state;

(b) Interfere with activities authorized by a permit issued under RCW 90.58.140(2);

(c) Injure the marine biota, beds, or tidelands of the waters;

(d) Violate water quality standards established by the department; or

(e) Create a public nuisance.

(3) Decisions on an application under subsection (2) of this section are subject to review only by the pollution control hearings

board under chapter 43.21B RCW.

(4) This section does not apply to activities conducted by an agency of the United States or the state of Washington.

(5) This section does not lessen, reduce, or modify RCW 90.58.160.

(6) The department may adopt rules necessary to implement this section.

(7) The attorney general shall enforce this section.

[1983 c 138 § 1.]

NOTES:

Ocean resources management act: Chapter 43.143 RCW.

Transport of petroleum products or hazardous substances: Chapter 88.40 RCW.

RCW 90.58.560
Oil or natural gas exploration -- Violations of RCW 90.58.550 -- Penalty -- Appeal.

(1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, a person who violates RCW 90.58.550, or any rule adopted thereunder, is subject to a penalty in an amount of up to five thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty provided for in this section.

(2) The penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the director or the director's representative describing such violation with reasonable particularity. The director or the director's representative may, upon written application therefor received within fifteen days after notice imposing any penalty is received by the person incurring the penalty, and when deemed to carry out the purposes of this chapter, remit or mitigate any penalty provided for in this section upon such terms as he or she deems proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as he or she may deem proper.

(3) Any person incurring any penalty under this section may appeal the penalty to the hearings board as provided for in chapter 43.21B RCW. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department. When an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the director or the director's representative setting forth the disposition of the application. Any penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, any penalty incurred hereunder shall become due and payable thirty days after receipt of notice setting forth the disposition of the application unless an appeal is filed from such disposition. Whenever an appeal of any penalty incurred under this section is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund.

[1995 c 403 § 638; 1983 c 138 § 2.]

NOTES:

Findings -- Short title -- Intent -- 1995 c 403: See note following RCW 34.05.328.

Part headings not law -- Severability -- 1995 c 403: See RCW 43.05.903 and 43.05.904.

RCW 90.58.570
Consultation before responding to federal coastal zone management certificates.

The department of ecology shall consult with affected state agencies, local governments, Indian tribes, and the public prior to responding to federal coastal zone management consistency certifications for uses and activities occurring on the federal outer continental shelf.

[1989 1st ex.s. c 2 § 15.]

NOTES:

Severability -- 1989 1st ex.s. c 2: See RCW 43.143.902.

RCW 90.58.600
Conformance with chapter 43.97 RCW required.

With respect to the National Scenic Area, as defined in the Columbia [River] Gorge National Scenic Area Act, P.L. 99-663, the exercise of any power or authority by a local government or the department of ecology pursuant to this chapter shall be subject to and in conformity with the requirements of chapter 43.97 RCW, including the management plan regulations and ordinances adopted by the Columbia River Gorge commission pursuant to the Compact.

[1987 c 499 § 10.]

RCW 90.58.900
Liberal construction -- 1971 ex.s. c 286.

This chapter is exempted from the rule of strict construction, and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

[1971 ex.s. c 286 § 37.]

RCW 90.58.910
Severability -- 1971 ex.s. c 286.

If any provision of this chapter, or its application to any person or legal entity or circumstances, is held invalid, the remainder of the act, or the application of the provision to other persons or legal entities or circumstances, shall not be affected.

[1971 ex.s. c 286 § 40.]

RCW 90.58.911
Severability -- 1983 c 138.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1983 c 138 § 4.]

RCW 90.58.920
Effective date -- 1971 ex.s. c 286.

This chapter is necessary for the immediate preservation of the public peace, health and safety, the support of the state government, and its existing institutions. This 1971 act shall take effect on June 1, 1971. The director of ecology is authorized to immediately take such steps as are necessary to insure that this 1971 act is implemented on its effective date.

[1971 ex.s. c 286 § 41.]

Chapter 173-22 WAC Adoption Of Designations Of Shorelands And Wetlands Associated With Shorelines Of The State

Last Update: 2/5/97

WAC SECTIONS

173-22-010 Purpose.

173-22-020 Applicability.

173-22-030 Definitions.

173-22-035 Wetland identification and delineation.

173-22-040 Shoreland area designation criteria.

173-22-050 Review of designations.

173-22-052 Alterations of shorelines affecting designations.

173-22-055 Conflicts between designations and criteria.

173-22-060 Shoreline designation maps.

173-22-0602 Adams County.

173-22-0604 Asotin County.

173-22-0606 Benton County.

173-22-0608 Chelan County.

173-22-0610 Clallam County.

173-22-0612 Clark County.

173-22-0614 Columbia County.

173-22-0616 Cowlitz County.

173-22-0618 Douglas County.

173-22-0620 Ferry County.

173-22-0622 Franklin County.

173-22-0624 Garfield County.

173-22-0626 Grant County.

173-22-0628 Grays Harbor County.

173-22-0630 Island County.

173-22-0632 Jefferson County.

173-22-0634 King County.

173-22-0636 Kitsap County.

173-22-0638 Kittitas County.

173-22-0640 Klickitat County.

173-22-0642 Lewis County.

173-22-0644 Lincoln County.

173-22-0646 Mason County.

173-22-0648 Okanogan County.

173-22-0650 Pacific County.

173-22-0652 Pend Oreille County.

173-22-0654 Pierce County.

173-22-0656 San Juan County.

173-22-0658 Skagit County.

173-22-0660 Skamania County.

173-22-0662 Snohomish County.

173-22-0664 Spokane County.

173-22-0666 Stevens County.

173-22-0668 Thurston County.

173-22-0670 Wahkiakum County.

173-22-0672 Walla Walla County.

173-22-0674 Whatcom County.

173-22-0676 Whitman County.

173-22-0678 Yakima County.

173-22-070 Lands within federal boundaries.

173-22-080 Wetland delineation manual.

DISPOSITIONS OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

Reviser's note: Order 73-24, filed 8/28/73 amends maps of wetlands associated with shorelines of the state of Washington and is to be used in conjunction with Administrative Order 73-11, filed 7/20/73. Sections within this chapter will show this date where applicable. The maps are listed by county and are entitled "Shoreline Management Act of 1971, chapter 90.58 RCW amendment to the wetland designations of the state of Washington -- chapter 173-22 WAC -- Department of ecology -- September 1973."

Order DE 77-18, filed 9/20/77 amends chapter 173-22 WAC, regarding designations of associated wetlands which constitute shorelines of the state and are subject to the Shoreline Management Act of 1971 as defined by RCW 90.58.030 (c), (d), (e), (f) and (g).

Order DE 78-15, filed 8/15/78 designating associated wetlands in San Juan County, consists of maps omitted from publication in the Washington Administrative Code under the authority of RCW 34.04.050(3) as being unduly cumbersome to publish. Copies of the maps may be obtained from the Department of Ecology, St. Martin's College, Lacey, Washington 98504.

173-22-015 Relationship to National Coastal Zone Management Act of 1972. [Order DE 73-11, § 173-22-015, filed 7/20/73.] Repealed by 97-04-076 (Order 96-12), filed 2/5/97, effective 3/8/97. Statutory Authority: RCW 90.58.140(3) and [90.58].200.

WAC 173-22-010 Purpose. Pursuant to RCW 90.58.030 (2)(f), the department of ecology herein designates the wetland areas associated with the streams, lakes and tidal waters which are subject to the provisions of chapter 90.58 RCW.

[Order DE 72-15, § 173-22-010, filed 6/30/72.]

WAC 173-22-020 Applicability. The provisions of this chapter shall apply statewide.

[Order DE 72-15, § 173-22-020, filed 6/30/72.]

WAC 173-22-030 Definitions. As used herein, the following words have the following meanings:

(1) "Associated wetlands" means those wetlands which are in proximity to and either influence or are influenced by tidal waters or a lake or stream subject to the Shoreline Management Act;

(2) "Atypical situation" as used herein, refers to areas in which one or more parameters (vegetation, soil, and/or hydrology) have been sufficiently altered by recent human activities or natural events to preclude the presence of wetland indicators of the parameter. Recent refers to the period of time since legal jurisdiction of an applicable law or regulation took effect;

(3) "Duration (inundation/soil saturation)" means the length of time during which water stands at or above the soil surface (inundation), or during which the soil is saturated. As used herein, duration refers to a period during the growing season;

(4) "Flood plain" is synonymous with one hundred-year floodplain and means that land area susceptible to being inundated by stream derived waters with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the act;

(5) "Floodway" means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition. The floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state. The limit of the floodway is that which has been established in flood regulation ordinance maps or by a reasonable method which meets the objectives of the act;

(6) "Growing season" means the portion of the year when soil temperatures at 19.7 inches below the soil surface are higher than biologic zero (5°C);

(7) "Hydrophytic vegetation" means the sum total of macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. When hydrophytic vegetation comprises a community where indicators of hydric soils and wetland hydrology also occur, the area has wetland vegetation;

(8) "Hydric soil" means soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part;

(9) "Lake" means a body of standing water in a depression of land or expanded part of a river, including reservoirs, of twenty acres or greater in total area. A lake is bounded by the ordinary high water mark or, where a stream enters a lake, the extension of the elevation of the lake's ordinary high water mark within the stream;

(10) "Long duration" means a period of inundation from a single event that ranges from seven days to one month.

(11) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department. The following criteria clarify this mark on tidal waters, lakes, and streams:

(a) Tidal waters.

(i) In high energy environments where the action of waves or currents is sufficient to prevent vegetation establishment below mean higher high tide, the ordinary high water mark is coincident with the line of vegetation. Where there is no vegetative cover for less than one hundred feet parallel to the shoreline, the ordinary high water mark is the average tidal elevation of the adjacent lines of vegetation. Where the ordinary high water mark cannot be found, it is the elevation of mean higher high tide;

(ii) In low energy environments where the action of waves and currents is not sufficient to prevent vegetation establishment below mean higher high tide, the ordinary high water mark is coincident with the landward limit of salt tolerant vegetation. "Salt tolerant vegetation" means vegetation which is tolerant of interstitial soil salinities greater than or equal to 0.5 parts per thousand;

(b) Lakes. Where the ordinary high water mark cannot be found, it shall be the line of mean high water;

(c) Streams. Where the ordinary high water mark cannot be found, it shall be the line of mean high water. For braided streams, the ordinary high water mark is found on the banks forming the outer limits of the depression within which the braiding occurs;

(12) "Prevalent vegetation" means the plant community or communities that occur in an area during a given period. The prevalent vegetation is characterized by the dominant macrophytic species that comprise the plant community;

(13) "River delta" means those lands formed as an aggradational feature by stratified clay, silt, sand and gravel deposited at the mouths of streams where they enter a quieter body of water. The upstream extent of a river delta is that limit where it no longer forms distributary channels;

(14) "Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology. Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom;

(15) A "stream" is a naturally occurring body of periodic or continuously flowing water where:

(a) The mean annual flow is greater than twenty cubic feet per second; and

(b) The water is contained within a channel. A channel is an open conduit either naturally or artificially created. This definition does not include artificially created irrigation, return flow, or stockwatering channels;

(16) "Tidal water" includes marine and estuarine waters bounded by the ordinary high water mark. Where a stream enters the tidal water, the tidal water is bounded by the extension of the elevation of the marine ordinary high water mark within the stream;

(17) "Typically adapted" is a term that refers to a species being normally or commonly suited to a given set of environmental conditions, due to some feature of its morphology, physiology, or reproduction;

(18) "Very long duration" means a period of inundation from a single event that is greater than one month.

(19) "Wetlands" or "wetland areas" means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands; and

(20) The definitions set forth in chapter 90.58 RCW shall also apply as used herein.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. 97-04-076 (Order 96-12), § 173-22-030, filed 2/5/97, effective 3/8/97. Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-030, filed 5/23/86. Statutory Authority: RCW 90.58.030 (2)(f), 90.58.120, and 90.58.200. 80-08-086 (Order DE 80-22), § 173-22-030, filed 7/2/80; Order DE 73-11, § 173-22-030, filed 7/20/73; Order DE 72-15, § 173-22-030, filed 6/30/72.]

WAC 173-22-035 Wetland identification and delineation. Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the criteria and indicators listed in WAC 173-22-080. These criteria and indicators along with recommended methods and additional background information can be found in the Washington State Wetland Identification and Delineation Manual, Ecology Publication # 96-94.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. 97-04-076 (Order 96-12), § 173-22-035, filed 2/5/97, effective 3/8/97.]

WAC 173-22-040 Shoreland area designation criteria. The following criteria contain the standards for the department's designation of shoreland areas associated with shorelines of the state which are subject to the jurisdiction of chapter 90.58 RCW:

(1) Tidal waters. The shoreland area shall include:

(a) Those lands which extend landward two hundred feet as measured on a horizontal plane from the ordinary high water mark; and

(b) Those wetlands which are in proximity to and either influence or are influenced by the tidal water. This influence includes but is not limited to one or more of the following: Periodic tidal inundation; hydraulic continuity; formation by tidally influenced geohydraulic processes; or a surface connection through a culvert or tide gate;

(2) Lakes. The shoreland area shall include:

(a) Those lands which extend landward two hundred feet as measured on a horizontal plane from the ordinary high water mark; and

(b) Those wetlands which are in proximity to and either influence or are influenced by the lake. This influence includes but is not limited to one or more of the following: Periodic inundation or hydraulic continuity;

(3) Streams. The shoreland area shall include the greater of:

(a) Those lands which extend landward two hundred feet as measured on a horizontal plane from the ordinary high water mark;

(b) Those floodplains which extend landward two hundred feet as measured on a horizontal plane from the floodway: Provided, That local government may, at its discretion, include all or a larger portion of the one hundred-year floodplain within the associated shorelands.

Designation of this shoreland area shall be in accordance with chapter 173-19 WAC, the state master program. If the applicable master program does not designate the shoreland area for a stream, it shall be designated under the rules which applied at the time of adoption by the department;

(c) Those wetlands which are in proximity to and either influence or are influenced by the stream. This influence includes but is not limited to one or more of the following: Periodic inundation; location within a floodplain; or hydraulic continuity; and

(d) Those lands within a river delta floodplain except for those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. 97-04-076 (Order 96-12), § 173-22-040, filed 2/5/97, effective 3/8/97. Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-040, filed 5/23/86. Statutory Authority: RCW 90.58.030, 90.58.120 and 90.58.200. 85-09-043 (Order DE 85-05), § 173-22-040, filed 4/15/85. Statutory Authority: RCW 90.58.030 (2)(f), 90.58.120, and 90.58.200. 80-08-086 (Order DE 80-22), § 173-22-040, filed 7/2/80; Order DE 76-30, § 173-22-040, filed 7/27/76; Order DE 73-11, § 173-22-040, filed 7/20/73; Order DE 72-15, § 173-22-040, filed 6/30/72.]

WAC 173-22-050 Review of designations. The department shall review all the designations made herein at least once in every five-year period following the effective date of chapter 90.58 RCW or as frequently as is deemed advisable by the department, and prepare the necessary revisions to ensure that the designations conform to the policies of chapter 90.58 RCW and of chapter 173-22 WAC in the manner and form prescribed for adopting and amending rules and regulations in chapter 34.04 RCW (the Administrative Procedure Act).

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-050, filed 5/23/86. Statutory Authority: RCW 90.58.030 (2)(f), 90.58.120, and 90.58.200. 80-08-086 (Order DE 80-22), § 173-22-050, filed 7/2/80; Order DE 73-11, § 173-22-050, filed 7/20/73; Order DE 72-15, § 173-22-050, filed 6/30/72.]

WAC 173-22-052 Alterations of shorelines affecting designations. Alterations of the existing conditions of shorelines and wetlands of the state which affect the boundary or volume of those water bodies, whether through authorized development or natural causes, shall warrant a review of the designation of those shorelines and their associated wetlands.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-052, filed 5/23/86.]

WAC 173-22-055 Conflicts between designations and criteria. In the event that any of the wetland designations shown on the maps adopted in WAC 173-22-060 conflict with the criteria set forth in this chapter the criteria shall control. The boundary of the designated wetland areas shall be governed by the criteria set forth in WAC 173-22-040.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-055, filed 5/23/86. Statutory Authority: RCW 90.58.030 (2)(f), 90.58.120, and 90.58.200. 80-08-086 (Order DE 80-22), § 173-22-055, filed 7/2/80; Order DE 73-11, § 173-22-055, filed 7/20/73.]

WAC 173-22-060 Shoreline designation maps. Shoreline designation maps are those maps which have been prepared and adopted by the department in a manner consistent with chapter 34.04 RCW (the Administrative Procedure Act) that designate the location of shorelines of the state and their associated wetland areas. Wetland designations are applied under the criteria contained in WAC 173-22-040. Due to the bulk of the maps designating the wetland areas, they are not included in the text of this chapter, but rather are incorporated herein as an appendix hereto, having full legal force and effect as if published herein. Copies of the appendix are available to the public at all reasonable times for inspection in the

headquarters of the department of ecology in Olympia, the Washington state code reviser's office, the appropriate county auditor and city clerk. Copies of portions thereof, or of the complete set, will be available from the department at the expense of the party requesting the same. Volumes I, II, and III entitled *Shorelines under the Shoreline Management Act of 1971* (chapter 90.58 RCW, chapter 286, Laws of 1971 1st ex. sess.) were adopted by reference on June 30, 1972.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-060, filed 5/23/86. Statutory Authority: RCW 90.58.030, 90.58.120 and 90.58.200. 85-14-001 (Order 85-15), § 173-22-060, filed 6/20/85; 85-09-043 (Order DE 85-05), § 173-22-060, filed 4/15/85. Statutory Authority: RCW 90.58.120, 90.58.200 and 90.58.030 (2)(f). 81-13-034 (Order DE 81-18), § 173-22-060, filed 6/15/81; Order DE 72-15, § 173-22-060, filed 6/30/72.]

WAC 173-22-0602 Adams County. Adams County designation maps approved June 30, 1972. Revision approved September 20, 1977.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0602, filed 5/23/86.]

WAC 173-22-0604 Asotin County. Asotin County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0604, filed 5/23/86.]

WAC 173-22-0606 Benton County. Benton County designation maps approved June 30, 1972. Revision approved September 20, 1977.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0606, filed 5/23/86.]

WAC 173-22-0608 Chelan County. Chelan County designation maps approved June 30, 1972. Revision approved August 28, 1973.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0608, filed 5/23/86.]

WAC 173-22-0610 Clallam County. Clallam County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977. Revision approved April 15, 1985.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0610, filed 5/23/86.]

WAC 173-22-0612 Clark County. Clark County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0612, filed 5/23/86.]

WAC 173-22-0614 Columbia County. Columbia County designation maps approved June 30, 1972.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0614, filed 5/23/86.]

WAC 173-22-0616 Cowlitz County. Cowlitz County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977. Revision approved July 2, 1980.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0616, filed 5/23/86.]

WAC 173-22-0618 Douglas County. Douglas

County designation maps approved June 30, 1972. Revision approved August 28, 1973.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0618, filed 5/23/86.]

WAC 173-22-0620 Ferry County. Ferry County designation maps approved June 30, 1972. Revision approved September 20, 1977.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0620, filed 5/23/86.]

WAC 173-22-0622 Franklin County. Franklin County designation maps approved June 30, 1972. Revision approved August 28, 1973.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0622, filed 5/23/86.]

WAC 173-22-0624 Garfield County. Garfield County designation maps approved June 30, 1972.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0624, filed 5/23/86.]

WAC 173-22-0626 Grant County. Grant County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977. Revision approved June 15, 1981.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0626, filed 5/23/86.]

WAC 173-22-0628 Grays Harbor County. Grays Harbor County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved July 2, 1980. Revision approved April 15, 1985.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0628, filed 5/23/86.]

WAC 173-22-0630 Island County. Island County designation maps approved June 30, 1972. Revision approved September 20, 1977. Revision approved July 2, 1980.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0630, filed 5/23/86.]

WAC 173-22-0632 Jefferson County. Jefferson County designation maps approved June 30, 1972. Revision approved September 20, 1977. Revision approved July 2, 1980.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0632, filed 5/23/86.]

WAC 173-22-0634 King County. King County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977. Revision approved July 2, 1980. Revision approved June 15, 1981. Revision approved April 15, 1985.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0634, filed 5/23/86.]

WAC 173-22-0636 Kitsap County. Kitsap County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977. Revision approved July 2, 1980. Revision approved June 15, 1981.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0636, filed

5/23/86.]

WAC 173-22-0638 Kittitas County. Kittitas County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0638, filed 5/23/86.]

WAC 173-22-0640 Klickitat County. Klickitat County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977. Revision approved July 2, 1980.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0640, filed 5/23/86.]

WAC 173-22-0642 Lewis County. Lewis County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977. Revision approved July 2, 1980.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0642, filed 5/23/86.]

WAC 173-22-0644 Lincoln County. Lincoln County designation maps approved June 30, 1972. Revision approved September 20, 1977.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0644, filed 5/23/86.]

WAC 173-22-0646 Mason County. Mason County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0646, filed 5/23/86.]

WAC 173-22-0648 Okanogan County. Okanogan County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977. Revision approved September 29, 1987. Revision approved January 5, 1988.

[Statutory Authority: RCW 90.58.120 and 90.58.200. 88-03-070 (Order DE 87-45), § 173-22-0648, filed 1/20/88. Statutory Authority: RCW 90.58.030, 90.58.120 and 90.58.300. 87-20-050 (Order DE 87-35), § 173-22-0648, filed 10/2/87. Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0648, filed 5/23/86.]

WAC 173-22-0650 Pacific County. Pacific County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0650, filed 5/23/86.]

WAC 173-22-0652 Pend Oreille County. Pend Oreille County designation maps approved June 30, 1972. Revision approved April 15, 1985.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0652, filed 5/23/86.]

WAC 173-22-0654 Pierce County. Pierce County designation maps approved June 30, 1972. Revision approved September 20, 1977.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0654, filed 5/23/86.]

WAC 173-22-0656 San Juan County. San Juan County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977.

Revision approved August 15, 1978. Revision approved July 2, 1980. Revision approved June 20, 1985.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0656, filed 5/23/86.]

WAC 173-22-0658 Skagit County. Skagit County designation maps approved June 30, 1972. Revision approved September 20, 1977. Revision approved July 2, 1980.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0658, filed 5/23/86.]

WAC 173-22-0660 Skamania County. Skamania County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977. Revision approved July 2, 1980.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0660, filed 5/23/86.]

WAC 173-22-0662 Snohomish County. Snohomish County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved July 2, 1980.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0662, filed 5/23/86.]

WAC 173-22-0664 Spokane County. Spokane County designation maps approved June 30, 1972.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0664, filed 5/23/86.]

WAC 173-22-0666 Stevens County. Stevens County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0666, filed 5/23/86.]

WAC 173-22-0668 Thurston County. Thurston County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977. Revision approved July 2, 1980. Revision approved April 15, 1985.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0668, filed 5/23/86.]

WAC 173-22-0670 Wahkiakum County. Wahkiakum County designation maps approved June 30, 1972.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0670, filed 5/23/86.]

WAC 173-22-0672 Walla Walla County. Walla Walla County designation maps approved June 30, 1972. Revision approved September 20, 1977.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0672, filed 5/23/86.]

WAC 173-22-0674 Whatcom County. Whatcom County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977. Revision approved July 2, 1980.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0674, filed 5/23/86.]

WAC 173-22-0676 Whitman County. Whitman County designation maps approved June 30, 1972.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0676, filed 5/23/86.]

WAC 173-22-0678 Yakima County. Yakima County designation maps approved June 30, 1972. Revision approved August 28, 1973. Revision approved September 20, 1977. Revision approved July 2, 1980.

[Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-0678, filed 5/23/86.]

WAC 173-22-070 Lands within federal boundaries. In addition to those designations contained in the appendix, those nonfederal lands lying within the exterior boundaries of federal lands and those federal lands leased by the federal government to other persons, which lands fall within the definition of shorelands contained herein, shall also be subject to the jurisdiction of chapter 90.58 RCW.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. 97-04-076 (Order 96-12), § 173-22-070, filed 2/5/97, effective 3/8/97; Order DE 73-11, § 173-22-070, filed 7/20/73; Order DE 72-15, § 173-22-070, filed 6/30/72.]

WAC 173-22-080 Wetland delineation manual. The department has prepared a Washington State Wetland Identification and Delineation Manual (Ecology publication # 96-94) to be used in implementing these regulations. The mandatory portions of this manual are adopted into the following regulations. In addition, the manual contains background information, guidance, examples, and methods which may be useful in applying these regulations. The manual is intended to be used in implementing the Shoreline Management Act and other applicable state statutes. The manual is also to be used by local governments in implementing local regulations under the Growth Management Act (chapter 36.70A RCW).

The state manual takes the original 1987 Corps of Engineers manual and incorporates the changes made by the federal government to the 1987 manual since that time. This includes the national guidance issued by the Corps in 1991 and 1992, and the regional guidance issued by the Corps and EPA in 1994. All other changes are of two types:

Additional language added to assist the user in applying the manual to the variety of situations found in the state of Washington; or

Deletion of geographic material or references irrelevant to Washington.

Since the original 1987 manual was developed for use throughout the United States, it contains many references that do not apply to our state. Where appropriate, references to species or situations found in Washington have been added.

(1) Wetland delineation. Purpose and introduction.

It is the purpose of a delineation manual to provide information and methods that will allow a delineator to make an accurate wetland delineation at any time of the year. However, it must be recognized that some wetlands will be more difficult to delineate than others and that all information collected must be used in conjunction with the knowledge and experience of the delineator. The proper collection and recording of field and other supporting data is one of the most critical aspects of any wetland delineation. The wetland delineation regulations are intended to identify areas that meet the definition of wetlands found in state law. They are also intended to identify the same areas identified in the Corps of Engineers 1987 Wetlands Delineation Manual, as amended and augmented by official federal guidance issued through January 1995.

The technical approach for identifying and delineating wetlands does not constitute a classification system. It provides a basis for determining whether a given area is a wetland for purposes of federal, state and local regulations without attempting to classify it by wetland type.

Certain wetland types, under the extremes of normal seasonal or annual variability, may not always meet all the wetland criteria defined in the manual. Examples include vernal wetlands during drought years and seasonal wetlands that may lack hydrophytic vegetation and/or wetland hydrology during the dry season. Such areas are discussed in subsection (12) of this section **(Problem Areas)**, and guidance is provided for making wetland determinations in these areas.

Three key provisions of the definition of wetlands include:

(a) Inundated or saturated soil conditions resulting from permanent or periodic inundation or saturation by ground water or surface water.

(b) A prevalence of vegetation typically adapted for life in saturated soil conditions (hydrophytic vegetation).

(c) The presence of "normal circumstances."

Explicit in the definition is the consideration of three environmental parameters: Hydrology, soil, and vegetation. Positive wetland indicators of all three parameters are normally present in wetlands. Although vegetation is often the most readily observed parameter, sole reliance on vegetation or either of the other parameters as the determinant of wetlands can sometimes be misleading. Many plant species can grow successfully in both wetlands and nonwetlands, and hydrophytic vegetation and hydric soils may persist for decades following alteration of hydrology that will render an area a nonwetland. The presence of hydric soils and wetland hydrology indicators in addition to vegetation indicators will provide a logical, easily defensible, and technical basis for the presence of wetlands. The combined use of indicators for all three parameters will enhance the technical accuracy, consistency, and credibility of wetland determinations. Therefore, all three parameters were used in developing the criteria for wetlands and all approaches for applying the criteria embody the multiparameter concept.

The procedures described in the methods section of the state delineation manual have been tested and found to be reliable. However, these methods are recommendations and are not mandatory. Site-specific conditions may require modification of field procedures. The user has the flexibility to employ sampling procedures other than those described. However, the basic approach for making wetland determinations should not be altered (i.e., the determination should be based on the dominant plant species, soil characteristics, and hydrologic characteristics of the area in question). The user should document reasons for using a different characterization procedure than described in the state manual. *CAUTION: Application of methods described in the manual or the modified sampling procedures requires that the user be familiar with wetlands of the area and use his/her training, experience, and good judgment in making wetland determinations.*

(2) Wetland identification and delineation. Technical criteria. The interaction of hydrology, vegetation, and soil results in the development of characteristics unique to wetlands. Therefore, the following criteria for wetlands are based on these three parameters.

The definition of wetlands (WAC 173-22-030) includes the language found in the federal Clean Water Act regulations. It also includes additional language found in the Shoreline Management Act and Growth Management Act which specifically excludes several types of "artificial" wetlands. Many of these areas specifically excluded in the definition will meet the technical requirements for being a wetland (i.e., will meet all three criteria). The delineation manual identifies all areas that meet the necessary wetland criteria and does not attempt to distinguish these "artificial" wetlands. If necessary, the user will need to independently determine if a wetland as identified by this manual fits in any of the categories of "artificial" wetlands specifically excluded in the definition.

(3) The following criteria, and technical approach comprise the basis for the identification and delineation of wetlands:

Wetlands meet the following criteria:

(a) Vegetation. The prevalent vegetation consists of macrophytes that are typically adapted to areas having hydrologic and soil conditions described in subsection (1)(a) of this section. Hydrophytic species, due to morphological, physiological, and/or reproductive adaptation(s), have the ability to grow, effectively compete, reproduce, and/or

persist in anaerobic soil conditions. Indicators of vegetation associated with wetlands are listed in this section.

(b) Soil. A hydric soil is a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part. (USDA-NRCS 1995, Federal Register, 7/13/94, Vol. 59, No. 133, pp 35680-83.) The following criteria reflect those soils that meet this definition:

(i) All Histosols except Folists; or

(ii) Soils in Aquic suborders, great groups, or subgroups, Albolls suborder, Aquisalids, Pachic subgroups, or Cumulic subgroups that are:

(A) Somewhat poorly drained with a water table equal to 0.0 foot (ft.) from the surface during the growing season; or

(B) Poorly drained or very poorly drained and have either:

(I) A water table equal to 0.0 ft. during the growing season if textures are coarse sand, sand, or fine sand in all layers within 20 inches(in.), or for other soils;

(II) A water table at less than or equal to 0.5 ft. from the surface during the growing season if permeability is equal to or greater than 6.0 in./hour in all layers within 20 in.; or

(III) The water table is at less than or equal to 1.0 ft. from the surface during the growing season if permeability is less than 6.0 in./hour in any layer within 20 in.; or

(iii) Soils that are frequently ponded for long or very long duration during the growing season; or

(iv) Soils that are frequently flooded for long duration or very long duration during the growing season.

Soil criteria indicators are listed in subsections (6), (7) and (8) of this section.

(c) Hydrology. Areas which are inundated and/or saturated to the surface for a consecutive number of days for more than 12.5 percent of the growing season are wetlands, provided the soil and vegetation parameters are met. Areas inundated or saturated to the surface for a consecutive number of days between 5 percent and 12.5 percent of the growing season in most years may or may not be wetlands. Areas inundated or saturated to the surface for less than 5 percent of the growing season are nonwetlands. Wetland hydrology exists if field indicators are present as described in subsection (10) of this section.

(d) Technical approach for the identification and delineation of wetlands. Except in certain situations defined in this manual, evidence of at least one positive wetland indicator from each parameter (hydrology, soil, and vegetation) must be found in order to make a positive wetland determination.

Characteristics and Indicators of Hydrophytic Vegetation,

Hydric Soils, and Wetland Hydrology

(4) Hydrophytic vegetation. The plant community concept is followed throughout the manual. Emphasis is placed on the assemblage of plant species that exert a controlling influence on the character of the plant community, rather than on indicator species. Thus, the presence of scattered individuals of an upland plant species in a community dominated by hydrophytic species is not a sufficient basis for concluding that the area is an upland community. Likewise, the presence of a few individuals of a hydrophytic species in a community dominated by upland species is not a sufficient basis for concluding that the area has hydrophytic vegetation.

(5) Indicators of hydrophytic vegetation. Several indicators may be used to determine whether hydrophytic vegetation is present on a site. However, the presence of a single individual of a hydrophytic species does not mean that hydrophytic vegetation is present. The strongest case for the presence of hydrophytic vegetation can be made when several indicators, such as those in the following list, are present. One of the most common errors made in delineating wetlands has been to assume that the first indicator (a) must be met in every case. This has

led to some wetland areas being called nonwetland. Keep in mind that any of the following indicators may be used to meet the vegetation criteria. However, when using any indicator other than (a), it is important to have solid documentation of wetland hydrology and hydric soils. Indicators are listed in order of decreasing reliability. Although all are valid indicators, some are stronger than others. When a decision is based on an indicator appearing in the lower portion of the list, re-evaluate the parameter to ensure that the proper decision was reached.

(a) More than 50 percent of the dominant species are OBL, FACW+, FACW, FACW-, FAC+ or FAC (Table 1) on lists of plant species that occur in wetlands. A national interagency panel has prepared a National List of Plant Species that Occur in Wetlands (Reed 1988a). This list categorizes species according to their affinity for occurrence in wetlands. In addition, a 1993 supplement to the plants species list for Region 9 (Northwest) has been prepared (Reed 1993). Be sure to consult this supplement or any more recent supplements to confirm that a species has the proper indicator status. (The Seattle District of the Corps does not use the FAC neutral option as an indicator of hydrophytic vegetation but does allow the use of the FAC neutral option as an indicator of hydrology. See Hydrology indicator # 10 for definition.) FAC- species do not count as FAC species for the purposes of meeting indicator (a). Only FAC, FAC+, FACW (+, -) and OBL species count.

Table 1

Plant Indicator Status Categories

Indicator

Indicator Category	Symbol	Definition
OBLIGATE WETLAND PLANTS	OBL	Plants that almost always occur (estimated probability >99%) in wetlands under natural conditions, but which may also occur rarely (estimated probability <1%) in nonwetlands. Examples: *Typha latifolia, Lysichitum americanum*
FACULTATIVE WETLAND PLANTS	FACW	Plants that usually occur (estimated probability 67% to 99%) in wetlands, but also occur (estimated probability 1% to 33% in nonwetlands). Examples: *Fraxinus latifolia Cornus stolonifera.*
FACULTATIVE PLANTS	FAC	Plants with a similar likelihood (estimated probability 34% to 66%) of occurring in both wetlands and nonwetlands. Examples: *Alnus rubra, Rubus spectabilis*
FACULTATIVE UPLAND PLANTS	FACU	Plants that sometimes occur (estimated probability 1% to 33%) in wetlands, but occur more often (estimated probability 67% to 99%) in nonwetlands. Examples: *Acer macrophyllum, Rubus discolor*
OBLIGATE UPLAND PLANTS	UPL	Plants that rarely occur (estimated probability <1%) in wetlands, but occur almost always (estimated probability >99%) in nonwetlands under natural conditions.

Categories were originally developed and defined by the USFWS National Wetlands Inventory and subsequently modified by the National Plant List Panel. The three facultative categories are subdivided by (+) and (-) modifiers. FAC+ species are considered to have a greater estimated probability of occurring in wetlands than FAC species, while FAC- species are considered to have a lesser estimated probability of occurring in wetlands than FAC species.

(b) Other indicators. Although there are several other indicators of hydrophytic vegetation, it will seldom be necessary to use them. However, they may provide additional useful information to strengthen a case for the presence of hydrophytic vegetation. Additional

training and/or experience may be required to employ these indicators.

(i) Visual observation of plant species growing in areas of prolonged inundation and/or soil saturation. This indicator can only be applied by experienced personnel who have accumulated information through several years of field experience and written documentation (field notes) that certain species commonly occur in areas of prolonged (>12.5 percent) inundation and/or soil saturation during the growing season. In certain situations, areas with wetland hydrology and hydric soils may be dominated by plant species classified as facultative upland. The most common examples in Washington are Western Hemlock forested wetlands and wet meadows planted with pasture grasses. It is important to keep in mind that facultative upland species are found in wetlands up to 33% of the time and, under certain circumstances, can be the dominant species in a wetland plant community. Usually, however, FACU species are found in uplands. Thus, if you encounter a situation where the hydrology and soil parameters are clearly met, do not eliminate the area from consideration as a wetland based on a lack of prevalence of facultative or wetter vegetation. Species such as *Gaultheria shallon, Acer circinatum,* and *Pteridium aquilinum* may be found in these areas, often on hummocks or downed logs or stumps. More typical wetland species may occur in such areas, though often as nondominants. Thus, occurrence of species commonly observed in other wetland areas provides a strong indication that hydrophytic vegetation is present. If you have strong evidence that the hydrology and soil parameters are met then the vegetation is acting as a hydrophyte and the area is probably a wetland.

CAUTION: It is necessary to have good documentation that the area experiences prolonged inundation and/or saturation in order to call it a wetland. The presence of standing water or saturated soil on a site at a single point in time or for short periods is insufficient evidence that the species present are able to tolerate long periods of inundation. The user must relate the observed species to other similar situations and determine whether they are normally found in wet areas, taking into consideration the season and immediately preceding weather conditions. If you encounter this situation, you may be dealing with an atypical situation or a problem area.

(ii) Morphological adaptations. Some hydrophytic species have easily recognized physical characteristics that indicate their ability to occur in wetlands. A given species may exhibit several of these characteristics, but not all hydrophytic species have evident morphological adaptations.

(iii) Technical literature. The technical literature may provide a strong indication that plant species comprising the prevalent vegetation are commonly found in areas where soils are periodically saturated for long periods. Sources of available literature include:

(A) Taxonomic references. Such references usually contain at least a general description of the habitat in which a species occurs. A habitat description such as, "Occurs in water of streams and lakes and in alluvial floodplains subject to periodic flooding," supports a conclusion that the species typically occurs in wetlands.

(B) Botanical journals. Some botanical journals contain studies that define species occurrence in various hydrologic regimes.

(C) Technical reports. Governmental agencies periodically publish reports (e.g., literature reviews) that contain information on plant species occurrence in relation to hydrologic regimes.

(D) Technical workshops, conferences, and symposia. Publications resulting from periodic scientific meetings contain valuable information that can be used to support a decision regarding the presence of hydrophytic vegetation. These usually address specific regions or wetland types.

(E) Wetland plant data base. The National Wetland Inventory has produced a Plant Data Base that contains habitat information on over 6,700 plant species that occur at some estimated probability in wetlands, as compiled from the technical literature.

(iv) Physiological adaptations. Physiological adaptations include any features of the metabolic processes of plants that make them particularly fitted for life in saturated soil conditions. *NOTE: It is impossible to detect the presence of physiological adaptations in plant species during on-site visits.*

(v) Reproductive adaptations. Some plant species have reproductive features that enable them to become established and grow in saturated soil conditions.

(6) Hydric soils. Indicators. Indicators are listed in descending order of reliability. Although all are valid indicators, some are stronger indicators than others. When a decision is based on an indicator appearing in the lower portion of the list, re-evaluate the parameter to ensure that the proper decision was reached.

A hydric soil may be either drained or undrained, and a drained hydric soil may not continue to support hydrophytic vegetation. Therefore, not all areas having hydric soils will qualify as wetlands. Only when a hydric soil supports hydrophytic vegetation and the area has indicators of wetland hydrology may the area be referred to as a wetland.

A drained hydric soil is one in which sufficient ground or surface water has been removed by artificial means such that the area will no longer support hydrophytic vegetation or wetland hydrology. On-site evidence of drained soils includes:

(a) Presence of ditches or canals of sufficient depth to lower the water table below the major portion of the root zone of the prevalent vegetation.

(b) Presence of dikes, levees, or similar structures that obstruct normal inundation of an area.

(c) Presence of a tile system to promote subsurface drainage.

(d) Diversion of upland surface run-off from an area.

Although it is important to record such evidence of drainage of an area, a hydric soil that has been drained or partially drained still allows the soil parameter to be met. However, the area will not qualify as a wetland if the degree of drainage has been sufficient to preclude the presence of either hydrophytic vegetation or a hydrologic regime that occurs in wetlands. *NOTE: The mere presence of drainage structures in an area is not sufficient basis for concluding that a hydric soil has been drained; such areas may continue to have wetland hydrology.*

(7) Indicators of hydric soils (nonsandy soils). Several indicators are available for determining whether a given soil meets the definition and criteria for hydric soils. Any one of the following indicates that hydric soils are present.

(a) Organic soils (Histosols). As a general rule, a soil is an organic soil when:

(i) More than 50 percent (by volume) of the upper 32 inches of soil is composed of organic soil material; or

(ii) Organic soil material of any thickness rests on bedrock. Organic soils are saturated for long periods and are commonly called peats or mucks.

(b) Histic epipedons. A histic epipedon is an 8-inch to 16-inch layer at or near the surface of a mineral hydric soil that is saturated with water for 30 consecutive days or more in most years and contains a minimum of 20 percent organic matter when no clay is present or a minimum of 30 percent organic matter when clay content is 60 percent or greater. Soils with histic epipedons are inundated or saturated for sufficient periods to greatly retard aerobic decomposition of the organic surface, and are considered to be hydric soils.

(c) Sulfidic material. When mineral soils emit an odor of rotten eggs, hydrogen sulfide is present. Such odors are only detected in soils that are permanently saturated and have sulfidic material within a few centimeters of the soil surface. Sulfides are produced only in a reducing environment.

(d) Aquic or peraquic moisture regime. An aquic moisture regime is a reducing one; i.e., it is virtually free of dissolved oxygen because the soil is saturated by ground water or by water of the capillary fringe. Because dissolved oxygen is removed from ground water by respiration of microorganisms, roots, and soil fauna, it is also implicit that the soil temperature is above biologic zero (41°F at 20 inches) at the same time the soil is saturated. Soils with peraquic moisture regimes are characterized by the presence of ground water which is always at or

near the soil surface and exhibits reducing conditions. Examples include soils of tidal marshes and soils of closed, landlocked depressions that are fed by permanent streams.

(e) Reducing soil conditions. Soils saturated for long or very long duration will usually exhibit reducing conditions. Under such conditions, ions of iron are transformed (reduced) from a ferric valence state (Fe^{3+}) to a ferrous valence state (Fe^{2+}). This condition can often be detected in the field by a ferrous iron test. A simple colorimetric field test kit has been developed for this purpose. When a soil extract changes to a pink color upon addition of alpha-alpha-dipyridil, ferrous iron is present, which indicates a reducing soil environment. *NOTE: This test cannot be used in mineral hydric soils having low iron content, organic soils, and soils that have been desaturated for significant periods of the growing season. Caution: This test can only be used as a positive indicator of reducing conditions and it is only effective if it is done at the time that a mineral soil is actively reducing. While the presence of a reaction indicates anaerobic conditions, the lack of a reaction does not indicate a lack of anaerobic conditions.*

(f) Soil colors. The colors of various soil components are often the most diagnostic indicator of hydric soils. Colors of these components are strongly influenced by the frequency and duration of soil saturation, which leads to reducing soil conditions. Mineral hydric soils will be either gleyed or will have contrasting mottles and/or low chroma matrix. These are discussed below:

NOTE: Soil terminology is undergoing constant change, and terms such as "mottles" and "low chroma colors" are being replaced with the term "redoximorphic features." In order to retain consistency with the Corps 1987 Manual, the older terms are used below.

(i) Gleyed soils (gray colors). Gleyed soils develop when anaerobic soil conditions result in pronounced chemical reduction of iron, manganese, and other elements, thereby producing gray soil colors. Anaerobic conditions that occur in waterlogged soils result in the predominance of reduction processes, and such soils are greatly reduced. Iron is one of the most abundant elements in soils. Under anaerobic conditions, iron in converted from the oxidized (ferric) state to the reduced (ferrous) state, which results in the bluish, greenish, or grayish colors associated with the gleying effect. Gleying immediately below the A-horizon or 10 inches (whichever is shallower) is an indication of a markedly reduced soil, and gleyed soils are hydric soils. Gleyed soil conditions can be determined by using the gley page of the Munsell Color Charts (Munsell Color 1990).

(ii) Soils with contrasting mottles and/or low chroma matrix. Mineral hydric soils that are saturated for substantial periods of the growing season (but not long enough to produce gleyed soils) will either have high chroma mottles and a low chroma matrix or will lack mottles but have a low matrix chroma. Mottled means "marked with spots of contrasting color." Soils that have high chroma mottles and a low chroma matrix are indicative of a fluctuating water table.

NOTE: Hydric soils can also have low chroma mottles that contrast with the matrix color.

The soil matrix is the portion (usually more than 50 percent) of a given soil layer that has the predominant color. Colors should be determined in soils that have been moistened; otherwise, state that colors are for dry soils. Mineral hydric soils usually have one of the following color features in the horizon immediately below the A-horizon or 10 inches (whichever is shallower):

(A) Matrix chroma of 2 or less in mottled soils.

(B) Matrix chroma of 1 or less in unmottled soils.

NOTE: The matrix chroma of some dark (black) mineral hydric soils (e.g., Aquolls) will not conform to the criteria described in (f)(ii)(A) and (B) of this subsection; in such soils, gray mottles occurring at 10 inches or less are indicative of hydric conditions. Mollisols that are not hydric will often still have dark colored surface soils.

CAUTION: Soils with significant coloration due to the nature of the parent material may not exhibit the above characteristics. In such cases, this indicator cannot be used.

(g) Soil appearing on hydric soils list. Using the criteria for hydric soils, the NTCHS has

developed a list of hydric soils. Listed soils have reducing conditions for a significant portion of the growing season in a major portion of the root zone and are frequently saturated within 12 inches of the soil surface if they have not been effectively drained. *CAUTION: Do not use this indicator unless you have field verified that the profile description of the mapping unit conforms to that of the sampled soil.*

(h) Iron and manganese concretions. During the oxidation-reduction process, iron and manganese in suspension are sometimes segregated as oxides into concretions, nodules or soft masses. These accumulations are usually black or dark brown. Concretions >2 mm. in diameter occurring within 7.5 cm. of the surface are evidence that the soil is saturated for long periods near the surface.

CAUTION: Concretions may be relict features. Be careful to confirm that the hydrologic conditions that created the concretions still exist before using this indicator.

(8) Additional indicators of hydric soils (for sandy soils). Not all indicators listed above can be applied to sandy soils. In particular, soil color may not be a reliable indicator in most sandy soils. However, three additional soil features may be used as indicators of sandy hydric soils, including:

(a) High organic matter content in the surface horizon. Organic matter tends to accumulate above or in the surface horizon of sandy soils that are inundated or saturated to the surface for a significant portion of the growing season. Prolonged inundation or saturation creates anaerobic conditions that greatly inhibit decomposition (oxidation) of organic matter.

(b) Streaking of subsurface horizons by organic matter. Organic matter is moved downward through sand as the water table fluctuates. This often occurs more rapidly and to a greater degree in some vertical sections of a sandy soil containing a higher content of organic matter than in others. Thus, the sandy soil appears streaked with darker areas. When soil from a darker area is rubbed between the fingers, the organic matter stains the fingers.

(c) Organic pans. As organic matter is moved downward through sandy soils, it tends to accumulate at the point representing the most commonly occurring depth to the water table. This organic matter tends to become slightly cemented with iron and aluminum, forming a thin layer of hardened soil (spodic horizon). These horizons often occur at depths of 12 to 30 inches below the mineral surface. Wet spodic soils usually have thick dark surface horizons that are high in organic matter with dull, gray horizons above the spodic horizon. Generally, the nearer to the surface the spodic horizon, the more likely the soil is hydric.

CAUTION: In recently deposited sandy material (e.g., accreting sandbars), it may be impossible to find any of these indicators. In such cases, consider this a problem area (Entisols).

NOTE: The NRCS developed and published Field Indicators of Hydric Soils in the United States in July 1996. This document includes many useful indicators of hydric soils, however, some hydric soils will lack one of the indicators included in the NRCS document. Therefore, the indicators are only used as positive indicators -- if one or more of the indicators is present, the soil is a hydric soil, but the lack of any of these indicators does not mean the soil is nonhydric. In addition, the Corps has not authorized the use of these new field indicators and has stated that while they may be used as additional information, they do not replace the indicators in the 1987 Manual nor may they be used to contradict the 1987 Manual indicators.

(9) Wetland hydrology. The term "wetland hydrology" encompasses all hydrologic characteristics of areas that are periodically inundated or have soils saturated to the surface at some time during the growing season. Areas with evident characteristics of wetland hydrology are those where the presence of water has an overriding influence on characteristics of vegetation and soils due to anaerobic and chemically reducing conditions, respectively. Such characteristics are usually present in areas that are inundated or have soils that are saturated to the surface for sufficient duration to develop hydric soils and support vegetation typically adapted for life in periodically anaerobic soil conditions. Hydrology is often the least exact of the parameters, and indicators of wetland hydrology are sometimes difficult to find in the field. However, it is essential to establish that a

wetland area is periodically inundated or has saturated soils during the growing season.

It is usually impractical to accurately measure the duration of soil saturation in the field because it takes repeated visits over a lengthy (several years) period of time. However, there has been a sufficient amount of research to support that the field indicators provided in the manual and supplementary guidance can be good measures of both the frequency and duration of soil saturation.

Given the requirement that inundation/saturation must be present for a certain portion of the growing season it is important to understand how the concept of growing season should be applied. The definition of growing season is: "The portion of the year when soil temperatures at 19.7 inches below the soil surface are higher than biological zero (41 degrees F). For ease of determination this period can be approximated by the number of frost-free days." The Washington State Wetland Identification and Delineation Manual contains additional guidance on how to determine the growing season.

(10) Indicators of wetland hydrology. Indicators of wetland hydrology may include, but are not necessarily limited to: Drainage patterns, drift lines, sediment deposition, watermarks, stream gage data and flood predictions, historic records, visual observation of saturated soils, and visual observation of inundation. Any of these indicators may be evidence of wetland hydrologic characteristics.

Methods for determining hydrologic indicators can be categorized according to the type of indicator. Recorded data include stream gage data, lake gage data, tidal gage data, flood predictions, and historical records. Use of these data is commonly limited to areas adjacent to streams or other similar areas. Recorded data usually provide both short-term and long-term information about frequency and duration of inundation, but contain little or no information about soil saturation, which must be gained from soil surveys or other similar sources. The remaining indicators require field observations. Field indicators are evidence of present or past hydrologic events (e.g., location and height of flooding). Indicators are listed in order of decreasing reliability. Although all are valid indicators, some are stronger indicators than others. When a decision is based on an indicator appearing in the lower portion of the list, re-evaluate the parameter to ensure that the proper decision was reached. Indicators for recorded data and field observations include:

(a) Recorded data. Stream gage data, lake gage data, tidal gage data, flood predictions, and historical data may be available from the following sources:

(i) Corps of Engineers (CE) district offices. Most CE Districts maintain stream, lake, and tidal gage records for major water bodies in their area. In addition, CE planning and design documents often contain valuable hydrologic information. For example, a General Design Memorandum (GDM) usually describes flooding frequencies and durations for a project area. Furthermore, the extent of flooding within a project area is sometimes indicated in the GDM according to elevation (height) of certain flood frequencies (1-, 2-, 5-, 10-year, etc.).

(ii) U.S. Geological Survey (USGS). Stream and tidal gage data are available from the USGS offices throughout the Nation, and the latter are also available from the National Oceanic and Atmospheric Administration. CE Districts often have such records.

(iii) State, county, and local agencies. These agencies often have responsibility for flood control/relief and flood insurance.

(iv) Natural Resource Conservation Service Small Watershed Projects. Planning documents from this agency are often helpful, and can be obtained from the NRCS district office in the county.

(v) Planning documents of developers.

(b) Field data. The following field hydrologic indicators can be assessed quickly, and although some of them are not necessarily indicative of hydrologic events that occur only during the growing season, they do provide evidence that inundation and/or soil saturation has occurred:

CAUTION: Many delineators have made the mistake of assuming that the wettest conditions occur in the earliest part of the growing season - usually March and April. However, in some situations, the wettest time of the growing season

may be later. This is especially true in areas that receive snowmelt run-off or irrigation water or are subject to tidal influence.

(i) Visual observation of inundation. The most obvious and revealing hydrologic indicator may be simply observing the areal extent of inundation. However, because seasonal conditions and recent weather conditions can contribute to surface water being present on a nonwetland site, both should be considered when applying this indicator.

(ii) Visual observation of soil saturation. Examination of this indicator requires digging a soil pit to a depth of 16 inches and observing the level at which water stands in the hole after sufficient time has been allowed for water to drain into the hole. The required time will vary depending on soil texture. In some cases, the upper level at which water is flowing into the pit can be observed by examining the wall of the hole. This level usually represents the depth to the water table. The depth to saturated soils will always be nearer the surface due to the capillary fringe. For soil saturation to impact vegetation, it must occur within a major portion of the root zone (usually within 12 inches of the surface) of the prevalent vegetation. The major portion of the root zone is that portion of the soil profile in which more than one half of the plant roots occur. *CAUTION: In some heavy clay soils, water may not rapidly accumulate in the hole even when the soil is saturated. If water is observed at the bottom of the hole but has not filled to the 12-inch depth, examine the sides of the hole and determine the shallowest depth at which water is entering the hole. When applying this indicator, the season of the year and preceding weather conditions as well the duration of saturation must be considered. NOTE: This indicator has caused confusion in relation to the hydrology criteria, which stipulates that saturation must be to the surface. If the water table (the level at which standing water is found in an unlined hole) is found within twelve inches of the soil surface in a nonsandy soil, one can assume that soil saturation occurs to the surface. For sandy soils, the water table must be within six inches of the soil surface. However, simply finding the water table at the appropriate depth* ***on one particular day,*** *does not necessarily confirm that saturation to the surface for the appropriate length of time does occur. Conversely, finding the water table below the appropriate depth* ***on one particular day,*** *does not confirm that saturation to the surface for the appropriate length of time does not occur.*

(iii) Watermarks. Watermarks are most common on woody vegetation. They occur as stains on bark or other fixed objects (e.g., bridge pillars, buildings, tree trunks, fences, etc.). When several watermarks are present, the highest reflects the maximum extent of recent inundation.

(iv) Drift lines. This indicator is most likely to be found adjacent to streams or other sources of water flow in wetlands, but also often occurs in tidal marshes. Evidence consists of deposition of debris in a line on the surface or debris entangled in above ground vegetation or other fixed objects. Debris usually consists of remnants of vegetation (branches, stems, and leaves), sediment, litter, and other waterborne materials deposited parallel: To the direction of water flow. Drift lines provide an indication of the minimum portion of the area inundated during a flooding event; the maximum level of inundation is generally at a higher elevation than that indicated by a drift line.

(v) Sediment deposits. Plants and other vertical objects often have thin layers, coatings, or depositions of mineral or organic matter on them after inundation. This evidence may remain for a considerable period before it is removed by precipitation or subsequent inundation. Sediment deposition on vegetation and other objects provides an indication of the minimum inundation level. When sediments are primarily organic (e.g., fine organic material, algae), the detritus may become encrusted on or slightly above the soil surface after dewatering occurs.

(vi) Drainage patterns within wetlands. This indicator, which occurs primarily in wetlands adjacent to streams or in depressions with closed or restricted outlets and impervious subsoils, consists of surface evidence of drainage flow into or through an area that is restricted for a substantial duration. In some wetlands, this evidence may exist as a drainage pattern eroded into the soil, vegetative matter (debris) piled against thick vegetation or woody stems oriented perpendicular to the direction of water flow, or the absence of expected leaf litter. Scouring is often evident around roots of persistent vegetation. Debris may be deposited in or along the drainage pattern. *CAUTION: Drainage*

patterns also occur in upland areas after periods of considerable precipitation; therefore, topographic position must also be considered when applying this indicator.

(vii) Oxidized rhizospheres surrounding living roots are acceptable hydrology indicators on a case-by-case basis and may be useful in ground water driven systems. Rhizospheres should also be reasonably abundant and within the upper 12 inches of the soil profile. Oxidized rhizospheres should be supported by other indicators of hydrology if hydrology evidence is weak. *Caution: Make sure that the oxidation is occurring along live roots/rhizomes and thus, that they are not relict.*

(viii) Local soil survey data - If you can field verify that the soil at your sampling site is a soil listed in the county soil survey or on the Washington State List of Hydric Soils, then the data in the soil survey referring to the flooding and/or high water table conditions for that soil can be accepted as valid for your site (assuming the site has not been effectively drained since the time it was mapped by the NRCS).

(ix) Water-stained leaves - Forested wetlands that are inundated at some time of the year will frequently have water stained leaves on the forest floor. These leaves are generally grayish or blackish in appearance, as a result of being underwater for significant periods. This indicator should be used with caution as water-stained leaves don't always indicate long-term inundation/saturation. It is important to compare the color of the leaves in the area presumed to be wetland with leaves of the same species in an adjacent area that is clearly upland. There should be a distinct difference in the color and texture of the leaves.

(x) FAC neutral test - In areas where hydrology evidence is weak or lacking, the FAC neutral test may be employed to corroborate the presence of sufficient hydrology. Apply as follows: Compare the number of dominants that are FACW and OBL with the number of dominants that are FACU and UPL (ignore the "neutral" FAC dominants). If there are more dominants that are FACW or wetter than there are dominants that are FACU or drier, then one can infer that the plant community is reflecting the presence of wetland hydrology. If there is a tie, compare the number of FAC+ and FAC- to see if there is a difference. If there is still a tie between the numbers of dominants, examine the nondominant species to determine if they provide an indication of how strongly hydrophytic the vegetation is. Any use of nondominants should be clearly documented and explained.

(xi) Other - Explain and provide rationale for use.

(11) Atypical situations. When a determination is made that positive indicators of hydrophytic vegetation, hydric soils, and/or wetland hydrology could not be found due to effects of recent human activities or natural events, it is necessary to employ different methods of determining the presence of indicators for hydrology, soils or vegetation. The term recent refers to the period of time since legal jurisdiction of an applicable law or regulation took effect.

When any of the three types of situations described below occurs, application of normal methods will lead to the conclusion that the area is not a wetland because positive wetland indicators for at least one of the three parameters will be absent. Therefore, apply procedures described in Part IV, Section F of the 1987 Corps of Engineers Wetland Delineation Manual or the Washington State Wetland Identification and Delineation Manual (as appropriate) to determine whether positive indicators of hydrophytic vegetation, hydric soils, and/or wetland hydrology existed prior to alteration of the area.

This section is applicable to delineations made in the following types of situations:

(a) Unauthorized activities. Unauthorized discharges requiring enforcement actions may result in removal or covering of indicators of one or more wetland parameters. Examples include, but are not limited to:

(i) Alteration or removal of vegetation;

(ii) Placement of dredged or fill material over hydric soils; and/or

(iii) Construction of levees, drainage systems, or dams that significantly alter the area hydrology. *NOTE: This section should not be used for activities that have been previously authorized or those that are exempted from*

regulation.

(b) Natural events. Naturally occurring events may result in either creation or alteration of wetlands. For example, recent beaver dams may impound water, thereby resulting in a shift of hydrology and vegetation to wetlands. However, hydric soil indicators may not have developed due to insufficient time having passed to allow their development. Fire, avalanches, volcanic activity, and changing river courses are other examples. *NOTE: It is necessary to determine whether alterations to an area have resulted in changes that are now the "normal circumstances."* The relative permanence of the change and whether the area is now functioning as a wetland must be considered.

(c) Human-induced wetlands. These are wetlands that have been purposely or incidentally created by human activities, but in which wetland indicators of one or more parameters are absent. For example, road construction may have resulted in impoundment of water in an area that previously was nonwetland, thereby affecting hydrophytic vegetation and wetland hydrology in the area. However, the area may lack hydric soil indicators. *NOTE: This is not intended to bring into jurisdiction those human-made wetlands that are exempted under agency regulations or policy.* It is also important to consider whether the man-induced changes are now the "normal circumstances" for the area. Both the relative permanence of the change and the functioning of the area as a wetland are implied.

(12) Problem areas. There are certain wetland types and/or conditions that may make application of indicators of one or more parameters difficult, at least at certain times of the year. These are not considered to be atypical situations. Instead, they are wetland types in which wetland indicators of one or more parameters may be periodically lacking due to normal environmental conditions or seasonal or annual variations in environmental conditions that result from causes other than human activities or catastrophic natural events. When one of these wetland types is encountered, the methods described in Part IV, Section G of the 1987 Manual or the state manual should be used.

(13) Types of problem areas. Representative examples of potential problem areas, types of variations that occur, and their effects on wetland indicators are presented in the following subparagraphs. Similar situations may sometimes occur in other wetland types. *Note: This section is not intended to bring nonwetland areas having wetland indicators of two, but not all three, parameters into jurisdiction. This list is not intended to be limiting.*

(a) Wetlands on slopes (seeps) and other glacial features. Slope wetlands can occur in certain glaciated areas in which thin soils cover relatively impermeable unsorted glacial material or till or in which layers of sorted glacial material have different hydraulic conditions that produce a broad zone of ground water seepage. Such areas are seldom, if ever, flooded, but downslope ground water movement keeps the soils saturated for a sufficient portion of the growing season to produce anaerobic and reducing soil conditions. This fosters development of hydric soil characteristics and selects for hydrophytic vegetation. Indicators of wetland hydrology may be lacking during the drier portion of the growing season.

(b) Seasonal wetlands. In Washington, some depression areas have wetland indicators of all three parameters during the wetter portion of the growing season, but normally lack wetland indicators of hydrology and/or vegetation during the drier portion of the growing season. For example, obligate and facultative wetland plant species normally are dominant during the wetter portion of the growing season, while upland species (annuals) may be dominant during the drier portion of the growing season. Also, these areas may be inundated during the wetter portion of the growing season, but wetland hydrology indicators may be totally lacking during the drier portion of the growing season. It is important to establish that an area truly is a water body. Water in a depression normally must be sufficiently persistent to exhibit an ordinary high-water mark or the presence of wetland characteristics before it can be considered as wetland potentially subject to jurisdiction. The determination that an area exhibits wetland characteristics for a sufficient portion of the growing season to qualify as a wetland must be made on a case-by-case basis. Such determinations should consider the respective length of time that the area exhibits upland and wetland characteristics, and the manner in which the area fits into the overall ecological system as a wetland. Evidence

concerning the persistence of an area's wetness can be obtained from its history, vegetation, soil, drainage characteristics, uses to which it has been subjected, and weather or hydrologic records. This situation is common in eastern Washington and parts of western Washington where precipitation is highly seasonal and/or prolonged droughts occur frequently. It is important to become familiar with the types of wetlands found in these areas. In some cases, it may be necessary to withhold making a final wetland determination until a site is examined during the wettest part of the growing season. Consultation with other experienced delineators may be helpful as well.

(c) Vernal wetlands - Although these systems are usually associated with California, Washington does have vernal wetlands, particularly in the region around Spokane. These wetlands are a distinct type of seasonal wetland described above. The hydrology in these wetlands is driven by winter and early spring rain and snowmelt and may be totally lacking by early summer. A wetland plant community grows and reproduces in spring in response to the wet conditions and is replaced by an upland plant community by summer. Attempts to delineate these wetlands in summer or fall may result in a false negative conclusion. In addition, during periods of extended drought, these wetlands may remain dry for several years.

(d) Vegetated flats. In both coastal and interior areas of Washington, vegetated flats are often dominated by annual species that are categorized as OBL. Application of normal sampling procedures during the growing season will clearly result in a positive wetland determination. However, these areas will appear to be unvegetated mudflats when examined during the nongrowing season, and the area would not qualify at that time as a wetland due to an apparent lack of vegetation.

(e) Mollisols (prairie and steppe soils) - Mollisols are dark colored, base-rich soils. They are common in grassland areas of the state, especially in eastern Washington and the prairies of the south Puget Sound basin. These soils typically have deep, dark topsoil layers (mollic epipedons) and low chroma matrix colors to considerable depths. They are rich in organic matter due largely to the vegetation (deep roots) and reworking of the soil and organic matter by earthworms, ants, moles, and rodents. The low chroma colors of mollisols are not necessarily due to prolonged saturation, so be particularly careful in making wetland determinations in these soils. Become familiar with the characteristics of mollisols with aquic moisture regimes, and be able to recognize these from nonhydric mollisols.

(f) Entisols (floodplain and sandy soils) - Entisols are usually young or recently formed soils that have little or no evidence of pedogenically developed horizons. These soils are typical of floodplains throughout Washington, but are also found in glacial outwash plains, along tidal waters, and in other areas. They include sandy soils of riverine islands, bars, and banks and finer-textured soils of floodplain terraces. Wet entisols have an aquic or peraquic moisture regime and are considered wetland soils. Some entisols are easily recognized as hydric soils such as the sulfaquents of tidal salt marshes, whereas others pose problems because they do not possess typical hydric soil field indicators. Wet sandy entisols (with loamy fine sand and coarser textures in horizons within 20 inches of the surface) may lack sufficient organic matter and clay to develop hydric soil colors. When these soils have a hue between 10YR and 10Y and distinct or prominent mottles present, a chroma of 3 or less is permitted to identify the soil as hydric (i.e., an aquic moisture regime). Also, hydrologic data showing that NTCHS criteria # 3 or # 4 are met are sufficient to verify these soils as hydric.

(g) Red parent material and volcanic ash soils - Hydric mineral soil derived from red parent materials (e.g., weathered clays, Triassic sandstones, and Triassic shales) may lack the low chroma colors characteristic of most hydric mineral soils. In these soils, the hue is redder than 10YR because of parent materials that remain red after citrate-dithionite extraction, so the low chroma requirement for hydric soil is waived. Additionally, some hydric soils in Washington that are influenced by volcanic ash or other volcanic material may not exhibit hydric soil indicators.

(h) Spodosols (evergreen forest soils) - These soils are usually associated with coniferous forests. Spodosols have a gray eluvial E-horizon overlying a diagnostic spodic horizon of accumulated (sometimes weakly cemented) organic matter and aluminum. A process called

podzolization is responsible for creating these two soil layers. Organic acids from the leaf litter on the soil surface are moved downward through the soil with rainfall, cleaning the sand grains in the first horizon then coating the sand grains with organic matter and iron oxides in the second layer. Certain vegetation produces organic acids that speed podzolization including western hemlock (*Tsuga heterophylla)*, spruces (*Picea* spp.), pine (*Pinus* spp.), larches (*Larix* spp.), and oaks (*Quercus* spp.) (Buol, *et al*, 1980). To the untrained observer, the gray leached layer may be mistaken as a field indicator of hydric soil, but if one looks below the spodic horizon the brighter matrix colors often distinguish nonhydric spodosols from hydric ones. The wet spodosols (formerly called "ground water podzolic soils") usually have thick dark surface horizons, dull gray E-horizons, and low chroma subsoils.

(i) Interdunal swale wetlands - Along the Washington coastline, seasonally wet swales supporting hydrophytic vegetation are located within sand dune complexes on barrier islands and beaches. Some of these swales are inundated or saturated to the surface for considerable periods during the growing season, while others are wet for only the early part of the season. In some cases, swales may be flooded irregularly by the tides. These wetlands have sandy soils that generally lack field indicators of hydric soil. In addition, indicators of wetland hydrology may be absent during the drier part of the growing season. Consequently, these wetlands may be difficult to identify.

(j) Vegetated river bars and adjacent flats - Along streams, particularly in arid and semiarid parts of the state, some river bars and flats may be vegetated by FACU species while others may be colonized by wetter species. If these areas are frequently inundated for ≥12.5% of the growing season, they are wetlands. The soils often do not reflect the characteristic field indicators of hydric soils, however, and thereby pose delineation problems.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. 97-04-076 (Order 96-12), § 173-22-080, filed 2/5/97, effective 3/8/97.]

Chapter 196-09 WAC Board Practices And Procedures

(Formerly chapter 196-08 WAC)
Last Update: 1/21/04

WAC SECTIONS

196-09-010 Declaration of purpose.

196-09-020 Adjudicative proceedings.

196-09-050 Brief adjudicative proceedings.

196-09-055 Records required for brief adjudicative proceeding.

196-09-060 Procedures for brief adjudicative proceedings.

196-09-100 Investigative cost reimbursement.

196-09-110 Cooperation with board investigation.

196-09-120 Meetings and officers.

WAC 196-09-010 Declaration of purpose. This chapter contains rules and administrative procedures for proceedings held by the board in executing its responsibilities under chapter 18.43 RCW.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-09-010, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035. 98-12-045, § 196-09-010, filed 5/29/98, effective 7/1/98.]

WAC 196-09-020 Adjudicative proceedings. Chapters 34.05 RCW and 10-08 WAC apply to all adjudicative proceedings. The procedures described in Washington superior court civil rules 26 through 32, 34, 36 and 37 also apply.

[Statutory Authority: RCW 18.43.035. 98-12-045, § 196-09-020, filed 5/29/98, effective 7/1/98.]

WAC 196-09-050 Brief adjudicative proceedings. The board will conduct brief adjudicative proceedings as provided for in RCW 34.05.482 through 34.05.494 of the Administrative Procedure Act. Such proceedings may be held at the request of the applicant/registrant/board (petitioner) for the following purposes:

(1) To appeal a determination that an applicant for certification as an engineer-in-training or land surveyor-in-training does not meet the minimum certification requirements as provided in chapter 18.43 RCW and/or chapters 196-20 and 196-21 WAC; or

(2) To appeal a determination that a professional engineer or professional land surveyor applicant does not meet the minimum licensing requirements as provided in chapter 18.43 RCW and/or chapter 196-12 WAC (PE) and chapter 196-16 WAC (PLS); or

(3) To determine whether a licensee requesting renewal or reinstatement has submitted all required information and has met the minimum criteria for renewal or restatement; or

(4) To determine whether an individual, named in default of student loan payments under RCW 18.43.160, holds a certification or license issued under chapter 18.43 RCW.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-09-050, filed 1/21/04, effective 2/21/04.]

WAC 196-09-055 Records required for brief adjudicative proceeding. The records for the brief adjudicative proceeding shall include:

(1) Applicants for certification/licensing: Original complete application with all attachments required by the board; all documents relied upon in reaching the determination of ineligibility; and all correspondence between the applicant and the board about the application or the appeal.

(2) License renewal or reinstatement: Copy(ies) of original renewal notice(s) sent by the department of licensing to the licensee; all documents received by the board from or on behalf of the licensee relating to information, payments or explanations that have been provided to the board.

(3) Default of student loan payments:

Copy(ies) of notice(s) to the board showing the name and other identification information of the individual claimed to be in default on student loan payments; copies of identification information corresponding to the person(s) who is (are) certified/licensed by the board that relate to the identity of the individual in default; and all documents received by the board from or on behalf of the licensee relating to rebutting such identification.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-09-055, filed 1/21/04, effective 2/21/04.]

WAC 196-09-060 Procedures for brief adjudicative proceedings. A brief adjudicative proceeding shall be held under the supervision of a presiding officer as designated by the board chair. The presiding officer shall have knowledge and experience in the administrative processes of the board and the requirements of the provisions for a brief adjudicative proceeding as provided for in chapter 34.05 RCW and WAC 196-09-050 through 196-09-060, but shall not have participated in the determination or action under review. Except as may be otherwise required by the presiding officer, the following procedures shall apply:

(1) The petitioner shall present petitioner's position in writing in accordance with the process and schedule established by the presiding officer.

(2) The presiding officer may accept oral testimony and/or argument.

(3) No witnesses may appear to testify.

(4) In addition to the written record, the presiding officer may employ agency expertise as a basis for the decision.

(5) The presiding officer will not issue an oral order at the time of the brief adjudicative proceeding. Within ten days of the final date established by the presiding officer for receipt of additional materials and/or oral arguments, if any, the presiding officer will enter a written initial order.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-09-060, filed 1/21/04, effective 2/21/04.]

WAC 196-09-100 Investigative cost reimbursement. The reimbursement of investigative costs may be ordered by the board if the adjudicative process has resulted in a finding by the board that identifies conduct which is considered misconduct or malpractice and has resulted in the suspension or revocation of the license to practice. Costs subject to reimbursement are those expenses paid by the board during the investigation process, such as expert or consultant witness contracts.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-09-100, filed 1/21/04, effective 2/21/04.]

WAC 196-09-110 Cooperation with board investigation. In the course of an investigation and request by the board under its authority in chapter 18.43 RCW, a licensee or registrant must provide any papers, records, or documents in their possession or accessible to them that pertain to the allegations in a complaint or investigation, and a written explanation addressing such complaint/investigation or other information requested by the board. A facility related to a complaint or investigation shall be made accessible by the licensee during regular business hours.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-09-110, filed 1/21/04, effective 2/21/04.]

WAC 196-09-120 Meetings and officers. The Washington state board of registration for professional engineers and land surveyors shall hold its regular public meeting annually in June. Special public meetings may be held at such times and places as the board may deem necessary. Public notice of all public meetings shall be issued as required by the Open Public Meetings Act, chapter 42.30 RCW.

At the regular annual meeting the board shall elect a chair and vice-chair to hold office for one year commencing July 9. The executive director of the board shall serve as secretary. A vacancy

in any office shall be filled for the remainder of the term by special election at the next special public meeting.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-09-120, filed 1/21/04, effective 2/21/04.]

Chapter 196-16 WAC Registered Professional Land Surveyors

Last Update: 1/21/04

WAC SECTIONS

196-16-006 Declaration and purpose.

196-16-007 Eligibility and applications.

196-16-010 Experience records.

196-16-020 Examinations.

196-16-031 Comity -- Registration of applicants qualified in other jurisdictions.

196-16-035 Retired status certificate of registration.

DISPOSITIONS OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

196-16-005 Definitions. [Statutory Authority: RCW 18.43.035. 82-01-064 (Order 81-10), § 196-16-005, filed 12/18/81; Rule III (part), filed 11/15/65; Rule III (part), filed 8/4/64.] Repealed by 96-11-086, filed 5/14/96, effective 7/1/96. Statutory Authority: RCW 18.43.035.

196-16-030 Reports. [Rule IIC, filed 12/26/62.] Decodified as omitted from comprehensive refiling of rules dated 11/15/65 and 8/4/64.

196-16-040 Evaluation of candidates for land surveyor licenses. [Rule IID, filed 12/26/62.] Decodified as omitted from comprehensive refiling of rules dated 11/15/65 and 8/4/64. See WAC 196-16-010 and 196-16-020.

196-16-050 Fees. [Order PL 224, § 196-16-050, filed 11/5/75; Order PL 181, § 196-16-050, filed 1/28/75; Rule IIID, filed 11/15/65; Rule IIID, filed 8/4/64; Rule IIE, filed 12/26/62.] Repealed by 82-01-064 (Order 81-10), filed 12/18/81. Statutory Authority: RCW 18.43.035.

196-16-055 Renewal of licenses. [Order PL 224, § 196-16-055, filed 11/5/75; Order PL 181, § 196-16-055, filed 1/28/75; Order PL 176, § 196-16-055, filed 10/15/74.] Repealed by 82-01-064 (Order 81-10), filed 12/18/81. Statutory Authority: RCW 18.43.035.

196-16-060 Correspondence. [Order PL-115, § 196-16-060, filed 11/24/71.] Repealed by Order PL 181, filed 1/28/75.

WAC 196-16-006 Declaration and purpose. This chapter contains rules and procedures for applications, eligibility and examinations to be licensed as professional land surveyors.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-16-006, filed 1/21/04, effective 2/21/04.]

WAC 196-16-007 Eligibility and applications. The law requires eight years of experience in land surveying work of a character satisfactory to the board and passing the fundamentals-of-land surveying examination to be eligible for the professional land surveyor examination. The eight years of experience must be completed sixty days prior to the date of the examination.

All applications must be completed on forms provided by the board and filed with the executive director at the board's address. The deadline for properly completed applications accompanied by the appropriate fee as listed in WAC 196-26A-025 is four months prior to the date of the examination. Late applications will be considered for a later examination. Supporting documents such as college transcripts and experience verification forms must be received by the board three months prior to the date of the examination in order for the board to determine eligibility prior to examination deadlines. Failure to have the supporting documents sent to the board by the defined deadline will result in the applicant being delayed until a later examination.

Once an application has been approved, no further application is required. An applicant who has taken an examination and failed or who qualified for an examination but did not take it shall request to take or retake the examination at least three months prior to the examination date. A written request accompanied by the applicable

fee as listed in WAC 196-26A-025 is required to reschedule for an examination.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-16-007, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035. 96-11-086, § 196-16-007, filed 5/14/96, effective 7/1/96; 89-05-021 (Order PM 820), § 196-16-007, filed 2/10/89; 88-12-044 (Order PM 738), § 196-16-007, filed 5/27/88; 87-13-005 (Order PM 606), § 196-16-007, filed 6/4/87; 84-04-027 (Order PL 454), § 196-16-007, filed 1/25/84; 82-01-064 (Order 81-10), § 196-16-007, filed 12/18/81; Order PL 224, § 196-16-007, filed 11/5/75; Order PL-129, § 196-16-007, filed 7/27/72; Order PL-115, § 196-16-007, filed 11/24/71; Rule IIIA, filed 11/15/65; Rule IIIA, filed 8/4/64.]

WAC 196-16-010 Experience records. The board shall evaluate all experience, which includes education, on a case-by-case basis and approve such experience as appropriate. The board will use the following criteria in evaluating an applicant's experience record.

(1) Education experience will be based on transcripts. Therefore, any transcripts not previously sent to the board's office should be submitted for maximum experience credit. Education may be approved as experience based on the following:

(a) Graduation with a baccalaureate degree in land surveying from an approved curriculum shall be equivalent to four years of required experience.

(b) Graduation with an associate degree in land surveying from an approved curriculum shall be equivalent to two years of required experience.

(c) Each year completed of an approved curriculum without graduation shall be granted up to a year of required experience.

(d) A maximum of one year may be granted for postgraduate college courses approved by the board. Postgraduate education will count toward the eight years of required experience as described in subsection (2) of this section.

(e) Any other education will be taken into account and evaluated on its merits.

(f) Experience gained between semesters or quarters or during summers while enrolled in an approved curriculum will be considered as part of the educational process. The board grants one year of experience for a year of approved education including any associated work experience within that year.

(2) In evaluating work experience, the board will be looking for eight years of broad based, progressive field and office experience in surveying work under the direct supervision of a person authorized by chapter 18.43 RCW or other applicable statute to practice land surveying, a minimum of four years of which shall be in a position of making independent judgments and decisions under the general guidance and direct supervision of an authorized professional except as provided for in subsections (1)(d) and (3) of this section. This latter experience shall not be limited to, but must include the following:

(a) Applying state, federal and case law;

(b) Exercising sound judgment when making independent decisions regarding complex boundary, topographic, horizontal and vertical control, and mapping issues;

(c) Field identification and evaluation of boundary evidence, including monumentation, and the ability to use that evidence for boundary determination;

(d) Conducting research;

(e) Preparing and analyzing complex property descriptions; and

(f) Interacting with clients and the public in conformance with chapter 196-27A WAC.

The board may grant partial credit for experience that does not fully meet the requirements in (a) through (f) of this subsection.

(3) Teaching of a character satisfactory to the board may be recognized as surveying experience up to a maximum of two years.

(4) In evaluating combined education and experience the board will be looking at transcripts and work experience to determine

knowledge in subsection (2)(a) through (f) of this section.

(5) Any work experience gained in a situation which violates the provisions of chapters 18.43 and 18.235 RCW or Title 196 WAC will not be credited towards the experience requirement.

(6) A registered professional engineer who applies to become registered as a professional land surveyor must meet the requirements stated within this section.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-16-010, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035. 96-11-086, § 196-16-010, filed 5/14/96, effective 7/1/96; 87-13-005 (Order PM 606), § 196-16-010, filed 6/4/87; 84-04-027 (Order PL 454), § 196-16-010, filed 1/25/84; 82-01-064 (Order 81-10), § 196-16-010, filed 12/18/81; Order PL-115, § 196-16-010, filed 11/24/71; Rule IIIB, filed 11/15/65; Rule IIIB, filed 8/4/64; Rule IIA, filed 12/26/62.]

WAC 196-16-020 Examinations. (1) To become licensed as a professional land surveyor the candidate must pass the fundamentals-of-land surveying examination, principles and practice examination, and law and ethics examination. A candidate must pass the fundamentals-of-land surveying examination before taking the principles and practice examination. The fundamentals and principles and practice examinations are given at times and places designated by the board. See the respective internet websites of the National Council of Examiners for Engineering and Surveying (NCEES), and the board for future examination schedules and syllabi. The law and ethics exam is a take-home examination covering chapters 18.43 and 18.235 RCW and Title 196 WAC. If one of these examinations is failed, only that examination must be retaken.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-16-020, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035. 96-11-086, § 196-16-020, filed 5/14/96, effective 7/1/96; 93-01-081, § 196-16-020, filed 12/15/92, effective 1/15/93; 89-05-021 (Order PM 820), § 196-16-020, filed 2/10/89; 84-04-027 (Order PL 454), § 196-16-020, filed 1/25/84; 82-01-064 (Order 81-10), § 196-16-020, filed 12/18/81; Order PL-121, § 196-16-020, filed 5/3/72; Order PL-115, § 196-16-020, filed 11/24/71; Rule IIIC, filed 11/15/65; Rule IIIC, filed 8/4/64; Rules IIB and IID (part), filed 12/26/62.]

WAC 196-16-031 Comity -- Registration of applicants qualified in other jurisdictions. (1) Applicants for registration as a land surveyor by comity must meet the following criteria:

(a) The applicant must complete an application on forms provided by the board and filed with the executive director at the board's address accompanied by the appropriate fee pursuant to WAC 196-26A-035;

(b) The applicant's qualifications meet the requirements of chapter 18.43 RCW and this chapter;

(c) The applicant is in good standing with the licensing agency in a state, territory, possession, district, or foreign country. Good standing shall be defined as a currently valid license in the jurisdiction of original registration or the jurisdiction of most recent practice, if different from the jurisdiction of original registration; and

(d) The applicant has been qualified by a written examination determined by the board to adequately test the fundamentals and principles and practice of land surveying and whose experience includes WAC 196-16-010 (2)(a) through (f).

(2) The applicant will be required to pass examinations to demonstrate competency in land surveying issues important to Washington, and law and ethics. Comity applicants will not be required to take the fundamentals-of-land surveying and full principles and practice examinations administered by the board.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-16-031, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035. 96-11-086, § 196-16-031, filed 5/14/96, effective 7/1/96; 93-01-081, § 196-16-031, filed 12/15/92, effective 1/15/93; 91-23-111, § 196-16-031, filed 11/20/91, effective 12/21/91; 89-05-021 (Order PM 820), § 196-16-

031, filed 2/10/89; 84-04-027 (Order PL 454), § 196-16-031, filed 1/25/84; 82-01-064 (Order 81-10), § 196-16-031, filed 12/18/81; Order PL-115, § 196-16-031, filed 11/24/71.]

WAC 196-16-035 Retired status certificate of registration. In accordance with RCW 18.43.075, any individual who has been issued a certificate of registration, in accordance with chapter 18.43 RCW, as a professional land surveyor, having reached at least the age of sixty-five and having discontinued active practice as a land surveyor, may be eligible to obtain a "retired certificate of registration." If granted, further certificate of registration renewal fees are waived. For the purpose of this provision, "active practice" is defined as exercising direct supervision and control over the development and production of a land surveying document as provided in RCW 18.43.070 and/or any related activities pertaining to the offer of and/or the providing of professional land surveying services as defined in RCW 18.43.020.

(1) Applications. Those persons wishing to obtain the status of a retired registration shall complete an application on a form as provided by the board. Applications shall be sent to the executive director at the address of the board. Upon receipt of said application and, if deemed eligible by the board, the retired status would become effective on the first scheduled renewal date of the certificate of registration that occurs on or after the applicant reaches the age of sixty-five. It shall not be necessary that an expired certificate of registration be renewed to be eligible for this status. The board will not provide refund of renewal fees if the application for "retired" status is made and granted before the date of expiration of the certificate of registration.

(2) Privileges. In addition to the waiver of the renewal fee, a retired registrant is permitted to:

(a) Retain the board issued wall certificate of registration;

(b) Use the title professional land surveyor (PLS), provided that it is supplemented by the term retired, or the abbreviation "ret";

(c) Work as a land surveyor in a volunteer capacity, provided that the retired registrant does not create a land surveying document, and does not use their seal, except as provided for in (d) of this subsection;

(d) Provide experience verifications and references for persons seeking registration under chapter 18.43 RCW. If using their professional seal the retired registrant may place the word "retired" in the space designated for the date of expiration;

(e) Serve in an instructional capacity on land surveying topics;

(f) Provide services as a technical expert before a court, or in preparation for pending litigation, on matters directly related to land surveying work performed by the registrant before they were granted a retired registration;

(g) Serve in a function that supports the principles of registration and/or promotes the profession of land surveying, such as members of commissions, boards or committees;

(h) Serve in a land surveying capacity as a "good samaritan," as set forth in RCW 38.52.195 and 38.52.1951, provided said work is otherwise performed in accordance with chapter 18.43 RCW.

(3) Restrictions. A retired registrant is not permitted to:

(a) Perform any land surveying activity, as provided for in RCW 18.43.020, unless said activity is under the direct supervision of a Washington state professional land surveyor who has a valid/active registration in the records of the board;

(b) Act as the designated land surveyor or land surveyor in responsible charge for a Washington land surveying corporation or Washington land surveying limited liability company;

(c) Apply their professional land surveyors seal, as provided for in RCW 18.43.070, to any plan, specification, plat or report, except as provided for in subsection (2)(d) of this section.

(4) Certificate of registration reinstatement. A retired registrant, upon written request to the board and payment of the current renewal fee, may resume active land surveying practice. At that time the retired registrant shall be removed

from retired status and placed on valid/active status in the records of the board. All rights and responsibilities of a valid/active registration will be in effect. At the date of expiration of the reinstated certificate of registration, the registrant may elect to either continue active registration or may again apply for retired registration in accordance with the provisions of this chapter.

(5) Exemptions. Under no circumstances shall a registrant be eligible for a retired registration if their certificate of registration has been revoked, surrendered or in any way permanently terminated by the board under RCW 18.43.110. Registrants who are suspended from practice and/or who are subject to terms of a board order at the time they reach age sixty-five shall not be eligible for a retired registration until such time that the board has removed the restricting conditions.

(6) Penalties for noncompliance. Any violations of this section shall be considered "misconduct and/or malpractice" as defined in RCW 18.43.105. Such violations are subject to penalties as provided for in RCW 18.235.110 and 18.43.120.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-16-035, filed 1/21/04, effective 2/21/04.]

Chapter 196-21 WAC Land Surveyors-In-Training

Last Update: 1/21/04

WAC SECTIONS

196-21-005 Declaration and purpose.

196-21-010 Eligibility and applications.

196-21-020 Experience.

196-21-030 Examinations.

196-21-035 Examination review.

WAC 196-21-005 Declaration and purpose. This chapter contains rules and procedures for applications, eligibility and examinations to be enrolled as land surveyors-in-training.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-21-005, filed 1/21/04, effective 2/21/04.]

WAC 196-21-010 Eligibility and applications. The law requires completing four years of experience or having achieved senior standing in a school or college approved by the board prior to taking the fundamentals-of-land surveying examination. If the applicant has achieved senior standing, that status must be certified by said school or college. The four years may be gained as: Four years of approved education; four years of experience approved by the board; four years of combined education and experience. The experience to qualify for the fundamentals-of-land surveying examination must be completed sixty days prior to the date of the examination.

All applications must be completed on forms provided by the board and filed with the executive director at the board's address. The deadline for properly completed applications accompanied by the appropriate fee as listed in WAC 196-26A-025 is four months prior to the date of examination. Late applications will be considered for a later examination.

All applicants should submit transcripts of degrees attained or college courses taken in order to obtain maximum experience credit except, applicants enrolled in a school or college that have achieved senior standing in a baccalaureate curriculum in land surveying approved by the board will be eligible to take the fundamentals-of-land surveying examination without submitting college transcripts.

Once an application has been approved, no further application is required. An applicant who has taken an examination and failed or who qualified for an examination but did not take it shall submit a request in writing, accompanied by the applicable fee as listed in WAC 196-26A-025, to take or retake the examination, at least three months prior to the examination date.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-21-010, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035. 96-11-086, § 196-21-010, filed 5/14/96, effective 7/1/96.]

WAC 196-21-020 Experience. The board shall evaluate all experience, which includes education, on a case-by-case basis and approve such experience as appropriate. The board will use the following criteria in evaluating an applicant's experience record.

(1) Education may be approved as experience based on the following:

(a) Graduation with a baccalaureate degree in land surveying from an approved curriculum shall be equivalent to four years of required experience.

(b) Graduation with an associate degree in land surveying from an approved curriculum shall be equivalent to two years of required experience.

(c) Each year completed of an approved curriculum without graduation shall be granted up to a year of required experience.

(d) A maximum of one year may be granted for postgraduate college courses approved by the board.

(e) Any other education will be taken into account and evaluated on its merits.

(f) Experience gained between semesters or

quarters or during summers while enrolled in an approved curriculum will be considered as part of the educational process. The board grants one year of experience for a year of approved education including any associated work experience within that year.

(2) In evaluating four years of work experience, the board will be looking for broad based, progressive experience in the fundamental knowledge of surveying theory and practice under the direct supervision of a person authorized by chapter 18.43 RCW or other applicable statute to practice land surveying. This experience shall not be limited to, but must include the following:

(a) Performing complex survey calculations;

(b) Conducting boundary and corner research;

(c) Preparing and using property descriptions;

(d) Understanding and applying fundamental boundary and topographic principles;

(e) Making and/or analyzing horizontal and vertical control measurements; and

(f) Being skilled in survey equipment care and usage.

The board may grant partial credit for experience that does not fully meet the requirements in (a) through (f) of this subsection.

(3) In evaluating the four years of combined education and experience the board will be looking at transcripts and work experience to determine knowledge in subsection (2)(a) through (f) of this section.

(4) In the judgment of the board, the applicant must have demonstrated increased levels of responsibility and a continuous gain in experience and knowledge such that at the time of being approved for the fundamentals-of-land surveying examination, the applicant is capable of making independent judgments and decisions under the general guidance and direct supervision of an authorized professional.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-21-020, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035. 96-11-086, § 196-21-020, filed 5/14/96, effective 7/1/96.]

WAC 196-21-030 Examinations. (1) The fundamentals-of-land surveying examination is given at times and places designated by the board. The schedule of future examinations and an examination syllabus may be obtained at the internet website of the National Council of Examiners for Engineering and Surveying (NCEES).

(2) An applicant passing the fundamentals-of-land surveying examination will be enrolled as a land surveyor-in-training pursuant to RCW 18.43.020(8).

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-21-030, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035. 96-11-086, § 196-21-030, filed 5/14/96, effective 7/1/96.]

WAC 196-21-035 Examination review. Because the examination contains only multiple choice questions and no essay (free response) questions, and the examination cannot be appealed, no review of the fundamentals-of-land surveying examination will be permitted. However, examinees that fail to achieve a passing score will be provided a scoring breakdown of how they performed on the various subjects in the examination.

[Statutory Authority: RCW 18.035 [18.43.035]. 00-23-105, § 196-21-035, filed 11/21/00, effective 12/22/00.]

Chapter 196-23 WAC Stamping And Seals

Last Update: 1/21/04

WAC SECTIONS

196-23-010 Seals.

196-23-020 Seal/stamp usage.

196-23-030 Providing direct supervision.

196-23-050 Practice by businesses, organizations or public agencies.

196-23-070 Signature.

WAC 196-23-010 Seals. All individuals licensed in accordance with chapter 18.43 RCW shall procure a seal/stamp that conforms to the design as authorized by the board. It is the responsibility of the licensee to maintain control over the use of his/her stamp/seal. The impression or image of the seal/stamp shall conform to the below-illustrated design and be of a size that assures full legibility of the following required information:

(1) State of Washington;

(2) Registered professional engineer or registered professional land surveyor;

(3) Certificate number;

(4) Licensee's name as shown on wall certificate;

(5) Date of license expiration.

Place illustration here.

[Statutory Authority: RCW 18.43.035. 99-15-058, § 196-23-010, filed 7/15/99, effective 8/15/99.]

WAC 196-23-020 Seal/stamp usage. The use of the seal/stamp shall be in accordance with chapter 18.43 RCW or as otherwise described herein:

(1) Final documents are those documents that are prepared and distributed for filing with public officials, use for construction, final agency approvals or use by clients. Any final document must contain the seal/stamp, license expiration date and signature of the licensee who prepared or directly supervised the work. For the purpose of this section "document" is defined as plans, specifications, plats, surveys and reports.

(2) Preliminary documents are those documents not considered final as defined herein, but are released or distributed by the licensee. Preliminary documents must be clearly identified as "PRELIMINARY" or contain such wording so it may be differentiated from a final document. Preliminary documents shall be stamped and dated, but need not be signed by the licensee.

(3) Plan sets: Every page of a plan set must contain the seal/stamp and signature of the licensee(s) who prepared or who had direct supervision over the preparation of the work.

(a) Plans/plats containing work prepared by or under the direct supervision of more than one licensee shall be sealed/stamped by each licensee and shall clearly note the extent of each licensee's responsibility.

(b) As provided for in subsections (1) and (2) of this section, each page of a plan set must contain the seal/stamp of the licensee who prepared or who had direct supervision over the preparation of the work and may contain the signature of the licensee depending on whether the plan set is final or preliminary.

(c) Plan/plat sheets containing and/or depicting background and/or supporting information that is duplicated from other plans need only be sealed/stamped by the licensee(s) who prepared or was in direct supervision of the design on that plan sheet. Whenever possible, the origin of the background information should be noted on the plan sheet.

(d) All design revisions to final plan/plat sheets shall be performed by qualified licensees and shall be done in accordance with the provisions of RCW 18.43.070. The revised plan/plat sheets shall clearly identify on each sheet; the revisions made and shall contain the name and seal of the licensee, and signature of licensee with the date the revision was made.

(4) Specifications: Specifications that are prepared by or under the direct supervision of a licensee shall contain the seal/stamp and signature of the licensee. If the specifications prepared by a licensee are a portion of a bound specification document that contains specifications other than that of an engineering or land surveying nature, the licensee need only seal/stamp that portion or portions of the documents for which the licensee is responsible. Nothing herein should be construed to require that each page of an engineering or land surveying specification be sealed/stamped by the licensee.

(5) Document review: When a licensee is required to review work prepared by another professional engineer or land surveyor, the reviewing licensee shall fully review those documents and shall prepare a report that discusses the findings of the review with any supporting calculations and sketches. The reviewing licensee would then seal/stamp and sign the report. The report would make reference to and/or be attached to the subject document(s) reviewed.

[Statutory Authority: RCW 18.43.035. 99-15-055, § 196-23-020, filed 7/15/99, effective 8/15/99.]

WAC 196-23-030 Providing direct supervision. Direct supervision is a combination of activities by which a licensee maintains control over those decisions that are the basis for the finding, conclusions, analysis, rationale, details, and judgments that are embodied in the development and preparation of engineering or land surveying plans, specifications, plats, reports, and related activities. **Direct supervision** explains the relationship between the licensee and those persons who are performing the work controlled by the licensee. **Direct supervision** requires providing personal direction, oversight, inspection, observation and supervision of the work being certified.

Communications between the licensee and those persons who are performing the work include, but are not limited to, use of any of the following ways: Direct face-to-face communications; written communications; U.S. mail; electronic mail; facsimiles; telecommunications, or other current technology: Provided, That the licensee retains, maintains, and asserts continuing control and judgment.

[Statutory Authority: RCW 18.43.035. 99-15-050, § 196-23-030, filed 7/15/99, effective 8/15/99.]

WAC 196-23-050 Practice by businesses, organizations or public agencies. When a business, organization or public agency offers or performs engineering or land surveying services as defined in RCW 18.43.020, the business, organization or public agency shall perform its duties and responsibilities in accordance with chapter 18.43 RCW and applicable rules.

[Statutory Authority: RCW 18.43.035. 99-15-056, § 196-23-050, filed 7/15/99, effective 8/15/99.]

WAC 196-23-070 Signature. The terms "signature or signed," as used in chapter 18.43 RCW and/or Title 196 WAC, shall mean the following:

(1) A handwritten identification that represents the act of putting one's name on a document to attest to its validity. The handwritten identification must be:

(a) Original and written by hand;

(b) Permanently affixed to the document(s) being certified;

(c) Applied to the document by the identified registrant.

(2) A digital identification that is an electronic authentication process attached to or logically associated with an electronic document.

The digital identification must be:

(a) Unique to the registrant using it;

(b) Capable of independent verification;

(c) Under the exclusive control of the registrant using it;

(d) Linked to a document in such a manner that the digital identification is invalidated if any data in the document is changed.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-23-070, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035. 01-09-017, § 196-23-070, filed 4/6/01, effective 5/7/01.]

Chapter 196-24 WAC General

Last Update: 1/21/04

WAC SECTIONS

196-24-110 Land surveying standards.

DISPOSITIONS OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

196-24-010, 196-24-020 [Rules IVA, IVB, filed 12/26/62.] Superseded by rules filed 8/4/64. See WAC 196-24-030 et seq.

196-24-030 Comity. [Statutory Authority: RCW 18.43.035. 93-01-081, § 196-24-030, filed 12/15/92, effective 1/15/93; 91-23-111, § 196-24-030, filed 11/20/91, effective 12/21/91; 90-21-035, § 196-24-030, filed 10/10/90, effective 11/10/90; 84-04-027 (Order PL 454), § 196-24-030, filed 1/25/84; 82-01-064 (Order 81-10), § 196-24-030, filed 12/18/81; Order PL 224, § 196-24-030, filed 11/5/75; Order PL 181, § 196-24-030, filed 1/28/75; Rule IVA, filed 8/4/64.] Repealed by 98-12-052, filed 5/29/98, effective 7/1/98. Statutory Authority: RCW 18.43.035.

196-24-040 Applications. [Statutory Authority: RCW 18.43.035. 84-04-027 (Order PL 454), § 196-24-040, filed 1/25/84; 82-01-064 (Order 81-10), § 196-24-040, filed 12/18/81; Order PL 224, § 196-24-040, filed 11/5/75; Rule IVB, filed 8/4/64.] Repealed by 98-12-052, filed 5/29/98, effective 7/1/98. Statutory Authority: RCW 18.43.035.

196-24-041 Brief adjudicative proceedings -- Denials based on failure to meet prerequisites for licensure, temporary permit, or examination. [Statutory Authority: RCW 18.43.035. 93-13-064, § 196-24-041, filed 6/17/93, effective 7/18/93.] Repealed by 04-04-001, filed 1/21/04, effective 2/21/04. Statutory Authority: Chapters 18.43 and 18.235 RCW.

196-24-050 Examinations. [Statutory Authority: RCW 18.43.035. 93-01-081, § 196-24-050, filed 12/15/92, effective 1/15/93; 92-09-089, § 196-24-050, filed 4/17/92, effective 5/18/92; 87-13-005 (Order PM 606), § 196-24-050, filed 6/4/87; 84-04-027 (Order PL 454), § 196-24-050, filed 1/25/84; 82-01-064 (Order 81-10), § 196-24-050, filed 12/18/81; Order PL 181, § 196-24-050, filed 1/28/75; Order PL-115, § 196-24-050, filed 11/24/71; Order PL 113, § 196-24-050, filed 8/3/71; Rule IVC, filed 8/4/64.] Repealed by 98-12-052, filed 5/29/98, effective 7/1/98. Statutory Authority: RCW 18.43.035.

196-24-058 Retired status certificate of registration. [Statutory Authority: RCW 18.43.035 and 18.43.075. 96-11-085, § 196-24-058, filed 5/14/96, effective 7/1/96.] Repealed by 99-15-052, filed 7/15/99, effective 8/15/99. Statutory Authority: RCW 18.43.035.

196-24-060 Renewals. [Statutory Authority: RCW 18.43.035. 91-11-075, § 196-24-060, filed 5/20/91, effective 6/20/91; 90-21-034, § 196-24-060, filed 10/10/90, effective 11/10/90; 82-01-064 (Order 81-10), § 196-24-060, filed 12/18/81; Order PL 224, § 196-24-060, filed 11/5/75; Order PL 181, § 196-24-060, filed 1/28/75; Rule IVD, filed 8/4/64.] Repealed by 99-15-051, filed 7/15/99, effective 8/15/99. Statutory Authority: RCW 18.43.035.

196-24-070 Correspondence. [Statutory Authority: RCW 18.43.035. 82-01-064 (Order 81-10), § 196-24-070, filed 12/18/81; Order PL 181, § 196-24-070, filed 1/28/75; Order PL-115, § 196-24-070, filed 11/24/71; Rule IVE, filed 8/4/64.] Repealed by 87-13-005 (Order PM 606), filed 6/4/87. Statutory Authority: RCW 18.43.035.

196-24-080 Fees. [Statutory Authority: RCW 18.43.035. 91-23-111, § 196-24-

080, filed 11/20/91, effective 12/21/91; 89-05-021 (Order PM 820), § 196-24-080, filed 2/10/89; 84-04-027 (Order PL 454), § 196-24-080, filed 1/25/84; 82-01-064 (Order 81-10), § 196-24-080, filed 12/18/81.] Repealed by 04-04-001, filed 1/21/04, effective 2/21/04. Statutory Authority: Chapters 18.43 and 18.235 RCW.

196-24-085 Temporary permits -- Information required of nonresidents intending to practice thirty days or less in a calendar year. [Statutory Authority: RCW 18.43.035. 89-05-021 (Order PM 820), § 196-24-085, filed 2/10/89; 87-13-005 (Order PM 606), § 196-24-085, filed 6/4/87; 82-01-064 (Order 81-10), § 196-24-085, filed 12/18/81.] Repealed by 04-04-001, filed 1/21/04, effective 2/21/04. Statutory Authority: Chapters 18.43 and 18.235 RCW.

196-24-090 Branch offices. [Statutory Authority: RCW 18.43.035. 90-05-071, § 196-24-090, filed 2/21/90, effective 3/24/90; 82-01-064 (Order 81-10), § 196-24-090, filed 12/18/81.] Repealed by 99-15-053, filed 7/15/99, effective 8/15/99. Statutory Authority: RCW 18.43.035.

196-24-092 Offer to practice. [Statutory Authority: RCW 18.43.035. 90-05-071, § 196-24-092, filed 2/21/90, effective 3/24/90.] Repealed by 99-15-054, filed 7/15/99, effective 8/15/99. Statutory Authority: RCW 18.43.035.

196-24-095 Seals. [Statutory Authority: RCW 18.43.035. 91-11-099, § 196-24-095, filed 5/22/91, effective 6/22/91; 82-01-064 (Order 81-10), § 196-24-095, filed 12/18/81.] Repealed by 99-15-058, filed 7/15/99, effective 8/15/99. Statutory Authority: RCW 18.43.035.

196-24-097 Seal/stamp usage. [Statutory Authority: RCW 18.43.035. 93-13-065, § 196-24-097, filed 6/17/93, effective 7/18/93.] Repealed by 99-15-055, filed 7/15/99, effective 8/15/99. Statutory Authority: RCW 18.43.035.

196-24-098 Documents prepared by a corporation, organization, or public agency. [Statutory Authority: RCW 18.43.035. 93-13-066, § 196-24-098, filed 6/17/93, effective 7/18/93.] Repealed by 99-15-056, filed 7/15/99, effective 8/15/99. Statutory Authority: RCW 18.43.035.

196-24-100 Meetings and officers. [Statutory Authority: RCW 18.43.035. 99-15-051, § 196-24-100, filed 7/15/99, effective 8/15/99; 87-13-005 (Order PM 606), § 196-24-100, filed 6/4/87.] Repealed by 04-04-001, filed 1/21/04, effective 2/21/04. Statutory Authority: Chapters 18.43 and 18.235 RCW.

196-24-105 Examination review. [Statutory Authority: RCW 18.43.035. 98-12-052, § 196-24-105, filed 5/29/98, effective 7/1/98; 93-01-081, § 196-24-105, filed 12/15/92, effective 1/15/93; 92-15-139, § 196-24-105, filed 7/22/92, effective 8/22/92; 87-13-005 (Order PM 606), § 196-24-105, filed 6/4/87.] Repealed by 04-04-001, filed 1/21/04, effective 2/21/04. Statutory Authority: Chapters 18.43 and 18.235 RCW.

WAC 196-24-110 Land surveying standards. Failure by any registrant to comply with the provisions of the Survey Recording Act, chapter 58.09 RCW and the survey standards, chapter 332-130 WAC shall be considered misconduct or malpractice as defined by RCW 18.43.105(11).

The following standards shall also apply:

(1) The monumentation, posting, and/or the marking of a boundary line between two existing corner monuments constitutes the "practice of land surveying" as defined in chapter 18.43 RCW and chapter 196-16 WAC, and consequently requires said work to be performed under the direct supervision of a registered professional land surveyor.

(2) The field survey work performed to accomplish the monumentation, posting, and marking of a boundary line between two existing

corner monuments shall meet the minimum standards imposed by chapter 332-130 WAC.

(3) The monumentation, posting, and/or marking of a boundary line between two existing corner monuments involves a determination of the accuracy and validity of the existing monuments by the use of standard survey methods and professional judgment.

(4) The monumentation, posting, and marking of a boundary line between two existing corner monuments shall require the filing of a record of survey according to chapter 58.09 RCW unless both corners satisfy one or both of the following requirements:

(a) The corner(s) are shown as being established on a properly recorded or filed survey according to chapter 58.09 RCW and are accurately and correctly shown thereon.

(b) The corner(s) are described correctly, accurately, and properly on a land corner record according to chapter 58.09 RCW if their establishment was by a method not requiring the filing of a record of survey.

[Statutory Authority: RCW 18.43.035. 87-13-005 (Order PM 606), § 196-24-110, filed 6/4/87.]

Chapter 196-25 WAC Business Practices

Last Update: 1/21/04

WAC SECTIONS

196-25-001 Purpose.

196-25-002 Definitions.

196-25-005 Businesses that must be authorized by the board.

196-25-010 Applications.

196-25-040 Provisions pertaining to both corporations and limited liability companies.

196-25-050 Branch offices.

196-25-060 Offer to practice.

DISPOSITIONS OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

196-25-020 Corporations or joint stock associations. [Statutory Authority: RCW 18.43.035 and 18.43.130. 98-12-053, § 196-25-020, filed 5/29/98, effective 7/1/98.] Repealed by 04-04-001, filed 1/21/04, effective 2/21/04. Statutory Authority: Chapters 18.43 and 18.235 RCW.

196-25-030 Limited liability companies. [Statutory Authority: RCW 18.43.035 and 18.43.130. 98-12-053, § 196-25-030, filed 5/29/98, effective 7/1/98.] Repealed by 04-04-001, filed 1/21/04, effective 2/21/04. Statutory Authority: Chapters 18.43 and 18.235 RCW.

196-25-100 Retired status certificate of registration. [Statutory Authority: RCW 18.43.035. 99-15-052, § 196-25-100, filed 7/15/99, effective 8/15/99.] Repealed by 04-04-001, filed 1/21/04, effective 2/21/04. Statutory Authority: Chapters 18.43 and 18.235 RCW.

WAC 196-25-001 Purpose. The purpose of this chapter is to provide clarification on how businesses are authorized to provide engineering or land surveying services in Washington and to implement that part of chapter 18.43 RCW related to corporations and limited liability companies offering engineering and land surveying services, as enacted by the 1997 legislature.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-25-001, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035 and 18.43.130. 98-12-053, § 196-25-001, filed 5/29/98, effective 7/1/98.]

WAC 196-25-002 Definitions. Board. The Washington state board of registration for professional engineers and land surveyors.

Professional engineer. A person registered by the board under chapter 18.43 RCW to practice engineering in this state.

Professional land surveyor. A person registered by the board under chapter 18.43 RCW to practice land surveying in this state.

Business. A corporation, joint stock association or limited liability company that is practicing or offering to practice, engineering or land surveying or both in this state.

Designee. A currently registered professional engineer designated by the business to be in responsible charge of engineering activities for the business in this state, OR, a currently registered professional land surveyor designated by the business to be in responsible charge of land surveying activities for the business in this state.

Certificate of authorization. A certificate issued by the board, pursuant to chapter 18.43 RCW, to a business authorizing it to practice engineering or land surveying or both in this state. (Note: This is a different certificate than the certificate of authorization that may be filed with the secretary of state.)

[Statutory Authority: RCW 18.43.035 and 18.43.130. 98-12-053, § 196-25-002, filed 5/29/98, effective 7/1/98.]

WAC 196-25-005 Businesses that must be authorized by the board. Except for professional service (PS) corporations and professional service limited liability companies (PLLC's), all corporations, joint stock

associations and limited liability companies (LLC's) that offer engineering or land surveying services must obtain from the board a certificate of authorization to practice engineering or land surveying or both in the state of Washington.

A general partnership must employ at least one person currently registered pursuant to chapter 18.43 RCW for each profession for which services are offered.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-25-005, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035 and 18.43.130. 98-12-053, § 196-25-005, filed 5/29/98, effective 7/1/98.]

WAC 196-25-010 Applications. All applications must be completed on forms provided by the board and submitted to the offices of the board. A complete application requires the following: Payment of the appropriate fee as listed in chapter 196-26A WAC; affidavit of professional engineer and/or land surveyor; and, certified copy of resolution naming the designated engineer, or land surveyor, or both.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-25-010, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035 and 18.43.130. 98-12-053, § 196-25-010, filed 5/29/98, effective 7/1/98.]

WAC 196-25-040 Provisions pertaining to both corporations and limited liability companies. (1) If the business offers both engineering and land surveying services, there must be a designee for each profession. If a person is licensed in both engineering and land surveying, that person may be designated for both professions.

(2) An affidavit must be signed by the designee(s) stating that he or she knows they have been designated by the business as being responsible for the engineering and/or land surveying activities in the state of Washington.

(3) The designated engineer and/or designated land surveyor must be an employee of the business.

(4) No person may be the designated engineer or designated land surveyor at more than one business at any one time.

(5) If there is a change in the designee(s), the business must notify the board in writing within thirty days of the effective date of the change and submit a new affidavit.

(6) If the business changes its name, the business must submit a copy of its amended certificate of authority or amended certificate of incorporation (for corporations) or a copy of the certificate of amendment (for LLC's), as filed with the secretary of state within thirty days of the filing.

(7) At the time of renewal, the corporation or limited liability company must submit a copy of the document issued to their company by the state of Washington master license service which states that the corporation or limited liability company has been "renewed by the authority of the secretary of state" and shows a current expiration date.

(8) The filing of the resolution shall not relieve the business of any responsibility or liability imposed upon it by law or by contract. Any business that is certified under chapter 18.43 RCW and this chapter is subject to the authority of the board as provided in RCW 18.43.035, 18.43.105, 18.43.110, and 18.43.120.

[Statutory Authority: RCW 18.43.035. 99-15-057, § 196-25-040, filed 7/15/99, effective 8/15/99. Statutory Authority: RCW 18.43.035 and 18.43.130. 98-12-053, § 196-25-040, filed 5/29/98, effective 7/1/98.]

WAC 196-25-050 Branch offices. An engineering business or land surveying business maintaining branch offices shall have a resident engineer or resident land surveyor, as applicable, in responsible charge of said engineering and/or land surveying services.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. 04-04-001, § 196-25-050, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035. 99-15-053, § 196-25-050, filed

7/15/99, effective 8/15/99.]

WAC 196-25-060 Offer to practice. The offer to practice or provide engineering or land surveying services must be made by or under the direct supervision of a licensee qualified to offer said services under the provisions of chapter 18.43 RCW.

[Statutory Authority: RCW 18.43.035. 99-15-054, § 196-25-060, filed 7/15/99, effective 8/15/99.]

Chapter 196-26a WAC Professional Engineers And Land Surveyors Fees

(Formerly chapter 196-26 WAC)
Last Update: 6/17/02

WAC SECTIONS

196-26A-010 State fee authority, applications and payment procedures.

196-26A-020 Examination vendor, procedures and costs.

196-26A-025 State fees for examinations.

196-26A-030 Applications for comity licensure and temporary permits.

196-26A-035 State fees for comity licensure and temporary permit applications.

196-26A-040 Renewals for professional engineer and professional land surveyor licenses.

196-26A-045 Professional engineer, professional land surveyor renewal fees and penalties.

196-26A-050 Application for certificate of authorization.

196-26A-055 Renewal of certificate of authorization.

196-26A-060 Certificate of authorization application and renewal fees.

196-26A-070 Replacement document fees.

WAC 196-26A-010 State fee authority, applications and payment procedures. The state fees listed in this chapter are adopted by the director of the department of licensing (department) in accordance with RCW 43.24.086. For registration under provisions of chapter 18.43 RCW, the required state fee must accompany all applications. If payment is made by check or money order, the payment should be made payable to the state treasurer. Should an applicant be judged ineligible for examination, the fee shall be retained to cover the costs of processing. An applicant who fails an examination may be scheduled for a retake by paying the required fee within the time frame established by the board of registration for professional engineers and land surveyors (board). Applicants who fail to appear for their scheduled examination will forfeit their fees as determined by the board. Applicants may withdraw from a scheduled examination without forfeiting their fees by submitting a written notice to the board office by the date established by the board.

[Statutory Authority: RCW 43.24.086 and 18.43.035. 02-13-080, § 196-26A-010, filed 6/17/02, effective 9/1/02.]

WAC 196-26A-020 Examination vendor, procedures and costs. The board has determined the National Council of Examiners for Engineering and Surveying (NCEES) will administer their examinations on behalf of the board. In addition to state fees, all approved applicants are charged by NCEES for the costs of examinations, exam administration and grading. All these costs must be paid in advance by the applicant to NCEES to reserve a seat at the examination. Applicants who have not paid the required costs will not be admitted to the examination. Applicants who fail to appear for their scheduled examination will forfeit all moneys paid to NCEES. The schedule of the costs charged by NCEES is available from NCEES or the board offices.

[Statutory Authority: RCW 43.24.086 and 18.43.035. 02-13-080, § 196-26A-020, filed 6/17/02, effective 9/1/02.]

WAC 196-26A-025 State fees for examinations.

FUNDAMENTAL EXAMINATIONS:

Fundamentals of Engineering (FE):

Application fee (incl. wall certificate):	$ 30
Processing fee to retake the FE examination:	$ 20

Fundamentals of Land Surveying (FLS):

Application fee (incl. wall certificate):	$ 30
Processing fee to retake the FLS examination:	$ 20

Note: Additional charges to cover costs of NCEES fundamentals examinations, exam administration and grading will be billed by NCEES to approved applicants.

PROFESSIONAL ENGINEERING EXAMINATIONS:

NCEES Examinations: (All branches other than board prepared examinations)

Application fee (incl. wall certificate and initial license):	$ 65
Processing fee to retake the NCEES PE exam:	$ 30

Note: Additional charges to cover costs of NCEES PE examinations, exam administration and grading will be billed by NCEES to approved applicants.

Structural Engineering:

Note: To become licensed in structural engineering a candidate is required to pass sixteen hours of structural examinations when determined eligible under Washington law. The examinations for structural licensing consist of the NCEES Structural II and the Washington Structural III examination. One application is required for structural engineering and when approved a candidate may sit for both examinations when they are offered on successive days.

Application fee (incl. wall certificate and initial license):	$ 65
Processing fee to retake the NCEES Structural II or Washington Structural III exams:	$ 30

Note: Additional charges to cover costs of NCEES Structural II examination, exam administration and grading will be billed by NCEES to approved applicants.

Structural III examination fee:	$ 300
Examination rescore:	$ 50/item

Forest Engineering:

Application fee (incl. wall certificate and initial license):	$ 65
Processing fee to retake the forest engineering examination:	$ 30
Examination rescore:	$ 50/item

Note: The examination for licensure in forest engineering is a Washington specific examination that is offered in April of the year depending upon applications received. Interested applicants should confirm schedule by contacting the board office.

PROFESSIONAL LAND SURVEYING:

Note: The examinations for licensure in professional land surveying include an NCEES PPLS examination, a Washington specific examination and a take-home examination over Washington laws and rules. One application is required and when determined eligible a candidate will sit for the NCEES PPLS examination and the Washington specific examination on the same day.

Application fee (incl. wall certificate, state exams, and initial license):	$ 140
Processing and examination fee to retake the state PLS exam:	$ 100

Note: Additional charges to cover costs of NCEES LS examination, exam administration and grading will be billed by NCEES to approved applicants.

Processing fee to retake the NCEES PPLS examination:	$ 30

[Statutory Authority: RCW 43.24.086 and 18.43.035. 02-13-080, § 196-26A-025, filed 6/17/02, effective 9/1/02.]

WAC 196-26A-030 Applications for comity licensure and temporary permits. For comity licensure under the provisions of chapter 18.43 RCW, the required state fee must accompany all applications. Payment by check or money order must be made payable to the Washington state treasurer. Should an applicant be judged ineligible for licensure by comity, the fee submitted shall be retained to cover the cost of processing.

A temporary permit to practice in the state of Washington is available to nonresidents for a period of not to exceed thirty days total in any one-year period. Eligible applicants must have a valid license to practice engineering in the United States, have no outstanding disciplinary actions against their licensure and meet the experience requirements for licensure in Washington. Temporary permits must be issued prior to any authorized practice in Washington.

[Statutory Authority: RCW 43.24.086 and 18.43.035. 02-13-080, § 196-26A-030, filed 6/17/02, effective 9/1/02.]

WAC 196-26A-035 State fees for comity licensure and temporary permit applications.

Professional engineering, comity licensure application:	$ 110

Note: For licensure by comity in structural engineering an applicant must have a current license as a professional engineer, meet the experience requirements established by the board and have passed sixteen hours of rigorous examinations in structural engineering as determined by the board to be equivalent to the examinations required by the Washington board.

Professional engineering, temporary permit application:	$ 110
Professional land surveying, comity licensure application:	$ 140

Note: For licensure by comity in land surveying an applicant must meet the experience requirements established by the board and have passed a written examination deemed satisfactory to the board. Eligible applicants are required to pass the Washington specific examination on Washington laws and rules.

[Statutory Authority: RCW 43.24.086 and 18.43.035. 02-13-080, § 196-26A-035, filed 6/17/02, effective 9/1/02.]

WAC 196-26A-040 Renewals for professional engineer and professional land surveyor licenses. The date of renewal, renewal interval and renewal fee is established by the director of the department of licensing in accordance with chapter 43.24 RCW. To renew a license, the licensee must:

(1) Include payment of the renewal fee;

(2) Include the licensee's Social Security number as provided for by RCW 26.23.150; and

(3) Include any name/address changes that apply.

If a completed application for renewal has not been received by the department by the date of expiration (postmarked before the date of expiration if mailed or transacted on-line before the date of expiration), the license becomes invalid. Licensees who fail to pay the renewal

fee within ninety days of the date of expiration are required to pay an additional penalty fee equivalent to the fee for a one-year renewal. It is the responsibility of each licensee to renew their license in a timely manner regardless of whether they received a renewal notice from the department.

The licenses for individuals registered as professional engineers or professional land surveyors shall be renewed every two years or as otherwise set by the director of the department of licensing. The date of renewal shall be the licensee's date of birth. The initial license issued to an individual shall expire on the licensee's next birth date. However, if the licensee's next birth date is within three months of the initial date of licensure, the original license shall expire on his or her second birth date following original licensure.

[Statutory Authority: RCW 43.24.086 and 18.43.035. 02-13-080, § 196-26A-040, filed 6/17/02, effective 9/1/02.]

WAC 196-26A-045 Professional engineer, professional land surveyor renewal fees and penalties.

Professional engineer (two years):	$ 116
Professional land surveyor (two years):	$ 116
Late renewal penalty (PE and LS only):	$ 58

[Statutory Authority: RCW 43.24.086 and 18.43.035. 02-13-080, § 196-26A-045, filed 6/17/02, effective 9/1/02.]

WAC 196-26A-050 Application for certificate of authorization. Except for professional service corporations (PS) and professional service limited liability companies (PLLC) as defined by the Washington secretary of state, all corporations, joint stock associations and limited liability companies that offer engineering or land surveying services to the public must obtain a certificate of authorization from the board. Each application must be accompanied by the required state fee made payable to the state treasurer. Should an applicant be judged ineligible for certificate of authority, the fee submitted shall be retained to cover the cost of processing.

[Statutory Authority: RCW 43.24.086 and 18.43.035. 02-13-080, § 196-26A-050, filed 6/17/02, effective 9/1/02.]

WAC 196-26A-055 Renewal of certificate of authorization. The date of renewal, renewal interval and renewal fee are established by the director of the department of licensing in accordance with chapter 43.24 RCW. To renew a certificate of authorization, payment of the renewal fee must be received by the department by the date of expiration (postmarked if renewal is mailed by U.S. mail) or the certificate of authorization becomes invalid. The complete renewal must include any changes to: The name of firm, scope of services offered, mailing address of firm and name and address of licensee(s) named in responsible charge for the services provided. A certificate of authorization that is expired is invalid on the date of expiration.

[Statutory Authority: RCW 43.24.086 and 18.43.035. 02-13-080, § 196-26A-055, filed 6/17/02, effective 9/1/02.]

WAC 196-26A-060 Certificate of authorization application and renewal fees.

Application fee (incl. wall certificate and initial license):	$ 150
Renewal fee (one-year):	$ 110

[Statutory Authority: RCW 43.24.086 and 18.43.035. 02-13-080, § 196-26A-060, filed 6/17/02, effective 9/1/02.]

WAC 196-26A-070 Replacement document fees. The department will provide replacement or duplicate certificates or licenses upon written request and payment of the appropriate fee to cover costs of production and mailing.

Duplicate/replacement wall certificate:	$ 25
Duplicate/replacement license:	$ 15

[Statutory Authority: RCW 43.24.086 and 18.43.035. 02-13-080, § 196-26A-070, filed 6/17/02, effective 9/1/02.]

Chapter 196-27a WAC Rules Of Professional Conduct And Practice

Last Update: 11/12/02

WAC SECTIONS

196-27A-010 Purpose and applicability.

196-27A-020 Fundamental canons and guidelines for professional conduct and practice.

196-27A-030 Explicit acts of misconduct.

WAC 196-27A-010 Purpose and applicability. (1) RCW 18.43.110 provides the board of registration for professional engineers and land surveyors (board) with the exclusive power to fine and reprimand registrants and suspend or revoke the certificate of registration of any registrant for violation of any provisions of chapter 18.43 or 18.235 RCW. This includes, as stated in RCW 18.43.105(11), "Committing any other act, or failing to act, which act or failure are customarily regarded as being contrary to the accepted professional conduct or standard generally expected of those practicing engineering or land surveying." The purpose of chapter 196-27A WAC is to provide further guidance to registrants with respect to the accepted professional conduct and practice generally expected of those practicing engineering or land surveying.

(2) These rules of professional conduct and practice are applicable to all registrants and engineering/land surveying firms. A registrant is any person holding a certificate or license issued in accordance with chapter 18.43 RCW and an engineering/land surveying firm is one that has been issued a certificate of authorization to practice by the board.

(3) All persons, corporations, joint stock associations and limited liability companies registered under the provisions of chapter 18.43 RCW are charged with having knowledge of, and practicing in accordance with, the provisions of this chapter.

[Statutory Authority: RCW 18.43.035. 02-23-027, § 196-27A-010, filed 11/12/02, effective 12/13/02.]

WAC 196-27A-020 Fundamental canons and guidelines for professional conduct and practice. Registrants are to safeguard life, health, and property and promote the welfare of the public. To that end, registrants have obligations to the public, their employers and clients, other registrants and the board.

(1) **Registrant's obligation to the public.**

(a) Registrants are obligated to be honest, fair and timely in their dealings with the public, their clients and other licensed professionals.

(b) Registrants must be able to demonstrate that their final documents and work products conform to accepted standards.

(c) Registrants must inform their clients or employers of the harm that may come to the life, health, property and welfare of the public at such time as their professional judgment is overruled or disregarded. If the harm rises to the level of an imminent threat, the registrant is also obligated to inform the appropriate regulatory agency.

(d) Registrants shall maintain their competency by continuing their professional development throughout their careers and shall provide opportunities for the professional development of those individuals under their supervision.

(e) Registrants shall be objective and truthful in professional documents, reports, public and private statements and testimony; all material facts, and sufficient information to support conclusions or opinions expressed, must be included in said documents, reports, statements and testimony. Registrants shall not knowingly falsify, misrepresent or conceal a material fact in offering or providing services to a client or employer.

(f) Registrants shall offer their services in a truthful, objective, professional manner that effects integrity and fosters public trust in the engineering and land surveying professions.

(g) Registrants should endeavor to extend the public knowledge of engineering and land surveying.

(h) Registrants shall accurately represent their academic credentials, professional qualifications

and experience.

(i) Registrants may advertise professional services only in ways that are representative of their qualifications, experience and capabilities.

(j) Registrants shall forbid the use of their name or firm name by any person or firm that is engaging in fraudulent or dishonest business or professional practices.

(2) **Registrant's obligation to employer and clients.**

(a) Registrants are expected to strive with the skill, diligence and judgment exercised by the prudent practitioner, to achieve the goals and objectives agreed upon with their client or employer. They are also expected to promptly inform the client or employer of progress and changes in conditions that may affect the appropriateness or achievability of some or all of the goals and objectives of the client or employer.

(b) Registrants and their clients should have a clear and documented understanding and acceptance of the work to be performed by the registrant for the client. The registrant should maintain good records throughout the duration of the project to document progress, problems, changes in expectations, design modifications, agreements reached, dates and subject of conversations, dates of transmittals and other pertinent records consistent with prudent professional practice.

(c) Registrants shall seal only documents prepared by them or under their direct supervision as required by RCW 18.43.070.

(d) Registrants shall be competent in the technology and knowledgeable of the codes and regulations applicable to the services they perform.

(e) Registrants must be qualified by education or experience in the technical field of engineering or land surveying applicable to services performed.

(f) Registrants may accept primary contractual responsibility requiring education or experience outside of their own fields of competence, provided, their services are restricted to those parts and aspects of the project in which they are qualified. Other qualified registrants shall perform and stamp the work for other parts and aspects of the project.

(g) Registrants shall act as faithful agents or trustees in professional matters for each employer or client.

(h) Registrants shall advise their employers or clients in a timely manner when, as a result of their studies and their professional judgment, they believe a project will not be successful.

(i) Registrants shall avoid conflicts of interest, or the appearance of a conflict of interest, with their employers or clients. Registrants must promptly inform their employers or clients of any business association, interest, or circumstances that could influence their judgment or the quality of their services or would give the appearance that an existing business association, interest, or circumstances could result in influencing their judgment or the quality of their services.

(j) Registrants shall accept compensation from only one party for services rendered on a specific project, unless the circumstances are fully disclosed and agreed to by the parties of interest.

(3) **Registrant's obligation to other registrants.**

(a) If registrants issue statements, critiques, evaluations or arguments on engineering or land surveying matters, they shall clearly indicate on whose behalf the statements are made.

(b) Registrants shall negotiate contracts for professional services fairly and on the basis of demonstrated competence and qualifications for the type of services required.

(c) Registrants shall respond to inquiries from other registrants regarding their work in a timely, fair and honest manner as would be expected from a prudent practitioner.

(4) **Registrant's obligation to the board.**

(a) Registrants shall cooperate with the board by providing, in a timely manner, all records and information requested in writing by the board, or their designee.

(b) Registrants shall respond to, or appear before the board at the time, date and location so stated in a legally served board order.

(c) Registrants shall notify the board of suspected violations of chapter 18.43 or 18.235 RCW or of these rules by providing factual information in writing to convey the knowledge or reason(s) to believe another person or firm may be in violation.

[Statutory Authority: RCW 18.43.035. 02-23-027, § 196-27A-020, filed 11/12/02, effective 12/13/02.]

WAC 196-27A-030 Explicit acts of misconduct. In addition to any failure to conform with the requirements of chapter 18.43 or 18.235 RCW, or this chapter, the following acts and any act or condition listed in RCW 18.235.130, are explicitly defined as misconduct in the practice of engineering and/or land surveying.

(1) Aiding or abetting the unsupervised practice of engineering or land surveying in the state by a person or firm that is not registered in accordance with chapter 18.43 RCW, or, aiding or abetting an unlicensed person to practice or operate a business or profession when a license is required.

(2) The practice of engineering or land surveying by a registrant when the registrant's license is retired (see WAC 196-25-100(6)), expired, suspended or revoked.

(3) Failing to comply with the terms and conditions of an order issued by the board.

(4) Failing to provide relevant information on plans and surveys in a clear manner consistent with prudent practice.

(5) Failing to comply with the provisions of the Survey Recording Act, chapter 58.09 RCW and the survey standards, chapter 332-130 WAC.

(6) Failing to respond to inquiries from clients, or other professionals regarding conflicts with the registrant's work, opinions or procedures, in a manner that would be expected from a prudent practitioner.

(7) Failing to correct engineering or land surveying documents or drawings known to contain substantive errors.

(8) Failing to notify a client or employer that a project could not, or would not, be completed once that assessment is made.

(9) Modifying another licensee's work without notifying that licensee, and clearly delineating the modifications and sealing and signing the modifications made; EXCEPT where the plans, maps, or documents are modified by the owner to reflect changes over time for their own purposes and are not used for submittals or bid documents.

(10) Offering or accepting money, goods or other favors as inducement to receive favorable consideration for a professional assignment, or as an inducement to approve, authorize or influence the granting of a professional assignment.

(11) Soliciting or accepting gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with clients or employers in connection with work for which the registrant is responsible.

(12) Using privileged information coming to registrants in the course of their assignments as a means of making personal profit beyond their professional compensation.

(13) Requesting, proposing, or accepting professional commissions on a contingent basis under circumstances in which the registrant's integrity may be compromised.

(14) Willfully attempting to interfere with a board investigation by falsifying records, making false statements and intimidating or influencing witnesses.

(15) Willfully attempting to suborn another person to violate the law or administrative code, public policy or their code of professional ethics.

[Statutory Authority: RCW 18.43.035. 02-23-027, § 196-27A-030, filed 11/12/02, effective 12/13/02.]

Chapter 332-28 WAC Harbor Line Commission

Last Update: Undated

WAC SECTIONS

332-28-010 Meydenbauer Bay -- Harbor area -- Line of navigability.

WAC 332-28-010 Meydenbauer Bay -- Harbor area -- Line of navigability. (1) This resolution has application to that portion of Meydenbauer Bay on Lake Washington lying southeasterly of a line formed by the extension southwesterly of the southeasterly line of S. E. Bellevue Place, Bellevue, Washington, and the extension northeasterly of the northwesterly line of Lot 39, Shorelands, according to plat recorded in volume 330 of plats at page 8, records of King County, Washington.

(2) That portion of Meydenbauer Bay above described lies within, in front of or within one mile of the corporate limits of the city of Bellevue, Washington, but the commission finds that there presently exists no necessity to reserve any part thereof for landings, wharves, streets and other conveniences of navigation and commerce, and for this reason declines to establish harbor area therein.

(3) The following described line lying within the above described portion of Meydenbauer Bay, to wit:

Commencing at the east quarter section corner of Section 31, Township 25 North, Range 5 East, W.M., whose "X" coordinate is 1,661,520.58 and whose "Y" coordinate is 225,661.29 referred to the Washington coordinate system, North Zone, and running thence on an azimuth of 78°51'17" a distance of 963.76 feet to a point whose "X" coordinate is 1,660,575.00 and whose "Y" coordinate is 225,475.00 referred to said coordinate system; thence on an azimuth of 312°06'17" a distance of 420.00 feet to a point hereinafter referred to as Point "A"; thence on an azimuth of 2°21'10" to an intersection with the southwesterly extension of the southeasterly margin of S.E. Bellevue Place, said intersection being the true point of beginning of this line description.

Thence continuing on an azimuth of 2°21'10" to a point 167.66 feet distance from said Point "A"; thence on an azimuth of 312°06'17" a distance of 415.00 feet, thence on an azimuth of 37°24'19" a distance of 125.00 feet and thence on an azimuth of 127°24'19" to an intersection with the northeasterly extension of the northwesterly line of Lot 39, Shorelands as recorded in vol. 33 of plats, page 8, records of King County, Washington, said point of intersection being the terminus of this line description, has been established by the superior court for King County in Cause No. 513081, entitled *Grill v. Meydenbauer Bay Yacht Club*, to be the boundary line between privately owned shorelands and the publicly owned lake bed. The commission confirms, approves, ratifies and adopts the line so located and established, or as it may be changed and relocated by decree of the supreme court of this state in appeal of the above cause, as the line of navigability in said portion of Meydenbauer Bay. In the event said supreme court shall decree in said appeal that the courts of this state have no jurisdiction to locate and establish the line of navigability, then the above described line shall be and is hereby adopted as the line of navigability in said portion of Meydenbauer Bay.

(4) In the event that the establishment of harbor area within the above described portion of Meydenbauer Bay should become necessary at some time in the future, such harbor area shall be restricted exclusively to lands publicly owned and no part thereof shall be established upon privately owned shorelands.

[Resolution No. 1, filed 8/16/60.]

Chapter 332-30 WAC Aquatic Land Management

Last Update: 10/17/02

WAC SECTIONS

332-30-100 Introduction.

332-30-103 Purpose and applicability.

332-30-106 Definitions.

332-30-107 Aquatic land planning.

332-30-108 Establishment of new harbor areas.

332-30-109 Harbor area.

332-30-114 Management agreements with port districts.

332-30-115 Harbor area use classes.

332-30-116 Harbor line relocation.

332-30-117 Waterways.

332-30-119 Sale of second class shorelands.

332-30-122 Aquatic land use authorization.

332-30-123 Aquatic land use rentals for water-dependent uses.

332-30-125 Aquatic land use rental rates for nonwater-dependent uses.

332-30-126 Sand and gravel extraction fees.

332-30-127 Unauthorized use and occupancy of aquatic lands (see RCW 79.01.471).

332-30-128 Rent review.

332-30-131 Public use and access.

332-30-137 Nonwater-dependent uses.

332-30-139 Marinas and moorages.

332-30-144 Private recreational docks.

332-30-145 Booming, rafting and storage of logs.

332-30-148 Swim rafts and mooring buoys.

332-30-151 Reserves (RCW 79.68.060).

332-30-157 Commercial clam harvesting.

332-30-163 River management.

332-30-166 Open water disposal sites.

332-30-170 Tideland and shoreland exchange.

332-30-171 Residential uses on state-owned aquatic lands.

DISPOSITIONS OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-30-112 Establishment of new areas for navigation and commerce outside of harbor areas. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-112, filed 7/3/80.] Repealed by 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.

332-30-118 Tidelands, shorelands and beds of navigable waters. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-118, filed 7/3/80.] Repealed by 00-19-001, filed 9/6/00, effective 10/7/00. Statutory Authority: RCW 43.30.150, 79.90.540.

332-30-121 Aquatic land use classes (excluding harbor areas). [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-121, filed 7/3/80.] Repealed by 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.

332-30-124 Aquatic land use authorization. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-124, filed 7/3/80.] Repealed by 84-23-014 (Resolution No. 470), filed 11/9/84. Statutory Authority: 1984 c 221 and RCW 79.90.540.

332-30-130 Public use. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-130, filed 7/3/80.] Repealed by 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68

[79.68.080] and chapter 79.93 RCW.

332-30-133 Environmental concerns. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-133, filed 7/3/80.] Repealed by 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.

332-30-134 Aquatic land environmental protection. [Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-134, filed 11/5/85.] Repealed by 00-19-002, filed 9/6/00, effective 10/7/00. Statutory Authority: RCW 43.30.150, 79.90.540.

332-30-136 Houseboats. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-136, filed 7/3/80.] Repealed by 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.

332-30-142 Piers. [Statutory Authority: RCW 43.30.150. 83-02-055 (Order 389, Resolution No. 403), § 332-30-142, filed 1/4/83; 80-09-005 (Order 343), § 332-30-142, filed 7/3/80.] Repealed by 00-19-003, filed 9/6/00, effective 10/7/00. Statutory Authority: RCW 43.30.150, 79.90.540.

332-30-154 Marine aquatic plant removal (RCW 79.68.080). [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-154, filed 7/3/80.] Repealed by 00-19-004, filed 9/6/00, effective 10/7/00. Statutory Authority: RCW 43.30.150, 79.90.540.

332-30-160 Renewable resources (RCW 79.68.080). [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-160, filed 7/3/80.] Repealed by 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.

332-30-161 Aquaculture. [Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-161, filed 11/5/85.] Repealed by 00-19-005, filed 9/6/00, effective 10/7/00. Statutory Authority: RCW 43.30.150, 79.90.540.

332-30-169 Artificial reefs (RCW 79.68.080). [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-169, filed 7/3/80.] Repealed by 00-19-006, filed 9/6/00, effective 10/7/00. Statutory Authority: RCW 43.30.150, 79.90.540.

WAC 332-30-100 Introduction. Subsection (2)(e) of this section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114). State-owned aquatic lands include approximately 1,300 miles of tidelands, 6,700 acres of constitutionally established harbor areas and all of the submerged land below extreme low tide which amounts to some 2,000 square miles of marine beds of navigable waters and an undetermined amount of fresh water shoreland and bed. These lands are managed as a public trust and provide a rich land base for a variety of recreational, economic and natural process activities. Management concepts, philosophies, and programs for state-owned aquatic lands should be consistent with this responsibility to the public.

These lands are "a finite natural resource of great value and an irreplaceable public heritage" and will be managed to "provide a balance of public benefits for all citizens of the state." (RCW 79.90.450 and 79.90.455)

(1) **Management goals.** Management of state-owned aquatic lands will strive to:

(a) Foster water-dependent uses;

(b) Ensure environmental protection;

(c) Encourage direct public use and access;

(d) Promote production on a continuing basis of renewable resources;

(e) Allow suitable state aquatic lands to be used for mineral and material production; and

(f) Generate income from use of aquatic lands in a manner consistent with the above goals.

(2) **Management methods.** To achieve the above, state-owned aquatic lands will be managed particularly to promote uses and protect resources of statewide value.

(a) Planning will be used to prevent conflicts and mitigate adverse effects of proposed activities involving resources and aquatic land uses of statewide value. Mitigation shall be provided for as set forth in WAC 332-30-107(6).

(b) Areas having unique suitability for uses of statewide value or containing resources of statewide value may be managed for these special purposes. Harbor areas and scientific reserves are examples. Unique use requirements or priorities for these areas may supersede the need for mitigation.

(c) Special management programs may be developed for those resources and activities having statewide value. Based on the needs of each case, programs may prescribe special management procedures or standards such as lease auctions, resource inventory, shorter lease terms, use preferences, operating requirements, bonding, or environmental protection standards.

(d) Water-dependent uses shall be given a preferential lease rate in accordance with RCW 79.90.480. Fees for nonwater-dependent aquatic land uses will be based on fair market value.

(e) Research and development may be conducted to enhance production of renewable resources.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-100, filed 11/5/85. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-100, filed 7/3/80.]

WAC 332-30-103 Purpose and applicability. (1) This chapter applies to all state-owned aquatic lands. Except when specifically exempted, this chapter applies to aquatic lands covered under management agreements with port districts (WAC 332-30-114).

(2) These regulations do not supersede laws and regulations administered by other governmental agencies covering activities falling under their jurisdiction on these same lands.

(3) These regulations contain performance standards as well as operational procedures to be used in lease management, land use planning and development actions by the department and port districts. These regulations shall apply each to the department and to the port districts, when such districts manage aquatic lands as the result of management agreements, and neither entity shall impose management control over the other under these regulations except as provided for in such management agreements.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-103, filed 11/5/85. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-103, filed 7/3/80.]

WAC 332-30-106 Definitions. All definitions in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114). For the purpose of this chapter:

(1) "Accretion" means the natural buildup of shoreline through the gradual deposit of alluvium. The general principle of common law

applicable is that a riparian or littoral owner gains by accretion and reliction, and loses by erosion. Boundary lines generally will change with accretion.

(2) "Alluvium" means material deposited by water on the bed or shores.

(3) "Anniversary date" means the month and day of the start date of an authorization instrument unless otherwise specified in the instrument.

(4) "Aquaculture" means the culture and/or farming of food fish, shellfish, and other aquatic plants and animals in fresh water, brackish water or salt water areas. Aquaculture practices may include but are not limited to hatching, seeding or planting, cultivating, feeding, raising, harvesting of planted crops or of natural crops so as to maintain an optimum yield, and processing of aquatic plants or animals.

(5) "Aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters (RCW 79.90.010). Aquatic lands are part of the public lands of the state of Washington (see subsection (49) of this section). Included in aquatic lands are public places subsection (51) of this section, waterways subsection (74) of this section, bar islands, avulsively abandoned beds and channels of navigable bodies of water, managed by the department of natural resources directly, or indirectly through management agreements with other governmental entities.

(6) "Aquatic land use classes" means classes of uses of tideland, shorelands and beds of navigable waters that display varying degrees of water dependency. See WAC 332-30-121.

(7) "Authorization instrument" means a lease, material purchase, easement, permit, or other document authorizing use of state-owned aquatic lands and/or materials.

(8) "Avulsion" means a sudden and perceptible change in the shoreline of a body of water. Generally no change in boundary lines occurs.

(9) "Beds of navigable waters" means those submerged lands lying waterward of the line of extreme low tide in navigable tidal waters and waterward of the line of navigability in navigable lakes, rivers and streams. The term, "bedlands" means beds of navigable waters.

(10) "Commerce" means the exchange or buying and selling of goods and services. As it applies to aquatic land, commerce usually involves transport and a land/water interface.

(11) "Covered moorage" means slips and mooring floats that are covered by a single roof with no dividing walls.

(12) "Department" means the department of natural resources.

(13) "Dredging" means enlarging or cleaning out a river channel, harbor, etc.

(14) "Educational reserves" means accessible areas of aquatic lands typical of selected habitat types which are suitable for educational projects.

(15) "Enclosed moorage" means moorage that has completely enclosed roof, side and end walls similar to a car garage i.e. boathouse.

(16) "Environmental reserves" means areas of environmental importance, sites established for the continuance of environmental baseline monitoring, and/or areas of historical, geological or biological interest requiring special protective management.

(17) "Erosion" means the gradual cutting away of a shore by natural processes. Title is generally lost by erosion, just as it is gained by accretion.

(18) "Extreme low tide" means the line as estimated by the federal government below which it might reasonably be expected that the tide would not ebb. In Puget Sound area generally, this point is estimated by the federal government to be a point in elevation 4.50 feet below the datum plane of mean lower low water, (0.0). Along the Pacific Ocean and in the bays fronting thereon and the Strait of Juan due Fuca, the elevation ranges down to a minus 3.5 feet in several locations.

(19) "Fair market value" means the amount of money which a purchaser willing, but not obligated, to buy the property would pay an owner willing, but not obligated, to sell it, taking into consideration all uses to which the property is adapted and might in reason be applied

(Donaldson v. Greenwood, 40 Wn.2d 238, 1952). Such uses must be consistent with applicable federal, state and local laws and regulations affecting the property as of the date of valuation.

(20) "First class shorelands" means the shores of a navigable lake or river belonging to the state not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, or the inner harbor line where established and within or in front of the corporate limits of any city, or within two miles thereof upon either side (RCW 79.90.040). These boundary descriptions represent the general rule; however exceptions do exist. To determine if the shorelands are within two miles of the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(21) "First class tidelands" means the shores of navigable tidal waters belonging to the state lying within or in front of the corporate limits of any city, or within one mile thereof upon either side and between the line of ordinary high tide and the inner harbor line; and within two miles of the corporate limits on either side and between the line of ordinary high tide and the line of extreme low tide (RCW 79.90.030). In general, the line of ordinary high tide is the landward boundary. The line of extreme low tide, or the inner harbor line where established, is the waterward boundary. To determine if the tidelands are within two miles of the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(22) "Fiscal year" means a period of time commencing on the first day of July and ending on the thirtieth day of June of the succeeding year. A fiscal year is identified by the year in which it ends, e.g., fiscal year 1985 is the period July 1, 1984 through June 30, 1985.

(23) "Floating house" means any floating structure that is designed, or has been substantially and structurally remodeled or redesigned, to serve primarily as a residence. "Floating houses" include house boats, house barges, or any floating structures that serve primarily as a residence and do not qualify as a vessel as provided in subsection (74) of this section. A floating structure that is used as a residence and is capable of navigation, but is not designed primarily for navigation, nor normally is capable of self propulsion and use as a means of transportation is a floating house, not a vessel.

(24) "Governmental entity" means the federal government, the state, county, city, port district, or other municipal corporation or political subdivision thereof.

(25) "Harbor area" means the area of navigable waters determined as provided in section 1 of Article XV of the state Constitution which shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce (RCW 79.90.020). Harbor areas exist between the inner and outer harbor lines as established by the state harbor line commission.

(26) "Harbor area use classes" means classes of uses of harbor areas that display varying degrees of conformance to the purpose for which harbor areas were established under the Constitution.

(27) "Harbor line" means either or both: (a) A line (outer harbor line) located and established in navigable waters as provided for in section 1 of Article XV of the state Constitution beyond which the state shall never sell or lease any rights whatever to private persons (RCW 79.90.015). (b) A line (inner harbor line) located and established in navigable waters between the line of ordinary high tide and the outer harbor line, constituting the inner boundary of the harbor area (RCW 79.90.025).

(28) "Inflation rate" means, for a given year, the percentage rate of change in the previous calendar year's all commodity producer price index of the Bureau of Labor Statistics of the United States department of commerce (RCW 79.90.465). The rate published by the bureau during May of each year for the previous calendar year shall be the rate for the previous calendar year.

(29) "Interest rate" shall be twelve percent per annum (RCW 79.90.520).

(30) "Interim uses" means certain uses which may, under special circumstances, be allowed to locate in harbor areas (see WAC 332-30-115(5)).

(31) "Inventory" means both a compilation of

existing data on man's uses, and the biology and geology of aquatic lands as well as the gathering of new information on aquatic lands through field and laboratory analysis. Such data is usually presented in map form such as the *Washington Marine Atlas*.

(32) "Island" means a body of land entirely and customarily surrounded by water. Land in navigable waters which is only surrounded by water in times of high water, is not an island within the rule that the state takes title to newly formed islands in navigable waters.

(33) "Line of navigability" means a measured line at that depth sufficient for ordinary navigation as determined by the board of natural resources for the body of water in question.

(34) "Log booming" means placing logs into and taking them out of the water, assembling and disassembling log rafts before or after their movement in water-borne commerce, related handling and sorting activities taking place in the water, and the temporary holding of logs to be taken directly into a processing facility (RCW 79.90.465).

(35) "Log storage" means the water storage of logs in rafts or otherwise prepared for shipment in water-borne commerce, but does not include the temporary holding of logs to be taken directly into a vessel or processing facility (RCW 79.90.465).

(36) "Marine land" means those lands from the mean high tide mark waterward in marine and estuarine waters, including intertidal and submerged lands. Marine lands represents a portion of aquatic lands.

(37) "Meander line" means fixed determinable lines run by the federal government along the banks of all navigable bodies of water and other important rivers and lakes for the purpose of defining the sinuosities of the shore or bank and as a means of ascertaining the areas of fractional subdivisions of the public lands bordering thereon.

(38) "Moorage facility" means a marina, open water moorage and anchorage area, pier, dock, mooring buoy, or any other similar fixed moorage site.

(39) "Motorized vehicular travel" means movement by any type of motorized equipment over land surfaces.

(40) "Multiple use management" means a management philosophy which seeks to insure that several uses or activities can occur at the same place at the same time. The mechanism involves identification of the primary use of the land with provisions such as performance standards to permit compatible secondary uses to occur.

(41) "Navigability or navigable" means that a body of water is capable or susceptible of having been or being used for the transport of useful commerce. The state of Washington considers all bodies of water meandered by government surveyors as navigable unless otherwise declared by a court.

(42) "Navigation" means the movement of vessels to and from piers and wharves.

(43) "Nonwater-dependent use" means a use that can operate in a location other than on the waterfront. Examples include, but are not limited to, hotels, condominiums, apartments, restaurants, retail stores, and warehouses not part of a marine terminal or transfer facility (RCW 79.90.465).

(44) "Open moorage" means moorage slips and mooring floats that have completely open sides and tops.

(45) "Open water moorage and anchorage areas" are areas of state-owned aquatic lands leased for moorage and anchorage that do not abut uplands and do not include a built connection to the uplands. They are generally in the center of a waterbody, to provide moorage in addition to any marinas and docks along the edge of the waterbody. They may contain mooring buoys, floating moorage docks, other moorage facilities not connected to the shoreline, and/or anchorage areas, as determined by the lessee and approved by the department. These areas are leased in accordance with WAC 332-30-139(5) and subject to the restrictions therein.

(46) "Optimum yield" means the yield which provides the greatest benefit to the state with particular reference to food production and is prescribed on the basis of the maximum sustainable yield over the statewide resource base as modified by any relevant economic,

social or ecological factor.

(47) "Ordinary high tide" means the same as mean high tide or the average height of high tide. In Puget Sound, the mean high tide line varies from 10 to 13 feet above the datum plane of mean lower low water (0.0).

(48) "Ordinary high water" means, for the purpose of asserting state ownership, the line of permanent upland vegetation along the shores of nontidal navigable waters. In the absence of vegetation, it is the line of mean high water.

(49) "Port district" means a port district created under Title 53 RCW (RCW 79.90.465).

(50) "Public benefit" means that all of the citizens of the state may derive a direct benefit from departmental actions in the form of environmental protection; energy and mineral production; utilization of renewable resources; promotion of navigation and commerce by fostering water-dependent uses; and encouraging direct public use and access; and generating revenue in a manner consistent with RCW 79.90.455.

(51) "Public lands" means lands belonging to or held in trust by the state, which are not devoted to or reserved for a particular use by law, and include state lands, tidelands, shorelands and harbor areas as herein defined, and the beds of navigable waters belonging to the state (RCW 79.01.004).

(52) "Public interest" means. . . . (reserved)

(53) "Public place" means a part of aquatic lands set aside for public access through platted tidelands, shorelands, and/or harbor areas to the beds of navigable waters.

(54) "Public tidelands" means tidelands belonging to and held in public trust by the state for the citizens of the state, which are not devoted to or reserved for a particular use by law.

(55) "Public trust" means that certain state-owned tidelands, shorelands and all beds of navigable waters are held in trust by the state for all citizens with each citizen having an equal and undivided interest in the land. The department has the responsibility to manage these lands in the best interest of the general public.

(56) "Public use" means to be made available daily to the general public on a first-come, first-served basis, and may not be leased to private parties on any more than a day use basis.

(57) "Public use beach" means a state-owned beach available for free public use but which may be leased for other compatible uses.

(58) "Public utility line" means pipes, conduits, and similar facilities for distribution of water, electricity, natural gas, telephone, other electronic communication, and sewers, including sewer outfall lines (RCW 79.90.465).

(59) "Real rate of return" means the average for the most recent ten calendar years of the average rate of return on conventional real property mortgages as reported by the Federal Home Loan Bank Board or any successor agency, minus the average inflation rate for the most recent ten calendar years (RCW 79.90.465).

(60) "Reliction" means the gradual withdrawal of water from a shoreline leaving the land uncovered. Boundaries usually change with reliction.

(61) "Renewable resource" means a natural resource which through natural ecological processes is capable of renewing itself.

(62) "Residential use" means any noncommercial habitation of:

(a) A floating house, as defined in WAC 332-30-106(23); or

(b) A vessel, as defined in WAC 332-30-106(74), when any one of the following applies:

(i) Any person or succession of different persons resides on the vessel in a specific location, and/or in the same area on more than a total of thirty days in any forty-day period or on more than a total of ninety days in any three hundred sixty-five-day period. "In the same area" means within a radius of one mile of any location where the same vessel previously moored or anchored on state-owned aquatic lands. A vessel that is occupied and is moored or anchored in the same area, but not for the number of days described in this subsection, is considered used as a recreational or transient vessel;

(ii) The city or county jurisdiction, through local ordinance or policy, defines the use as a residential use or identifies the occupant of the vessel as a resident of the vessel or of the facility where it is moored;

(iii) The operator of the facility where the vessel is moored, through the moorage agreement, billing statement, or facility rules, defines the use as a residential use or identifies the occupant of the vessel as a resident of the vessel or of the facility; or

(iv) The occupant or occupants identify the vessel or the facility where it is moored as their residence for voting, mail, tax, or similar purposes.

(63) "Riparian" means relating to or living or located on the bank of a natural water course, such as a stream, lake or tidewater.

(64) "Scientific reserves" means sites set aside for scientific research projects and/or areas of unusually rich plant and animal communities suitable for continuing scientific observation.

(65) "Second class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, and more than two miles from the corporate limits of any city (RCW 79.90.045). These boundary definitions represent the general rule; however, exceptions do exist. To determine if shorelands are more than two miles from the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(66) "Second class tidelands" means the shores of navigable tidal waters belonging to the state, lying outside of and more than two miles from the corporate limits of any city and between the line of ordinary high tide and the line of extreme low tide (RCW 79.90.035). In general, the line of ordinary high tide is the landward boundary. The line of extreme low tide is the waterward boundary. To determine if the tidelands are more than two miles from the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(67) "Shore" means that space of land which is alternately covered and left dry by the rising and falling of the water level of a lake, river or tidal area.

(68) "State-owned aquatic lands" means those aquatic lands and waterways administered by the department of natural resources or managed under department agreement by a port district. "State-owned aquatic lands" does not include aquatic lands owned in fee by, or withdrawn for the use of, state agencies other than the department of natural resources (RCW 79.90.465).

(69) "Statewide value." The term statewide value applies to aquatic land uses and natural resources whose use, management, or intrinsic nature have statewide implications. Such uses and resources may be either localized or distributed statewide. Aquatic land uses of statewide value provide major statewide public benefits. Public use and access, renewable resource use and water-dependent use have been cited by the legislature as examples of such uses. Aquatic land natural resources of statewide value are those critical or uniquely suited to aquatic land uses of statewide value or to environmental quality. For example, wild and scenic rivers, high quality public use beaches and aquatic lands fronting state parks are of statewide value for public use and access. Commercial clam and geoduck beds and sites uniquely suited to aquaculture are of statewide value to renewable resource use. Harbor areas are of statewide value to water-dependent navigation and commerce. Certain aquatic land habitats and plant and animal populations are of statewide value to recreational and commercial fisheries, wildlife protection, and scientific study.

(70) "Streamway" means stream dependent corridor of single or multiple, wet or dry channel, or channels within which the usual seasonal or storm water run-off peaks are contained, and within which environment the flora, fauna, soil and topography is dependent on or influenced by the height and velocity of the fluctuating river currents.

(71) "Terminal" means a point of interchange between land and water carriers, such as a pier, wharf, or group of such, equipped with facilities for care and handling of cargo and/or passengers (RCW 79.90.465).

(72) "Thread of stream - thalweg" means the center of the main channel of the stream at the natural and ordinary stage of water.

(73) "Town" means a municipal corporation of the fourth class having not less than three hundred inhabitants and not more than fifteen hundred inhabitants at the time of its organization (RCW 35.01.040).

(74) "Vessel" means a floating structure that is designed primarily for navigation, is normally capable of self propulsion and use as a means of transportation, and meets all applicable laws and regulations pertaining to navigation and safety equipment on vessels, including, but not limited to, registration as a vessel by an appropriate government agency.

(75) "Water-dependent use" means use which cannot logically exist in any location but on the water. Examples include, but are not limited to, waterborne commerce; terminal and transfer facilities; ferry terminals; watercraft sales in conjunction with other water dependent uses; watercraft construction, repair, and maintenance; moorage and launching facilities; aquaculture; log booming; and public fishing piers and parks (RCW 79.90.465(1)).

(76) "Waterfront" means a parcel of property with upland characteristics which includes within its boundary, a physical interface with the existing shoreline of a body of water.

(77) "Water oriented use" means use which historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, fish processing, petroleum refining, sand and gravel processing, log storage, and houseboats (RCW 79.90.465).

(78) "Waterway" means an area platted across aquatic lands or created by a waterway district providing for access between the uplands and open water, or between navigable bodies of water.

(79) "Wetted perimeter" means a fluctuating water line which separates submerged river beds from the dry shoreland areas at any given time.

[Statutory Authority: RCW 79.90.455, 79.90.460. 02-21-076 (Order 710), § 332-30-106, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 79.01.132, 79.01.216, 79.90.520, 79.90.535 and 1991 c 64 §§ 1 and 2. 91-22-079 (Order 580), § 332-30-106, filed 11/5/91, effective 12/6/91. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-106, filed 11/5/85. Statutory Authority: 1984 c 221 and RCW 79.90.540. 84-23-014 (Resolution No. 470), § 332-30-106, filed 11/9/84. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-106, filed 7/3/80.]

WAC 332-30-107 Aquatic land planning. Subsection (4) of this section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) **Multiple use.** The aquatic lands of Washington are a limited and finite resource. Management of these lands will allow for multiple use by compatible activities to the greatest extent feasible.

(2) **Planning objectives.** Aquatic land management will strive for the best combination of aquatic uses to achieve the goals in WAC 332-30-100. Planning should allow for a variety of uses and activities, such as navigation; public use; production of food; energy; minerals and chemicals; and improvement of aquatic plant and animal habitat, occurring simultaneously or seasonally on state-owned aquatic lands.

(3) **Shoreline management.** The Shoreline Management Act and shoreline master program planning, together with supplemental planning as described in subsection (5) of this section, will be the primary means for identifying and providing appropriate uses of statewide value.

(4) **Coordination.** Coordination with shoreline management programs will be accomplished by:

(a) Identifying aquatic land areas of particular statewide value for public access, habitat and water-dependent and renewable resource use.

(b) Informing appropriate shoreline planning bodies of the location and particular value of aquatic lands identified in (a) of this subsection.

(c) Participating in shoreline planning and suggesting ways to incorporate and balance statewide values.

(d) Proposing to the appropriate local jurisdiction that shoreline plans be updated when new information concerning statewide values becomes available or when existing plans do not adequately address statewide values.

(5) **Supplemental planning.** The department (for aquatic lands not covered under port management agreements) or port districts (for aquatic lands managed under port management agreements) may supplement the shoreline master program planning process with management plans necessary to meet the constitutional and statutory proprietary responsibilities for state-owned aquatic lands. Plans developed and implemented under this subsection will involve aquatic lands, resources, and activities requiring intensive management, special protection, or conflict resolution and will be developed when these needs are not provided for by shoreline master program planning. Aquatic land uses and activities implemented through this supplemental planning process will be consistent with adopted shoreline master programs and the Shoreline Management Act. Planning activities will be closely coordinated with local, state, and federal agencies having jurisdiction and public participation will be encouraged.

(6) **Mitigation.** Shoreline master program planning and additional planning processes described in subsection (5) of this section will be the preferred means for identifying and mitigating adverse impacts on resources and uses of statewide value. In the absence of such planning directed to these values and uses, the department (for aquatic lands not covered under port management agreements) or port districts (for aquatic lands managed under port management agreements) will mitigate unacceptable adverse impacts on a case-by-case basis by the following methods in order of preference:

(a) Alternatives will be sought which avoid all adverse impacts.

(b) When avoidance is not practical, alternatives shall be sought which cause insignificant adverse impacts.

(c) Replace, preferably on-site, impacted resources and uses of statewide value. It must be demonstrated that these are capable of being replaced.

(d) Payment for lost value, in lieu of replacement, may be accepted from the aquatic land user in limited cases where an authorized use reduces the economic value of off-site resources, for example, bacterial pollution of nearby shellfish beds.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-107, filed 11/5/85. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-107, filed 7/3/80.]

WAC 332-30-108 Establishment of new harbor areas. (1) The policies and standards in this section apply to establishment of new harbor areas by the harbor line commission under Article XV of the Washington Constitution and to establishment of new harbor areas in Lake Washington by the commissioner of public lands under RCW 79.94.240.

(2) New harbor areas will only be established to serve the following purposes:

(a) Reserving adequate urban space for navigation and commerce facilities; and

(b) Preventing urban development from disrupting navigation.

(3) New harbor areas will only be established when a need is demonstrated by existing development or by plans, studies, project proposals or other evidence of development potential in, or waterward of, the proposed harbor area.

(4) Unless there is an overriding statewide navigation and commerce need, new harbor areas will only be established when:

(a) Compatible with local land use and shoreline management plans;

(b) Supported by the city, county and port district;

(c) The area is physically and environmentally suitable for navigation and commerce purposes; and

(d) Necessary support facilities and services are likely to be available.

(5) The shoreline length of a new harbor area established along a city's waterfront will be determined by the need and purposes to be served and by conformance with subsection (4) of this section.

(6) Harbor line placement standards.

(a) Harbor lines will be placed to serve constitutional harbor area purposes as they relate to the individual site in question.

(b) Harbor lines will be placed to provide practical development guidance. Harbor lines will relate to navigation and commerce development which has occurred or can reasonably be expected to occur.

(c) Inner harbor lines will be placed at the boundary of public aquatic land ownership. Inner harbor lines may be placed waterward of the boundary of public ownership to avoid conflicts with other guidelines in this section.

(d) Outer harbor lines will generally be placed near the ends of existing conforming structures located on public aquatic lands. The lines shall provide adequate space for navigation and commerce and prevent development from interfering with navigation.

(e) Unless there is an overriding statewide navigation and commerce need, harbor lines will be placed in accordance with:

(i) Local, state and federal land use plans and environmental regulations;

(ii) Maintenance of environmental quality;

(iii) Existing abutting harbor lines; and

(iv) Existing aquatic land development.

[Statutory Authority: RCW 79.90.080, 79.92.010, 79.94.240 and 79.94.250. 84-23-008 (Resolution No. 469), § 332-30-108, filed 11/9/84.]

WAC 332-30-109 Harbor area. (1) Harbor areas shall be reserved for landings, wharves, streets and other conveniences of navigation and commerce.

(2) Water dependent commerce shall be given preference over other uses of harbor areas.

(3) Every consideration shall be given to meeting the expanding need for navigation and water dependent commerce in existing harbor areas.

(4) Several industries using the same harbor area facility shall be given preference over single industry use.

(5) Shallow draft uses, such as barge terminals and marinas, shall be preferred over deep draft uses, in areas requiring extensive maintenance dredging.

(6) Harbor lines may be adjusted, when authorized by the legislature, to provide reasonable opportunity to meet the present and future needs of commerce and navigation.

(7) In harbor areas where no current constitutional use (navigation and commerce) is called for or practical and other uses are in demand, interim uses may be authorized by the board of natural resources if in the public interest.

(8) The department will, where in the public interest, promote the conversion of existing nonconforming uses to conforming uses by assisting if possible, such users in resiting their operations and by withdrawing renewal options on affected state harbor area leases.

(9) The department will promote full development of all existing suitable harbor areas for use by water dependent commerce.

(10) Abandoned structures determined to be unsightly or unsafe by the department shall be removed from harbor areas by the owner of the

structures upon demand by the department or by the department in which case the owner will be assessed the costs of such removal.

(11) Floating houses are not permitted in harbor areas.

(12) Resource management cost account portion of the revenue from leasing of harbor areas shall be used to reduce the general tax burden and for aquatic land management programs that are of benefit to the public.

(13) Harbor areas will be managed to produce revenue for the public unless withdrawn as a public place.

(14) Harbor area lease renewal applications must be returned to the department within sixty days of expiration of prior lease term. If not timely returned, the harbor area involved will be put up for public auction.

(15) The department will encourage local government, state and federal agencies to cooperate in planning for the following statewide harbor management needs:

(a) Reserve adequate and appropriate space within the jurisdiction to serve foreseeable navigation and commerce development needs.

(b) Coordinate plans for aquatic land and upland development so that areas reserved for navigation and commerce will be usable in the future.

(c) Identify areas where interim uses may be allowed.

(d) Identify needed changes in harbor lines.

(e) Minimize the environmental impacts of navigation and commerce development.

(f) Prevent existing and future interim uses in harbor areas from lowering the suitability of harbor areas for navigation and commerce development.

[Statutory Authority: RCW 79.90.455, 79.90.460. 02-21-076 (Order 710), § 332-30-109, filed 10/17/02, effective 11/17/02. Statutory Authority: Chapter 79.92 RCW. 83-21-004 (Order 404, Resolution No. 433), § 332-30-109, filed 10/6/83. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-109, filed 7/3/80.]

WAC 332-30-114 Management agreements with port districts. By mutual, formal, written agreement the department may authorize a port district to manage some or all of those aquatic lands within the port district meeting the criteria stated in subsection (2) of this section. The port district shall adhere to the aquatic land management laws and policies of the state as specified in chapters 79.90 through 79.96 RCW. Port district management of state aquatic lands shall be consistent with all department regulations contained in chapter 332-30 WAC. These requirements shall govern the port's management of state aquatic lands. The administrative procedures used to carry out these responsibilities shall be those provided for port districts under Title 53 RCW.

(1) Interpretations. Phrases used in legislation (RCW 79.90.475) providing for management agreements with ports shall have the following interpretation:

(a) "Administrative procedures" means conducting business by the port district and its port commission.

(b) "Aquatic lands abutting or used in conjunction with and contiguous to" means state-owned aquatic lands which share a common or coincident boundary with an upland parcel or in the event the state aquatic land does not attach to an upland parcel (i.e., bedlands, harbor areas, etc.), this term shall include the aquatic land adjacent to and waterward of the port owned or controlled aquatic parcel which has a common or coincident boundary to the upland parcel.

(c) "Diligently pursued" means such steady and earnest effort by the port district and the department which results in the resolution of any deficiencies preventing the issuance of a management agreement to the port.

(d) "Leasehold interest" means the benefits and obligations of both the lessor and lessee resulting from a lease agreement.

(e) "Model management agreement" means a document approved by the board of natural resources to be used for all individual

management agreements with port districts.

(f) "Operating management" means the planning, organizing, staffing, coordinating, and controlling for all activities occurring on a property.

(g) "Otherwise managed" means having operating management for a property.

(h) "Revenue attributable" means all rentals, fees, royalties, and/or other payments generated from the use of a parcel; or the most likely amount of money due for the use of a parcel as determined by procedures in chapter 332-30 WAC, whichever is greater.

(2) Criteria for inclusion. State-owned parcels of aquatic lands, including those under lease or which may come under lease to a port, abutting port district uplands may be included in a management agreement if criteria set forth in RCW 79.90.475 are met and if there is documentation of ownership, a lease in good standing, or agreement for operating management, in the name of the port district for the upland parcel.

(3) A model management agreement and any amendments thereto shall be developed by the department and representatives of the port industry. The board of natural resources shall review and approve the model management agreement and any subsequent amendments.

(4) Processing requests. The following application requirements, review procedures, and time frame for responses involved in the issuance of a management agreement to a port district shall apply.

(a) Application requirements. The following items must be submitted to the department by the port district in order for its request to be an application for a management agreement:

(i) A copy of a resolution of the port commission that directs the port district to seek a management agreement;

(ii) An exhibit showing the location of and a description adequate to allow survey for each parcel of state-owned aquatic land to be included in the agreement, plus sufficient information on abutting port parcels to satisfy the requirements of subsection (2) of this section;

(iii) The name, address, and phone number of the person or persons that should be contacted if the department has any questions about the application.

(b) Time frames for responses:

(i) Within thirty days of receipt of an application, the department shall notify the port district if its application is complete or incomplete;

(ii) Within thirty days of receipt of notification by the department of any incompleteness in their application, the port district shall submit the necessary information;

(iii) Within ninety days of receipt of notification by the department that the application is complete, the port district and department shall take all steps necessary to enter into an agreement.

[Statutory Authority: 1984 c 221 and RCW 79.90.540. 84-23-014 (Resolution No. 470), § 332-30-114, filed 11/9/84.]

WAC 332-30-115 Harbor area use classes. These classes are based on the degree to which the use conforms to the intent of the constitution that designated harbor areas be reserved for landings, wharves, streets and other conveniences of navigation and commerce.

(1) **Water-dependent commerce.** Water-dependent commerce are all uses that cannot logically exist in any other location but on the water and are aids to navigation and commerce. These are preferred harbor area uses. Leases may be granted up to the maximum period allowed by the Constitution and may be renewed. Typical uses are:

(a) Public or private vessel terminal and transfer facilities which handle general commerce including the cargo handling facilities necessary for water oriented uses.

(b) Public and private terminal facilities for passenger vessels.

(c) Watercraft construction, repair, maintenance, servicing and dismantling.

(d) Marinas and mooring areas.

(e) Tug and barge companies facilities.

(f) Log booming.

(2) **Water-oriented commerce.** Water oriented commerce are commercial uses which historically have been dependent on waterfront locations, but with existing technology could be located away from the waterfront. Existing water-oriented uses may be asked to yield to water dependent commercial uses when the lease expires. New water-oriented commercial uses will be considered as interim uses. Typical uses are:

(a) Wood products manufacturing.

(b) Watercraft sales.

(c) Fish processing.

(d) Sand and gravel companies.

(e) Petroleum handling and processing plants.

(f) Log storage.

(3) **Public access.** Facilities for public access are lower priority uses which do not make an important contribution to navigation and commerce for which harbor areas are reserved, but which can be permitted providing that the harbor area involved is not needed, or is not suitable for water-dependent commerce. Leases may be issued for periods up to thirty years with possible renewals. Typical uses are:

(a) Public fishing piers.

(b) Public waterfront parks.

(c) Public use beaches.

(d) Aquariums available to the public.

(e) Underwater parks and reefs.

(f) Public viewing areas and walkways.

(4) **Residential use.** Residential uses do not require harbor area locations and are frequently incompatible with water-dependent commerce. New residential uses will not be permitted to locate in harbor areas, except that vessels used as a residence will be permitted wherever other vessels are permitted if the residential uses are otherwise allowed by WAC 332-30-171 and meet all applicable laws and lease requirements. This restriction on new leases differentiates residential uses from interim uses. Existing residential uses may be asked to yield to other uses when the lease expires. Proposed renewals of residential leases will require the same analysis as specified for interim uses.

(5) **Interim uses.** Interim uses are all uses other than water-dependent commerce, existing water-oriented commerce, public access facilities, and residential uses. Interim uses do not require waterfront locations in order to properly function. Leases may only be issued and reissued for interim uses in exceptional circumstances and when compatible with water dependent commerce existing in or planned for the area. See WAC 332-30-137 Nonwater-dependent uses for evaluation standards.

(6) Areas withdrawn are harbor areas which are so located as to be currently unusable. These areas are temporarily withdrawn pending future demand for constitutional uses. No leases are issued.

[Statutory Authority: RCW 79.90.455, 79.90.460. 02-21-076 (Order 710), § 332-30-115, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-115, filed 11/5/85. Statutory Authority: Chapter 79.92 RCW. 83-21-004 (Order 404, Resolution No. 433), § 332-30-115, filed 10/6/83. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-115, filed 7/3/80.]

WAC 332-30-116 Harbor line relocation. Harbor areas are established to meet the needs of navigation and commerce. Harbor line relocations must be consistent with this purpose.

(1) Harbor line relocations should:

(a) Maintain or enhance the type and amount of harbor area needed to meet long-term needs of

water dependent commerce; and

(b) Maintain adequate space for navigation beyond the outer harbor line.

(2) When in agreement with the above guidelines, consideration of harbor line relocations should include:

(a) Plans and development guidelines of public ports, counties, cities, and other local, state, and federal agencies;

(b) Economic and environmental impacts;

(c) Public access to the waterfront;

(d) Indian treaty rights;

(e) Cumulative impacts of similar relocations on water dependent commerce; and

(f) The precedent setting effect on other harbor areas.

(3) Procedure.

(a) Upon receipt of a completed harbor line relocation proposal form and SEPA checklist (if necessary), department of natural resources staff shall arrange for a public hearing.

(b) Notice of the hearing shall be mailed at least thirty days in advance to the concerned city, county, port district, interest groups, adjacent tide, shore or upland owners and others who indicate interest; and shall be published at least twenty days in advance in a local newspaper of general circulation.

(c) The hearing, conducted by a hearings officer, shall be held in the county in which the relocation is proposed. Department staff shall present the proposal and preliminary recommendations. The hearing shall be recorded.

(d) Comments may be submitted at the hearing or mailed to the department. Written comments must be postmarked no later than fourteen days after the hearing.

(e) Department of natural resources staff will finalize SEPA compliance (if necessary) and prepare a final report of recommendations to the harbor line commission.

(f) No later than sixty days after the date of the public hearing, the harbor line commission shall consider the staff report and public comments, then approve, modify or deny the relocation. A copy of the commission's resolution shall be sent within ten days to the proponent, the city, county, port district and other parties who have requested it.

[Statutory Authority: Chapter 79.92 RCW. 83-21-004 (Order 404, Resolution No. 433), § 332-30-116, filed 10/6/83.]

WAC 332-30-117 Waterways. (1) **Purpose and applicability.** This section describes the requirements for authorizing use and occupation of waterways under the department's authority as proprietor of state-owned aquatic lands. This section applies to waterways established in accordance with RCW 79.93.010 and 79.93.020. This section does not apply to uses of Salmon Bay Waterway, or to the East and West Duwamish Waterways in Seattle authorized under RCW 79.93.040.

(2) **Priority use.** Providing public navigation routes between water and land for conveniences of navigation and commerce is the priority waterway use.

(3) **Permit requirement.** In order to assure availability of waterways for present and future conveniences of navigation and commerce, moorage (other than transient moorage for fewer than 30 days), and other waterway uses shall require prior authorization from the department. Permits may be issued for terms not exceeding one year if there will be no significant interference with the priority waterway use or short-term moorage. Permits may be issued for terms not exceeding five years for uses listed in subsection (4) of this section in instances in which existing development, land use, ownership, or other factors are such that the current and projected demand for priority waterway uses is reduced or absent.

(4) **Permit priority.** In cases of competing demands for waterways, the following order of priority will apply:

(a) Facilities which provide public access to adjacent properties for loading and unloading of watercraft;

(b) Water-dependent commerce, as defined in WAC 332-30-115(1), related to use of the adjacent properties;

(c) Other water-dependent uses;

(d) Facilities for nonnavigational public access;

(e) Other activities consistent with the requirements in WAC 332-30-131(4) for public use facilities.

(5) **Waterway permits.** All necessary federal, state, and local permits shall be acquired by those proposing to use waterways. Copies of permits must be furnished to the department prior to authorizing the use of waterways.

(6) **Obstructions.** Permanent obstruction of waterways, including filling is prohibited. Structures associated with authorized uses in waterways shall be capable of ready removal. Where feasible, anchors and floats shall be preferred over pilings.

(7) **Permit process.** Applications for waterway permits will be processed as follows:

(a) Local government review of permit applications will be requested.

(b) Public comment will be gathered through the shoreline permit process, if applicable. If no shoreline permit is required, public comment will be gathered through the methods described in WAC 332-41-510(3).

(c) Applications will be reviewed for consistency with the policy contained in this chapter.

(d) Evaluation will consider existing, planned, and foreseeable needs and demands for higher priority uses in the waterway and in the associated water body.

(8) The department will require waterway permittees to provide security in accordance with WAC 332-30-122(5) to insure the provisions of waterway permits are fulfilled.

(9) **Cancellation.** Permission to use waterways is subject to cancellation in order to satisfy the needs of higher priority waterway uses. Transient moorage may be required to move at any time. Waterway permits are cancellable upon ninety days' notice when the sites are needed for higher priority uses.

(10) **Monitoring.** Local governments will be encouraged to monitor waterway use and to report any uses not in compliance with this regulation.

(11) **Planning.** Planning for waterway use will be encouraged. The shoreline planning process should provide for the long range needs of preferred waterway uses and other statewide values. Planning should also consider the availability of other public property, such as platted street ends, to serve anticipated needs.

(12) **Existing uses.** Existing waterway uses, structures, and obstructions will be reviewed for compliance with this section. Uses not in compliance shall be removed within one year from the date notification of noncompliance is mailed unless the public interest requires earlier removal. Unless early removal is required, removal may be postponed if the department receives a request for vacation of the waterway from the city or port district in accordance with RCW 79.93.060. If the request for waterway vacation is denied, the structure must be removed within six months of mailing of notice of denial or within one year of the original date of notification of noncompliance, whichever is later.

(13) **Fees.** Waterway permit fees will be determined on the same basis as required for similar types of uses on other state-owned aquatic lands.

(14) **Filled areas.** Certain waterways contain unauthorized fill material. The filled areas have generally assumed the characteristics of the abutting upland. Nonwater-dependent uses may be allowed on existing fills when there will be no interference with priority or other permitted waterway uses and when permitted under applicable local, state, and federal regulations.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-117, filed

11/5/85.]

WAC 332-30-119 Sale of second class shorelands. (1) Under RCW 79.01.474 state-owned second class shorelands on lakes legally determined or considered by the department of natural resources to be navigable, may be sold to private owners of abutting upland property where it is determined by the board of natural resources that the shorelands have minimal public value for uses such as providing access, recreation or other public benefit. The amount of shoreland subject to sale to any one individual shall be the amount fronting a lot within a recorded subdivision plat; or the greater of 100 feet or ten percent of the frontage owned by the applicant outside of a recorded subdivision. However, it shall be in the public interest to retain ownership of publicly owned second class shorelands on navigable lakes where any of the following conditions exist:

(a) The shorelands are natural, conservancy, or equivalent designated areas under the local shoreline master program.

(b) The shorelands are located in front of land with public upland ownership or public access easements.

(c) Further sales of shorelands would preclude the establishment of public access to the lake, or adversely affect the public use and access to the lake.

(2) Prior to the sale of second class shorelands on a navigable lake, the department will:

(a) Depict on a suitable map the current ownership of all shorelands and identify those shorelands potentially available for sale as provided under WAC 332-30-119(1).

(b) Identify any privately owned shorelands, acquisition of which would benefit the public.

(c) Identify and establish the waterward boundary of the shorelands potentially available for sale or acquisition.

(d) Make an appraisal of the value of the shorelands potentially available for sale or acquisition in accordance with as many of the following techniques as are appropriate to the parcels in question:

(i) The market value of shorelands as of the last equivalent sale before the moratorium multiplied by the percentage increase in value of the abutting upland during the same period, i.e.,

FMV = (V2/V1) x (S1)

FMV = Current fair market value of shorelands

S1 = Value of shorelands at time of last equivalent sale

V1 = Value of abutting upland at time of last equivalent shoreland sale

V2 = Current fair market value of upland to a maximum of 150 feet shoreward

(ii) Techniques identified in adopted aquatic land management WACs e.g. WAC 332-30-125

(iii) The sales price of the shoreland shall be the fair market value as determined in (2)(d)(i)(ii) but not less than five percent of the fair market value of the abutting uplands, less improvements, to a maximum depth of one hundred fifty feet landward from the line of ordinary high water.

(e) If necessary, prepare a lake management plan in cooperation with local government to guide future department activities on the publicly owned aquatic lands.

(3) The board of natural resources shall determine whether or not the sale would be in the public interest, and a sales price shall be established by the department of natural resources in a reasonable period of time.

[Statutory Authority: RCW 43.30.150 and 79.01.474. 80-08-071 (Order 342), § 332-30-119, filed 7/1/80.]

WAC 332-30-122 Aquatic land use authorization. All requirements in this section shall apply to the department. Subsection (2) of this section (except subsection (2)(a)(iii) and (b)(iii) of this section), subsections (3)(a), and (4)(a) shall apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) **General requirements.**

(a) In addition to other requirements of law, aquatic land activities that interfere with the use by the general public of an area will require authorization from the department by way of agreement, lease, permit, or other instrument.

(i) Suitable instruments shall be required for all structures on aquatic lands except for those federal structures serving the needs of navigation.

(ii) The beds of navigable waters may be leased to the owner or lessee of the abutting tideland or shoreland. This preference lease right is limited to the area between the landward boundary of the beds and the -3 fathom contour, or 200 feet waterward, whichever is closer to shore. However, the distance from shore may be less in locations where it is necessary to protect the navigational rights of the public.

(iii) When proposing to lease aquatic lands to someone other than the abutting property owner, that owner shall be notified of the intention to lease the area. When not adverse to the public's ownership, the abutting owner's water access needs may be reasonably accommodated.

(b) Determination of the area encumbered by an authorization for use shall be made by the department based on the impact to public use and subsequent management of any remaining unencumbered public land.

(i) Operations involving fixed structures will include the area physically encumbered plus the open water area needed to operate the facility.

(ii) Areas for individual mooring buoys will be a circle with a radius equal to the expected swing of the vessel or object moored. Only the area encumbered at any given point in time shall be used to calculate any rentals due.

(iii) Areas for utility line easements will normally be ten feet wider than the overall width of the structure(s) placed in the right of way.

(c) All necessary federal, state and local permits shall be acquired by those proposing to use aquatic lands. Copies of permits must be furnished to the department prior to authorizing the use of aquatic lands. When evidence of interest in aquatic land is necessary for application for a permit, an authorization instrument may be issued prior to permit approval but conditioned on receiving the permit.

(2) **Application review.** In addition to other management considerations, the following special analysis shall be given to specific proposed uses:

(a) Environment.

(i) Authorization instruments shall be written to insure that structures and activities on aquatic lands are properly designed, constructed, maintained and conducted in accordance with sound environmental practices.

(ii) Uses which cause adverse environmental impacts may be authorized on aquatic lands only upon compliance with applicable environmental laws and regulations and appropriate steps as may be directed are taken to mitigate substantial or irreversible damage to the environment.

(iii) Nonwater-dependent uses which have significant adverse environmental impacts shall not be authorized.

(b) Public use and access.

(i) Wherever practical, authorization instruments for use of aquatic lands shall be written to provide for public access to the water.

(ii) Areas allocated for first-come, first-served public use shall not be managed to produce a profit for a concessionaire or other operator without a fee being charged.

(iii) Notice will be served to lessees of tidelands and shorelands allocated for future public use that prior to renewal of current leases, such leases will be modified to permit public use or will be terminated.

(c) Authorization to use aquatic lands shall not be granted to any person or organization which discriminates on the basis of race, color, creed, religion, sex, age, or physical or mental handicap.

(d) Authorization instruments for the installation of underwater pipelines, outfalls and cables may be granted when proper provisions are included to insure against substantial or

irreversible damage to the environment and there is no practical upland alternative.

(3) **Rents and fees.**

(a) When proposed uses of aquatic lands requiring an authorization instrument (other than in harbor areas) have an identifiable and quantifiable but acceptable adverse impact on state-owned aquatic land, both within and without the authorized area, the value of that loss or impact shall be paid by the one so authorized in addition to normal rental to the department or port as is appropriate.

(b) Normal rentals shall be calculated based on the classification of the aquatic land use(s) occurring on the property. Methods for each class of use are described in specific WAC sections.

(c) Advance payments for two or more years may be collected in those situations where annual payments are less than document preparation and administration costs.

(d) Rentals for leases will normally be billed annually, in advance. If requested by a lessee in good standing, billings will be made:

(i) Quarterly on a prorated basis when annual rental exceeds four thousand dollars; or

(ii) Monthly on a prorated basis when annual rental exceeds twelve thousand dollars.

(e) A one percent per month charge shall be made on any amounts which are past due, unless those amounts are appealed. Users of aquatic properties shall not be considered in good standing when they have amounts more than thirty days past due.

(4) **Structures and improvements on aquatic lands.**

(a) Authorization for placing structures and improvements on public aquatic lands shall be based on the intended use, other uses in the immediate area, and the effect on navigational rights of public and private aquatic land owners. Structures and improvements shall:

(i) Conform to the laws and regulations of any public authority;

(ii) Be kept in good condition and repair by the authorized user of the aquatic lands;

(iii) Not be, nor become, a hazard to navigation;

(iv) Be removed by the authorized user as stipulated in the authorization instrument.

(b) In addition to aquatic land rentals and fees, rent shall be charged for use of those structures and improvements:

(i) Owned by the department, under contract to the department for management; or that become state property under RCW 79.94.320;

(ii) As may be agreed upon as part of the authorization document;

(iii) Installed on an authorized area without written concurrence of the department; or

(iv) Not covered by an application for use of aquatic lands, or a lawsuit challenging such requirements, within ninety days after the date of mailing of the department's written notification of unauthorized occupancy of public aquatic lands.

(c) Only land rental and fees shall be charged for public aquatic lands occupied by those structures and improvements that are:

(i) Authorized in writing by the department;

(ii) Installed prior to June 1, 1971 (effective date of the Shoreline Management Act) on an area authorized for use from the department; or

(iii) Covered by an application for use of aquatic lands within ninety days after the date of mailing of the department's written notification of unauthorized occupancy of public aquatic lands.

(5) **Insurance, bonds, and other security.**

(a) The department may require authorized users of aquatic lands to carry insurance, bonding, or provide other forms of security as may be appropriate for the use or uses occurring on public property, in order to ensure its sustained utility and future value.

(b) Proof of coverage shall be acceptable to

the department if provided by any of the following:

(i) Insurance and/or bonding companies licensed by the state;

(ii) Recognized insurance or bonding agent for the authorized user;

(iii) Savings account assignment from authorized user to department; or

(iv) Cash deposit.

(c) The amount of security required of each user shall be determined by the department and adjusted periodically as needed.

(i) Any portion of the required security relating to payment of rent or fees shall be limited to an amount not exceeding two year's rental or fees.

(ii) Required security related to other terms of the agreement shall be based on the estimated cost to the department of enforcing compliance with those terms.

(iii) Cash deposits shall not be required in an amount exceeding one-twelfth of the annual rental or fees. If this amount is less than the total required security, the remainder shall be provided through other forms listed in (b) of this subsection.

(d) Security must be provided on a continual basis for the life of the agreement. Security arrangements for less than the life of the agreement shall be accepted as long as those arrangements are kept in force through a series of renewals or extensions.

[Statutory Authority: RCW 79.01.132, 79.01.216, 79.90.520, 79.90.535 and 1991 c 64 §§ 1 and 2. 91-22-079 (Order 580), § 332-30-122, filed 11/5/91, effective 12/6/91. Statutory Authority: 1984 c 221 and RCW 79.90.540. 84-23-014 (Resolution No. 470), § 332-30-122, filed 11/9/84.]

WAC 332-30-123 Aquatic land use rentals for water-dependent uses. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114). The annual rental for water-dependent use leases of state-owned aquatic land shall be: The per unit assessed value of the upland tax parcel, exclusive of improvements, multiplied by the units of lease area multiplied by thirty percent multiplied by the real rate of return. Expressed as a formula, it is: UV x LA x .30 x r = AR. Each of the letter variables in this formula have specific criteria for their use as described below. This step by step presentation covers the typical situations within each section first, followed by alternatives for more unique situations.

(1) **Overall considerations.**

(a) Criteria for use of formula. The formula:

(i) Shall be applied to all leases having structural uses that require a physical interface with upland property when a water-dependent use occurs on such uplands (in conjunction with the water-dependent use on the aquatic lands);

(ii) Shall be used for remote moorage leases by selecting an upland parcel as detailed in subsection (2) of this section;

(iii) Shall not be used for areas of filled state-owned aquatic lands having upland characteristics where the department can charge rent for such fills (see WAC 332-30-125), renewable and nonrenewable resource uses, or areas meeting criteria for public use (see WAC 332-30-130); and

(iv) Shall cease being used for leases intended for water-dependent uses when the lease area is not actively developed for such purposes as specified in the lease contract. Rental in such situations shall be determined under the appropriate section of this chapter.

(b) Criteria for applicability to leases. The formula shall be used to calculate rentals for:

(i) All new leases and all pending applications to lease or re-lease as of October 1, 1984;

(ii) All existing leases, where the lease allows calculation of total rent by the appropriate department methods in effect at the time of rental adjustment. Leases in this category previously affected by legislated rental increase limits, shall have the formula applied on the first lease anniversary date after September 30, 1984. Other

conditions of these leases not related to rent shall continue until termination or amendment as specified by the lease contract. Leases in this category not previously affected by legislated rental increase limits and scheduled for a rent adjustment after October 1, 1985, shall have the option of retaining the current rent or electing to pay the formula rent under the same conditions as specified in (iii) of this subsection.

(iii) Leases containing specific rent adjustment procedures or schedules shall have the rent determined by the formula when requested by the lessee. Holders of such leases shall be notified prior to their lease anniversary date of both the lease contract rent and formula rent. A selection of the formula rent by the lessee shall require an amendment to the lease which shall include all applicable aquatic land laws and implementing regulations.

(2) **Physical criteria of upland tax parcels.**

(a) Leases used in conjunction with and supportive of activities on the uplands. The upland tax parcel used shall be waterfront and have some portion with upland characteristics. If no upland tax parcel meets these criteria, then an alternative shall be selected under the criteria of subsection (4) of this section.

(b) Remote moorage leases. The upland tax parcel used shall be waterfront, have some portion with upland characteristics; and

(i) If the remote moorage is associated with a local upland facility, be an appropriate parcel at the facility; or

(ii) If the remote moorage is similar in nature of use to moorages in the area associated with a local upland facility, be an appropriate parcel at the facility; or

(iii) If the remote moorage is not associated with a local upland facility, be the parcel closest in distance to the moorage area.

(c) Priority of selection. If more than one upland tax parcel meets the physical criteria, the priority of selection shall be:

(i) The parcel that is structurally connected to the lease area;

(ii) The parcel that abuts the lease area;

(iii) The parcel closest in distance to the lease area.

If more than one upland tax parcel remains after this selection priority, then each upland tax parcel will be used for its portion of the lease area. If there is mutual agreement with the lessee, a single upland tax parcel may be used for the entire lease area. When the unit value of the upland tax parcels are equal, only one upland tax parcel shall be used for the lease area.

(d) The unit value of the upland tax parcel shall be expressed in terms of dollars per square foot or dollars per acre, by dividing the assessed value of the upland tax parcel by the number of square feet or acres in the upland tax parcel. This procedure shall be used in all cases even if the value attributable to the upland tax parcel was assessed using some other unit of value, e.g., front footage, or lot value. Only the "land value" category of the assessment record shall be used; not any assessment record category related to improvements.

(3) **Consistent assessment.** In addition to the criteria in subsection (2) of this section, the upland tax parcel's assessed value must be consistent with the purposes of the lease and method of rental establishment. On this basis, the following situations will be considered inconsistent and shall either require adjustment as specified, or selection of an alternative upland tax parcel under subsection (4) of this section:

(a) The upland tax parcel is not assessed. (See chapter 84.36 RCW Exemptions);

(b) Official date of assessment is more than four years old. (See RCW 84.41.030);

(c) The "assessment" results from a special tax classification not reflecting fair market value. Examples include classifications under: State-regulated utilities (chapter 84.12 RCW), Reforestation lands (chapter 84.28 RCW), Timber and forest lands (chapter 84.33 RCW), and Open space (chapter 84.34 RCW). This inconsistency may be corrected by substituting the full value for the parcel if such value is part of the assessment records;

(d) If the assessed valuation of the upland tax parcel to be used is under appeal as a matter of record before any county or state agency, the

valuation on the assessor's records shall be used, however, any changes in valuation resulting from such appeal will result in an equitable adjustment of future rental;

(e) The majority of the upland tax parcel area is not used for a water-dependent purpose. This inconsistency may be corrected by using the value and area of the portion of the upland tax parcel that is used for water-dependent purposes if this portion can be segregated from the assessment records; and

(f) The size of the upland tax parcel in acres or square feet is not known or its small size results in a nominal valuation, e.g., unbuildable lot.

(4) **Selection of the nearest comparable upland tax parcel.** When the upland tax parcel does not meet the physical criteria or has an inconsistent assessment that can't be corrected from the assessment records, an alternative upland tax parcel shall be selected which meets the criteria. The nearest upland tax parcel shall be determined by measurement along the shoreline from the inconsistent upland tax parcel.

(a) The alternative upland tax parcel shall be located by order of selection priority:

(i) Within the same city as the lease area, and if not applicable or found;

(ii) Within the same county and water body as the lease area, and if not found;

(iii) Within the same county on similar bodies of water, and if not found;

(iv) Within the state.

(b) Within each locational priority of (a) of this subsection, the priority for a comparable upland tax parcel shall be:

(i) The same use class within the water-dependent category as the lease area use;

(ii) Any water-dependent use within the same upland zoning;

(iii) Any water-dependent use; and

(iv) Any water-oriented use.

(5) **Aquatic land lease area.** The area under lease shall be expressed in square feet or acres.

(a) Where more than one use class separately exist on a lease area, the formula shall only be applied to the water-dependent use area. Other use areas of the lease shall be treated according to the regulations for the specific use.

(b) If a water-dependent and a nonwater-dependent use exist on the same portion of the lease, the rent for such portion shall be negotiated taking into account the proportion of the improvements each use occupies.

(6) **Real rate of return.**

(a) Until July 1, 1989, the real rate of return to be used in the formula shall be five percent.

(b) On July 1, 1989, and on each July 1 thereafter the department shall calculate the real rate of return for that fiscal year under the following limitations:

(i) It shall not change by more than one percentage point from the rate in effect for the previous fiscal year; and

(ii) It shall not be greater than seven percent nor less than three percent.

(7) **Annual inflation adjustment of rent.** The department shall use the inflation rate on a fiscal year basis e.g., the inflation rate for calendar year 1984 shall be used during the period July 1, 1985 through June 30, 1986. The rate will be published in a newspaper of record. Adjustment to the annual rent of a lease shall occur on the anniversary date of the lease except when the rent is redetermined under subsection (9) of this section. The inflation adjustment each year is the inflation rate times the previous year's rent except in cases of stairstepping.

(8) **Stairstepping rental changes.**

(a) Initial increases for leases in effect on October 1, 1984. If the application of the formula results in an increase of more than one hundred dollars and more than thirty-three percent, stairstepping to the formula rent shall occur over the first three years in amounts equal to thirty-three percent of the difference between each year's inflation adjusted formula rent and the

previous rent.

Example

Previous rent = $100.00 Formula rent = $403.00 Inflation = 5%/yr.

Yr.	Formula Rent	Previous Rent	Difference	33%	Stairstep Rent
1	$403.00	$100.00	$303.00	$100.00	$200.00
2	423.15	100.00	323.15	106.64	306.64
3	444.31	100.00	344.31	113.62	420.26
4	466.52	-	-	-	466.52

(b) Initial decreases for leases in effect on October 1, 1984. If the application of the formula results in a decrease of more than thirty-three percent, stairstepping to the formula rent shall occur over the first three years in amounts equal to thirty-three percent of the difference between the previous rent and each year's inflation adjusted formula rent.

Example

Previous rent = $403.00 Formula rent = $100.00 Inflation = 5%/yr.

Yr.	Previous Rent	Formula Rent	Difference	33%	Stairstep Rent
1	$403.00	$100.00	$303.00	$100.00	$303.00
2	403.00	105.00	298.00	98.34	204.66
3	403.00	110.25	292.75	96.61	108.05
4	-	115.76	-	-	115.76

(c) If a lease in effect on October 1, 1984, contains more than one water-dependent or water-oriented use and the rental calculations for each such use (e.g., log booming and log storage) result in different rentals per unit of lease area, the total of the rents for those portions of the lease area shall be used to determine if the stairstepping provisions of (a) or (b) of this subsection apply to the lease.

(d) If a lease in effect on October 1, 1984, contains a nonwater-dependent use in addition to a water-dependent or oriented use, the stairstepping provisions of (a) or (b) of this subsection:

(i) Shall apply to the water-dependent use area if it exists separately (see subsection (5)(a) of this section);

(ii) Shall not apply to any portion of the lease area jointly occupied by a water-dependent and nonwater-dependent use (see subsection (5)(b) of this section).

(e) Subsequent increases. After completion of any initial stairstepping under (a) and (b) of this subsection due to the first application of the formula, the rent for any lease or portion thereof calculated by the formula shall not increase by more than fifty percent per unit area from the previous year's per unit area rent.

(f) All initial stairstepping of rentals shall only occur during the term of existing leases.

(9) The annual rental shall be redetermined by the formula every four years or as provided by the existing lease language. If an existing lease calls for redetermination of rental during an initial stairstepping period, it shall be determined on the scheduled date and applied (with inflation adjustments) at the end of the initial stairstep period.

[Statutory Authority: 1984 c 221 and RCW 79.90.540. 84-23-014 (Resolution No. 470), § 332-30-123, filed 11/9/84.]

WAC 332-30-125 Aquatic land use rental rates for nonwater-dependent uses. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) The value of state-owned aquatic lands withdrawn from general public use for private nonwater-dependent use shall be recognized by charging lessees the full fair market rental. No rent shall be charged for improvements, including fills, on aquatic lands unless owned by the state. The fair market rental is based on: (a) Comparable non-DNR market rents, whether based on land value exclusive of improvements, a percent of gross revenues, or other appropriate basis, or if not available (b) the full market value (same as true and fair value) multiplied by the use rate percentage as determined under subsection (2) of this section and published in

the Washington State Register.

(2) Use rate percentage.

(a) The percentage rate will be based on nondepartmental market rental rates of return for comparable properties leased on comparable terms in the locality, or when such do not exist;

(b) The percentage rate of return shall be based on the average rate charged by lending institutions in the area for long term (or term equivalent to the length of the lease) mortgages for comparable uses of real property.

(3) Appraisals: The determination of fair market value shall be based on the indications of value resulting from the application of as many of the following techniques as are appropriate for the use to be authorized:

(a) Shore contribution; utilizing differences in value between waterfront properties and comparable nonwaterfront properties. Generally best for related land-water uses which are independent of each other or not needed for the upland use to exist.

(b) Comparable upland use (substitution); utilizing capacity, development, operation, and maintenance ratios between a use on upland and similar use on aquatic land with such ratios being applied to upland value to provide indication of aquatic land value for such use. Generally best for aquatic land uses which are totally independent of adjacent upland yet may also occur on upland totally independent of direct contact with water.

(c) Extension; utilizing adjacent upland value necessary for total use as the value of aquatic lands needed for use on a unit for unit basis. Generally best for aquatic land uses which are integrated with and inseparable from adjacent upland use.

(d) Market data; utilizing verified transactions between knowledgeable buyers and sellers of comparable properties. Generally best for tidelands or shorelands where sufficient data exists between knowledgeable buyers and sellers.

(e) Income; utilizing residual net income of a commercial venture as the indication of investment return to the aquatic land. This can be expressed either as a land rent per acre or as a percent of gross revenues. Generally best for income producing uses where it can be shown that an owner or manager of the operation is motivated to produce a profit while recognizing the need to obtain returns on all factors of production.

(4) Negotiation of rental amounts may occur when necessary to address the uniqueness of a particular site or use.

(5) Rental shall always be more than the amount that would be charged if the aquatic land parcel was used for water-dependent purposes.

[Statutory Authority: 1984 c 221 and RCW 79.90.540. 84-23-014 (Resolution No. 470), § 332-30-125, filed 11/9/84. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-125, filed 7/3/80.]

WAC 332-30-126 Sand and gravel extraction fees. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) **Public auction or negotiation.** The royalty for sand, gravel, stone or other aggregate removed from state-owned aquatic lands shall be determined through public auction or negotiation.

(2) **Royalty rate.** A negotiated royalty shall reflect the current fair market value of the material in place.

The "income approach" appraisal technique will normally be used to determine fair market value. Factors considered include, but are not limited to:

(a) The wholesale value of similar material, based on a survey of aggregate producers in the region or market area;

(b) Site specific cost factors including, but not limited to:

(i) Homogeneity of material;

(ii) Access;

(iii) Regulatory permits;

(iv) Production costs.

(3) **Adjustments to initial royalty rate.**

(a) Inflation. Annual inflation adjustments to the initial royalty rate shall be based on changes in the Producer Price Index (PPI) for the commodities of sand, gravel, and stone, as published by the United States Department of Commerce, Bureau of Labor Statistics. Annual PPI adjustments to the initial royalty rate shall begin one year after the effective date of establishment of each contract's royalty rate pursuant to subsection (1) of this section.

(b) Flood control. Initial negotiated royalty rates may be adjusted downward, depending on the degree to which removal of the material will enhance flood control.

(i) Any adjustment shall be based on hydrologic benefit identified in an approved comprehensive flood control management plan adopted by a general purpose local government and any state or federal agency with jurisdiction.

(ii) The department, prior to approving any proposed royalty rate adjustment for flood control benefits, may review the flood control plan to determine whether the material removal actually reduces the potential for flooding.

(4) **Payments.** Royalty payments may be paid monthly or quarterly based on the volume of material sold, transferred from control of the contract holder, or otherwise utilized for purposes of the contract.

(5) **Stockpiling.** Stockpiling of removed material may be permitted.

(a) Material will be stockpiled separately from other material owned or controlled by the contract holder.

(b) Bonding or other satisfactory security will be required to cover the value of stockpiled material.

(6) **Appeals.** The state's determination of royalty rates set under subsections (2) and (3) of this section, are appealable through WAC 332-30-128.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-126, filed 11/5/85.]

WAC 332-30-127 Unauthorized use and occupancy of aquatic lands (see RCW 79.01.471). (1) Aquatic lands determined to be state owned, but occupied for private use through accident or without prior approval, may be leased if found to be in the public interest.

(2) Upon discovery of an unauthorized use of aquatic land, the responsible party will be immediately notified of his status. If the use will not be authorized, he will be served notice in writing requiring him to vacate the premises within thirty days. If the law and department policy will permit the use, the occupant is to be encouraged to lease the premises.

(3) The trespassing party occupying aquatic lands without authority will be assessed a monthly use and occupancy fee for such use beginning at the time notification of state ownership is first provided to them and continuing until they have vacated the premises or arranged for a right to occupy through execution of a lease as provided by law.

(4) The use and occupancy fee is sixty percent higher than full fair market rental and is intended to encourage either normal leasing or vacation of aquatic land.

(5) In those limited circumstances when a use cannot be authorized by a lease even though it may be in the public interest to permit the structure or activity, the fair market rental will be charged and billed on an annual basis.

(6) The use and occupancy billing is to be made after the use has occurred and conveys no rights in advance. Payment is due by the tenth of the month following the original notification, and if not received, a notice is to be sent. If payment is not received within thirty days of this notice and monthly thereafter by the tenth of each month during the period of the use and occupancy lease or if the improvement has not been removed from the aquatic land, an unlawful detainer action against the party in trespass will be filed along with an action to collect past due

rental.

[Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-127, filed 7/3/80.]

WAC 332-30-128 Rent review. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) **Eligibility to request review.** Any lessee or applicant to lease or release state-owned aquatic lands may request review of any rent proposed to be charged by the department.

(2) **Dispute officers.** The manager of the marine lands division will be the rental dispute officer (RDO). The supervisor of the department, or his designee, will be the rental dispute appeals officer (RDAO).

(3) **Submittals.** A request for review of the rent (an original and two copies) shall be submitted within thirty days of notification by the department of the rent due from the lessee/applicant. The request for review shall contain sufficient information for the officers to make a decision on the appropriateness of the rent initially determined by the department. The burden of proof for showing that the rent is incorrect shall rest with the lessee/applicant.

(4) **Rental due.** The request for review shall be accompanied by one year's rent payment based on the preceding year's rate, or a portion thereof as determined by RCW 79.90.530; or based on the rate proposed by the department, or a portion thereof as determined by RCW 79.90.530, whichever is less. The applicant shall pay any additional rent or be entitled to a refund, with interest, within thirty days after completion of the review process provided in this section.

(5) **Contents of request.** The request for review shall state what the lessee/applicant believes the rent should be and shall contain, at the minimum, all necessary documentation to justify the lessee/applicant's position. This information shall include but not be limited to:

(a) **Rationale.** Why the rent established by the department is inappropriate. The supporting documentation for nonwater-dependent leases may include appraisals by professionally accredited appraisers.

(b) **Lease information.** A description of state-owned aquatic land under lease which shall include, but not be limited to:

(i) Lease or application number;

(ii) Map showing location of lease or proposed lease;

(iii) Legal description of lease area including area of lease;

(iv) The permitted or intended use on the leasehold; and

(v) The actual or current use on the leasehold premises.

(c) **Substitute upland parcel.** A lessee/applicant whose lease rent is determined according to RCW 79.90.480 (water-dependent leases) and who disputes the choice of the upland parcel as provided by WAC 332-30-123, shall indicate the upland parcel that should be substituted in the rental determination and shall provide the following information on the parcel:

(i) The county parcel number;

(ii) Its assessed value;

(iii) Its area in square feet or acres;

(iv) A map showing the location of the parcel; and

(v) A statement indicating the land use on the parcel and justifying why the parcel should be substituted.

(6) **RDO review.**

(a) The RDO shall evaluate the request for review within fifteen days of filing to determine if any further support materials are needed from the lessee/applicant or the department.

(b) The lessee/applicant or the department shall provide any needed materials to the RDO within thirty days of receiving a request from the RDO.

(c) The RDO may, at any time during the review, order a conference between the

lessee/applicant and department staff to try to settle the rent dispute.

(d) The RDO shall issue a decision within sixty days of filing of the request. Such decision shall contain findings of fact for the decision. If a decision cannot be issued within that time, the lessee/applicant's request will automatically be granted and the rent proposed by the lessee/applicant will be the rent for the lease until the next rent revaluation; provided that, the RDO may extend the review period for one sixty-day period.

(7) **RDAO review.**

(a) The RDAO may, within fifteen days of the final decision by the RDO, be petitioned to review that decision.

(b) If the RDAO declines to review the petition on the decision of the RDO, the RDO's decision shall be the final decision of the RDAO.

(c) If the RDAO consents to review the decision, the review may only consider the factual record before the RDO and the written findings and decision of the RDO. The RDAO shall issue a decision on the petition containing written findings within thirty days of the filing of the petition. This decision shall be the RDAO's final decision.

(8) **Board review.**

(a) The board of natural resources (board) may, within fifteen days of the final RDAO decision, be petitioned to review that decision.

(b) If the board declines to review the petition, the RDAO decision shall be the final decision of the board.

(c) If the board decides to review the petition, the department and the lessee/applicant shall present written statements on the final decision of the RDAO within fifteen days of the decision to review. The board may request oral statements from the lessee/applicant or the department if the board decides a decision cannot be made solely on the written statements.

(d) The board shall issue a decision on the petition within sixty days of the filing of the written statements by the lessee/applicant and the department.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-128, filed 11/5/85.]

WAC 332-30-131 Public use and access. This section shall not apply to private recreational docks. Subsections (2) and (3) of this section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114). Public use and access are aquatic land uses of statewide value. Public access and recreational use of state-owned aquatic land will be actively promoted and protected.

(1) **Access encouraged.** Other agencies will be encouraged to provide, in their planning, for adequate public use and access and for protection of public use and access resources.

(2) **Access grants.** Aquatic Land Enhancement Account funds will be distributed to state and local agencies to encourage provision of public access to state-owned aquatic lands.

(3) **Access advertised.** State-owned aquatic lands particularly suitable for public use and access will be advertised through appropriate publications.

(4) **No-fee access agreements.** No-fee agreements may be made with other parties for provision of public use and access to state-owned aquatic lands provided the other party meets the following conditions:

(a) The land must be available daily to the public on a first-come, first-served basis and may not be leased to private parties on any more than a day-use basis.

(b) Availability of free public use must be prominently advertised by appropriate means as required. For example, signs may be required on the premises and/or on a nearby public road if the facility is not visible from the road.

(c) When the use is dependent on the abutting uplands, the managing entity must own, lease or control the abutting uplands.

(d) User fees shall not be charged unless specifically authorized by the department and shall not exceed the direct operating cost of the facility.

(e) Necessary nonwater-dependent accessory uses will be allowed in the no-fee agreement area only under exceptional circumstances when they contribute directly to the public's use and enjoyment of the aquatic lands and comply with WAC 332-30-137. Such nonwater-dependent uses shall be required to pay a fair-market rent for use of aquatic lands.

(f) Auditable records must be maintained and made available to the state.

(5) **Rent reduction for access.** Leased developments on state-owned aquatic lands which also provide a degree of public use and access may be eligible for a rent reduction. Rental reduction shall apply only to the actual area within the lease that meets public access and use requirements of subsection (4) of this section.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-131, filed 11/5/85.]

WAC 332-30-137 Nonwater-dependent uses. Policy. Nonwater-dependent use of state-owned aquatic lands is a low priority use providing minimal public benefits. Nonwater-dependent uses shall not be permitted to expand or be established in new areas except in exceptional circumstances and when compatible with water-dependent uses existing in or planned for the area. Analysis under this section will be used to determine the terms and conditions of allowable nonwater-dependent use leases. The department will give public notice of sites proposed for nonwater-dependent use leases.

(1) **Exceptional circumstances.** The following are exceptional circumstances when nonwater-dependent uses may be allowed:

(a) Nonwater-dependent accessory uses to water-dependent uses such as delivery and service parking, lunch rooms, and plant offices.

(b) Mixed water-dependent and nonwater-dependent development. The water-dependent component shall be a major project element. The nonwater-dependent use shall significantly enhance water-dependent uses and/or resources of statewide value.

(c) Nonwater-dependent uses in structures constructed, or on sites filled, prior to June 30, 1985.

(d) Expansion or realignment of essential public nonwater-dependent facilities such as airports, highways and sewage treatment plants where upland topography, economics, or other factors preclude alternative locations.

(e) When acceptable sites and circumstances are identified in adopted local shoreline management master programs which provide for the present and future needs of all uses and resources of statewide value, identify specific areas or situations in which nonwater-dependent uses will be allowed, and justify the exceptional nature of those areas or situations.

(2) **Compatibility with water-dependent uses.** Nonwater-dependent uses will only be allowed when they are compatible with water-dependent uses existing in or planned for the area. Evaluation of compatibility will consider the following:

(a) Current and future demands for the site by water-dependent uses.

(b) The effect on the usefulness of adjacent areas for water-dependent uses.

(c) The probability of attracting additional water-dependent or nonwater-dependent uses.

(d) Subsidies offered to water-dependent uses.

(3) **Evaluation.** Proposed nonwater-dependent uses will be evaluated individually. Applicants must demonstrate the proposed nonwater-dependent uses are consistent with subsections (1) and (2) of this section and any other applicable provisions of this chapter.

(4) **Re-leases.** Re-leases of nonwater-dependent uses will be evaluated as new uses. If continuance of the nonwater-dependent use

substantially conflicts with uses or resources of statewide value or with shoreline master program planning or supplemental planning developed under WAC 332-30-107(5), or if the site is needed by a use of statewide value, the re-lease will not be approved.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-137, filed 11/5/85.]

WAC 332-30-139 Marinas and moorages. (1) Moorage facilities developed on aquatic lands should meet the following design criteria:

(a) Moorage shall be designed so as to be compatible with the local environment and to minimize adverse esthetic impacts.

(b) Open moorage is preferred in relatively undeveloped areas and locations where view preservation is desirable, and/or where leisure activities are prevalent.

(c) Covered moorage may be considered in highly developed areas and locations having a commercial environment.

(d) Enclosed moorage should be confined to areas of an industrial character where there is a minimum of esthetic concern.

(e) In general, covered moorage is preferred to enclosed moorage and open moorage is preferred to covered moorage.

(f) View encumbrance due to enclosed moorage shall be avoided in those areas where views are an important element in the local environment.

(g) In order to minimize the impact of moorage demand on natural shorelines, large marina developments in urban areas should be fostered in preference to numerous small marinas widely distributed.

(h) The use of floating breakwaters shall be considered as protective structures before using solid fills.

(i) Dry moorage facilities (stacked dry boat storage) shall be considered as an alternative to wet storage in those locations where such storage will:

(i) Significantly reduce environmental or land use impacts within the water area of the immediate shoreline.

(ii) Reduce the need for expansion of existing wet storage when such expansion would significantly impact the environment or adjacent land use.

(2) Anchorages suitable for use by transient, recreational boaters will be identified and established by the department in appropriate locations so as to provide additional moorage space.

(3) Upland sewage disposal approved by local government and appropriate state agencies is required for all vessels used as a residence.

(4) The department shall work with federal, state, local government agencies and other groups to determine acceptable locations for marina development, properly distributed to meet projected public need for the period 1980 to 2010.

(5) The department may lease open water moorage and anchorage areas only to local governments that have authorized the establishment of open water moorage and anchorage areas in their local Shoreline Master Programs within five years of the effective date of this rule. With the department's approval, the local government lessee may install mooring buoys or other floating moorage devices, designate anchorage locations, sublease moorage and anchorage in the area, collect rent and fees for such moorage and anchorage, and otherwise manage the area as a moorage facility. All open water moorage and anchorage areas must meet the following requirements:

(a) Open water moorage and anchorage areas must meet all relevant requirements normally applicable to a marina lease, which may include the placement, design, limitation on the number of vessels or floating houses, and operation of the area and any improvements within the area, payment of rent to the department, consideration of navigational and environmental impacts, and

all other applicable permits and other requirements of law.

(b) Open water moorage and anchorage areas may not be in a harbor area nor in any location or configuration that would interfere with water-borne commerce and navigation.

(c) The leasing of state-owned aquatic lands for open water moorage and anchorage areas is subject to all preferences accorded upland, tideland, or shoreland owners in RCW 79.94.070, 79.94.260, 79.94.280, 79.95.010, and WAC 332-30-122.

(d) Any vessel used for residential use or floating house in an open water moorage and anchorage area must comply with WAC 332-30-171.

(e) Except for nongrandfathered floating house moorage as defined in WAC 332-30-171 (7)(a)(ii), nonwater-dependent uses and commercial uses are prohibited in open water moorage and anchorage areas. Uses prohibited by this subsection (e) are allowed when necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

The department will not lease an open water moorage and anchorage area to an entity other than a local government agency. This restriction shall not affect use authorizations to public or private entities for mooring buoys, aquaculture net pens, or other floating structures otherwise allowed by law.

[Statutory Authority: RCW 79.90.455, 79.90.460. 02-21-076 (Order 710), § 332-30-139, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-139, filed 7/3/80.]

WAC 332-30-144 Private recreational docks. (1) **Applicability.** This section implements the permission created by RCW 79.90.105, Private recreational docks, which allows abutting residential owners, under certain circumstances, to install private recreational docks without charge. The limitations set forth in this section apply only to use of state-owned aquatic lands for private recreational docks under RCW 79.90.105. No restriction or regulation of other types of uses on aquatic lands is provided. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(2) **Eligibility.** The permission shall apply only to the following:

(a) An "abutting residential owner," being the owner of record of property physically bordering on public aquatic land and either used for single family housing or for a multifamily residence not exceeding four units per lot.

(b) A "dock," being a securely anchored or fixed, open walkway structure visible to boaters and kept in good repair extending from the upland property, primarily used as an aid to boating by the abutting residential owner(s), and accommodating moorage by not more than four pleasure boats typical to the body of water on which the dock is located. Two or more abutting residential owners may install and maintain a single joint-use dock provided it meets all other design requirements of this section; is the only dock used by those owners; and that the dock fronts one of the owners' property.

(c) A "private recreational purpose," being a nonincome-producing, leisure-time, and discretionary use by the abutting residential owner(s).

(d) State-owned aquatic lands outside harbor areas designated by the harbor line commission.

(3) **Uses not qualifying.** Examples of situations not qualifying for the permission include:

(a) Yacht and boat club facilities;

(b) Floating houses, as defined in WAC 332-30-106(23), and vessels used as a residence (as defined in WAC 332-30-106(62));

(c) Resorts;

(d) Multifamily dwellings, including condominium ownerships, with more than four units;

(e) Uses other than docks such as launches and railways not part of the dock, bulkheads, landfills, dredging, breakwaters, mooring buoys, swim floats, and swimming areas.

(4) **Limitations.**

(a) The permission does not apply to areas where the state has issued a reversionary use deed such as for shellfish culture, hunting and fishing, or park purposes; published an allocation of a special use and the dock is inconsistent with the allocation; or granted an authorization for use such as a lease, easement, or material purchase.

(b) Each dock owner using the permission is responsible for determining the availability of the public aquatic lands. Records of the department are open for public review. The department will research the availability of the public aquatic lands upon written request. A fee sufficient to cover costs shall be charged for this research.

(c) The permission is limited to docks that conform to adopted shoreline master programs and other local ordinances.

(d) The permission is not a grant of exclusive use of public aquatic lands to the dock owner. It does not prohibit public use of any aquatic lands around or under the dock. Owners of docks located on state-owned tidelands or shorelands must provide a safe, convenient, and clearly available means of pedestrian access over, around, or under the dock at all tide levels. However, dock owners are not required to allow public use of their docks or access across private lands to state-owned aquatic lands.

(e) The permission is not transferable or assignable to anyone other than a subsequent owner of the abutting upland property and is continuously dependent on the nature of ownership and use of the properties involved.

(f) Vessels used as a residence and floating houses are not permitted to be moored at a private recreational dock, except when such moorage is necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

(5) **Revocation.** The permission may be revoked or canceled if:

(a) The dock or abutting residential owner has not met the criteria listed in subsection (2) or (4) of this section; or

(b) The dock significantly interferes with navigation or with navigational access to and from other upland properties. This degree of interference shall be determined from the character of the shoreline and waterbody, the character of other in-water development in the vicinity, and the degree of navigational use by the public and adjacent property owners;

(c) The dock interferes with preferred water-dependent uses established by law; or

(d) The dock is a public health or safety hazard.

(6) **Appeal of revocation.** Upon receiving written notice of revocation or cancellation, the abutting residential owner shall have thirty days from the date of notice to file for an administrative hearing under the contested case proceedings of chapter 34.04 RCW. If the action to revoke the permission is upheld, the owner shall correct the cited conditions and shall be liable to the state for any compensation due to the state from the use of the aquatic lands from the date of notice until permission requirements are met or until such permission is no longer needed. If the abutting residential owner disclaims ownership of the dock, the department may take actions to have it removed.

(7) **Current leases.** Current lessees of docks meeting the criteria in this section will be notified of their option to cancel the lease. They will be provided a reasonable time to respond. Lack of response will result in cancellation of the lease by the department.

(8) **Property rights.** No property rights in, or boundaries of, public aquatic lands are established by this section.

(9) **Lines of navigability.** The department will not initiate establishment of lines of navigability on any shorelands unless requested to do so by the shoreland owners or their representatives.

(10) Nothing in this section is intended to address statutes relating to sales of second class shorelands.

[Statutory Authority: RCW 79.90.455, 79.90.460. 02-21-076 (Order 710), § 332-30-

144, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-144, filed 11/5/85.]

WAC 332-30-145 Booming, rafting and storage of logs. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) Unless specifically exempted in writing, all log dumps located on aquatic lands, or operated in direct association with booming grounds on aquatic land, must provide facilities for lowering logs into the water without tumbling, which loosens the bark. Free rolling of logs is not permitted.

(2) Provision must be made to securely retain all logs, chunks, and trimmings and other wood or bark particles of significant size within the leased area. Lessee will be responsible for regular cleanup and upland disposal sufficient to prevent excessive accumulation of any debris on the leased area.

(3) Unless permitted in writing, aquatic land leased for booming and rafting shall not be used for holding flat rafts except:

(a) Loads of logs averaging over 24" diameter.

(b) Raft assembly, disassembly and log sort areas.

(4) Unless permitted in writing, grounding of logs or rafts is not allowed on tidelands leased for booming and rafting. However, tidelands which were leased for booming and rafting prior to January 1, 1980, are exempt from this provision.

(5) No log raft shall remain on aquatic land for more than one year, unless specifically authorized in writing.

(6) For leases granted to serve the general needs of an area such as an island, the leased area shall be made available to others for booming and rafting and at a reasonable charge.

(7) Areas within a lease boundary meeting the definition of log booming are water-dependent uses. The rent for these areas will be calculated according to WAC 332-30-123.

(8) Areas leased for log storage shall have the rent calculated by applying a statewide base unit rent per acre. Temporary holding of logs alongside a vessel for the purpose of loading onto the vessel is neither booming nor storage.

(9) The base unit rent, application to existing leases, and subsequent annual rents will be determined as provided for water-dependent uses under WAC 332-30-123 except for the following modifications:

(a) A formula rental calculation will be made for each such area leased as of July 1, 1984, as though the formula applied on July 1, 1984.

(b) The assessment for an upland parcel shall not be used when the following situations exist:

(i) The parcel is not assessed.

(ii) The size of the parcel in acres or square feet is not known.

(c) When necessary to select an alternative upland parcel, the nearest assessed waterfront parcel shall be used if not excluded by the criteria under (b) of this subsection.

(d) Because of the large size and shape of many log storage areas, there may be more than one upland parcel that could be used in the formula. The department shall treat such multiple parcel situations by using:

(i) The per unit value of each upland parcel applied to its portion of the lease area. If it is not possible or feasible to delineate all portions of the lease area by extending the boundaries of the upland parcel, then;

(ii) The total of the assessed value of all the upland parcels divided by the total acres of all the upland parcels shall be the per unit value applied in the formula.

(e) The total formula rents divided by the total acres under lease for log storage equals the annual base unit rent for fiscal years 1985-1989. That figure is $171.00 per acre.

(f) For purposes of calculating stairstepping

of rentals allowed under WAC 332-30-123, the base unit rent multiplied by the number of acres shall be the formula rent. In cases of mixed uses, the log storage formula rent shall be added to the formula rent determinations for the other uses under leases before applying the criteria for stairstepping.

(g) Inflation adjustments to the base rent shall begin on July 1, 1990.

(10) On July 1, 1989, and each four years thereafter, the department shall establish a new base unit rent.

(a) The new base rent will be the previous base rent multiplied by the result of dividing the average water-dependent lease rate per acre for the prior fiscal year by the average water-dependent lease rate per acre for the fiscal year in which the base unit rent was last established. For example, the formula for the base unit rent for fiscal year 1990 would be:

$$\text{FY90 BUR} = \text{FY85 BUR} \times \frac{\text{(FY89 AWLR)}}{\text{(FY85 AWLR)}}$$

(b) When necessary to calculate the average water-dependent lease rate per acre for a fiscal year, it shall be done on or near July 1. The total formula rent plus inflation adjustments divided by the total acres of water-dependent uses affected by the formula during the prior fiscal year shall be the prior fiscal year's average.

(11) If portions of a log storage lease area are open and accessible to the general public, no rent shall be charged for such areas provided that:

(a) The area meets the public use requirements under WAC 332-30-130(9);

(b) Such areas are in a public use status for a continuous period of three months or longer during each year;

(c) The lease includes language addressing public use availability or is amended to include such language;

(d) The department approves the lessee's operations plan for public use, including safety precautions;

(e) Changes in the amount of area and/or length of time for public use availability shall only be made at the time of rental adjustment to the lease; and

(f) Annual rental for such areas will be prorated by month and charged for each month or part of a month not available to the general public.

[Statutory Authority: 1984 c 221 and RCW 79.90.540. 84-23-014 (Resolution No. 470), § 332-30-145, filed 11/9/84. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-145, filed 7/3/80.]

WAC 332-30-148 Swim rafts and mooring buoys. (1) Swim rafts or mooring buoys will not be authorized where such structures will interfere with heavily traveled routes for watercraft, commercial fishing areas or on designated public use - wilderness beaches.

(2) Swim rafts or mooring buoys may be authorized on aquatic lands shoreward of the -3 fathom contour or within 200 feet of extreme low water or line of navigability whichever is appropriate. The placement of rafts and buoys beyond the -3 fathom contour or 200 feet will be evaluated on a case by case basis.

(3) No more than one structure may be installed for each ownership beyond extreme low water or line of navigability. However, ownerships exceeding 200 feet as measured along the shoreline may be permitted more installations on a case by case basis.

(4) Swim rafts or buoys must float at least 12" above the water and be a light or bright color.

(5) Mooring buoys may be authorized beyond the limits described above on land designated by the department for anchorages.

(6) Vessels for residences, as defined in WAC 332-30-106(62) and floating houses, as defined in WAC 332-30-106(23) shall not moor at swim rafts, mooring buoys, or other moorage facilities not connected to the shoreline, except within an open water moorage and anchorage area leased to a local government agency as provided in WAC 332-30-139(5). Such moorage may occur

when necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

[Statutory Authority: RCW 79.90.455, 79.90.460. 02-21-076 (Order 710), § 332-30-148, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-148, filed 7/3/80.]

WAC 332-30-151 Reserves (RCW 79.68.060). (1) Types of reserves: Educational, environmental, scientific - see definitions (WAC 332-30-106).

(2) Aquatic lands of special educational or scientific interest or aquatic lands of special environmental importance threatened by degradation shall be considered for reserve status. Leases for activities in conflict with reserve status shall not be issued.

(3) The department or other governmental entity or institution may nominate specific areas for consideration for reserve status.

(4) Such nominations will be reviewed and accepted or rejected by the commissioner of public lands based upon the following criteria:

(a) The site will accomplish the purpose as stated for each reserve type.

(b) The site will not conflict with other current or projected uses of the area. If it does, then a determination must be made by the commissioner of public lands as to which use best serves the public benefit.

(c) Management of the reserve can be effectively accomplished by either the department's management program or by assignment to another governmental agency or institution.

(5) The department's reserves management program consists of prevention of conflicting land use activities in or near the reserve through lease actions. In those cases where physical protection of the area may be necessary the management of the area may be assigned to another agency.

(6) When DNR retains the management of reserve areas the extent of the management will consist of a critical review of lease applications in the reserve area to insure proposed activities or structures will not conflict with the basis for reserve designation. This review will consist of at least the following:

(a) An environmental assessment.

(b) Request of agencies or institutions previously identified as having a special interest in the area for their concerns with regard to the project.

(7) Proposed leases for structures or activities immediately adjacent to any reserve area will be subjected to the same critical review as for leases within the area if the structures and/or activities have the potential of:

(a) Degrading water quality,

(b) Altering local currents,

(c) Damaging marine life, or

(d) Increasing vessel traffic.

(8) All management costs are to be borne by the administering agency. Generally, no lease fee is required.

[Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-151, filed 7/3/80.]

WAC 332-30-157 Commercial clam harvesting. (1) Commercial clam beds on aquatic lands shall be managed to produce an optimum yield.

(2) The boundaries of clam tracts offered for lease shall be established and identified to avoid detrimental impacts upon significant beds of aquatic vegetation or areas of critical biological significance as well as prevent unauthorized harvesting.

(3) The methods of harvest may only be those as established by law and certified by the department of fisheries.

(4) Surveillance methods will be employed to insure that trespass as well as off-tract harvesting is prevented.

(5) Harvesters must comply with all lease provisions. Noncompliance may result in lease suspension or cancellation upon notification.

(6) Harvesters must comply with all applicable federal, state and local rules and regulations. Noncompliance may result in lease suspension or cancellation upon notification.

(7) If appropriate, the department may secure all necessary permits prior to leasing.

[Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-157, filed 7/3/80.]

WAC 332-30-163 River management. (1) Use and/or modification of any river system shall recognize basic hydraulic principles, as well as harmonize as much as possible with the existing aquatic ecosystems, and human needs.

(2) Priority consideration will be given to the preservation of the streamway environment with special attention given to preservation of those areas considered esthetically or environmentally unique.

(3) Bank and island stabilization programs which rely mainly on natural vegetative systems as holding elements will be encouraged.

(4) Research will be encouraged to develop alternative methods of channel control, utilizing natural systems of stabilization.

(5) Natural plant and animal communities and other features which provide an ecological balance to a streamway, will be recognized in evaluating competing human use and protected from significant human impact.

(6) Normal stream depositions of logs, uprooted tree snags and stumps which abut on shorelands and do not intrude on the navigational channel or reduce flow, or adversely redirect a river course, and are not harmful to life and property, will generally be left as they lie, in order to protect the resultant dependent aquatic systems.

(7) Development projects will not, in most cases, be permitted to fill indentations such as mudholes, eddies, pools and aeration drops.

(8) Braided and meandering channels will be protected from development.

(9) River channel relocations will be permitted only when an overriding public benefit can be shown. Filling, grading, lagooning or dredging which would result in substantial detriment to navigable waters by reason of erosion, sedimentation or impairment of fish and aquatic life will not be authorized.

(10) Sand and gravel removals will not be permitted below the wetted perimeter of navigable rivers except as authorized under a departments of fisheries and game hydraulics permit (RCW 75.20.100). Such removals may be authorized for maintenance and improvement of navigational channels.

(11) Sand and gravel removals above the wetted perimeter of a navigable river (which are not harmful to public health and safety) will be considered when any or all of the following situations exist:

(a) No alternative local upland source is available, and then the amount of such removals will be determined on a case by case basis after consideration of existing state and local regulations.

(b) The removal is designed to create or improve a feature such as a pond, wetland or other habitat valuable for fish and wildlife.

(c) The removal provides recreational benefits.

(d) The removal will aid in reducing a detrimental accumulation of aggregates in downstream lakes and reservoirs.

(e) The removal will aid in reducing damage to private or public land and property abutting a navigable river.

(12) Sand and gravel removals above the wetted perimeter of a navigable river will not be considered when:

(a) The location of such material is below a dam and has inadequate supplementary feeding of gravel or sand.

(b) Detached bars and islands are involved.

(c) Removal will cause unstable hydraulic conditions detrimental to fish, wildlife, public health and safety.

(d) Removal will impact esthetics of nearby recreational facilities.

(e) Removal will result in negative water quality according to department of ecology standards.

(13) Bank dumping and junk revetment will not be permitted on aquatic lands.

(14) Sand and gravel removal leases shall be conditioned to allow removal of only that amount which is naturally replenished on an annual basis.

[Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-163, filed 7/3/80.]

WAC 332-30-166 Open water disposal sites. (1) Open water disposal sites are established primarily for the disposal of dredged material obtained from marine or fresh waters. These sites are generally not available for disposal of material derived from upland or dryland excavation except when such materials would enhance the aquatic habitat.

(2) Material may be disposed of on state-owned aquatic land only at approved open water disposal sites and only after authorization has been obtained from the department. Applications for use of any area other than an established site shall be rejected. However, the applicant may appeal to the interagency open water disposal site evaluation committee for establishment of a new site.

(3) Application for use of an established site must be for dredged material that meets the approval of federal and state agencies and for which there is no practical alternative upland disposal site or beneficial use such as beach enhancement.

(4) The department will only issue authorization for use of the site after:

(a) The environmental protection agency and department of ecology notify the department that, in accordance with Sections 404 and 401, respectively, of the Federal Clean Water Act, the dredged materials are suitable for in-water disposal and do not appear to create a threat to human health, welfare, or the environment; and

(b) All necessary federal, state, and local permits are acquired.

(5) Any use authorization granted by the department shall be subject to the terms and conditions of any required federal, state, or local permits.

(6) The department shall suspend or terminate any authorization to use a site upon the expiration of any required permit.

(7) All leases for use of a designated site must require notification to DNR in Olympia twenty-four hours prior to each use. DNR Olympia must be notified five working days prior to the first use to permit an on-site visit to confirm with dump operator the site location.

(8) Pipeline disposal of material to an established disposal site will require special consideration.

(9) Fees will be charged at rates sufficient to cover all departmental costs associated with management of the sites. Fees will be reviewed and adjusted annually or more often as needed. A penalty fee may be charged for unauthorized dumping or dumping beyond the lease site. Army Corps of Engineers navigation channel maintenance projects where there is no local sponsor are exempt from this fee schedule.

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(a) Puget Sound and Strait of Juan De Fuca: All disposal sites $0.45 per cubic yard (c.y.), $2,000 minimum

(b) Grays Harbor/Willapa Bay: All disposal sites $0.10 per cubic yard (c.y.), minimum fee $300.00

(c) Damage fee - $5.00/cubic yard

(10) Open water disposal site selection. Sites are selected and managed by the department with the advice of the interagency open water disposal site evaluation committee (a technical committee

of the aquatic resources advisory committee). The committee is composed of representatives of the state departments of ecology, fisheries, game, and natural resources as well as the Federal Army Corps of Engineers, National Marine Fisheries Service, Environmental Protection Agency, and Fish and Wildlife Service. The department chairs the committee. Meetings are irregular. The committee has developed a series of guidelines to be used in selecting disposal sites. The objectives of the site selection guidelines are to reduce damage to living resources known to utilize the area, and to minimize the disruption of normal human activity that is known to occur in the area. The guidelines are as follows:

(a) Select areas of common or usual natural characteristics. Avoid areas with uncommon or unusual characteristics.

(b) Select areas, where possible, of minimal dispersal of material rather than maximum widespread dispersal.

(c) Sites subject to high velocity currents will be limited to sandy or coarse material whenever feasible.

(d) When possible, use disposal sites that have substrate similar to the material being dumped.

(e) Select areas close to dredge sources to insure use of the sites.

(f) Protect known fish nursery, fishery harvest areas, fish migration routes, and aquaculture installations.

(g) Areas proposed for dredged material disposal may require an investigation of the biological and physical systems which exist in the area.

(h) Current velocity, particle size, bottom slope and method of disposal must be considered.

(i) Projects transporting dredged material by pipeline will require individual review.

(j) Placement of temporary site marking buoys may be required.

(k) The department will assure disposal occurs in accordance with permit conditions. Compliance measures may include, but are not limited to, visual or electronic surveillance, marking of sites with buoys, requiring submittal of operator reports and bottom sampling or inspection.

(l) Special consideration should be given to placing material at a site where it will enhance the habitat for living resources.

(m) Locate sites where surveillance is effective and can easily be found by tugboat operators.

(11) The department shall conduct such subtidal surveys as are necessary for siting and managing the disposal sites.

[Statutory Authority: RCW 43.30.150, 79.90.550, 79.90.555 and 79.90.560. 94-23-006 (Order 628), § 332-30-166, filed 11/3/94, effective 12/4/94. Statutory Authority: RCW 79.90.560. 90-02-085, § 332-30-166, filed 1/3/90, effective 2/3/90; 88-13-082 (Order 537, Resolution No. 585), § 332-30-166, filed 6/17/88. Statutory Authority: RCW 79.90.100 and 43.30.150. 85-15-050 (Order 451, Resolution No. 492), § 332-30-166, filed 7/16/85. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-166, filed 7/3/80.]

WAC 332-30-170 Tideland and shoreland exchange. The department will use this rule when it considers exchanging tidelands or shorelands with private individuals or public entities pursuant to RCW 79.90.457. The department may exchange these aquatic lands if the exchange is in the public interest and will actively contribute to the public benefits established in RCW 79.90.455. Those benefits are: Encouraging direct public use and access; fostering water-dependent uses; ensuring environmental protection; utilizing renewable resources; and generating revenue in a manner consistent with these benefits. The department may not exchange state-owned harbor areas or waterways.

(1) **Eligibility criteria.** The department may consider exchanging ownership of tidelands or shorelands with private and other public landowners if the proposed exchange meets the

eligibility criteria set forth in (a) and (b) of this subsection.

(a) The economic values of the parcels must be equal or the exchange must result in a net economic gain to the state. The economic value must be determined by a qualified independent appraiser and/or economist and accomplished through a methodology accepted by the department.

(b) The tidelands or shorelands to be conveyed into state ownership must abut navigable water.

(2) **Evaluation criteria.** Subject to available funding, the department will evaluate eligible proposed exchanges according to the following criteria. The department will give priority and preference to proposed exchanges which, in the department's judgment, are in the public interest by providing the greatest public benefits, the least negative impacts, and the most appropriate resolution of other considerations, as set forth in (a), (b) and (c) of this subsection.

(a) The tidelands or shorelands to be conveyed into state ownership must have one or more of the following characteristics:

(i) Be or abut a critical and/or an essential habitat identified by the National Marine Fisheries Service, state natural resource management agency(s), and/or the United States Department of Fish and Wildlife;

(ii) Be or abut a critical area identified by jurisdictions under chapter 36.70A RCW;

(iii) Be an area beneficial to sediment transport and/or nearshore habitat function identified by the National Marine Fisheries Service, state natural resource management agency(s), and/or the United States Department of Fish and Wildlife;

(iv) Be actively used or abut a parcel used in the commercial production of food or fibre or other renewable resource production (for example, commercial grade beds of shellfish and aquaculture facilities);

(v) Abut a state or national wildlife refuge;

(vi) Abut an upland parcel with public upland ownership, easements, or some other formalized agreement that would allow direct public use of and access to the water;

(vii) Be actively used or abut parcel(s) actively used for water-dependent uses or allow for water dependent use;

(viii) Contain a historic or archaeological property listed on or eligible to be listed on the National Register of Historic Places; or

(ix) Generate or have the potential to generate higher revenues than the parcel being transferred out-of-state ownership in a manner consistent with the benefits listed in RCW 79.90.455.

(b) The proposed exchange must have beneficial or no negative impacts on:

(i) Navigation;

(ii) The diversity and health of the local environment including the production and utilization of renewable resources;

(iii) The quantity and quality of public access to the waterfront;

(iv) Treaty rights of federally recognized tribes. The department will solicit comments on a proposed exchange from affected tribes; and

(v) Hazardous waste and contaminated sediments liability issues.

(c) The following issues must also be considered:

(i) Consistency with plans and development guidelines of public ports, counties, cities and other local, state, and federal agencies;

(ii) The relative manageability of the tidelands or shorelands to be exchanged including, but not limited to, the effect of the exchange on management costs, liability and upland access, and the relative proximity of the tidelands or shorelands to be exchanged to other state-owned shorelands or tidelands; and

(iii) The cumulative impacts of similar exchanges on water dependent uses, nonrenewable and renewable natural resources, and total aquatic lands acreage managed by the department.

(3) **Recommendation to the board of natural resources.** The department will provide its recommendations to the board of natural resources in writing, addressing whether the exchange meets the criteria in this rule and the positive and negative impacts of the exchange on public benefits and resources. The department will provide copies of its recommendations to the proponent of the exchange. In general, an exchange should only be recommended by the department and approved by the board of natural resources when, in the department's and the board's judgment, the public benefits associated with the exchange outweigh the negative impacts or other diminution in public benefits.

[Statutory Authority: RCW 79.90.457. 99-07-034 (Order 640), § 332-30-170, filed 3/11/99, effective 4/11/99.]

WAC 332-30-171 Residential uses on state-owned aquatic lands. (1) **Application.** This section applies to residential uses, as defined in WAC 332-30-106(62), and floating houses, moorage facilities, and vessels, as defined in WAC 332-30-106 (23), (38) and (74), as they relate to residential uses, on state-owned aquatic lands. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114). This section does not apply to: Activities or structures on aquatic lands not owned by the state; vessels used solely for recreational or transient purposes; floating houses or vessels used as hotels, motels or boatels; or vessels owned and operated by the United States military.

(2) **Limits on the number of residential uses.** Residential uses on state-owned aquatic lands shall only occur in accordance with all federal, state, and local laws. The following apply only to leases entered into following the effective date of this rule unless otherwise provided in subsection (3) of this section.

(a) The total number of slips which may be allocated for residential uses in any marina, pier, open water moorage and anchorage area, or other moorage facility shall be limited to ten percent of the total number of slips within a marina, unless otherwise established as provided in (b) or (c) of this subsection. For the purposes of determining the exact number of residential slips, the department shall round to nearest whole number.

(b) Upon the effective date of this rule, the ten percent limit can be changed by local government, through amendments to the local shoreline master program and/or issuance of a shoreline substantial development conditional use permit, if all of the following conditions are met:

(i) Methods to handle the upland disposal and best management practices for the increased waste associated with residential use are expressly addressed and required; and

(ii) Specific locations for residential use slips do not adversely impact habitat or interfere with water-dependent uses.

(c) If a local shoreline master program or local ordinance has established a different percentage limit prior to the date this rule takes effect, the limit established in that shoreline master program or local ordinance shall be the recognized percentage limit. After the effective date of this rule, changes to the percentage limit shall only be recognized by DNR as the percentage limit if the changes are made through amendments to the Shoreline Master Program or adoption of a shoreline substantial development conditional use permit.

(d) Application of the percentage limit to moorage facilities that occupy both state-owned aquatic and privately owned aquatic lands.

(i) If the city or county jurisdiction has not established a percentage limit, then the total number of vessels used as a residence and floating houses in any moorage facility shall be limited to ten percent of the total number of slips or spaces usable for moorage or anchorage in that facility. In this case, when a moorage facility occupies both state-owned and nonstate-owned aquatic lands, the percent limit will be calculated using only the total number of slips that are located on state-owned aquatic lands and will be applied only to the portion of the facility located on state-owned aquatic lands.

(ii) If a county or city has established a percent limit, and a moorage facility occupies both state-owned and nonstate-owned aquatic lands, the department may authorize any or all of the floating houses or vessels with residential uses within the entire facility to be located in the

portion of the facility on state-owned aquatic lands.

(e) If a moorage facility has so few moorage slips or spaces that the percent limit allows for less than one residential use slip, then one residential use slip may be authorized, if not otherwise prohibited by the city or county jurisdiction.

(3) **Excess residential use slips.**

(a) This subsection shall apply to all lessees occupying state-owned aquatic lands under written leases with the department as of the effective date of this rule. Within one hundred eighty days of the effective date of this rule, each existing moorage facility lessee shall document the existing percentage of residential use slips within their facility and report this information to the department. This reported percentage shall be referred to as the "reported existing percentage" for the moorage facility lessee.

(i) If the reported existing percentage of residential use slips is greater than the ten percent limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, then the reported existing percentage will establish the allowable residential use percentage at the beginning of a new lease for the same moorage facility, regardless of whether ownership of the facility changes subject to attrition described in subsection (3)(b) of this section. At the time the new lease is entered into, those residential uses in excess of the reported existing percentage will be required to vacate the moorage facility.

(ii) If the reported existing percentage of residential use slips is less than or equal to the ten percent limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, then the percentage limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, will establish the allowable residential use percentage at the beginning of a new lease for the same moorage facility, regardless of whether ownership of the facility changes. At the time the new lease is entered into, those residential uses in excess of the ten percent limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, will be required to vacate the moorage facility.

(iii) If a moorage facility lessee fails to report the existing percentage of residential slips within their facility within one hundred eighty days of the effective date of this rule, then the percentage limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, will establish the allowable residential use percentage at the beginning of a new lease for the same moorage facility, regardless of whether ownership of the facility changes. At the time the new lease is entered into, those residential uses in excess of the ten percent limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, will be required to vacate the moorage facility.

(b) The purpose of this subsection is to describe the process of attrition used to reach compliance with the percentage limit or locally established percentage limit. For all leases entered into following the effective date of this rule, if there are more residential use slips in a moorage facility than allowed by the percent limit, then no new or additional residential use slips, including replacements for grandfathered floating houses under subsection (7)(a) of this section, shall be authorized in that facility. In such cases, any residential uses that leave the facility for a period of time greater than thirty days may not return to the facility until the total number of residential use slips is below the percent limit. For purposes of counting the thirty days described in this subsection (3)(b), the department shall not include time needed for repairs to the vessels or floating houses, nor any time when a vessel is away from the moorage facility but the owner or operator of the vessel continuously maintains a written moorage agreement for that facility.

(c) Marina owners, operators, and/or managers may decrease the ten percent limit on a site-specific basis.

(4) **Waste disposal.** The following apply to all leases entered into following the effective date of this rule:

(a) Sewage. All treated and untreated sewage shall be disposed of upland, in accordance with federal, state, and local laws. This section does not require specific disposal methods so long as the measures established by the lessee and the

department ensure upland disposal.

(b) Oil and toxic substances. All oil, grease, corrosive liquids, and other toxic substances shall be disposed of upland, in accordance with federal, state, and local laws. This section does not require specific disposal methods so long as the measures established by the lessee and the department ensure upland disposal.

(c) Solid waste. All solid waste shall be disposed of upland, in accordance with federal, state, and local laws. This section does not require specific disposal methods so long as the measures established by the lessee and the department ensure upland disposal.

(d) Gray water. All gray water shall be disposed of in accordance with federal, state, and local laws. Moorage facilities shall develop and implement best management practices to avoid, to the maximum extent possible, all discharges into waters above state-owned aquatic land, of wastewater from showers, baths, sinks, laundry, decks, and other miscellaneous sources, otherwise known as "gray water." For those unavoidable discharges, the best management practices shall minimize discharges, to the maximum extent possible, of gray water from showers, baths, sinks, laundry, decks, and other miscellaneous sources.

(5) **Responsibilities of lessees with residential uses.** The following apply to leases entered into following the effective date of this rule:

(a) Each department lessee must establish and implement measures satisfactory to the department for ensuring upland waste disposal, and the avoidance or minimization of any discharge of waste, as described in (c) of this subsection, onto or in the waters above state-owned aquatic lands from vessels used for residential use and floating houses. This shall include a contingency plan in case of failure or unavailability of the waste disposal methods identified by the lessee and approved by the department.

(b) Each department lessee must annually, or as otherwise provided in the lease, provide the department with evidence that all vessels used for residential use and floating houses in their facility comply with this rule and the terms of the department lease.

(c) Each department lessee shall fully describe the waste disposal measures. These measures may include, but are not limited to:

(i) Connection to an upland sewage system;

(ii) Periodic sewage pump-out service, either at a pump-out station or with transportable pump-out equipment, including prepayment for such services and proof of participation by residential occupants;

(iii) Installation of appropriate waste receptacles;

(iv) Back-up and clean-up facilities and procedures as needed in case of failure or temporary unavailability of waste disposal systems;

(v) Educational efforts, such as posting of notices, distribution of information, and training for residents on waste disposal methods and requirements;

(vi) Monitoring of activities within the facility to prevent or identify and remedy improper waste disposal;

(vii) Contractual requirements in moorage subleases requiring proper waste disposal by residents; and/or

(viii) Other best management practices and/or best available technologies that are established by any local, state, or federal agency, including the department, or by any appropriate nongovernmental organization, that are satisfactory to the department to ensure upland disposal of waste and avoid or minimize any discharge of waste onto or in the waters above state-owned aquatic lands.

(d) Consistent with all federal, state, and local laws and regulations, all leases issued by the department after the effective date of this rule for moorage facilities with residential uses within them shall require and specify:

(i) Methods to handle the upland disposal and best management practices for the increased waste associated with residential use;

(ii) Specific locations for residential use slips that do not adversely impact habitat or interfere

with water-dependent uses.

(6) **Vessels.** Moorage of a vessel, as defined in WAC 332-30-106(74), is a water-dependent use.

(7) **Floating houses.** Moorage of a floating house, as defined in WAC 332-30-106(23), is a water-oriented use.

(a) **Classifying floating house moorage under RCW 79.90.465(2).** In classifying floating house moorage under RCW 79.90.465(2), the department will apply the following rules:

(i) If a floating house moorage site had a floating house moored there under a department lease on October 1, 1984, or if a floating house was moored there for at least three years before October 1, 1984, then the department will classify that site as a water-dependent use for the purposes of determining rent. Such sites may be referred to as "grandfathered" sites.

(ii) If a floating house moorage site did not have a floating house moored there under a department lease on October 1, 1984, nor for at least three years before October 1, 1984, then the department shall classify that site as a nonwater-dependent use. Such sites may be referred to as "nongrandfathered" sites.

(iii) The classification of a grandfathered or nongrandfathered floating house moorage site applies to the specific aquatic land being utilized for moorage of the floating house, not to the floating house itself.

(iv) The department shall classify each individual floating house moorage slip within a moorage facility as a separate site. This may result in a marina containing both grandfathered and nongrandfathered floating house moorage sites.

(v) If a floating house vacates a grandfathered moorage site and either returns within thirty days or is replaced with another floating house within thirty days, then the moorage site will remain grandfathered.

(vi) If a floating house vacates a grandfathered moorage site and does not return within thirty days, future moorage of that floating house in the same or a different site shall be nongrandfathered, unless the floating house qualifies as a replacement floating house under (a)(v) of this subsection.

(vii) After October 1, 1984, if a grandfathered site ceased or ceases being used for floating house moorage for more than thirty consecutive days, then the site shall no longer be grandfathered.

(viii) When counting the thirty days described in (a)(v) through (vii) of this subsection, the department will exclude any reasonable time needed for repair of the floating house.

(ix) If a lessee redesignates a grandfathered floating house moorage slip within the lease area, consistent with the lease requirements, and notifies the department in advance of where the slip is to be relocated, then the slip will remain grandfathered. However, if a nongrandfathered site has a floating house relocated to it after the effective date of this rule, the site shall not be designated as grandfathered as provided in this subsection, (7)(a)(ix).

(x) If a floating house was moored at a grandfathered site on October 1, 1984, but was relocated to a site authorized by the department so that on the effective date of this rule the floating house is moored at a nongrandfathered site, then the department may classify this new location as a grandfathered site if the floating house meets all of the following criteria:

(A) The floating house was on state-owned aquatic land leased on October 1, 1984, or was on state-owned aquatic lands for three years prior to October 1, 1984;

(B) The floating house was continuously on state-owned aquatic lands from October 1, 1984, until the effective date of this rule, except for any reasonable time needed for repair of the house; and

(C) The department receives, within one year after the effective date of this rule, a request to have the current moorage site classified as a grandfathered site.

(b) **Managing grandfathered floating house moorage.** Floating houses moored in grandfathered sites that meet all applicable laws and rules, and are consistent with all lease requirements, may remain. The department shall

charge the water-dependent rental rate for such moorage.

(c) **Managing nongrandfathered floating house moorage.**

(i) The department may authorize floating house moorage at a nongrandfathered site only if the department determines that the following conditions are met:

(A) All conditions as set forth in this section;

(B) The specific sites and circumstances for floating house moorage have been identified in an adopted local shoreline management plan that provides for the present and future needs of all uses, considers cumulative impacts to habitat and resources of statewide value, identifies specific areas or situations in which floating house moorage will be allowed, and justifies the exceptional nature of those areas or situations; and

(C) The floating house moorage is compatible with water-dependent uses existing in or planned for the area.

(ii) If a floating house is moored at a nongrandfathered site that does not meet the conditions in (c)(i) of this subsection, but the site is authorized by a department lease and the floating house and moorage meet all conditions as set forth in this section and is consistent with all lease requirements, then the floating house may remain until the termination of the lease or one year after the effective date of this rule, whichever is later. Thereafter, unless at that time the floating house meets the conditions in (c)(i) of this subsection, the floating house must vacate the nongrandfathered site.

(iii) If a floating house is moored at a nongrandfathered site that does not meet the conditions in (c)(i) of this subsection and is not authorized by a department lease, then the floating house must vacate the site within one year from the effective date of this rule, unless at that time it meets the conditions in (c)(i) of this subsection and the department chooses to grant a lease.

(iv) For nongrandfathered floating house moorage sites, the department shall charge the nonwater-dependent rental rate. If a leased area contains both nongrandfathered floating house moorage along with grandfathered floating house moorage or other water-dependent uses, then the nonwater-dependent rental rate shall be applied to a proportionate share of any common areas used in conjunction with the nongrandfathered floating house moorage, including, but not limited to, docks, breakwaters, and open water areas for ingress and egress to the facility.

(8) **Open water moorage.** For the purposes of this section, open water moorage and anchorage areas are defined in WAC 332-30-106(45).

(a) Vessels used for residential use and floating houses shall be moored, anchored, or otherwise secured only at a marina, pier, or similar fixed moorage facility that is connected to the shoreline, or in open water moorage and anchorage areas described under WAC 332-30-139(5) and subject to the restrictions therein. Vessels used for residential use and floating houses shall not be moored, anchored or otherwise secured in open waters above state-owned aquatic lands away from a fixed moorage facility that is connected to the shoreline, nor be moored, anchored, or otherwise secured to any natural feature in the water or on the shoreline, except within an open water moorage and anchorage area. A vessel used for residential use or floating house may moor in areas prohibited by this subsection (8)(a) when necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

(b) Any vessel used for residential use or floating house that is moored on state-owned aquatic lands on the effective date of this rule, and complies with all other applicable laws and all lease requirements, but does not comply with (a) of this subsection, may remain until one year after the effective date of this rule or until the termination date of the existing department lease, whichever is later. Thereafter, unless at that time it meets the conditions in (a) of this subsection, the vessel used for residential use or floating house must vacate the site. The department shall not authorize or reauthorize any moorage for vessels used for residential use or floating houses that do not comply with (a) of this subsection.

[Statutory Authority: RCW 79.90.455,

79.90.460. 02-21-076 (Order 710), § 332-30-171, filed 10/17/02, effective 11/17/02.]

Chapter 332-120 WAC Survey Monuments -- Removal Or Destruction

Last Update: 2/25/94

WAC SECTIONS

332-120-010 Authority.

332-120-020 Definitions.

332-120-030 Applicability.

332-120-040 Monument removal or destruction.

332-120-050 Application process.

332-120-060 Project completion -- Perpetuation of the original position.

332-120-070 Application/permit form.

WAC 332-120-010 Authority. The department of natural resources, in accordance with RCW 58.24.030 and 58.24.040 (1) and (8), prescribes the following regulations concerning the removal or destruction of survey monuments and the perpetuation of survey points.

[Statutory Authority: RCW 58.24.040(8). 94-06-034 (Order 617), § 332-120-010, filed 2/25/94, effective 3/28/94; Order 131, § 332-120-010, filed 3/1/72, effective 4/7/72.]

WAC 332-120-020 Definitions. The following definitions shall apply to this chapter:

Department: The department of natural resources.

Engineer: Any person authorized to practice the profession of engineering under the provisions of chapter 18.43 RCW who also has authority to do land boundary surveying pursuant to RCW 36.75.110, 36.86.050, 47.36.010 or 58.09.090.

Geodetic control point: Points established to mark horizontal or vertical control positions that are part of the National Geodetic Survey Network.

Land boundary survey corner: A point on the boundary of any easement, right of way, lot, tract, or parcel of real property; a controlling point for a plat; or a point which is a General Land Office or Bureau of Land Management survey corner.

Land corner record: The record of corner information form as prescribed by the department of natural resources pursuant to chapter 58.09 RCW.

Land surveyor: Any person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW.

Local control point: Points established to mark horizontal or vertical control positions that are part of a permanent government control network other than the National Geodetic Survey network.

Parcel: A part or portion of real property including but not limited to GLO segregations, easements, rights of way, aliquot parts of sections or tracts.

Removal or destruction: The physical disturbance or covering of a monument such that the survey point is no longer visible or readily accessible.

Survey monument: The physical structure, along with any references or accessories thereto, used to mark the location of a land boundary survey corner, geodetic control point, or local control point.

Survey Recording Act: The law as established and designated in chapter 58.09 RCW.

[Statutory Authority: RCW 58.24.040(8). 94-06-034 (Order 617), § 332-120-020, filed 2/25/94, effective 3/28/94; Order 131, § 332-120-020, filed 3/1/72, effective 4/7/72.]

WAC 332-120-030 Applicability. (1) No survey monument shall be removed or destroyed before a permit is obtained as required by this chapter.

(2) Any person, corporation, association, department, or subdivision of the state, county or municipality responsible for an activity that may cause a survey monument to be removed or destroyed shall be responsible for ensuring that the original survey point is perpetuated. It shall be the responsibility of the governmental agency

or others performing construction work or other activity (including road or street resurfacing projects) to adequately search the records and the physical area of the proposed construction work or other activity for the purpose of locating and referencing any known or existing survey monuments.

A government agency, when removing a local control point that it has established, shall be exempted from the requirements of this chapter.

(3) Survey monuments subject to this chapter are those monuments marking local control points, geodetic control points, and land boundary survey corners.

In regard to local or geodetic control points the department will defer authorization for the removal or destruction of the survey monument to the agency responsible for the establishment or maintenance of the control point. Such agency may, at their discretion, exempt the applicant from the remonumentation requirements of this chapter. Such exemption shall be noted by the agency on the application form.

[Statutory Authority: RCW 58.24.040(8). 94-06-034 (Order 617), § 332-120-030, filed 2/25/94, effective 3/28/94; Order 131, § 332-120-030, filed 3/1/72, effective 4/7/72.]

WAC 332-120-040 Monument removal or destruction. (1) All land boundary survey monuments that are removed or destroyed shall be replaced or witness monuments shall be set to perpetuate the survey point.

(2) A land boundary survey corner shall be referenced to the Washington Coordinate System of 1983, adjusted in 1991, prior to removal or destruction. See WAC 332-130-060, Geodetic control, survey standards.

An applicant may request a variance from this referencing requirement by so noting in the applicant information section on the permit and providing the justification on the back of the form. The department shall note whether the variance is approved or not approved and shall provide the reason for not approving the request.

[Statutory Authority: RCW 58.24.040(8). 94-06-034 (Order 617), § 332-120-040, filed 2/25/94, effective 3/28/94; Order 131, § 332-120-040, filed 3/1/72, effective 4/7/72.]

WAC 332-120-050 Application process. (1) Whenever a survey monument needs to be removed or destroyed the application required by this chapter shall be submitted to the department.

It shall be completed, signed and sealed by a land surveyor or engineer as defined in this chapter.

(2) Upon receipt of a properly completed application, the department shall promptly issue a permit authorizing the removal or destruction of the monument; provided that:

(a) In extraordinary circumstances, to prevent hardship or delay, a verbal authorization may be granted, pending the processing and issuance of a written permit. A properly completed application shall be submitted by the applicant within fifteen days of the verbal authorization.

(b) Applications received by the department concerning local or geodetic control points will be referred to the appropriate agency for action. The applicant will be notified when such action is taken.

(3) One application may be submitted for multiple monuments to be removed or destroyed as part of a single project; however, there shall be separate attachments to the application form detailing the required information for each monument removed or destroyed.

[Statutory Authority: RCW 58.24.040(8). 94-06-034 (Order 617), § 332-120-050, filed 2/25/94, effective 3/28/94; Order 131, § 332-120-050, filed 3/1/72, effective 4/7/72.]

WAC 332-120-060 Project completion -- Perpetuation of the original position. (1) After completion of the activity that caused the removal or destruction of the monument, a land surveyor or engineer shall, unless specifically authorized otherwise:

(a) Reset a suitable monument at the original survey point or, if that is no longer feasible;

(b) Establish permanent witness monuments easily accessible from the original monument to perpetuate the position of the preexisting monument.

(2) Land boundary survey monumentation required by this chapter shall meet the requirements of the RCW 58.09.120 and 58.09.130.

(3) After completion of the remonumentation, the land surveyor or engineer shall complete the report form required by this chapter and forward it to the department.

(4) Additionally, after remonumenting any corner originally monumented by the GLO or BLM, a land corner record form shall also be filed with the county auditor as required by the Survey Recording Act.

Place illustration here.

[Statutory Authority: RCW 58.24.040(8). 94-06-034 (Order 617), § 332-120-060, filed 2/25/94, effective 3/28/94.]

WAC 332-120-070 Application/permit form. The following form shall be used when making application to remove or destroy a survey monument:

[Statutory Authority: RCW 58.24.040(8). 94-06-034 (Order 617), § 332-120-070, filed 2/25/94, effective 3/28/94.]

Place illustration here.

Chapter 332-130 WAC Minimum Standards For Land Boundary Surveys And Geodetic Control Surveys And Guidelines For The Preparation Of Land Descriptions

Last Update: 5/10/04

WAC SECTIONS

332-130-010 Authority.

332-130-020 Definitions.

332-130-025 Corner restoration -- Recording form.

332-130-030 Land subdivision and corner restoration standards -- Recording.

332-130-040 Land description guidelines.

332-130-050 Survey map requirements.

332-130-060 Geodetic control survey standards.

332-130-070 Survey standards.

332-130-080 Relative accuracy -- Principles.

332-130-090 Field traverse standards for land boundary surveys.

332-130-100 Equipment and procedures.

WAC 332-130-010 Authority. The department of natural resources, in accordance with RCW 58.24.040, 58.09.050, and 58.17.160, prescribes the following regulations setting minimum standards for land boundary surveys and geodetic control surveys and providing guidelines for the preparation of land descriptions.

[Statutory Authority: RCW 58.09.050 and 58.24.040(1). 92-03-007 (Order 597), § 332-130-010, filed 1/3/92, effective 2/3/92. Statutory Authority: RCW 58.24.040(1). 89-11-028 (Order 561), § 332-130-010, filed 5/11/89; Order 275, § 332-130-010, filed 5/2/77.]

WAC 332-130-020 Definitions. The following definitions shall apply to this chapter:

(1) **Geodetic control surveys:** Surveys for the specific purpose of establishing control points for extending the National Geodetic Survey horizontal and vertical control nets, establishing plane coordinate values on boundary monuments within the requirements of the Washington coordinate system, and determining the vertical elevations of boundary monuments.

(2) **GLO and BLM:** The General Land Office and its successor, the Bureau of Land Management.

(3) **Land boundary surveys:** All surveys, whether made by individuals, entities or public bodies of whatever nature, for the specific purpose of establishing, reestablishing, laying out, subdividing, defining, locating and/or monumenting the boundary of any easement, right of way, lot, tract, or parcel of real property or which reestablishes or restores General Land Office or Bureau of Land Management survey corners.

(4) **Land corner record:** The record of corner information form as prescribed by the department of natural resources in WAC 332-130-025.

(5) **Land description:** A description of real property or of rights associated with real property.

(6) **Land surveyor:** Any person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW.

(7) **NAD83 (1991):** North American Datum of 1983, adjusted in 1991.

(8) **Parcel:** A part or portion of real property including but not limited to GLO segregations, easements, rights of way, aliquot parts of sections or tracts.

(9) **Survey Recording Act:** The law as established and designated in chapter 58.09 RCW.

(10) **Washington coordinate system:** The system of plane coordinates as established and designated by chapter 58.20 RCW.

[Statutory Authority: RCW 58.09.050 and 58.24.040(1). 92-03-007 (Order 597), § 332-130-020, filed 1/3/92, effective 2/3/92. Statutory Authority: RCW 58.24.040(1). 91-19-013 (Order 581), § 332-130-020, filed 9/9/91, effective

10/10/91; 89-11-028 (Order 561), § 332-130-020, filed 5/11/89; Order 275, § 332-130-020, filed 5/2/77.]

WAC 332-130-025 Corner restoration -- Recording form. The record of corner information required to be filed with the county auditor by the Survey Recording Act shall be filed on a form substantially like the following:

Place illustration here.

Place illustration here.

[Statutory Authority: RCW 58.24.040(1) and 58.09.050. 97-02-071, § 332-130-025, filed 12/31/96, effective 1/31/97; 92-03-007 (Order 597), § 332-130-025, filed 1/3/92, effective 2/3/92.]

WAC 332-130-030 Land subdivision and corner restoration standards -- Recording. The following requirements apply when a land boundary survey is performed. If, in the professional judgment of the surveyor, the procedures of subsections (1) and (2) of this section are not necessary to perform the survey, departures from these requirements shall be explained and/or shown on the survey map produced.

(1) The reestablishment of lost GLO or BLM corners and the subdividing of sections shall be done according to applicable GLO or BLM plats and field notes and in compliance with the rules as set forth in the appropriate GLO or BLM *Manual of Surveying Instructions,* manual supplements and circulars. Federal or state court decisions that influence the interpretation of the rules should be considered. Methods used for such corner reestablishment or section subdivision shall be described on the survey map produced.

(2) All maps, plats, or plans showing a land boundary survey shall show all the corners found, established, reestablished and calculated, including corresponding directions and distances, which were used to survey and which will be necessary to resurvey the parcel shown. Additionally, all such maps, plats, or plans shall show sufficient section subdivision data, or other such controlling parcel data, necessary to support the position of any section subdivisional corner or controlling parcel corner used to reference the parcel surveyed. Where a portion or all of this information is already shown on a record filed or recorded in the county recording office of the county in which the parcel is located, reference may be made to that record in lieu of providing the required data.

(3) Documentation shall be provided for all GLO or BLM corner(s) or point(s) used to control the location of the parcel surveyed. This requirement shall be met by providing on the document produced:

(a) The information required by both the Survey Recording Act and the history and evidence found sections of the Land Corner Record Form; or

(b) The recording data of a document(s) that provides the required information and is filed or recorded in the county recording office of the county in which the parcel is located.

(4) Every corner originally monumented by the GLO or BLM that is physically reestablished shall be monumented in accordance with the Survey Recording Act. If the reestablished corner is not filed or recorded as part of a record of survey, plat or short plat, at least three references shall be established and filed or recorded on a Land Corner Record Form. If the reestablished corner is filed or recorded as part of a record of survey, plat or short plat, then ties to at least two other monuments shown on the record document may serve in lieu of the required references. A valid set of coordinates on the Washington coordinate system may serve as one of the references. However, to best ensure an accurate relocation, references in close proximity to the corner are recommended. Monuments placed shall be magnetically locatable and include a cap stamped with the appropriate corner designation as defined in the current BLM *Manual of Surveying Instructions.*

[Statutory Authority: RCW 58.24.040(1). 90-06-028 (Order 568), § 332-130-030, filed 3/1/90, effective 4/1/90; 89-11-028 (Order 561), § 332-130-030, filed 5/11/89; Order 275, § 332-130-030, filed 5/2/77.]

WAC 332-130-040 Land description guidelines. An instrument used for the conveyance of real property should contain a description of the property sufficiently definite to allow location by a land surveyor without recourse to oral testimony.

The following guidelines consist of elements which are recommended for use in the preparation of land descriptions. They are not intended to be all inclusive and may not be applicable in all situations:

(1) In a description of a lot, tract, parcel or portion thereof in a recorded plat, short plat, or record of survey:

(a) Lot and block number or designation and addition or subdivision name;

(b) Official recording data and identification of recording office;

(c) Location by section, township, and range

with respect to the Willamette Meridian, (if applicable);

(d) Property location by county and state.

(2) In a description of an easement, lot, tract, or parcel described by metes and bounds:

(a) Parcel location by the subdivision(s) of the section; or portion of any other official subdivisional tract from a GLO or BLM public land survey; or portion of a recorded plat, short plat, or record of survey;

(b) Section, township, and range with respect to the Willamette Meridian;

(c) Property location by county and state;

(d) Direction and distance to GLO or BLM corners or properly determined section subdivision corners with description of the physical corners, if applicable;

(e) A description of the boundary giving:

(i) Place of beginning and/or initial point;

(ii) Basis of bearings or azimuths;

(iii) Bearings, angles or azimuths in degrees, minutes and seconds;

(iv) Distances in feet and decimals of feet or record units, where applicable;

(v) Curve data showing the controlling elements;

(vi) Identification of senior adjoiners giving recording office and filing reference;

(vii) Calls to existing controlling monuments, both artificial and natural;

(viii) Calls which indicate if a course is a section line, subdivisional line, a line of record or parallel therewith;

(ix) A bearing and distance for each boundary line of the described parcel with a closing course returning to the point of beginning, except where the boundary can be described by a record, physical or natural feature.

(3) In a description based on a public land survey subdivision:

(a) Special segregations such as donation land claims, homestead entry surveys, townsites, tracts, and Indian or military reservations;

(b) Government lot number(s);

(c) Aliquot part designation;

(d) Section, township, and range with respect to the Willamette Meridian;

(e) Property location by county and state.

(4) Other elements of consideration for any land description:

(a) Avoid ambiguities when exceptions to a parcel are stated;

(b) Indicate width of strip description and its relationship to described centerline or survey line;

(c) Delineate the dividing line when designating a fractional portion of a parcel;

(d) When designating one-half or other fractional portion of an aliquot part by government subdivision procedures, follow with "according to U.S. Government subdivision procedures."

[Statutory Authority: RCW 58.24.040(1). 89-11-028 (Order 561), § 332-130-040, filed 5/11/89; Order 275, § 332-130-040, filed 5/2/77.]

WAC 332-130-050 Survey map requirements. The following requirements apply to land boundary survey maps and plans, records of surveys, plats, short plats, boundary line adjustments, and binding site plans required by law to be filed or recorded with the county.

(1) All such documents filed or recorded shall conform to the following:

(a) They shall display a county recording official's information block which shall be located along the bottom or right edge of the document unless there is a local requirement specifying this information in a different format. The county recording official's information block

shall contain:

(i) The title block, which shall be on all sheets of maps, plats or plans, and shall identify the business name of the firm and/or land surveyor that performed the survey. For documents not requiring a surveyor's certificate and seal, the title block shall show the name and business address of the preparer and the date prepared. Every sheet of multiple sheets shall have a sheet identification number, such as "sheet 1 of 5";

(ii) The auditor's certificate, where applicable, which shall be on the first sheet of multiple sheets; however, the county recording official shall enter the appropriate volume and page and/or the auditor's file number on each sheet of multiple sheets;

(iii) The surveyor's certificate, where applicable, which shall be on the first sheet of multiple sheets and shall show the name, license number, original signature and seal of the land surveyor who had responsible charge of the survey portrayed, and the date the land surveyor approved the map or plat. Every sheet of multiple sheets shall have the seal and signature of the land surveyor and the date signed;

(iv) The following indexing information on the first sheet of multiple sheets:

(A) The section-township-range and quarter-quarter(s) of the section in which the surveyed parcel lies, except that if the parcel lies in a portion of the section officially identified by terminology other than aliquot parts, such as government lot, donation land claim, homestead entry survey, townsite, tract, and Indian or military reservation, then also identify that official subdivisional tract and call out the corresponding approximate quarter-quarter(s) based on projections of the aliquot parts. Where the section is incapable of being described by projected aliquot parts, such as the Port Angeles townsite, or elongated sections with excess tiers of government lots, then it is acceptable to provide only the official GLO designation. A graphic representation of the section divided into quarter-quarters may be used with the quarter-quarter(s) in which the surveyed parcel lies clearly marked;

(B) Additionally, if appropriate, the lot(s) and block(s) and the name and/or number of the filed or recorded subdivision plat or short plat with the related recording data;

(b) They shall contain:

(i) A north arrow;

(ii) The vertical datum when topography or elevations are shown;

(iii) The basis for bearings, angle relationships or azimuths shown. The description of the directional reference system, along with the method and location of obtaining it, shall be clearly given (such as "North by Polaris observation at the SE corner of section 6"; "Grid north from azimuth mark at station Kellogg"; "North by compass using twenty-one degrees variation"; "None"; or "Assumed bearing based on ..."). If the basis of direction differs from record title, that difference should be noted;

(iv) Bearings, angles, or azimuths in degrees, minutes and seconds;

(v) Distances in feet and decimals of feet;

(vi) Curve data showing the controlling elements.

(c) They shall show the scale for all portions of the map, plat, or plan provided that detail not drawn to scale shall be so identified. A graphic scale for the main body of the drawing, shown in feet, shall be included. The scale of the main body of the drawing and any enlargement detail shall be large enough to clearly portray all of the drafting detail, both on the original and reproductions;

(d) The document filed or recorded and all copies required to be submitted with the filed or recorded document shall, for legibility purposes:

(i) Have a uniform contrast suitable for scanning or microfilming.

(ii) Be without any form of cross-hatching, shading, or any other highlighting technique that to any degree diminishes the legibility of the drafting detail or text;

(iii) Contain dimensioning and lettering no smaller than 0.08 inches, vertically, and line widths not less than 0.008 inches (equivalent to pen tip 000). This provision does not apply to vicinity maps, land surveyors' seals and

certificates.

(e) They shall not have any adhesive material affixed to the surface;

(f) For the intelligent interpretation of the various items shown, including the location of points, lines and areas, they shall:

(i) Reference record survey documents that identify different corner positions;

(ii) Show deed calls that are at variance with the measured distances and directions of the surveyed parcel;

(iii) Identify all corners used to control the survey whether they were calculated from a previous survey of record or found, established, or reestablished;

(iv) Give the physical description of any monuments shown, found, established or reestablished, including type, size, and date visited;

(v) Show the record land description of the parcel or boundary surveyed or a reference to an instrument of record;

(vi) Identify any ambiguities, hiatuses, and/or overlapping boundaries;

(vii) Give the location and identification of any visible physical appurtenances such as fences or structures which may indicate encroachment, lines of possession, or conflict of title.

(2) All signatures and writing shall be made with permanent black ink.

(3) The following criteria shall be adhered to when altering, amending, changing, or correcting survey information on previously filed or recorded maps, plats, or plans:

(a) Such documents filed or recorded shall comply with the applicable local requirements and/or the recording statute under which the original map, plat, or plan was filed or recorded;

(b) Alterations, amendments, changes, or corrections to a previously filed or recorded map, plat, or plan shall only be made by filing or recording a new document;

(c) All such documents filed or recorded shall contain the following information:

(i) A title or heading identifying the document as an alteration, amendment, change, or correction to a previously filed or recorded map, plat, or plan along with, when applicable, a cross-reference to the volume and page and auditor's file number of the altered document;

(ii) Indexing data as required by subsection (1)(a)(iv) of this section;

(iii) A prominent note itemizing the change(s) to the original document. Each item shall explicitly state what the change is and where the change is located on the original;

(d) The county recording official shall file, index, and cross-reference all such documents received in a manner sufficient to provide adequate notice of the existence of the new document to anyone researching the county records for survey information;

(e) The county recording official shall send to the department of natural resources, as per RCW 58.09.050(3), a legible copy of any document filed or recorded which alters, amends, changes, or corrects survey information on any document that has been previously filed or recorded pursuant to the Survey Recording Act.

(4) Survey maps, plats and plans filed with the county shall be an original that is legibly drawn in black ink on mylar and is suitable for producing legible prints through scanning, microfilming or other standard copying procedures. The following are allowable formats for the original that may be used in lieu of the format stipulated above:

(a) photo mylar with original signatures,

(b) any standard material as long as the format is compatible with the auditor's recording process and records storage system. Provided, that records of survey filed pursuant to chapter 58.09 RCW are subject to the restrictions stipulated in RCW 58.09.110(5),

(c) an electronic version of the original if the county has the capability to accept a digital signature issued by a licensed certification authority under chapter 19.34 RCW or a

certification authority under the rules adopted by the Washington state board of registration for professional engineers and land surveyors, and can import electronic files into an imaging system. The electronic version shall be a standard raster file format acceptable to the county.

(5) The following checklist is the only checklist that may be used to determine the recordability of records of survey filed pursuant to chapter 58.09 RCW. There are other requirements to meet legal standards. This checklist also applies to maps filed pursuant to the other survey map recording statutes, but for these maps there may be additional sources for determining recordability.

CHECKLIST FOR SURVEY MAPS BEING RECORDED

(Adopted in WAC 332-130)

The following checklist applies to land boundary survey maps and plans, records of surveys, plats, short plats, boundary line adjustments, and binding site plans required by law to be filed or recorded with the county. There are other requirements to meet legal standards. Records of survey filed pursuant to chapter 58.09 RCW, that comply with this checklist, shall be recorded; no other checklist is authorized for determining their recordability.

ACCEPTABLE MEDIA:

- For counties required to permanently store the document filed, the only acceptable media are:

  [ ] black ink on mylar or photo mylar

- For counties exempted from permanently storing the document filed, acceptable media are:

  [ ] any standards material compatible with county processes; or, an electronic version of the original.

- [ ] All signatures must be original and, on hardcopy, made with permanent black ink.
- [ ] The media submitted for filing must not have any material on it that is affixed by adhesive.

LEGIBILITY:

- [ ] The documents submitted, including paper copies, must have a uniform contrast throughout the document.
- [ ] No information, on either the original or the copies, should be obscured or illegible due to cross-hatching, shading, or as a result of poor drafting technique such as lines drawn through text or improper pen size selection (letters or number filled in such that 3's, 6's or 8's are indistinguishable).
- [ ] Signatures and seals must be legible on the prints or the party placing the seal must be otherwise identified.
- [ ] Text must be 0.08 inches or larger; line widths shall not be less than 0.008 inches (vicinity maps, land surveyor's seals and certificates are excluded).

INDEXING:

- [ ] The recording officer's information block must be on the bottom or right edge of the map.

  [ ] A title block (shows the name of the preparer and is on each sheet of multiple sheets).

  [ ] An auditor's certificate (on the first sheet of multiple sheets, although Vol./Pg. and/or AF# must be entered by the recording officer on each sheet).

  [ ] A surveyor's certificate (on the first sheet of multiple sheets; seal and signature on multiple sheets).

- The map filed must provide the following indexing data:

  [ ] S-T-R and the quarter-quarter(s) or approximate quarter-quarter(s) of the section in which the surveyed parcel lies,

  [ ] Optional: a graphic representation of the section divided into quarter-quarters may be used with the quarter-quarter(s) in which the surveyed parcel lies clearly marked;

MISCELLANEOUS

- If the function of the document submitted is to change a previously filed record, it must also have:

  [ ] a title identifying it as a correction, amendment, alteration or change to a previously filed record,

  [ ] a note itemizing the changes.

- For records of survey:

  [ ] The sheet size must be 18" x 24"

  [ ] The margins must be 2" on the left and 1/2" for the others, when viewed in landscape orientation.

  [ ] In addition to the map being filed there must be two prints included in the submittal; except that, in counties using imaging systems fewer prints, as determined by the Auditor, may be allowed.

[Statutory Authority: RCW 58.24.040(1) and 58.09.110. 00-17-063 (Order 704), § 332-130-050, filed 8/9/00, effective 9/9/00. Statutory Authority: RCW 58.24.040(1). 89-11-028 (Order 561), § 332-130-050, filed 5/11/89; Order 275, § 332-130-050, filed 5/2/77.]

WAC 332-130-060 Geodetic control survey standards. The following standards shall apply to geodetic control surveys:

(1) The datum for the horizontal control network in Washington shall be NAD83 (1991) as officially adjusted and published by the National Geodetic Survey of the United States Department of Commerce or as established in accordance with chapter 58.20 RCW. The datum adjustment shall be identified on all documents prepared; i.e., NAD83 (1991).

(2) Horizontal and vertical control work must meet or exceed those accuracy and specification standards as published by the Federal Geodetic Control Committee, September 1984, in the bulletin titled, "Standards and Specifications for Geodetic Control Networks" or any subsequently published bulletins modifying such class standards. The class of control surveys shall be shown on documents prepared.

[Statutory Authority: RCW 58.24.040(1). 91-19-013 (Order 581), § 332-130-060, filed 9/9/91, effective 10/10/91; 89-11-028 (Order 561), § 332-130-060, filed 5/11/89; Order 275, § 332-130-060, filed 5/2/77.]

WAC 332-130-070 Survey standards. The accuracy or precision of field work may be determined and reported by either relative accuracy procedures or field traverse standards, provided that the final result shall meet or exceed the standards contained in WAC 332-130-090.

[Statutory Authority: RCW 58.24.040(1). 90-06-028 (Order 568), § 332-130-070, filed 3/1/90, effective 4/1/90; 89-11-028 (Order 561), § 332-130-070, filed 5/11/89; Order 275, § 332-130-070, filed 5/2/77.]

WAC 332-130-080 Relative accuracy -- Principles. The following principles of relative accuracy are provided to guide those who may be analyzing their work by these procedures.

(1) Relative accuracy means the theoretical uncertainty in the location of any point or corner relative to other points or corners set, found, reestablished, or established. A standard of relative accuracy can be achieved by using appropriate equipment and implementing field and office procedures that will result in a ninety-five percent probability of achieving the accuracy required.

(2) Relative accuracy is not related to uncertainties due to differences between measured values and record values or uncertainties in the geodetic position.

(3) In the application of a relative accuracy standard, the surveyor must consider the established land use patterns, land values of and in the vicinity of the surveyed parcel, and the client's intended use of the property. Higher levels of precision are expected to be used in situations necessitating higher accuracy.

(4) Each land boundary survey should contain a statement identifying the method of mathematical analysis used in achieving a stated relative accuracy.

[Statutory Authority: RCW 58.24.040(1). 90-06-028 (Order 568), § 332-130-080, filed 3/1/90, effective 4/1/90; 89-11-028 (Order 561), § 332-130-080, filed 5/11/89; Order 275, § 332-130-080, filed 5/2/77.]

WAC 332-130-090 Field traverse standards for land boundary surveys. The following

standards shall apply to field traverses used in land boundary surveys. Such standards should be considered minimum standards only. Higher levels of precision are expected to be utilized in areas with higher property values or in other situations necessitating higher accuracy.

(1) Linear closures after azimuth adjustment.

(a) City - central and local business and industrial

areas 1:10,000

(b) City - residential and subdivision lots 1:5,000

(c) Section subdivision, new subdivision boundaries for residential lots and interior monument control 1:5,000

(d) Suburban - residential and subdivision lots 1:5,000

(e) Rural - forest land and cultivated areas 1:5,000

(f) Lambert grid traverses 1:10,000

(2) Angular closure.

(a) Where 1:10,000 minimum linear closure is required, the maximum angular error in seconds shall be determined by the formula of 10 √n, where "n" equals the number of angles in the closed traverse.

(b) Where 1:5,000 minimum linear closure is required, the maximum angular error in seconds shall be determined by the formula of 30 √n where "n" equals the number of angles in the closed traverse.

[Statutory Authority: RCW 58.24.040(1). 90-06-028 (Order 568), § 332-130-090, filed 3/1/90, effective 4/1/90; 89-11-028 (Order 561), § 332-130-090, filed 5/11/89.]

WAC 332-130-100 Equipment and procedures. (1) All land boundary surveys filed or recorded shall contain a statement identifying the type of equipment used, such as 10-second theodolite and calibrated chain, or 10-second theodolite and electronic distance measuring unit, and procedures used, such as field traverse, photogrammetric survey, global positioning system survey or a combination thereof to accomplish the survey shown;

(2) All measuring instruments and equipment shall be maintained in adjustment according to manufacturer's specifications.

[Statutory Authority: RCW 58.24.020. 04-11-019 (Order 711), § 332-130-100, filed 5/10/04, effective 6/10/04. Statutory Authority: RCW 58.24.040(1). 89-11-028 (Order 561), § 332-130-100, filed 5/11/89.]

AGO_1971_No_009 Cities And Towns - Plats - Subdivisions - Filing Of - Notice Requirements

The notice requirements of RCW 58.17.080 relating to the filing of a preliminary plat of a proposed subdivision adjacent to or within one mile of the municipal boundaries of a city or town do apply to a proposed subdivision which is located totally within a certain city but is also located within one mile of the municipal boundaries of some one or more other cities or towns.

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February 17, 1971

Honorable Richard H. Slavin

Director, Planning & Community Affairs Agency

1306 Capitol Way

Olympia, Washington 98501

Cite as: AGO 1971 No. 9

Dear Sir:

By letter previously acknowledged you have asked for our opinion on a question which we paraphrase as follows:

Do the notice requirements of RCW 58.17.080, relating to the filing of a preliminary plat of a proposed subdivision adjacent to or within one mile of the municipal boundaries of a city or town, apply to a proposed subdivision which is located totally within a certain city but is also located within one mile of the municipal boundaries of some one or more other cities or towns?

We answer this question in the affirmative for the reasons set forth in our analysis.

ANALYSIS

RCW 58.17.080 codifies the provisions of § 8, chapter 271, Laws of 1969, Ex. Sess., commonly referred to as the platting, subdivision and dedication of land act of 1969. This particular section of the act provides as follows:

[[Orig. Op. Page 2]]

"Notice of the filing of a preliminary plat of a proposed subdivision adjacent to or within one mile of the municipal boundaries of a city or town, or which contemplates the use of any city or town utilities shall be given to the appropriate city or town authorities. Any notice required by this act shall include the hour and location of the hearing and a description of the property to be

platted. Notice of the filing of a preliminary plat of a proposed subdivision located in a city or town and adjoining the municipal boundaries thereof shall be given to appropriate county officials. Notice of the filing of a preliminary plat of a proposed subdivision located adjacent to the right-of-way of a state highway shall be given to the state department of highways."

Your question assumes that a certain proposed subdivision is located entirely within the limits of city "A", but at the same time is located within one mile in distance from the city limits of one or more other nearby cities.

Query: Do the notice requirements of the statute apply in such a case?

After reviewing the entire act in which the statute in question is contained, we conclude that this question must be answered in the affirmative. In essence, we base this conclusion on the probable legislative intent reflected in several related sections within the act; moreover, we are of the opinion that where, as here, notice requirements are apparently intended to promote coordination among interested governmental units, they should be construed literally and it is, of course, obvious that a literal reading of RCW 58.17.080, supra, dictates an affirmative answer to your question.

Other related sections of the act to be noted are §§ 7, 9, 10, 11 and 18 (codified, respectively, as RCW 58.17.070, 58.17.090, 58.17.100, 58.17.110, and 58.17.180). These sections provide, either in full or in material part (as indicated) as follows:

Section 7 (RCW 58.17.070):

"A preliminary plat of proposed subdivisions [[Orig. Op. Page 3]] and dedications of land shall be submitted for approval to the legislative body of the city, town, or county within which the plat is situated."

Section 9 (RCW 58.17.090):

"Upon receipt of an application for preliminary plat approval the administrative officer charged by ordinance with responsibility for administration of regulations pertaining to platting and subdivision shall set a date for a public hearing. Notice of such hearing shall be given by publication of at least one notice not less than ten days prior to the hearing in a newspaper of general circulation within the county. Additional notice of such hearing may be given by mail, posting on the property or in any manner local authorities deem necessary to notify adjacent landowners and the public. All hearings shall be public."

Section 10 (RCW 58.17.100):

"If a city, town or county has established a planning commission or planning agency in accordance with state law or local charter, such commission or agency shall review all proposed subdivisions and make recommendations thereon to the city, town or county legislative body to assure conformance of the proposed subdivision to the general purposes of the comprehensive plan and to planning standards and specifications as adopted by the city, town or county. Reports of the planning commission or agency shall be advisory only: PROVIDED, That the legislative body of the city, town or county may, by ordinance, assign to such commission or agency, or any department official or group of officials, such administrative functions, powers and duties as may be appropriate, including the holding of hearings, and recommendations for approval or disapproval of preliminary plats of proposed subdivisions.

". . ."

[[Orig. Op. Page 4]]

Section 11 (RCW 58.17.110):

"The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. . . . If it finds that the plat makes appropriate provisions for the public health, safety and general welfare and for such drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and schoolgrounds and that the public use and interest will be served by the platting of such subdivision, then it shall be approved. . . ."

Section 18 (RCW 58.17.180):

"Any decision approving or disapproving any plat shall be reviewable for unlawful, arbitrary, capricious or corrupt action or nonaction by writ of review before the superior court of the county in which such matter is pending. The action may be brought by any property owner in the city, town or county having jurisdiction, who deems himself aggrieved thereby: . . ."

The over-all purpose of these several sections, as we view it, is to establish an orderly procedure for the processing of all proposed plats, and, secondarily, to insure that those persons or bodies, including not only property owners but certain nearby governmental entities which may have a special interest in the approval or disapproval of the proposed subdivision, shall be given appropriate notice of the proceedings and an opportunity to participate therein. Under § 8 (RCW 58.17.080), supra, a nearby city or town has been characterized by the legislature as being one of these interested legal entities if its boundaries are located within one mile of the territory to be encompassed in the subdivision. No exception to the notice requirement manifesting this determination has been expressed in the case of those proposed subdivisions which are located within the territory of some other city or town.

In effect, this aspect of the act appears to constitute a legislative recognition that the practical consequences of [[Orig. Op. Page 5]] land development are not limited to the territorial boundaries of the particular political subdivision within which the development is taking place. Instead, as is expressed in § 1 of the act (RCW 58.17.010), its purpose is to regulate the subdivision of land and promote the public health, safety and general welfare ". . . in accordance with standards established by the state to prevent the overcrowding of land; . . ." Accomplishment of this objective may well, from time to time, require coordinated efforts between adjacent or nearby municipalities.

Therefore, in summary, it is our opinion that the notice requirements of RCW 58.17.080, supra, relating to the filing of a preliminary plat of a proposed subdivision adjacent to or within one mile of the municipal boundaries of a city or town, do apply to a proposed subdivision which is located totally within a certain city but is also located within one mile of the municipal boundaries of some one or more other cities or towns.

We trust that the foregoing will be of assistance to you.

Very truly yours,

SLADE GORTON

Attorney General

RICHARD F. LANCEFIELD

Assistant Attorney General

AGO_1971_no_017 counties - plats and subdivisions - leasing of land for mobile homes.

(1) The provisions of chapter 58.17 RCW, relating to plats and subdivisions, are applicable to mobile home parks where the ownership of an entire parcel remains in the developer or operator of the park, but the parcel is divided into five or more lots or sites for the purpose of renting the same to mobile home owners on a month-to-month basis.

(2) The provisions of chapter 58.17 RCW, relating to plats and subdivisions, are also applicable where a developer or operator retains ownership of an entire parcel of land, but divides the same into five or more lots or sites for the purpose of renting the same on a nightly or weekly basis to the owners of campers, trailers, and such other mobile recreational and camping vehicles.

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June 9, 1971

Honorable S. Brooke Taylor

Prosecuting Attorney

Clallam County

Lincoln Building, Suite 205

Port Angeles, Washington 98362

Cite as: AGO 1971 No. 17

Dear Sir:

By letter previously acknowledged you have requested the opinion of this office on two questions which we paraphrase as follows:

(1) Do the provisions of chapter 58.17 RCW apply to mobile home parks where the ownership of an entire parcel remains in the developer or operator of the park, but the parcel is divided into five or more lots or sites for the purpose of renting the same to mobile home owners on a month-to-month basis?

[[Orig. Op. Page 2]]

(2) Do the provisions of chapter 58.17 RCW apply where a developer or operator retains ownership of an entire parcel of land, but divides the same into five or more lots or sites for the purpose of renting the same on a nightly or weekly basis to owners of campers, trailers, and other such mobile recreational and camping vehicles?

We answer both questions in the affirmative for the reasons set forth below.

ANALYSIS

Chapter 58.17 RCW codifies the provisions of chapter 271, Laws of 1969, Ex. Sess., commonly referred to as the platting, subdivision and dedication of land act of 1969. By its terms chapter 58.17 RCW applies to every subdivision of land within the state of Washington. (RCW 58.17.030.)

The answer to your questions depends upon the definition of the term "subdivision." That term is defined by RCW 58.17.020 (1), as follows:

"'Subdivision' is the division of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale or lease and shall include all resubdivision of land."

In simple terms, your questions raise the issue of whether or not the term "lease" as found in RCW 58.17.020 would include the daily, weekly or monthly rental of a lot or site to a mobile home or recreational vehicle owner.

Before proceeding further it will be helpful to keep in mind certain rules of statutory construction which must be used to guide our interpretation of the statute involved. Without attempting to provide an exhaustive list of all rules of construction which might apply, we will set out those rules which we think most pertinent.

It is fundamental that the objective of all statutory construction is to ascertain and to give effect to the legislative intent, which is to be derived from the statute as a whole, and not from single or isolated sentences or paragraphs, or solitary words. Anderson v. City of Seattle, 78 W.D.2d 193 [[78 Wn.2d 201]], 471 P.2d 87 (1970); State ex rel. Tarver v. Smith, 78 W.D.2d 141 [[78 Wn.2d 152]], 470 P.2d 172 (1970). A statute must [[Orig. Op. Page 3]] be construed not strictly according to its letter, but according to its intent as gathered from all parts of the act. Alderwood Water Dist. v. Pope & Talbot, 62 Wn.2d 319, 382 P.2d 639 (1963); and it is the duty of the court to adopt a construction that is reasonable and in furtherance of the obvious and manifest purpose of the legislation. Wilson v. Lund, 74 Wn.2d 945, 447 P.2d 718 (1968).

In arriving at the legislative meaning of the word "lease" we must proceed with the rule in mind that the words of a statute, unless otherwise defined therein, must be given their usual, customary and ordinary meaning. State ex rel. Beam v. Civil Service Commission of City of Spokane, 77 W.D.2d 964 [[77 Wn.2d 951]], 468 P.2d 998 (1970); Rena-Ware Distributors, Inc. v. State, 77 W.D.2d 521 [[77 Wn.2d 514]], 463 P.2d 622 (1970).

Lastly, the rule of reason upholding the obvious purpose that the legislature was attempting to achieve by enacting any statute overrides all technical rules of construction. State v. Coffey, 77 W.D.2d 639 [[77 Wn.2d 630]], 465 P.2d 665 (1970).

In determining the intent of the legislature in enacting chapter 58.17 RCW, and in particular in defining "subdivision" as found in RCW 58.17.020, we must look then to the recitation of the purpose of the legislature in enacting the chapter. That purpose is found in RCW 58.17.010, which provides as follows:

"The purpose of this chapter is to regulate the subdivision of land and to promote the public health, safety and general welfare in accordance with standards established by the state to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate

light and air; to facilitate adequate provision for water, sewerage, parks and recreation areas, sites for schools and schoolgrounds and other public requirements; to provide for proper ingress and egress; and to require uniform monumenting of land subdivisions and conveyancing by accurate legal description."

It is obvious from the language above quoted that the legislature intended to deal broadly and generally with the problems presented by division of land which results in an [[Orig. Op. Page 4]] increased population residing in any area, whether permanent or transient, and which increases, or in any way affects, a broad range of general governmental services which must be provided in order to maintain the public health, safety and welfare. Land is no less overcrowded, for example, if the residents of a mobile home park which has been inappropriately subdivided into small lots or sites, without adequate consideration for light and air, or adequate provision for water or sewerage facilities, reside thereon as month-to-month tenants under an oral lease, rather than as tenants from year-to-year under an express written contract. Likewise, a camper park which has been subdivided and laid out without proper engineering consideration for ingress and egress, and results in congestion on the streets and highways adjacent thereto, is not less in the public interest because its lots or sites are rented on a nightly or weekly basis rather than for a longer term under a formal written lease.

In determining the scope of the word "lease," and thus the application of the act itself to these circumstances, we must consider the term in its ordinary and everyday sense. The word "lease" is defined in Webster's Third New International Dictionary as:

"a contract by which one conveys lands, tenements, or hereditaments for life, for a term of years, <u>or at will or for any less interest than that of the lessor</u>, usually for a specified rent or compensation; . . ." (Emphasis supplied.)

Similar broad definitions are found in the expressions of the courts. The word "lease" has been variously defined as "any agreement which gives rise to the relationship of landlord and tenant." <u>Smith v. Royal Ins. Co.</u>, 111 F.2d 667 (9th Cir. 1940); and "any grant of permissive use." <u>The People v. City of Chicago</u>, 349 Ill. 304, 182 N.E. 419 (1932).

The Washington courts also define the word "lease" broadly. In <u>Barnett v. Lincoln</u>, 162 Wash. 613, 299 Pac. (1931), the court said:

". . . If exclusive possession or control of the premises, or a portion thereof, is [[Orig. Op. Page 5]] granted, even though the use is restricted by reservations, the instrument will be considered to be a lease and not a license. . . ." (162 Wash. pp. 617-618.)

It is true that in many cases the rental of space to the operators of recreational vehicles on a nightly or weekly basis is, in fact, consummated orally, and without the formalities of a written document. This would not alter the relationship of the parties as lessor and lessee, however. Accord, such cases as <u>Watkins v. Balch</u>, 41 Wash. 310, 83 Pac. 321 (1906); and <u>Armstrong v. Burkett</u>, 104 Wash. 476, 177 Pac. 333 (1918), in which the court held that all agreements for the rental of property, although not meeting the requirements for a writing contained in chapter 59.04 RCW relating to year-to-year tenancies, are nontheless valid as leases from month-to-month or day-to-day in accordance with the understanding of the parties.

A further basis for the conclusion we reach herein is to be found in the language of RCW 58.17.040, which provides for exclusions from the operation of the chapter. That section provides as follows:

"The provisions of this chapter shall not apply to:

"(1) Cemeteries and other burial plots while used for that purpose;

"(2) Divisions of land into lots or tracts where the smallest lot is twenty acres or more and not containing a dedication of a public right-of-way;

"(3) Divisions of land into lots or tracts none of which are smaller than five acres and not containing a dedication unless the governing authority of the city, town or county in which the land is situated shall have by ordinance provided otherwise.

"(4) Divisions made by testamentary provisions, the laws of descent, or upon court order."

[[Orig. Op. Page 6]]

Where express exceptions are made from the operation of a particular statute the legal presumption arises that the legislature did not intend to save other cases or situations from the operation of the act. The rule applied in such cases is that an exception in a statute amounts to an affirmation of the application of its provisions to all other cases not excepted and excludes all other exceptions, or the enlargement of exceptions expressly made. Spokane v. The State, 198 Wash. 682, 89 P.2d 826 (1939); Exchange Nat. Bank v. United States, 147 Wash. 176, 265 Pac. 722; aff'd. 279 U.S. 80, 73 L.Ed. 621, 49 S.Ct. 321 (1928).

With the above rule in mind, we must conclude that the legislature intended to exclude from the operation of chapter 58.17 RCW only those divisions of land expressly enumerated in RCW 58.17.040, and intended not to exclude the two situations which we are here considering. For us, or for a court, to construe other exceptions into the statute would be to legislate judicially. Spokane v. State, supra.

Therefore, in summary, it is our opinion that the provisions of chapter 58.17 RCW apply fully where a parcel of land is divided into five or more lots or sites for the purpose of either renting such lots or sites to mobile home owners on a month-to-month basis, or to the owners of campers, trailers, or other mobile recreational vehicles on a daily or weekly basis. Accord, our earlier opinion on essentially this same issue which was written to your predecessor on March 30, 1970, a copy of which you will find enclosed herewith. Regardless of the absence of a writing, or other technical formalities in any given case, it is our best judgment that the intent of the legislature, in using the term "lease" in RCW 58.17.020 (1), supra, was to include all periodic rentals, for whatever period, within the scope of that term as used in the act.

[[Orig. Op. Page 7]]

We trust the foregoing will be of assistance to you.

Very truly yours,

SLADE GORTON

Attorney General

MALACHY R. MURPHY

Assistant attorney general

AGLO_1976_no_028 plats and platting - counties - authority of county to regulate certain subdivisions.

A county may, by ordinance, require the platting of subdivisions in accordance with chapter 58.17 RCW in any case in which the smallest lot within a subdivision is fifty acres or less in area.

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April 12, 1976

Honorable Hubert F. Donohue

State Senator, 9th District

Route 2, Box 13

Dayton, Washington 99328

Cite as: AGLO 1976 No. 28

Dear Senator Donohue:

By recent letter you have requested our opinion on a question which we paraphrase as follows:

May a county, by ordinance, require the platting of subdivisions in accordance with chapter 58.17 RCW in any case in which the smallest lot within a subdivision is fifty acres or less in area?

We answer the foregoing question in the affirmative.

ANALYSIS

Chapter 271, Laws of 1969, Ex. Sess., (now codified as chapter 58.17 RCW) was enacted as a uniform platting of subdivisions act. See, AGO 1970 No. 14 [[to Martin J. Durkan, State Senator on June 23, 1970]], copy enclosed. As further indicated in that opinion, however, in § 4 of the original act (RCW 58.17.040) the legislature enumerated certain types of subdivisions to which the act was not intended to apply. This section provided as follows:

"The provisions of this chapter shall not apply to:

"(1) Cemeteries and other burial plots while used for that purpose;

"(2) Divisions of land into lots or tracts where the smallest lot is twenty acres or more and not containing a dedication of a public right-of-way;

"(3) Divisions of land into lots or tracts none of which are smaller than five acres and not containing a dedication unless the governing authority [[Orig. Op. Page 2]] of the city, town or county in which the land is situated shall have by ordinance provided otherwise.

"(4) Divisions made by testamentary provisions, the laws of descent, or upon court order." (Emphasis supplied.)

Based upon the above underscored provisions of subsection (3) of this statute we advised that:

"A subdivision of land containing no dedication and no lots or tracts smaller than five acres in size may be made subject to the provisions of chapter 271, Laws of 1969, Ex. Sess., if the county, city or town in which the land is situated enacts an ordinance so providing and it is not necessary that such an ordinance shall have been enacted prior to the effective date of the 1969 act."

Thereafter, in 1974, RCW 58.17.040, supra, was amended by § 2, chapter 134, Laws of 1974, Ex. Sess. Set forth in bill form for ease of reference, that amendment so altered the terms of the original statute as to cause it now to read, in material part, as follows:

"The provisions of this chapter shall not apply to:

"(1) Cemeteries and other burial plots while used for that purpose;

"(2) Divisions of land into lots or tracts ((~~where the smallest lot is twenty acres or more and not containing a dedication of a public right of way;~~

~~"(3) Divisions of land into lots or tracts none~~)) each of which is ((~~are smaller than~~)) one one hundred twenty-eighth of a section of land or larger, or five acres or larger ((~~and not containing a dedication~~)) if the land is not capable of description as a fraction of a section of land, unless the governing authority of the city, town, or county in which the land is situated shall have ((~~by ordinance provided otherwise;~~

[[Orig. Op. Page 3]]

~~"(4)~~)) adopted a subdivision ordinance requiring plat approval of such divisions: PROVIDED, That for purposes of computing the size of any lot under this item which borders on a street or road, the lot size shall be expanded to include that area which would be bounded by the center line of the road or street and the side lot lines of the lot running perpendicular to such center line;

". . ."

In essence, what the legislature did by this 1974 amendment was to combine subsections (2) and (3) of RCW 58.17.040 so as to establish a single class of divisions to which the state law would not apply,

". . . unless the governing authority of the city, town, or county in which the land is situated shall have adopted a subdivision ordinance requiring plat approval of such divisions: . . ."

That class, in the present words of the statute, encompasses:

"Divisions of land into lots or tracts each of which is one one hundred twenty-eighth of a section of land or larger, or five acres or larger if the land is not capable of description as a fraction of a section of land, . . ."

Nevertheless, insofar as the qualifying language of the statute is concerned, the reasoning which we utilized in AGO 1970 No. 14, supra, as well as the conclusion which we there reached, remains valid. Accordingly, notwithstanding the intervening 1974 amendment to RCW 58.17.040, we at this time reaffirm the foregoing 1970 opinion and, on the basis thereof, answer your present question, as above paraphrased, in the affirmative.

[[Orig. Op. Page 4]]

It is hoped that the foregoing will be of some assistance to you.

Very truly yours,

SLADE GORTON

Attorney General

PHILIP H. AUSTIN

Deputy Attorney General

AGLO_1979_No_029 Counties - Plats And Subdivisions - Approval Of Dedications In Short Plat

A county, under authority of RCW 58.17.060, may adopt an ordinance which would authorize the director of planning to approve a short plat containing dedications without submission of the dedications to the county commissioners for approval under RCW 58.17.070.

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August 24, 1979

Honorable Arthur R. Eggers

Walla Walla County Prosecuting Attorney

407 Drumheller Building

Walla Walla, Washington 99362

Cite as: AGLO 1979 No. 29

Dear Sir:

By recent letter you have requested our opinion on the following question:

"May a county, under authority of RCW 58.17.060, adopt an ordinance which would authorize the Director of Planning to approve a short plat which contains dedications without submission of the dedications to the County Commissioners for approval as provided in RCW 58.17.070?"

We answer the foregoing question in the affirmative for the reasons set forth in our analysis.

ANALYSIS

Chapter 58.17 RCW relates to plats, subdivisions and dedications. Before turning to the substantive provisions of the chapter which relates to your question the following definitions from RCW 58.17.020 are to be noted:

[[Orig. Op. Page 2]]

"(1) 'Subdivision' is the division of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale or lease and shall include all resubdivision of land.

"(2) 'Plat' is a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys or other divisions and dedications.

"(3) 'Dedication' is the deliberate appropriation of land by an owner for any general and public uses, reserving to himself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final plat or short plat showing the dedication thereon; and, the acceptance by the public shall be evidenced by the approval of such plat for filing by the appropriate governmental unit.

". . .

"(5) 'Final plat' is the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in this chapter and in local regulations adopted pursuant to this chapter.

"(6) 'Short subdivision' is the division of land into four or less lots, tracts, parcels, sites or subdivisions for the purpose of sale or lease.

"(7) 'Short plat' is the map or representation of a short subdivision.

". . ."

The first of the two substantive sections cited in your question, RCW 58.17.060, relates to short plats and short subdivision and, as amended by § 3, chapter 134, Laws of 1974, Ex. Sess., now reads as follows:

[[Orig. Op. Page 3]]

"The legislative body of a city, town, or county shall adopt regulations and procedures, and appoint administrative personnel for the summary approval of short plats and short subdivisions, or revision thereof. Such regulations shall be adopted by ordinance and may contain wholly different requirements than those governing the approval of preliminary and final plats of subdivisions and may require surveys and monumentations and shall require filing of a short plat for record in the office of the county auditor: Provided, That such regulations must contain a requirement that land in short subdivisions may not be further divided in any manner within a period of five years without the filing of a final plat: Provided further, That such regulations are not required to contain a penalty clause as provided in RCW 36.32.120 and may provide for wholly injunctive relief."

RCW 58.17.070, in turn, codifies the original provisions of § 7, chapter 271, Laws of 1969, Ex. Sess., and says that:

"A preliminary plat of proposed subdivisions and dedications of land shall be submitted for approval to the legislative body of the city, town, or county within which the plat is situated."

The basic issue raised by your question is whether this last quoted section of chapter 58.17 RCW is applicable to a dedication which is contained in a short plat that has been filed with a county director of planning in accordance with seemingly inconsistent provisions of a county short plat ordinance adopted under RCW 58.17.060, supra. In our opinion RCW 58.17.070 is not applicable in such a case and, therefore, your question, as stated above, is answerable in the affirmative; i.e., if so authorized by the subject ordinance, the director of planning may,

". . . approve a short plat which contains dedications without submission of the

dedications to the county commissioners for approval as provided in RCW 58.17.070."

In the first place, you will readily note that RCW 58.17.060, supra, expressly authorizes a county, in connection with its short plat ordinance, to,

[[Orig. Op. Page 4]]

". . . appoint administrative personnel for the summary approval of short plats and short subdivisions, . . ."

In addition, that same statute further provides that a county short plat ordinance,

". . . may contain wholly different requirements than those governing the approval of preliminary and final plats and subdivisions . . ."

Bearing this in mind let us now return, once again, to the definition of "dedication" in RCW 58.17.020(3), supra. There, we find the following pertinent language:

". . . The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final plat or short plat showing the dedication thereon; and, the acceptance by the public shall be evidenced by the approval of such plat for filing by the appropriate governmental unit." (Emphasis supplied.)

What all of this means, in our opinion, is that in the case of a dedication contained in a short plat, as opposed to the plat of a full subdivision, acceptance by the county is manifested by approval of the short plat itself -in whatever manner is provided for by the particular county's short plat ordinance. Thus, if the legislative body of the county, in adopting that short plat ordinance, has authorized the director of planning to approve short plats it has thereby also authorized the director of planning to accept any dedications contained therein on behalf of the county.

We trust that the foregoing will be of assistance to you.

Very truly yours,

SLADE GORTON

Attorney General

PHILIP H. AUSTIN

Deputy Attorney General

AGLO_1980_No_001 Counties - Cities And Towns - Building - Fire - Platting And Subdivisions - Compliance With Access Requiriements Of Unform Fire Code

Explanation of the interrelationship between § 13.208 of the Uniform Fire Code, 1976 Edition, and the platting of subdivisions or short subdivisions under chapter 58.17 RCW and/or a local short subdivision ordinance; consideration of the respective roles of the original subdivider and subsequent purchasers of building lots in achieving compliance with the access requirements of § 13.208 of the Uniform Fire Code.

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January 9, 1980

Honorable Carol Monohon

State Rep., 19th District

Rt. 1, Box 136

Raymond, Washington 98577

Cite as: AGLO 1980 No. 1

Dear Representative Monohon:

By recent letter you made reference to a certain provision in the Uniform Fire Code, 1976 Edition, adopted by reference for all counties and cities pursuant to RCW 19.27.030. You then requested our opinion on the following questions:

"(1) If the owner of land wishes to subdivide or short subdivide land for residential purposes after the 1976 Uniform Fire Code became effective, does the owner have to provide the access roadway provided for in § 13.208 before the lots may be sold? In other words, does § 13.208 affect the mandatory subdivision or short subdivision requirements, and essentially 'amend' by implication the mandatory provisions of chapter 58.17 RCW?

[[Orig. Op. Page 2]]

"(2) If new lots are created through the subdivision, or short subdivision, process after the 1976 Uniform Fire Code became effective and individual lots are sold, does a purchaser of an individual lot who builds a single home on his lot have to provide the access roadway provided for in § 13.208?

"(3) If new lots are created through the subdivision, or short subdivision, process after the 1976 Uniform Fire Code became effective and the person who divides the land constructs homes on the lots and then sells the lots and homes, does the person who divides the land have to provide the access roadway provided for in § 13.208?

"(4) If lots which were created through the subdivision, or short subdivision, process prior to the time the 1976 Uniform Fire Code became effective were not sold until after the date the 1976 Uniform Fire Code became effective: (a) do the purchasers of the individual lots have to provide the access roadway provided for in § 13.208? (b) does the person who divided the land have to build the access roadway provided for in § 13.208 before any more lots are sold?"

We respond to the foregoing questions in the manner set forth below.

ANALYSIS

RCW 19.27.030 provides, in pertinent part, that:

"There shall be in effect in all cities, towns and counties of the state a state building code which shall consist of the following codes which are hereby adopted by reference:

". . .

[[Orig. Op. Page 3]]

"(3) The Uniform Fire Code with appendices thereto, 1976 edition, published by the International Conference of Building Officials and the Western Fire Chiefs Association;

". . ."

Section 13.208 of the Uniform Fire Code, 1976 Edition, to which reference is made in your letter, reads, in turn, as follows:

"(a) Every building hereafter constructed shall be accessible to fire department apparatus by way of access roadways with all-weather driving surface of not less than 20 feet of unobstructed width, with adequate roadway turning radius capable of supporting the imposed loads of fire apparatus and having a minimum of 13 feet, 6 inches of vertical clearance.

"EXCEPTION: When there are not more than two Group R, Division l or M Occupancies as defined in the Building Code, the requirement of this Section may be modified when, in the opinion of the Chief, fire fighting or rescue operations would not be impaired.

"(b) The required width of access roadways shall not be obstructed in any manner, including parking of vehicles, 'NO PARKING' signs and/or other appropriate notice prohibiting obstructions may be required and shall be maintained.

"(c) The access roadway shall be extended to within 150 feet of all portions of the exterior walls of the first story of any building. Where the access roadway cannot be provided, approved fire protection system or systems shall be provided as required and approved by the Chief.

[[Orig. Op. Page 4]]

"(d) Where fire protection systems approved by the Chief are provided, the above required clearances may be modified.

"(e) The Chief shall have the authority to require an increase in the minimum access widths where such width is not adequate for fire or rescue operations."

You earlier asked us to explain the interrelationship between the foregoing section of the Uniform Fire Code and ". . . local subdivision and short subdivision requirements . . ." under chapter 58.17 RCW. By letter dated November 8, 1979, we replied saying, in material part:

". . . Both zoning and platting involve, in essence, the uses which may be made of particular land. Thus, for example, by zoning a given area for single family residential dwellings, a board of county commissioners or city council (as the case may be) makes it legally possible for that area to be developed as a platted real estate subdivision. And then, by approving either a plat or a short plat of land within the area so zoned, either pursuant to chapter 58.17 RCW or the county or city short subdivision ordinance, the commissioners or council allow the area to be divided into specified land units for the purpose of sale or lease.

"Neither of those land use related actions, however, by themselves, address the further question of what kinds of structures may be constructed within the area or in what manner those structures shall be accessible to such things as fire department apparatus. Those kinds of questions, instead, remain dependent upon the applicable provisions of the state building code including (in this case) the Uniform Fire Code and, specifically, § 13.208, supra. And, by virtue of chapter 19.27 RCW, that code is applicable within all counties and cities in the state of Washington except to the limited extent that it may be modified by local authority under RCW 19.27.040."

[[Orig. Op. Page 5]]

Bearing this previous explanation in mind, and assuming no material modification of § 13.208, supra, by local authority under RCW 19.27.040, we would answer your present questions as follows:

Question (1):

Neither RCW 19.27.030 nor § 13.208 of the Uniform Fire Code, supra, amend by implication the provisions of chapter 58.17 RCW regarding the establishment of subdivisions or short subdivisions. The basic reason for this conclusion is that, as we earlier indicated, the state building code (of which the Uniform Fire Code is a part) and the platting and subdivision law relate to two different subjects. The real question, however, is whether either the original subdivider or later purchasers of lots within the subdivision (or short subdivision) must comply with § 13.208 of the Uniform Fire Code, supra, in connection with the construction of any buildings on those lots. And our answer to that question necessarily is in the affirmative because that section of the Uniform Fire Code, in essence, requires any buildings constructed after its adoption by the legislature to be in compliance with the access requirements stated therein.

Questions (2) and (3):

In response to these two questions, it would seem to us that initial responsibility for compliance with § 13.208, supra, rests with the subdivider, at least in the case of subdivisions established after the effective date of the Fire Code amendments. Specifically, we note the following provisions of RCW 58.17.110 relating to the approval or disapproval of any proposed subdivision:

"The city, town, or county legislative body shall inquire into the public use and interest

proposed to be served by the establishment of the subdivision and dedication. It shall determine if appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and schoolgrounds, and shall consider all other relevant facts and determine whether the public [[Orig. Op. Page 6]] interest will be served by the subdivision and dedication. If it finds that the proposed plat makes appropriate provisions for the public health, safety, and general welfare and for such open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and schoolgrounds and that the public use and interest will be served by the platting of such subdivision, then it shall be approved. If it finds that the proposed plat does not make such appropriate provisions or that the public use and interest will not be served, then the legislative body may disapprove the proposed plat. Dedication of land to any public body, may be required as a condition of subdivision approval and shall be clearly shown on the final plat. The legislative body shall not as a condition to the approval of any plat require a release from damages to be procured from other property owners." (Emphasis supplied)

Therefore, at the time the proposed subdivision is submitted to it for review, the city or county legislative body involved should consider, inter alia, whether such streets, roads or other public access ways as are provided for are truly "adequate" when laid against the standards set forth in the Uniform Fire Code. If they are not, the reviewing authority would be entirely justified in disapproving the subdivision proposal on that basis.

But even if, for some reason, the reviewing legislative authority were to approve such a proposed subdivision, the only immediate result of that action would be to shift the burden of compliance with § 13.208, supra, to later purchasers of lots therein. In other words, based upon approval of the subdivision under RCW 58.17.110, supra (or any comparable provisions of the local short subdivision ordinance as the case may be), lots within the subdivision or short subdivision could thereafter legally be sold. See, RCW 58.17.200. But as a result, the purchaser would then become the one who would have to do whatever was necessary in order to comply with the Uniform Fire Code before constructing any buildings on the lot or lots thus acquired.

[[Orig. Op. Page 7]]

Question (4):

Your final question, repeated for ease of reference, inquires as follows:

"If lots which were created through the subdivision, or short subdivision, process prior to the time the 1976 Uniform Fire Code became effective were not sold until after the date the 1976 Uniform Fire Code became effective: (a) do the purchasers of the individual lots have to provide the access roadway provided for in § 13.208? (b) does the person who divided the land have to build the access roadway provided for in § 13.208 before any more lots are sold?"

This question, as we understand it, assumes local approval of the subdivision (or short subdivision) based upon a determination of adequacy under RCW 58.17.110, supra, under such building code requirements as were in effect prior to the time the 1976 Uniform Fire Code became effective. The subsequent adoption, by the legislature, of the 1976 Code would not, in such a case, have automatically invalidated the preexisting (previously approved) subdivision or short subdivision. Therefore, there would be no legal barrier to further sales of lots within the subdivision. But again, any persons purchasing those lots would have to comply with the provisions of § 13.208 of the Uniform Fire Code, 1976 Edition, supra, in order to construct any buildings on their lots. And thus, as a practical matter, the original subdivider might well find his remaining lots (if any) unsalable unless he first did whatever was

necessary, under the amendatory process, to alter the access elements of the plat to the extent necessary to enable any subsequent purchasers of lots therein to comply with the "new" Uniform Fire Code requirements set forth in § 13.208, supra.

It is hoped that the foregoing will be of assistance to you.

Very truly yours,

SLADE GORTON

Attorney General

PHILIP H. AUSTIN

Deputy Attorney General

AGLO_1980_No_012 Counties - Cities And Towns - Platting And Subdivisions - Resubdivision Of Lot Within Existing Subdivision

When, within an existing land subdivision established pursuant to either chapter 58.16 or chapter 58.17 RCW, the owner of an individual lot proposes to divide it into a number of smaller lots for the purpose of sale or lease, while such action constitutes a "resubdivision" as defined in RCW 58.17.020(6) and is, thereby, subject to the general provisions of chapter 58.17 RCW relating to subdivisions (AGO 1980 No. 5), the subdivider is not, in addition, required to vacate his existing lot or lots pursuant to chapter 58.11 RCW or alter the plat pursuant to chapter 58.12 RCW; if, however, the vacation of a plat or part thereof entails the vacation of a county road, one or the other of the procedures set forth in chapter 58.11 RCW and chapter 36.87 RCW, respectively, must be utilized.

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March 14, 1980

Honorable Patrick D. Sutherland

Prosecuting Attorney

Thurston County

2000 Lakeridge Drive S.W.

Olympia, Washington 98502

Cite as: AGLO 1980 No. 12

Dear Sir:

By letter previously acknowledged, you requested our opinion regarding the relationship between chapters 58.11, 58.12 and 58.17 RCW. Specifically, you asked:

1. Must a platted lot or lots, created at any time and in any manner other than by short subdivision pursuant to RCW 58.17.060 or "large lot" subdivision pursuant to RCW 58.17.040(2), be vacated pursuant to Chapter 58.11 RCW or altered or replatted pursuant to Chapter 58.12 RCW before the lot may be redivided in any manner pursuant to Chapter 58.17 RCW?

[[Orig. Op. Page 2]]

2. To what extent, if any, would the answer to Question No. 1 be affected by the fact that the original platted lot was created by short subdivision pursuant to RCW 58.17.060 or by "large lot" subdivision pursuant to RCW 58.17.040(2)?

3. If the vacation of a plat or part thereof entails the vacation of a county street, do the vacation requirements of RCW 58.11.010, et seq., and Chapter 36.87 RCW apply?

We answer your questions in the manner set forth in our analysis.

ANALYSIS

In AGO 1980 No. 5 we recently concluded that:

"Where, within an existing land subdivision established pursuant to either chapter 58.16 or 58.17 RCW, the owner of an individual lot proposes to divide that lot into four or fewer smaller lots for the purpose of sale or lease, such action will not constitute the establishment of a 'short subdivision' as defined in RCW 58.17.020(6) and, thereby, be subject to the city or county's short subdivision ordinance as enacted pursuant to RCW 58.17.060; instead, such action will constitute a 'resubdivision' and thus be subject to the general provisions of chapter 58.17 RCW relating to subdivisions."

Question (1):

As we understand it, the essence of your first question is whether, in addition to thus complying with the requirements of chapter 58.17 RCW relating to subdivisions, it is legally necessary for a person owning a lot or lots within an existing subdivision who desires further to divide that lot or lots to:

(a) Vacate the existing lots pursuant to chapter 58.11 RCW; and/or

(b) Alter the plat pursuant to chapter 58.12 RCW.

[[Orig. Op. Page 3]]

In posing this question, you further asked us to assume that:

". . . the proposed redivision entails, in the first instance, only the creation of new lot lines and not the alteration of any existing lines . . .; in the second instance, an alteration of the plat only to accommodate a road and new lots . . .; in the third instance, a change in existing lot lines . . .; and in the fourth instance, not the alteration of a lot or road line but rather a change in a condition of approval of the original plat, for example a deletion of an open space dedication or reservation."

You also supplemented your request with three drawings illustrating the first three of these four assumptions. In drawing "A", what is identified as Lot 9 in an existing subdivision would be divided into three numbered smaller lots. In drawing "B", the same Lot 9 would be divided into four smaller lots, each facing a cul-de sac created by the extension of an adjacent county road. And in drawing "C", Lot 9 and adjoining Lot 10 (both presumably in common ownership) would first be combined and then divided into ten smaller lots also including a cul-de sac and an extension of the county road.

Clearly, each of these three cases would constitute a "resubdivision" within the meaning of so much of RCW 58.17.020(1) as defines the term "subdivision" as:

". . . the division of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale and lease and shall include all resubdivision of land." (Emphasis supplied)

Accord, AGO 1980 No. 5, supra. On the other hand, the fourth case described in your letter (involving only a change in a condition of approval of the original plat) would not constitute such a "resubdivision" but, instead, would be governed by chapter 58.17 RCW only as an amendment, in effect, to a previously established plat. It is our considered opinion, however, that none of the actions described additionally fall under, or require compliance with, either chapter 58.11 or chapter 58.12 RCW.

[[Orig. Op. Page 4]]

(a) Chapter 58.11 RCW:

This RCW chapter codifies several sections of the territorial code of 1881 and relates, generally, to the vacation of any street, alley, lot or common in either an unincorporated (RCW 58.11.010) or an incorporated (RCW 58.11.040) town. The only apparent purpose of this territorial legislation, however, was to facilitate the removal from dedicated status of land previously dedicated for some public use in connection with the formation or proposed formation of a town. See, RCW 58.11.030 and 58.11.050. Therefore, as we read it, the provisions of chapter 58.11 RCW have nothing to do with any of the hypothetical cases described in your letter.

(b) Chapter 58.12 RCW:

This chapter codifies the provisions of chapter 92, Laws of 1903, and involves the vacation or alteration of an existing plat. The first section thereof, RCW 58.12.010, reads as follows:

"That whenever three fourths in number and area of the owners of any townsite, city plat or plats, addition or additions, or part thereof, shall be desirous of altering the plat or plats, replatting or vacating the same or any part thereof, they may prepare a plat or plats, showing such alterations or replat, drafted upon a copy of the existing plat or plats, or that portion desired to altered, replatted or vacated, and file the same with the clerk of the board of county commissioners, or city council or other governing body having jurisdiction of the establishment or vacation and control of the streets to be affected, accompanied with a petition for the change desired: PROVIDED, That this section shall not be construed as applying to the alteration, replatting or vacation of any plat of state granted, tide, or shore lands."

The remaining sections of the chapter, RCW 58.12.020 through 58.12.080 then spell out what is to be done in response to such a petition - along with the legal consequences of [[Orig. Op. Page 5]] such action. Again, however, we can see no basis for saying that compliance with this chapter is required in order to further subdivide a lot or lots within an existing subdivision in the manner contemplated by your question.

In the first place, chapter 58.12 RCW is simply not mandatory but, rather, constitutes only one of several alternative approaches to the alteration of an existing platted subdivision. Accord, our letter opinion of November 15, 1978, to the Pend Oreille County prosecuting attorney, copy enclosed, in which we said:

". . . Chapter 58.12 RCW, to which you have referred, covers only one of those methods; namely, the alternation of a plat (presumably long in existence) on the basis of a petition signed by at least three quarters of the '. . . number and area of the owners . . .' of land comprising the plat. Alternatively, however, an existing platted subdivision may be altered by the subdivider himself upon compliance with the applicable provisions of chapter 58.17 RCW dealing with replatting. And finally, a new platted subdivision may be created within an existing subdivision through the process of

further platting and subdividing a single lot within the original subdivision."

And secondly, as we also then went on to say in that same letter opinion, the provisions of chapter 58.12 RCW are, in any event,

". . . only pertinent in those instances in which the alteration is being initiated by property owners within the subdivision involved and amounts to something other than simply the creation of a new, smaller, subdivision through the process of dividing a single lot within an existing subdivision."

Accord, Hamilton v. Link-Hellmuth, Inc., 104 Ohio App. 1, 146 N.E.2d 615 (1957), recently cited with approval in Bersos v. Cape George Colony Club, 4 Wn.App. 663, 434 P.2d 485 (1971).

We therefore answer your first question, as above set forth, in the negative.

[[Orig. Op. Page 6]]

Question (2):

Next you have asked:

To what extent, if any, would the answer to Question No. 1 be affected by the fact that the original platted lot was created by short subdivision pursuant to RCW 58.17.060 or by "large lot" subdivision pursuant to RCW 58.17.040(2)?

Conceivably, had we, instead, answered question (1) in the affirmative, we might nevertheless have distinguished the cases referred to therein from either the "large lot" or the "short subdivision" situations. Having answered question (1) in the negative, however, there obviously is no need to attempt making such a distinction. The provisions of chapter 58.11 and 58.12 RCW, supra, are at least equally inapplicable, in terms of some form of mandatory compliance here.

Question (3):

Your third and final question, as we understand it, does not involve any of the four hypothetical cases referred to in connection with questions (1) and (2), supra. This question asks:

If the vacation of a plat or part thereof entails the vacation of a county street, do the vacation requirements of RCW 58.11.010, et seq., and Chapter 36.87 RCW apply?

We have already noted chapter 58.11 RCW in our response to question (1). Clearly, it constitutes one method of vacating a county road. Specifically, RCW 58.11.010 provides that:

"Any person interested in any town not incorporated, who may desire to vacate any lot, street, alley, common, or any part thereof, or any public square, or part thereof, in any such town, may petition the board of county commissioners for the proper county. The petition shall set forth the facts pertinent thereto, with a description of the property to be vacated, and shall be filed in the office [[Orig. Op. Page 7]] of the county auditor. The auditor shall give notice of the time and place of hearing on the petition before the commissioners, by posting notice thereof, containing a description of the property to be

vacated, in three of the most public places in said town, at least twenty days before the hearing."

Chapter 36.87 RCW also deals, among other things, with the vacation of county roads upon the petition of freeholders residing in the vicinity thereof. See, RCW 36.87.020 and 36.87.030.

We would regard chapters 58.11 RCW and 36.87 RCW as authorizing alternative methods for the vacation of a county road. Moreover, as far as we know, they are the only methods. Therefore, if the vacation of a plat or part thereof entails the vacation of a county road, one or the other of these two laws must be utilized. But it is not necessary to comply with both.

This completes our consideration of your questions. We trust that the foregoing will be of assistance to you.

Very truly yours,

SLADE GORTON

Attorney General

PHILIP H. AUSTIN

Deputy Attorney General

ROBERT F. HAUTH

Senior Assistant Attorney General

AGLO_1980_No_031 Offices And Officers - County - Auditor - Plats And Subdivisions - Land Surveys - Processing And Recording Of Land Surveys

(1) A county auditor is legally authorized to reject records of survey which do not meet the requirements set forth in chapter 332-130 WAC, chapter 58.09 RCW and chapter 58.17 RCW.

(2) A county auditor is required by RCW 58.17.190 -prior to approval by the appropriate local legislative body -to refuse to accept for recordation any maps or representations which in fact constitute a "plat" of a "subdivision" required to be filed under chapter 58.17 RCW, and which otherwise contain a survey of such a subdivision.

(3) The duties imposed by RCW 58.17.160 on a county engineer involve the performance of the governmental function of approval of data to enable the appropriate legislative body to pass on a proffered plat or replat -and not the conduct of such survey activities as are involved in the platting; accordingly, in carrying out such review functions and granting approval, the county engineer is not engaging in the practice of land surveying.

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November 3, 1980

Honorable James E. Carty

Prosecuting Attorney

Clark County

P.O. Box 5000

Vancouver, Washington 98660

Cite as: AGLO 1980 No. 31

Dear Sir:

By letter previously acknowledged, you requested our opinion on several questions relating to surveys and plats. We paraphrase those questions as follows:

(1) Does a county auditor have the authority to reject records of survey which do not meet the requirements set forth in chapter 332-130 WAC, chapter 58.09 RCW and chapter 58.17 RCW?

[[Orig. Op. Page 2]]

(2) Is a county auditor required by RCW 58.17.190 to reject records of survey which divide property where the parcels created are of such a size as to necessitate plat approval and recording prior to offering such parcels for sale or lease; and if not, may he be authorized or required to do so by local ordinance?

(3) When a county engineer approves a plat pursuant to RCW 58.17.150 and 58.17.160, what is the nature of his approval?

(4) Is a county engineer required to be a dual registrant under the provisions of RCW 18.43.070?

We answer question (1) in the affirmative and your remaining questions as set forth in our analysis.

ANALYSIS

Question (1):

Chapter 58.09 RCW, which is referred to in your first question, is known as the "Survey Recording Act."1/ RCW 58.09.010 sets forth the purpose of this law as follows:

"The purpose of this chapter is to provide a method for preserving evidence of land surveys by establishing standards and procedures for monumenting and for recording a public record of the surveys. Its provision shall be deemed supplementary to existing laws relating to surveys, subdivisions, platting and boundaries."

A "survey" is defined in RCW 58.09.020(3) to mean:

". . . the locating and monumenting in accordance with sound principles of land surveying by or under the supervision of a licensed land surveyor, of points or lines which define the exterior boundary or boundaries common to two or more ownerships or which reestablish or restore general land office corners."

[[Orig. Op. Page 3]]

RCW 58.09.030 then provides that every map, plat, report, description or other document issued by a licensed land surveyor must comply with the provisions of the act when those documents are filed as public records. Not all surveys, however, are required to be recorded. Thus, RCW 58.09.090 provides that a record of survey is not required when the survey has been made by a public officer under certain described circumstances. Also, under the same statute, a record of survey is not required if it is of a preliminary nature, is being prepared for recording or has been recorded under a local subdivision or platting law ordinance. In those cases, however, certain corner information is required by the statute to be filed within 90 days of an establishment, reestablishment or restoration of a corner on a boundary of two or more ownerships or general land office corners. See, RCW 58.09.040(1).

In the event a survey is recorded, the law then sets out a number of survey requirements applicable to such recording. Thus, RCW 58.09.040 begins by providing that:

"After making a survey in conformity with sound principles of land surveying, a land surveyor may file a record of survey with the county auditor . . ." (Emphasis supplied)

RCW 58.09.040(1), supra, then requires certain disclosures relating to the filing of mandatory corner information. Specifically, RCW 58.09.040(1)(a) through (d) require

disclosure of (a) the establishment of corners materially varying from the description of record, (b) the establishment of one or more property corners not previously existing, (c) any evidence that reasonable analysis might result in alternate positions of lines or points as a result of an ambiguity in the description and (d) the reestablishment of lost government land office corners. And RCW 58.09.060(1) and (2) contain further requirements and standards concerning records of survey which relate to corner information and the ascertainment and establishment of such corners.

In addition, RCW 58.09.070 prohibits a survey map from being recorded unless it also shows (or is accompanied by a map showing) the control scheme through which were determined the coordinates that were used from points of known coordinates when the coordinate system is shown for points on a record of survey map. And RCW 58.09.050 sets forth standards relative to form and procedures.

[[Orig. Op. Page 4]]

We turn, next, to chapter 58.17 RCW which is also referred to in your first question. That chapter relates to plats and subdivisions; and RCW 58.17.160(2) contains a specific requirement that every plat or replat filed for record with a county auditor must be accompanied by a survey of the section or sections in which the plat or replat is located. This provision also requires the submission of certain information relative to the original or reestablished corners along with descriptions of such corners. In addition, sketches must be included showing all distances, angles and calculations that are needed to determine the corners and distances of the plat. The same provision also specifies an allowable error of closure of survey.

Also to be noted is RCW 58.17.160(1), quoted below at pp. 9-10, which requires that the applicable city or county engineer or a licensed engineer, acting on behalf of the public, review and approve the survey data.2/

Finally, we turn to chapter 332-130 WAC, as promulgated by the Department of Natural Resources pursuant to RCW 58.24.040(1) which authorizes that agency to set up standards of accuracy and methods of procedure for surveys. These regulations set forth land subdivisions survey standards,3/ land description requirements,4/ survey map requirements,5/ field traverse standards6/ and geodetic control survey standards.7/ The regulations apply to both land boundary surveys and geodetic control surveys, the former being surveys made for the specific purpose of establishing or reestablishing the boundary of any lot, tract or parcel of real property in the state.8/

[[Orig. Op. Page 5]]

We believe that all of these statutes and regulations set forth standards for surveys which are reviewable by appropriate public officers. Clearly, RCW 58.17.160 permits a county auditor to refuse for filing those plats or replats which have not been approved by the appropriate county or city engineer as to survey data. And inherent in any review and approval by a city, town or county engineer is a determination of whether the survey related to the particular plat or replat complies with the standards in chapter 332-130 WAC, chapter 58.09 RCW and RCW 58.17.160.9/ We are also of the opinion that a county auditor may refuse to accept for filing those surveys and corner information which are determined not to be in compliance with the provisions of chapter 58.09 RCW or chapter 332-130 WAC. Both RCW 58.09.040 and 58.09.060 condition a record of survey by imposing standards and requirements which necessitate that the auditor examine the accompanying records and data to determine whether the proferred information meets those standards -and contemplate that such requirements must be met.

We believe the reasoning employed in Fischnaller v. Thurston County, 21 Wn.App. 280, 584 P.2d 483 (1978) is applicable to this situation. There the Court of Appeals upheld a refusal by a county auditor to accept a filing for a declaration of candidacy for office where a defect of residency readily appeared on the face of declaration. In so ruling, the Court cited and relied on the earlier case of Eggert v. Ford, 21 Wn.2d 152, 150 P.2d 719 (1944), in which a county auditor was held to have a right to refuse to accept an instrument affecting title which was not acknowledged as required by law.10/

[[Orig. Op. Page 6]]

These cases illustrate to us that an auditor's authority under chapter 58.09 RCW permits him (or her) to examine a record of survey and determine from at least the face of such documents as are involved whether the survey criteria and standards contained both in that act and under chapter 332-130 WAC have been met. In the event the record of survey does not meet those requirements, we believe the auditor can then refuse the proferred survey for recording.11/

Question (2):

This question, once again, asks:

Is a county auditor required by RCW 58.17.190 to reject records of survey which divide property where the parcels created are of such a size as to necessitate plat approval and recording prior to offering such parcels for sale or lease; and if not, may he be authorized or required to do so by local ordinance?

RCW 58.17.190 provides that:

"The county auditor shall refuse to accept any plat for filing until approval of the plat has been given by the appropriate legislative body. Should a plat or dedication be filed without such approval, the prosecuting attorney of the county in which the plat is filed shall apply for a writ of mandate in the name of and on behalf of the legislative body required to approve same, directing the auditor and assessor to remove from their files or records the unapproved plat, or dedication of record."

[[Orig. Op. Page 7]]

We believe that a county auditor is required by this statute -prior to approval by the appropriate local legislative body -to refuse to accept for recordation any maps or representations which in fact constitute a "plat" of a "subdivision" required to be filed under chapter 58.17 RCW, and which otherwise contain a survey of such a subdivision.12/

The auditor must determine whether the map or representation containing a survey also constitutes a "plat" as defined in RCW 58.17.020(2); i.e.,

". . . a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys or other divisions and dedications." (Emphasis supplied)

A "subdivision," in turn, is defined in RCW 58.17.020(1) as:

". . . the division of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale or lease and shall include all resubdivision of land." (Emphasis supplied)

It is recognized that the survey on which the plat is used may be separate from the plat. Also, there may be instances where the subdivision of land into parcels has not been for the purpose of sale or lease. In those instances, the auditor may not refuse the survey for recordation under chapter 58.09 RCW. It is only those instances where the survey, sought to be recorded, also is determined to be a "plat" that a filing may be refused.

[[Orig. Op. Page 8]]

The Survey Recording Act, under RCW 58.09.010, supra, is supplementary to existing laws relating to surveys, subdivisions, platting and boundaries. Hence, the Survey Recording Act was not intended to obviate the necessity for complying with the provisions of chapter 58.17 RCW in filing plats. Where plats may not be filed with a county auditor under chapter 58.17 RCW, the record of survey which otherwise constitutes a plat cannot be filed if it has not met the requirements of that chapter.13/

The second part of this question concerns the authority of a county or other local legislative body to enact an ordinance prohibiting the recording of a survey which divides property when the auditor otherwise determines that it would not have to be filed under chapter 58.17 RCW. We do not believe that such a local legislative body would have such authority.

Article XI, § 11 of our state constitution provides that:

"Any county, city, town or township may make and enforce within its limits all such local policy, sanitary and other regulations as are not in conflict with general laws." (Emphasis supplied)

The test concerning the validity of a local ordinance under this provision is whether the ordinance conflicts with general laws or whether the state has preempted local regulation. State x rel. Schillberg v. Everett District Justice Court, 92 Wn.2d 106, 594 P.2d 448 (1979); Clallam County Deputy Sheriff's Guild, et al. v. The Board of Clallam County Commissioners, 92 Wn.2d 844, 601 P.2d 943 (1979).

Here, chapter 58.09 RCW constitutes a general law with which a local ordinance may not conflict. Its provisions are intended to apply to all surveys as defined therein. It is a recording act which has state wide applicability. It contains specific requirements and standards that, if altered by local regulation, would defeat the purpose of the act. We therefore do not believe a city, town or county has the power to authorize a county auditor to refuse for recordation a survey otherwise legally recordable under that state law on the basis of a [[Orig. Op. Page 9]] local ordinance. The only exception would be where the survey was subject to the requirements of a local short subdivision ordinance enacted under chapter 58.17 RCW.14/

Furthermore, we believe that chapter 58.09 RCW contains a legislative program which is intended to be comprehensive in its application, evidencing an intent to occupy the field as to the recordation of surveys.

Questions (3) and (4):

These questions, also repeated for ease of reference, ask:

When a county engineer approves a plat pursuant to RCW 58.17.150 and 58.17.160 what is the nature of his approval?

Is a county engineer required to be a dual registrant under the provisions of RCW 18.43.070?

RCW 58.17.160 provides that:

"Each and every plat, or replat, of any property filed for record shall:

"(1) Contain a statement of approval from the city, town or county licensed road engineer or by a licensed engineer acting on behalf of the city, town or county as to the survey data, the layout of streets, alleys and other rights of way, design of bridges, sewage and water systems, and other structures;

"(2) Be accompanied by a complete survey of the section or sections in which the plat or replat is located, or as much thereof as may be necessary to properly orient the plat within such section or sections. The plat and section survey shall be submitted with complete field and computation notes showing the original or reestablished corners with descriptions of the same and the actual traverse showing error of closure and [[Orig. Op. Page 10]] method of balancing. A sketch showing all distances, angles and calculations required to determine corners and distances of the plat shall accompany this data. The allowable error of closure shall not exceed one foot in five thousand feet.

". . ."

Inherent in the answers to your third and fourth questions is a determination of whether a county engineer is carrying out the "practice of land surveying" as defined in RCW 18.43.020 which provides, in part:

". . .

"Practice of land surveying: The term 'practice of land surveying' within the meaning and intent of this chapter, shall mean assuming responsible charge of the surveying of land for the establishment of corners, lines, boundaries, and monuments, the lying out and subdivision of land, the defining and locating of corners, lines, boundaries and monuments of land after they have been established, the survey of land areas for the purpose of determining the topography thereof, the making of topographical delineations and the preparing of maps and accurate records thereof, when the proper performance of such services requires technical knowledge and skill.

". . ."

We do not believe the function of a county engineer in approving survey data and the layout of streets, alleys and rights of way in proposed plats constitutes the practice of land surveying. The duties imposed by RCW 58.17.160, supra, on the county engineer involve the performance of a governmental function of approval of data to enable the appropriate legislative body to pass on a proffered plat or replat -and not the conduct of such survey activities as are involved in the platting.

[[Orig. Op. Page 11]]

The survey function is provided for in RCW 58.17.250 which requires the survey of a plat to be made by or under the supervision of a registered land surveyor who must certify the survey. This is a function to be performed by the person seeking to plat the land and not by the county engineer who is merely to review and approve the survey data as submitted by the land surveyor.

It is also significant that the legislature did not require approval of the survey data or right-of-way information by a registered land surveyor. Nor is there any evidence of any legislative intent that a county engineer is required to be a dual registrant under the provisions of RCW 18.43.070.

The legislature is assumed to have knowledge of other laws including the provisions of RCW 36.80.020 which require the county engineer to be only a licensed professional civil engineer. Department of Fisheries v. PUD, 91 Wn.2d 378, 588 P.2d 1146 (1979). RCW 58.17.160 is a delegation of a specific governmental function to the county engineer. That function is unlike the function of actually surveying lands within the county; a function which, as contemplated by the provisions of RCW 36.32.370, is to be performed by a surveyor. Conversely, as we have pointed out, the approval function does not constitute the practice of land surveying. The engineer is not in charge of the actual surveying of the land nor is he involved in the preparation of maps or the location of monuments. His only function is to review the survey data to determine whether it is acceptable for the purpose of approving a proposed plat or replat.15/

In short, we do not believe that, in carrying out such review functions and granting approval, the county engineer is engaging in the practice of land surveying. Nor is he required to be a dual registrant under RCW 18.43.070. As above noted, we do believe, however, that the county engineer must, in determining whether to give approval, review the data to determine if it complies with all applicable standards and laws. This includes the applicable requirements under chapter 58.17 RCW as well as chapter 332-130 WAC and chapter [[Orig. Op. Page 12]] 58.09 RCW. We further believe that due to the nature of the specific survey data required to be submitted under RCW 58.17.160, the engineer must review such data as to its mathematical accuracy.

We trust that the foregoing will be of assistance to you.

Very truly yours,

SLADE GORTON

Attorney General

THEODORE O. TORVE

Senior Assistant Attorney General

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FOOTNOTES *

1/Chapter 50, Laws of 1973.

2/RCW 58.17.160 relates to plats and replats. These terms do not include short plats. However, RCW 58.17.060 would authorize the appropriate legislative body to adopt filing requirements for acceptable surveys of land included in short plats. See, AGLO 1979 No. 29.

3/WAC 332-130-030.

4/WAC 332-130-040 and 332-130-050.

5/WAC 332-130-060.

6/WAC 332-130-070.

7/WAC 332-130-080.

8/See, WAC 332-130-020(1).

9/As above noted, maps being prepared or recorded under local ordinances relating to subdivisions or platting laws are exempt from the Survey Recording Act. RCW 58.09.090(1)(c), supra. But RCW 58.09.090(2) requires corner information provided for in RCW 58.09.040(2) to be filed on all surveys which are otherwise exempt for filing.

10/The Court in the Fischnaller case also distinguished the case of State ex rel. McCaffrey v. Superior Court, 20 Wn.2d 704, 149 P.2d 156 (1944), where the Supreme Court held that the auditor could not refuse a declaration of candidacy on the basis that the candidate failed to satisfy the residency requirement. The Court in Fischnaller indicated that if the defect appears on the fact of the record, the auditor can refuse such a request for filing. However, if extrinsic evidence is needed to determine the existence of a defect, the auditor may not make such a decision.

11/Similarly, we believe that a city, town or county engineer or a licensed engineer acting on behalf of such municipality may refuse to issue an approval of survey data when examining a plat or replat of property proposed to be filed for record with the county auditor when such data fails to meet the standards contained both in chapter 58.09 RCW, chapter 332-130 WAC and the provisions in chapter 58.17 RCW.

12/An exception to this requirement, however, involves the filing of corner information under RCW 58.09.040, supra. This latter provision requires certain information to be submitted within 90 days after the establishment, reestablishment or restoration of certain corners. This provision carries a possible revocation of a land surveyor's license in the event there is noncompliance. Where a plat containing a survey is rightfully refused for filing by the auditor, he can require the mandatory survey information to be filed in another form or require deletion of the impermissible subdivision from the survey, maps or documents.

13/RCW 58.17.190 requires the auditor to refuse to accept any plat for filing until approval of the plat has been given by the appropriate legislative body. RCW 58.17.160 requires approval of the city, town or county engineer.

14/See, RCW 58.17.060.

15/Accord, letter opinion to Honorable Jay Roy Jones, Prosecuting Attorney, Asotin County, dated January 30, 1978.

AGO_1980_No_005 Counties - Cities And Towns - Platting And Subdivision - Resubdivision Of Lot Within Existing Subdivision

Cite as: AGO 1980 No. 5

Where, within an existing land subdivision established pursuant to either chapter 58.16 or 58.17 RCW, the owner of an individual lot proposes to divide that lot into four or fewer smaller lots for the purpose of sale or lease, such action will not constitute the establishment of a "short subdivision" as defined in RCW 58.17.020(6) and, thereby, be subject to the city or county's short subdivision ordinance as enacted pursuant to RCW 58.17.060; instead, such action will constitute a "resubdivision" and thus be subject to the general provisions of chapter 58.17 RCW relating to subdivisions.

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January 24, 1980

Honorable Henry R. Dunn

Prosecuting Attorney

Cowlitz County

312 South First Avenue West

Kelso, Washington 98626

Dear Sir:

By letter previously acknowledged you requested the opinion of this office on two questions which we have paraphrased as follows:

(1) Where, within an existing land subdivision established pursuant to either chapter 58.16 or 58.17 RCW, the owner of an individual lot proposes to divide that lot into four or fewer smaller lots for the purpose of sale or lease, will such action constitute the establishment of a "short subdivision" as defined in RCW 58.17.020(6) and, thereby, be subject to the city or county's short subdivision ordinance as enacted pursuant to RCW 58.17.060?

[[Orig. Op. Page 2]]

(2) If the answer to Question No. 1 is in the negative, would such action constitute, instead, a "resubdivision" and thus be subject to the general provisions of chapter 58.17 RCW as a "subdivision"?

We answer your first question in the negative and your second question in the affirmative.

ANALYSIS

Chapter 58.17 RCW codifies the provisions of chapter 271, Laws of 1969, 1st Ex. Sess., as amended, and relates to platting and the formations of subdivisions. Chapter 58.16 RCW, in turn, contained the predecessor to this 1969 state platting law.

Your questions assume the existence of a land subdivision earlier established pursuant to one or the other of those two chapters. And, as we view it, it makes no difference which law was initially utilized. The issue, in either event, involves the proper legal characterization to be applied to the subsequent action by the current owner of an individual lot within the subdivision who now proposes ". . . to divide that lot into four or less smaller lots for the purpose of sale or lease, . . ."

Clearly, any such action now taken by the owner of a parcel of real property will be governed by the provisions of chapter 58.17 RCW simply because that is the law now in effect with regard to plats and subdivisions. Accord, AGLO 1974 No. 7, a copy of which is enclosed. The precise issue to be determined will readily be seen upon examination of the following two definitions from RCW 58.17.020:

". . .

"(1) 'Subdivision' is the division of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale or lease and shall include all resubdivision of land.

". . .

"(6) 'Short subdivision' is the division of land into four or less lots, tracts, parcels, sites or subdivisions for the purpose of sale or lease.

". . ." (Emphasis supplied)

[[Orig. Op. Page 3]]

Also to be noted is RCW 58.17.030 which provides that:

"Every subdivision shall comply with the provisions of this chapter. Every short subdivision as defined in this chapter shall comply with the provisions of any local regulation adopted pursuant to RCW 58.17.060."

Therefore, the proposed action described in your letter will be covered either by chapter 58.17 RCW itself -if that action is deemed to be a "resubdivision of land" within the meaning of RCW 58.17.020(1), supra -or, alternatively, it will be covered by the applicable county short subdivision ordinance if it is deemed, instead, to amount to the establishment of a new "short subdivision" as defined in RCW 58.17.020(6), supra.1/ In this latter regard, RCW 58.17.060 provides as follows:

"The legislative body of a city, town, or county shall adopt regulations and procedures, and appoint administrative personnel for the summary approval of short plats and short subdivisions, or revision thereof.

[[Orig. Op. Page 4]]

Such regulations shall be adopted by ordinance and may contain wholly different requirements than those governing the approval of preliminary and final plats of subdivisions and may require surveys and monumentations and shall require filing of a short plat for record in the office of the county auditor: PROVIDED, That such regulations must contain a requirement that land

in short subdivisions may not be further divided in any manner within a period of five years without the filing of a final plat: PROVIDED FURTHER, That such regulations are not required to contain a penalty clause as provided in RCW 36.32.120 and may provide for wholly injunctive relief."

The issue thus crystalized is one which has never been addressed directly by any appellate court in this state or in any official opinion of this office; i.e., which "law," chapter 58.17 RCW or the applicable local short subdivision ordinance, governs the further division of an individual lot situated within an existing subdivision or short subdivision?

In the following three instances, the answer seems clear:

(1) Where the further division of an individual lot occurs within an existing short subdivision (as defined in RCW 58.17.020(6), supra) within five years of the creation thereof:

RCW 58.17.060, supra, in dealing with the content of a county or city's short subdivision regulations, contains the following stipulation:

". . . PROVIDED, That such regulations must contain a requirement that land in short subdivisions may not be further divided in any manner within a period of five years without the filing of a final plat: . . ."

[[Orig. Op. Page 5]]

Thus, any further division of land within a short subdivision will necessitate the filing of a full "final plat"2/ if it occurs within five years of creation of the particular short subdivision, regardless of the number of "new" lots proposed.

(2) Where the further division of an individual lot occurs within either a subdivision or a short subdivision at any time and it is proposed to divide that lot into five or more "new" lots:

Likewise, even after this five year period has run, the further land division will still be governed by the general provisions of chapter 58.17 RCW, and not the local short subdivision regulations, if it is designed to produce five or more new lots within the confines of the existing lot being divided. Accord, the definition of "subdivision" in RCW 58.17.020(1), supra, and see also, AGLO 1974 No. 7 and AGO 57-58 No. 88 (copies enclosed) to the effect that the term "land" must be deemed to include previously platted land or single lots as well as undeveloped, unplatted lands. Moreover, this will be so, by definition, regardless of whether the lot being divided is within a full subdivision or a short subdivision.

(3) Where the further division occurs within a short subdivision more than five years after its creation and it is proposed to divide the individual lot in question into four or less "new" lots:

In this instance the apparent inference to be drawn from RCW 58.17.060, supra, is that the applicable short subdivision regulation of the county or city in question will govern -because the five year period covered by the proviso will have ended. Otherwise, that proviso will be virtually meaningless.

[[Orig. Op. Page 6]]

But what if, instead (as stipulated in your questions), we have the following situation:

(a) The lot being further divided is situated within an existing full subdivision established pursuant to either chapter 58.16 or 58.17 RCW; and

(b) The proposal is to divide that lot into four or less lots for the purpose of sale or resale?

But for the last seven words in the definition of "subdivision" in RCW 58.17.020(1), supra,3/ the answer to even this question would seem to have been fairly apparent. Because the "action" in question would, in that case, have fallen within the definition of a "short subdivision" as set forth in RCW 58.17.020(6), supra, and not the definition of the "subdivision" in subsection (1) of the same statute, the applicable "law" would have been that contained in the short subdivision regulations of the county or city involved rather than the general provisions of chapter 58.17 RCW.

It would, of course, have been helpful if the legislature, itself, having thus instead added the reference to "resubdivision" to its division of a "subdivision," had then later expressly defined that term as well. Cf., our earlier letter opinion of August 28, 1973, to then State Representative Leonard A. Sawyer, copy enclosed. But the legislature did not do so and thus our present task is to glean its intent from what, in fact, it said. Graffell v. Honeysuckle, 30 Wn.2d 390, 191 P.2d 858 (1948) and cases cited therein.

[[Orig. Op. Page 7]]

In so doing we must also bear in mind the principle that all parts of a statute must be construed together as an organic whole, and no part should be read out of context or ignored. State v. Houck, 32 Wn.2d 681, 203 P.2d 693 (1949). Thus, no clause, sentence or word should be considered superfluous, void or insignificant. Groves v. Meyers, 35 Wn.2d 403, 213 P.2d 483 (1950). Moreover, a court will not place a narrow, literal or technical construction on only part of a statute and ignore other relevant parts. In Re Cress, 13 Wn.2d 7, 123 P.2d 767 (1942). And finally, to the extent that the language of an act is ambiguous or uncertain, resort is to be made to certain judicially approved aids to statutory construction including, e.g., the history of the act in question and the evils that it was designed to remedy. State ex rel. Bugge v. Martin, 38 Wn.2d 834, 232 P.2d 833 (1951).

Unquestionably, the framers of our new (1969) state platting law were quite concerned with what were felt to be weaknesses in the prior law as it related (or, more properly, did not relate) either to the initial division of land into four or less lots or to the further division of an individual lot in an existing subdivision into four or less smaller lots.4/ See, e.g., the discussion relating to Substitute Senate Bill No. 169 between Representatives Chapin and Moon which is reported on page 1643 of the 1969 Journal of the House of Representatives and, also, the later discussion between the same two legislators on the free conference version of the bill at page 1777 of the House Journal. In fact, the particular concern which was discussed on both occasions was, specifically, that of the further division of land within a "short subdivision" rather than the [[Orig. Op. Page 8]] instant question of how the division of a lot into four or less lots within an existing full subdivision would be regulated. The answer, in turn, to that other question was established by the proviso to RCW 58.17.060 which we earlier quoted at page 4 of this opinion. But it seems to us at least reasonable to assume that the drafters of Substitute Senate Bill No. 169 simply felt that they had already taken care of the instant problem by their further reference to "resubdivision" in the definition of what constitutes a subdivision; i.e., in what is now RCW 58.17.020(1), supra.

It is also interesting to note that while the term "resubdivision" did not appear in our "old" platting law, chapter 58.16 RCW, it did appear, at the time what is now chapter 58.17 RCW was drafted, in the New Jersey definition of the word "subdivision." See, N.J.S.A. 40:55-1.2 (since repealed) which then read, in material part, as follows:

"'Subdivision' means the division of a lot, tract, or parcel of land into two or more lots, sites or other divisions of land for the purpose, whether immediate or future, of sale or building developments; . . . Subdivision also includes resubdivision, and where appropriate to the context, relates to the process of subdividing or to the lands or territory divided."

And, in Lake Intervale Homes v. Parsippany-Troy Hill, 47 N.J. Super. 334, 136 A.2d 57 (1957), which happens to be the only case reported in the legal publication, "Words and Phrases" for the meaning of the word "resubdivision," the New Jersey Court had earlier observed as follows:

"'Subdivision' is defined by N.J.S.A. 40:55-1.2 as 'the division of a lot, tract, or parcel of land into two or more lots, sites or other divisions of land for the purpose, whether immediate or future, of sale or building development,' and includes 'resubdivision,' The key word is 'division.' Resubdivision can only mean a further division of a division previously made . . ." (Emphasis supplied)

[[Orig. Op. Page 9]]

It thus seems to us quite possible that the similarity between RCW 58.17.020(1), supra, and the definition of "subdivision" in N.J.S.A. 40:55-1.2, supra, is more than coincidental.

Finally, we note the further word "all" in the last line of our definition. Under RCW 58.17.020(1), the term "subdivision" includes all resubdivision of land. The only exception, apparently, is (for the reasons above explained), a further division into four or less lots of a lot within a short subdivision more than five years after its creation. But unless, in every other instance, that last line of our definition means that any further division of land previously divided is also to be deemed a subdivision, that portion of the definition will be seen, in the final analysis, to be without any meaning at all. And that, obviously, would be contrary to the applicable principles of statutory construction as above stated.

Conclusion:

Consequently, in direct answer to your two questions, it is our opinion that the further division of a lot within an existing plat or subdivision, whether established pursuant to chapter 58.16 or chapter 58.17 RCW, constitutes a "resubdivision" within the meaning of RCW 58.17.020(1), supra. Such action therefore must thus comply with the provisions of chapter 58.17 RCW relating to "subdivision," regardless of the number of new lots which result from the action in question. We therefore answer your first question in the negative and your second question in the affirmative.5/

[[Orig. Op. Page 10]]

We trust that the foregoing will be of assistance to you.

Very truly yours,

SLADE GORTON

Attorney General

PHILIP H. AUSTIN

Deputy Attorney General

ROBERT F. HAUTH

Senior Assistant Attorney General

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FOOTNOTES *

1/In order to be certain that we understood your questions, we wrote, following receipt of your initial request, and asked you:

"Is your true concern only with the proposed further division of a particular lot within a previously established subdivision (as exemplified by the attached rough drawing of a hypothetical subdivision) or, instead, are you inquiring about the procedures to be followed in amending the existing lot boundaries within the entire subdivision?"

In response, by return letter, you advised us as follows:

". . . our concern at this point is only with the resubdivision of lots within previously established subdivisions and does not include amending lot boundaries so long as no additional lots are created by the amendment."

2/Defined in RCW 58.17.020 as,

". . . the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in this chapter and in local regulations adopted pursuant to this chapter."

3/Here repeated for ease of reference as follows:

"(1) 'Subdivision' is the division of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale or lease and shall include all resubdivision of land." (Emphasis supplied)

4/Chapter 58.16 RCW simply did not deal at all with the creation of what we now refer to as a "short subdivision;" i.e., the division of land into four or less lots for the purpose of sale or lease. Instead, that prior law only governed the division of land into five or more lots and was silent on the omitted area of activity, leaving the regulation thereof entirely up to the various counties and cities under the general authority, as set forth in RCW 35.63.080, to ". . . regulate and restrict . . . [among other things] the subdivision and development of land . . ." See, AGO 57-58 No. 88, supra.

5/In so concluding we recognize that, some ten years after the law in question was first enacted, there is a lack of uniformity among the various local jurisdictions in actual practice throughout the state. In fact, it is that apparent lack of uniformity which prompted your instant opinion request in the first place. The state legislature, however, is now again in session and remains free to clarify its own intent, if we have not sufficiently done so, by doing what we

recommended in our letter opinion of August 28, 1973, to then State Representative Sawyer, supra; namely, expressly defining the word "resubdivision."

AGO_1983_No_031 Platting And Subdivisions - Real Estate - Creation Of Short Subdivision By Offer To Sell Land

Because of the necessity for a legally sufficient description in connection with an offer to sell, or sale of, real property an offer to sell a portion of a larger tract of land, or the execution of a purchase and sale agreement covering such a tract of land, constitutes a "division" of the land under the definition of a "short subdivision" contained in RCW 58.17.020(6) or (7) so as to render applicable the various provisions of chapter 58.17 RCW relating to short plats and short subdivisions.

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December 15, 1983

Honorable R. H. "Dick" Barrett

State Representative, Fifth District

North 9819 Nez Perce Court

Spokane, Washington 99208

Cite as: AGO 1983 No. 31

Dear Sir:

By recent letter you requested our opinion on the following two questions:

"1. Does the unilateral offer to sell a portion of a larger trace [tract] of land which portion would ultimately be subject to RCW 58.17.060 constitute a 'division' of land under the definition of 'short sub division' contained in RCW 58.17.020 (6) or (7)?

"2. Does the execution of a purchase and sale agreement in which a closing is specifically dependent upon the prior recording of a short plat covering the sale parcel constitute a 'division' under RCW 58.17.020 (6) or (7)?"

We answer both questions in the affirmative.

ANALYSIS

In posing the above stated questions you directed our attention to the respective definitions of a "short subdivision" appearing in RCW 58.17.020 as amended by § 1, chapter 292, Laws of [[Orig. Op. Page 2]] 1981 and by § 2, chapter 293, Laws of 1981. The first of those two definitions reads as follows:

"'Short subdivision' is the division of land into four or less lots, tracts, parcels, sites or subdivisions for the purpose of sale or lease."

The other definition, as set forth in § 2, chapter 293, supra, reads as follows:

"'Short subdivision' is the division or redivision of land into four or fewer lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership: PROVIDED, That the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine."

However, it is not necessary -in order to respond to your questions -to determine which of those two versions of the definition would prevail to the extent that they are in conflict. Conversely, if it were necessary to make that determination we would be guided by the following rule of construction as set forth in RCW 1.12.025:

"If at any session of the legislature there are enacted two or more acts amending the same section of the session laws or of the official code, each amendment without reference to the others, each act shall be given effect to the extent that the amendments do not conflict in purpose, otherwise the act last filed in the office of the secretary of state in point of time, shall control: PROVIDED, That if one or more special sessions of the same legislature shall follow any regular session, this rule of construction shall apply to the laws enacted at either, both, any, or all of such sessions."

In this instance, although both chapter 292 and chapter 293, supra, were filed with the Secretary of State on the same day (May 18, 1981), chapter 293 was date stamped as having been received by that office later during the day than chapter 292.

The reason it is unnecessary to proceed any further with that issue, however, is that both definitions coincide on the basic point here involved; namely, that a "short subdivision" occurs whenever the owner of a tract of land divides that land ". . . [[Orig. Op. Page 3]] into four or less lots, tracts, parcels, sites or divisions for the purpose of sale." (Emphasis supplied)

Repeated for ease of reference you have asked:

"1. Does the unilateral offer to sell a portion of a larger trace [tract] of land which portion would ultimately be subject to RCW 58.17.060 constitute a 'division' of land under the definition of 'short sub division' contained in RCW 58.17.020 (6) or (7)?

"2. Does the execution of a purchase and sale agreement in which a closing is specifically dependent upon the prior recording of a short plat covering the sale parcel constitute a 'division' under RCW 58.17.020 (6) or (7)?"

Based on the above quoted definitions of a short division we answer both questions in the affirmative. For, in order for the owner of a tract of land to offer only a portion of that tract for sale, or to enter into a contract for the sale of only a portion of the tract, some sort of legally sufficient description of what is being offered must necessarily be developed; for example, an offer to sell ". . . that portion of Blackacre lying south of Mill Creek and east of Penny Lane." Without such a legal description a meaningful, legally enforceable contract of sale simply could not be executed. As stated by the court in Bigelow v. Mood, 56 Wn.2d 340, 341, 353 P.2d 429 (1960):

"We have held consistently that, in order to comply with the statute of frauds, a contract or deed for the conveyance of land must contain a

description of the land sufficiently definite to locate it without recourse to oral testimony, or else it must contain a reference to another instrument which does contain a sufficient description. Bingham v. Sherfey (1951), 38 Wn.2d 886, 234 P.2d 489; Martin v. Seigel (1949), 35 Wn.2d 223, 212 P.2d 107, 23 A.L.R.2d 1; Fosburgh v. Sando (1946), 24 Wn.2d 586, 166 P.2d 850; Barth v. Barth (1943), 19 Wn.2d 543, 143 P.2d 542; Martinson v. Cruikshank (1940), 3 Wn.2d 565, 101 P.2d 604."

But, in turn, under the above quoted definitions of a "short subdivision" the very act of formulating and then using such a legally sufficient definition of what is to be sold constitutes the creation of a short subdivision where the thing to be sold is a single lot or parcel within a larger tract of land -the remainder [[Orig. Op. Page 4]] of which is either to be retained by its owner or later to be sold as a separate parcel or parcels.

Having said that, however, we should next direct your attention to RCW 58.17.040 which exempts certain subdivisions or short subdivisions from the otherwise applicable provisions of chapter 58.17 RCW because of the purpose of the particular division, the size of the lots involved, or because of other factors referred to in that section of the law. In addition, particularly with reference to the approach contemplated by your second question, we would call to your attention the following language of RCW 58.17.205:

"If performance of an offer or agreement to sell, lease, or otherwise transfer a lot, tract, or parcel of land following preliminary plat approval is expressly conditioned on the recording of the final plat containing the lot, tract, or parcel under this chapter, the offer or agreement is not subject to RCW 58.17.200 or 58.17.300 and does not violate any provision of this chapter. All payments on account of an offer or agreement conditioned as provided in this section shall be deposited in an escrow or other regulated trust account and no disbursement to sellers shall be permitted until the final plat is recorded."

The two statutes thus referred to (RCW 58.17.200 and 58.17.300), in turn, provide, respectively, for injunctive relief and for the imposition of criminal penalties where land is sold or offered for sale in violation of any of the provisions of chapter 58.17 RCW.

It is hoped that the foregoing will be of assistance to you.

Very truly yours,

KENNETH O. EIKENBERRY

Attorney General

PHILIP H. AUSTIN

Senior Deputy Attorney General

AGO_1986_No_006 Counties - Redivision - Short Subdivision - Adjusting Boundary Lines

The dividing of a lot in a previously approved subdivision into two halves with the intent that one half be sold and attached to an adjoining parcel outside the subdivision does not create a boundary line adjustment.

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March 21, 1986

Honorable David F. Thiele

Island County Prosecuting Attorney

P.O. Box 430

Coupeville, Washington 98239

Cite as: AGO 1986 No. 6

Dear Sir:

By letter previously acknowledged, you have requested the opinion of this office on two questions which we have paraphrased as follows:

(1) If a lot in a previously approved subdivision is divided in half, with the intent that one half be sold and attached to another adjoining parcel outside the subdivision (which will then become part of the existing subdivision) (lot 1A) and with the other one half remaining (lot 1B) containing sufficient area to meet minimum requirements for width and area for a building site, is this a boundary line adjustment under RCW 58.17.040 and therefore not subject to the provisions of chapter 58.17 RCW?

(2) If the same lot were divided in half with the intent that one half be removed from the subdivision, sold, and attached to another adjoining parcel outside the subdivision with the other one half remaining in the subdivision containing sufficient area to meet minimum requirements for width and area for a building site, is this a boundary line adjustment under RCW 58.17.040 and therefore not subject to the provisions of chapter 58.17 RCW?

We answer both your questions in the negative for the reasons set forth in our analysis.

[[Orig. Op. Page 2]]

ANALYSIS

Turning to your first question, initially, it is important to note the purpose of chapter 58.17 RCW. RCW 58.17.010 provides as follows:

"The legislature finds that the process by which land is divided is a matter of state concern and should be administered in a uniform manner by cities, towns, and counties, throughout the state. The purpose of this chapter is to regulate the subdivision of land and to promote the public health, safety and general welfare in accordance with standards established by the state to prevent the overcrowding of land; to lessen congestion in the streets and highways; to promote effective use of land; to promote safe and convenient travel by the public on streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage, parks and recreation areas, sites for schools and schoolgrounds and other public requirements; to provide for proper ingress and egress; to provide for the expeditious review and approval of proposed subdivisions which conform to zoning standards and local plans and policies; to adequately provide for the housing and commercial needs of the citizens of the state; and to require uniform monumenting of land subdivisions and conveyancing by accurate legal description." (Emphasis supplied)

Additionally, RCW 58.17.020 defines a short subdivision as ". . . the division or redivision of land into four or fewer lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership. . . ."1/

[[Orig. Op. Page 3]]

Redivision is an additional separation into parts. As the facts you posed indicate, a lot, in a previously approved subdivision, is divided in half. It is our opinion that this action constitutes a redivision. Inasmuch as four or fewer lots are created, this would be a short subdivision rather than a subdivision (RCW 58.17.020 -five or more lots). If this is a short subdivision it is subject to the provisions of chapter 58.17 RCW. RCW 58.17.060 requires cities, towns and counties to adopt regulations and procedures for the approval of short subdivisions. Therefore, the action you described would be subject to approval under your local regulations unless it falls under the exception enumerated in RCW 58.17.040(6).2/

RCW 58.17.040 lists a number of exceptions to the application of chapter 58.17 RCW. Your question specifically relates to RCW 58.17.040(6) which states as follows:

"A division made for the purpose of adjusting boundary lines which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; . . ."

The facts presented in your question indicate that a lot within an existing subdivision will be divided in half with both halves remaining within the existing subdivision. Clearly, in this situation, an additional lot is created. (Where the subdivision originally had a lot 1, it will now have a lot 1A and a lot 1B.) This creation of an additional lot removes this action from the exemption provided in RCW 58.17.040(6). Accordingly, it is our conclusion that the action described in question (1) is a redivision subject to the provisions of chapter RCW 58.17 [chapter 58.17 RCW] and we therefore answer your first question in the negative.

Regarding your second question, the facts are similar except that the lot in question is to be removed from the existing subdivision and attached to an adjoining parcel outside the subdivision. Unlike your first question, in this situation no additional lot is created. We therefore turn to a further analysis of RCW 58.17.040(6).

[[Orig. Op. Page 4]]

The essence of your question is whether the division of a lot with each parcel containing sufficient area and dimension to meet minimum requirements for width and area for a building

site constitutes a boundary line adjustment making it exempt from coverage under chapter 58.17 RCW. Unfortunately, when the legislature enacted chapter 293 in 19813/ it did not provide a definition of "adjusting boundary lines." The statute does not itself further describe what a boundary line adjustment is nor is there any legislative history available which clarifies the meaning of "adjusting boundary lines." Further, this issue has never been addressed by any appellate court in this state. Thus, it is necessary for us to glean the legislature's intent from what it did say.

Black's Law Dictionary defines "adjustment" as an arrangement or settlement (citing Henry D. Davis Lumber Co. v. Pacific Lumber Agency, 127 Wash. 198, 220 Pac. 804, 805 (1923)). "Adjust" is defined as "[t]o settle or arrange; to free from differences or discrepancies; . . ." (Black's Law Dictionary). Webster's Third New International Dictionary defines "adjust" as ". . . settle, resolve . . . rectify . . ." and, "adjustment" as "the bringing into proper, exact, or conforming position or condition . . . harmonizing or settling (the adjustment of variant views) . . ."

Words in statutes must be given their ordinary meaning where no statutory definition is provided. State v. Roadhs, 71 Wn.2d 705, 708, 430 P.2d 586 (1967). Pringle v. State, 77 Wn.2d 569, 571, 464 P.2d 425 (1970). Thus, "adjusting" means settling or arranging; freeing from differences or discrepancies; rectifying. Adjusting may be necessary where some controversy exists regarding the boundary line or where arranging or rectifying is required.

The legislature recognized that boundary line disputes do occur when it enacted RCW 58.04.020 which reads as follows:

"Whenever the boundaries of lands between to [two] or more adjoining proprietors shall have been lost, or by time, accident or any other cause, shall have become obscure, or uncertain, and the adjoining proprietors cannot agree to establish the same, one or more of said adjoining proprietors may bring his civil action in equity, in the superior court, for the county in which such lands, or [[Orig. Op. Page 5]] part of them are situated, and such superior court, as a court of equity, may upon such complaint, order such lost or uncertain boundaries to be erected and established and properly marked." (Emphasis supplied)

If the parties can agree on the location of the boundary line, pursuant to RCW 58.17.040(6), then they would not be required to resort to civil action under RCW 58.04.020 to obtain a determination of the proper location of the boundary line.

An adjustment may be necessary where, for example, a boundary in an approved plat may need to be changed by a developer for proper installation of utilities to two lots. Assuming no additional lot was created and no lot was left containing insufficient area to constitute a building site, such a change in boundary line would be a rectifying or arranging pursuant to the usual and ordinary meaning of the term "adjusting." Therefore, this division would be an adjusting of boundary lines under RCW 58.17.040(6).

"In placing a judicial construction upon a legislative enactment, the entire sequence of all statutes relating to the same subject matter should be considered. . . ." Brewster Public Schools v. PUD No. 1, 82 Wn.2d 839, 843, 514 P.2d 913 (1973) citing Amburn v. Daly, 81 Wn.2d 241, 245-46, 501 P.2d 178 (1972). Legislative intent, will, or purpose, is to be ascertained from the statutory test as a whole, interpreted in terms of the general object and purpose of the act. Brewster, 82 Wn.2d at 843. As previously cited, the purpose of chapter 58.17 RCW is to assure uniformity in the process by which land is divided and to regulate the subdivision of land.

In the facts presented, the parties intend to establish a boundary line (cutting a lot in half) where none existed before. Although there is no additional lot, tract, parcel, site or division, a new plat boundary line is created. We do not believe this is in keeping with the purpose of the statute nor with our interpretation of "adjusting boundary lines."4/

[[Orig. Op. Page 6]]

It should also be noted that the definition of "short subdivision" speaks of redivision of land for the purpose of sale. Here, the lot in question is being divided so that one half may be purchased by an adjoining landowner. For the reasons discussed herein it is our opinion that the anticipated property alteration is the creation of a short subdivision under RCW 58.17.020(6) and not an adjusting of boundary lines under RCW 58.17.040(6). Accordingly, we answer your second question in the negative.5/ We trust that the foregoing will be of some assistance to you.

Very truly yours,

KENNETH O. EIKENBERRY

Attorney General

MEREDITH WRIGHT MORTON

Assistant Attorney General

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FOOTNOTES *

1/AGO 1980 No. 5 dealt with the provisions of chapter 58.17 RCW. In 1980 a "short subdivision" was defined as ". . . the division of land into four or less lots, tracts, parcels, sites or subdivisions for the purpose of sale or lease." AGO 1980 No. 5 discussed an earlier recommendation to the State Legislature that the word "resubdivision" be expressly defined. In 1981 the legislature amended chapter 58.17 RCW adding the word "redivision" to the definition of "short subdivision." "Resubdivision" was stricken from the definition of "subdivision" and substituted for "redivision."

2/There are also six other exceptions enumerated under RCW 58.17.040, however, clearly, none of them are applicable to your fact situation. So we will not provide an analysis of them.

3/Codified in part as RCW 58.17.040(6).

4/There may be counties which have adopted ordinances which would exempt this factual situation from county approval. Inasmuch as you have asked for our opinion regarding this situation, we assume no such ordinance exists in Island County.

5/In so concluding we recognize that, as we did in AGO 1980 No. 5, there is a lack of uniformity among the various local jurisdictions in actual practice throughout the state. The state legislature remains free to clarify its own intent, if we have not sufficiently done so, by expressly defining the phrase "adjusting boundary lines."

AGO_1987_No_008 Platting & Subdivisions - Real Estate - Denial Of Short Plat Application - Forum For Appeal

King County is not required to allow an appeal to the county council of an administrative decision denying a short plat application.

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March 16, 1987

Honorable John W. Betrozoff

State Representative, 45th District

325 House Office Building

Olympia, Washington 98504

Cite as: AGO 1987 No. 8

Dear Sir:

By recent letter you have requested our opinion on a question that we paraphrase as follows:

Is King County required to allow an appeal to the county council of an administrative decision denying a short plat application?

We answer this question in the negative.

ANALYSIS

The statutory scheme with regard to plats and subdivisions is set forth in chapter 58.17 RCW. Before turning to the substantive provisions of the chapter that relate to your question, the following definitions from RCW 58.17.020 are to be noted:

(1) "Subdivision" is the division or redivision of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership, except as provided in subsection (6) of this section.

(2) "Plat" is a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys or other divisions and dedications.

[[Orig. Op. Page 2]]

. . .

(6) "Short subdivision" is the division or redivision of land into four or fewer lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership: Provided, That the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine.

. . .

(8) "Short plat" is the map or representation of a short subdivision.

. . .

Turning to the substantive provisions that apply to your question, we note first RCW 58.17.330 which provides in part:

As an alternative to those provisions of this chapter requiring a planning commission to hear and issue recommendations for plat approval, the county or city legislative body may adopt a hearing examiner system and shall specify by ordinance the legal effect of the decisions made by the examiner. The legal effect of such decisions shall include one of the following:

(1) The decision may be given the effect of a recommendation to the legislative body;

(2) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body.

. . .1/

[[Orig. Op. Page 3]]

King County has adopted a hearing examiner system. See King County Code 20.24. Pursuant to this system, certain decisions of the hearing examiner have the effect of a recommendation to the county council. See King County Code 20.24.070. Certain other decisions, including appeals from the decisions of the administrator for short subdivisions, have the effect of final decisions. See King County Code 20.24.080.2/

Decisions of the hearing examiner pursuant to section 20.24.080 are not appealable to the county council. Instead, they are appealable within certain time limits only to the King County Superior Court. See King County Code 20.24.240.3/

[[Orig. Op. Page 4]]

The basic issue raised by your question, then, is whether the provision of King County's hearing examiner system that required decisions of the examiner with regard to the approval of short subdivisions to be appealed to Superior Court conflicts with the requirement of RCW 58.17.330 that decisions of an examiner with regard to plat approval be given the effect of either a recommendation to the legislative body or an administrative decision appealable to the legislative body. In our opinion, this provision of the King County hearing examiner system does not conflict with RCW 58.17.330 because the requirements of RCW 58.17.330 do not apply to short plats or short subdivisions.4/

First, RCW 58.17.030 exempts short plats and short subdivisions from the requirements of chapter 58.17. RCW 58.17.030 provides:

Every subdivision shall comply with the provisions of this chapter. Every short subdivision as defined in this chapter shall comply with the provisions of any local regulation adopted pursuant to RCW 58.17.060.

RCW 58.17.060, in turn, provides in part:

The legislative body of a city, town, or county shall adopt regulations and procedures, and appoint administrative personnel for the summary approval of [[Orig. Op. Page 5]] short plats and short subdivisions, or revision thereof. Such regulations shall be adopted by ordinance and may contain wholly different requirements than those governing the approval of preliminary and final plats of subdivisions . . . .

The requirements of chapter 58.17 RCW are thus inapplicable to short plats and short subdivisions.5/

Instead, the Legislature has left the regulation of short plats and short subdivisions entirely to the discretion of the local legislative bodies. The local bodies are required to adopt their own regulations and procedures but these regulations may contain requirements that are "wholly different" from the requirements of chapter 58.17 RCW concerning plats and subdivisions. Thus, King County is free, pursuant to RCW 58.17.060, to provide for a legal effect of the decision of the hearing examiner with regard to approval of a short plat or short subdivision that is wholly different from the requirements of RCW 58.17.330.6/

Second, if the Legislature intended for the provisions and requirements of RCW 58.17.330 to apply to short plats and short subdivisions, it could have expressly so provided. For example, the requirement in RCW 58.17.195 that no plat may be approved [[Orig. Op. Page 6]] unless the city, town, or county makes a written finding that the proposed subdivision is in conformity with any applicable zoning ordinance or other land use controls is expressly made applicable to short plats and short subdivisions. See supra note 5. Thus, the Legislature clearly knew how to make a provision in chapter 58.17 RCW applicable to short plats and short subdivisions but chose not to do so with regard to the requirements of RCW 58.17.330.

For the reasons set forth above, it is our opinion that the exemption contained in RCW 58.17.030 and the broad grant of authority given to local governments by RCW 58.17.060 with regard to short plats and short subdivisions serves to exclude short plats and short subdivisions from the requirements of RCW 58.17.330.

We trust that the foregoing will be of assistance to you.

Very truly yours,

KENNETH O. EIKENBERRY

Attorney General

MARK S. GREEN

Assistant Attorney General

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FOOTNOTES *

1/The provisions of chapter 58.17 RCW requiring a planning commission to hear and issue recommendations for plat approval include RCW 58.17.100, which provides in part:

If a city, town or county has established a planning commission or planning agency in accordance with state law or local charter, such commission or agency shall review all preliminary plats and make recommendations thereon to the city, town or county legislative body to assure conformance of the proposed subdivision to the general purposes of the comprehensive plan and to planning standards and specifications as adopted by the city, town or county. . . .

. . .

Sole authority to approve final plats, and to adopt or amend platting ordinances shall reside in the legislative bodies.

2/King County Code 20.24.080 provides in part:

A. The examiner shall receive and examine available information, conduct public hearings andd [and] prepare records and reports thereof, and issue final decisions based upon findings and conclusions in the following cases:

1. Appeals from the decisions of the administrator for short subdivisions;

. . .

3/King County Code 20.24.240 provides in part:

. . .

B. Decisions of the examiner in cases identified in Section 20.24.080 shall be a final and conclusive action unless within twenty calendar days from the date of issuance of the examiner's decision an aggrieved person applies for a writ of certiorari from the Superior Court in and for the county of King, state of Washington, for the purpose of review of the action taken; . . .

4/King County has authorized its hearing examiner to issue final decisions in a number of situations other than appeals from the decision of the administrator for short subdivisions, including appeals from decisions of the zoning adjustor on conditional use permits and variances. King County Code 20.24.080. As with decisions regarding short subdivisions, the decisions of the hearing examiner regarding conditional use permits and variances are appealable only to the Superior Court. King County Code 20.24.240(B). We express no opinion on the propriety of King County's determination to make certain decisions of the hearing examiner other than decisions concerning short plat applications appealable only to the Superior Court.

5/The only exception seems to be the requirement in RCW 58.17.195 that

"[n]o plat or short plat may be approved unless the city,town, or county makes a formal written finding of fact that the proposed subdivision or proposed short subdivision is in conformity with any applicable zoning ordinance or other land use controls which may exist." (Emphasis added.)

By its terms, this requirement is specifically applicable to short plats and short subdivisions.

6/This result is in accord with the result we reached in AGLO 1979 No. 29 (copy enclosed). There we concluded on the basis of RCW 58.17.060 that a county could manifest its approval of a short plat containing dedications "in whatever manner is provided for by the particular county's short plat ordinance" notwithstanding that RCW 58.17.070 requires a preliminary plat of proposed subdivisions and dedications of land to be submitted to the county commissioners for approval.

AGO_1988_No_004 State Agencies - Municipal Corporations - Contracts For Architectural And Engineering Services

Cite as: AGO 1988 No. 4

1. A public agency may not, in procuring architectural or engineering services, consider proposed price or cost in determining which firm is most highly qualified to provide services.

2. When a public agency selects a firm to perform architectural or engineering services, price and cost may be considered only after the most qualified firm has been selected, at which time the law provides for negotiation of a "fair and reasonable" price.

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February 18, 1988

Honorable Gary Nelson

Honorable Lorraine Hine

Legislative Building

Olympia, Washington 98504

Dear Senator Nelson and Representative Hine:

By letter previously acknowledged you requested our opinion concerning public agency procurement of architectural and engineering services under RCW 39.80 [chapter 39.80 RCW]. We paraphrase your questions as follows:

1. In procuring architectural and engineering services, may a public agency consider proposed price or cost of the services in determining which firm is most highly qualified to provide those services under RCW 39.80.040?

2. At what point in the selection process may price or cost be considered by a public agency in procuring architectural and engineering services under RCW 39.80 [chapter 39.80 RCW]?

We answer question 1 in the negative and question 2 as set forth in our analysis.

[[Orig. Op. Page 2]]

ANALYSIS

Though it may seem odd at first impression, the State Legislature has adopted a

statutory scheme by which public agencies are precluded from considering price when selecting architects and engineers, except for a final price negotiation after the most qualified architect or engineer has been selected.

Chapter 39.80 RCW originated with the passage of Substitute House Bill 176 in 1981, enacted as Laws of 1981, ch. 61. The Legislature's purpose was to establish a state policy that:

governmental agencies publicly announce requirements for architectural and engineering services, and negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

RCW 39.80.010.

The chapter establishes a three step process for procuring such services: (1) publication of the agency's requirement for professional services, RCW 39.80.030; (2) selection of the firm deemed to be the most highly qualified to provide the required services based upon criteria established by the agency, RCW 39.80.040; and (3) negotiation of a contract with the most qualified firm at a price which the agency determines is fair and reasonable to the agency, RCW 39.80.050(1). If negotiations with that firm fail, the agency determines the next most qualified firm and similarly negotiates, RCW 39.80.050(2).

The term "qualified" is not defined in RCW 39.80 [chapter 39.80 RCW]; thus, we must give it its ordinary meaning. Webster's Third New International Dictionary 1858 (1981) defines "qualified" as "fitted (as by endowments or accomplishments) for a given purpose: COMPETENT, FIT . . . ."

Your first question is whether under RCW 39.80.040 price or cost may be one of the requirements or criteria that the agency may consider in determining the most highly qualified firm. A thorough reading of the statute and an examination of its legislative history indicate that price is not a permissible criterion for choosing the most highly qualified firm.

[[Orig. Op. Page 3]]

The three step process set forth by the statute provides for negotiation of price only after the agency has selected the most qualified firm. If price were one of the criteria for selecting the most qualified firm, the language of RCW 39.80.050 regarding negotiation of price would be surplusage.

This interpretation is consistent with the legislative history of the statute. Extrinsic aids may be used to construe a statute even in the absence of ambiguous statutory language. Garrison v. State Nursing Bd., 87 Wn.2d 195, 550 P.2d 7 (1976). Documents from state legislative archives may be examined to glean evidence of legislative intent. See, e.g., Seattle Times Co. v. County of Benton, 99 Wn.2d 251, 661 P.2d 964 (1983); State v. Turner, 98 Wn.2d 731, 658 P.2d 658 (1983).

Files from both the House and Senate State Government Committees contain documents reflecting that under Substitute House Bill 176 price would not be a factor in the initial selection of a qualified firm to provide architectural and engineering services. Eg., Memorandum from D. Karras, Staff Analyst, Office of Program Research, to Members, House State Government Committee, February 18, 1981; Memorandum from B. Lynch, Legal Intern, Office of Program Research, to Members, House State Government Committee, February 18, 1981; Senate Committee on State

Government, 47th Legislature, Committee Analysis of SHB 176 as Enacted (1981). The bill passed out of the House Committee without amendment in that regard. When the bill was considered in the Senate Committee, an amendment was proposed which would have reworded what was to become RCW 39.80.040, directing the agency to choose

the most qualified firm for the project based on criteria established by the agency which may include: professional competence for the type of services to be performed; technical merits of the offered services; financial capability of the applicant to perform the specified work; the cost, price, compensation, or consideration to be paid by the agency for such services; and the affirmative action/equal employment opportunity record of the consultant.

Proposed Committee Amendment to SHB 176 by Senate Committee on State Government, 47th Legislature (1981) (emphasis added). The committee rejected the amendment. Thus, the legislative history indicates consideration and rejection of price as an initial consideration in selecting a firm to provide architectural and engineering services.

[[Orig. Op. Page 4]]

RCW 39.80 [chapter 39.80 RCW] was modeled, in part, after 40 U.S.C. §§ 541-544, the Brooks Act. The Brooks Act also contains the three step process of publication, selection of the "most highly qualified firm," and negotiation of the contract at a price deemed to be "fair and reasonable" to the agency. No case involving the Brooks Act has specifically decided whether price or cost may be a factor considered by the agency in choosing the most qualified firm. 1/

However, in National Soc'y of Professional Eng'rs v. United States, 435 U.S. 679, 55 L. Ed. 2d 637, 98 S. Ct. 1355 (1978), the Supreme Court compared the Brooks Act to the Engineers' Society Code of Ethics, which forbade competitive bidding among engineers. The Society's traditional recommended method of engineer selection began with initial competition based on competence and experience. Price negotiations were to take place only after selection of the most qualified firm. The Court stated: "Congress has decided not to require competitive bidding for Government purchases of engineering services. The Brooks Act requires the Government to use a method of selecting engineers similar to the Society's 'traditional method.'" 435 U.S. 694 n. 21 (citation omitted).

A previous opinion issued by this office reached the same conclusion. It described the newly enacted RCW 39.80 [chapter 39.80 RCW] as follows:

Simply stated, chapter 61, Laws of 1981 . . . does not establish a competitive bidding procedure for the letting of architectural and engineering service contracts by governmental agencies. Rather, it provides for negotiated contracts . . . after a preliminary determination as to the "most qualified" firm. While there most certainly is a competitive aspect to the law in terms of how a particular architectural or engineering firm is determined to be "most qualified," the competition is at that preliminary level and not, as under competitive bidding, at the critical level of "offer" and "acceptance" in the context of formation of a particular contract.

AGO 1981 No. 19, at 7.

[[Orig. Op. Page 5]]

Thus, in answer to your second question, the point in the selection process at which price or cost may be considered by the public agency

is after the selection of the most highly qualified firm, during the negotiations with that firm. The agency may then contract for the services at a price which the agency determines is fair and reasonable to the agency.

We trust the foregoing will be of assistance to you.

Very truly yours,

KENNETH O. EIKENBERRY

Attorney General

NANCY THYGESEN DAY

Assistant Attorney General

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FOOTNOTES *

1/A Comptroller General published opinion issued in August 1985 concludes that, under the Brooks Act, cost may be considered only after the final ranking of firms. Mounts Engineering, 64 Comp. Gen. 772 (1985).

AGO_1989_No_001 Surveys - Plats And Subdivisions - Filing And Recording

1. RCW 58.09.040(1)(a) through (d) do not constitute an exclusive list of the surveys required by law to be filed.

2. The Survey Recording Act (chapter 58.09 RCW) does not require the filing of a record of survey subsequent to the physical location of a boundary line between two existing corner monuments.

3. The Survey Recording Act (chapter 58.09 RCW) requires the filing of a record of survey subsequent to the reestablishment of a corner position previously recorded in the county under a local law or ordinance; it does not matter whether the corner had previously been monumented.

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January 20, 1989

Honorable Brian Boyle

Commissioner of Public Lands

Department of Natural Resources

Olympia, Washington 98504

Cite as: AGO 1989 No. 1

Dear Commissioner Boyle:

By letter previously acknowledged, you requested our opinion on several questions concerning the Survey Recording Act, chapter 58.09 RCW. We have reordered your questions as follows:

1. Does RCW 58.09.040(1)(a) through (d) limit the types of surveys required to be filed?

2. Does the Survey Recording Act require the filing of a record of survey subsequent to the physical location of a boundary line between two existing corner monuments?

3. Does the answer to question 2 vary depending on the physical objects used to mark the boundary line, i.e., whether the line is marked by flags or by iron pipes?

[[Orig. Op. Page 2]]

4. Does the Survey Recording Act require the filing of a record of survey

subsequent to the reestablishment of a corner position previously recorded in the county under any local subdivision or platting law or ordinance?

5. Does the answer to question 4 depend on whether the corner was previously monumented and the monument is lost or the corner was not originally monumented?

We answer question 1 and 2 in the negative, question 4 in the affirmative, question 5 in the negative, and do not reach question 3.

Question 1

The first of your questions is:

Does RCW 58.09.040(1)(a) through (d) limit the types of surveys required to be filed?

To place your question is perspective, we will first set forth the entire text of RCW 58.09.040:

After making a survey in conformity with sound principles of land surveying, a land surveyor may file a record of survey with the county auditor in the county or counties wherein the lands surveyed are situated.

(1) It shall be mandatory, within ninety days after the establishment, reestablishment or restoration of a corner on the boundary of two or more ownerships or general land office corner by survey that a land surveyor shall file with the county auditor in the county or counties wherein the lands surveyed are situated a record of such survey, in such form as to meet the requirements of this chapter, which through accepted survey procedures, shall disclose:

(a) The establishment of a corner which materially varies from the description of record;

(b) The establishment of one or more property corners not previously existing;

(c) Evidence that reasonable analysis might result in alternate positions of lines or points as a result of an ambiguity in the description;

[[Orig. Op. Page 3]]

(d) The reestablishment of lost government land office corners.

(2) When a licensed land surveyor, while conducting work of a preliminary nature or other activity that does not constitute a survey required by law to be recorded, replaces or restores an existing or obliterated general land office corner, it is mandatory that, within ninety days thereafter, he shall file with the county auditor in the county in which said corner is located a record of the monuments and accessories found or placed at the corner location, in such form as to meet the requirements of this chapter.

Initially, RCW 58.09.040 makes it clear that not all surveys must be recorded pursuant to the act.1/

The first sentence of the statute says that a land surveyor "may" file a record of survey. If it were mandatory that all records of surveys be filed, the statute would use "shall" instead of "may".2/

Also, if all surveys had to be recorded, then subsection (1) of RCW 58.09.040 would not have been necessary.

RCW 58.09.040(1) makes it "mandatory" to file a record of certain surveys. Your inquiry is the role of paragraphs (a) through (d) in defining which surveys must be filed.

At least two constructions are possible. Under one possible interpretation, paragraphs (a) through (d) would limit the surveys required to be filed to those which disclose one or more of the conditions listed in paragraphs (a) through (d). Under this interpretation, if the survey did not involve at least one of these conditions, it would not have to be filed.

Another possible interpretation is that paragraphs (a) through (d) do not limit or describe the types of surveys that must be filed. Under this interpretation, the description of what surveys must be filed would be found elsewhere in RCW 58.09.040(1), and the effect of paragraphs (a) through (d) would [[Orig. Op. Page 4]] be merely to require, if any of those conditions existed, that the record of survey being filed clearly disclose them.

We conclude that the latter construction is the proper one and that paragraphs (a) through (d) do not limit the types of surveys required to be filed. We reach this conclusion primarily from the language of RCW 58.09.040(1) itself. Repeated for convenience, that subsection reads:

It shall be mandatory, within ninety days <u>after the establishment, reestablishment or restoration of a corner</u> on the boundary of two or more ownerships <u>or general land office corner by survey that a land surveyor shall file</u> with the county auditor in the county or counties wherein the lands surveyed are situated <u>a record of such survey</u>, in such form as to meet the requirements of this chapter, which through accepted survey procedures, shall disclose:

(a) The establishment of a corner which materially varies from the description of record;

(b) The establishment of one or more property corners not previously existing;

(c) Evidence that reasonable analysis might result in alternate positions of lines or points as a result of an ambiguity in the description;

(d) The reestablishment of lost government land office corners.

(Emphasis added.)

In our view, the surveys that must be filed pursuant to this subsection are all surveys which establish, reestablish, or restore either "a corner on the boundary of two or more ownerships" or a general land office corner.3/

The critical words in the statute are: "It shall be mandatory . . . that a land surveyor shall file . . . a record of <u>such</u> survey . . . ." (Emphasis

added.) In our view, "such" survey refers to the description preceding it, namely, any survey which establishes, reestablishes, or restores a corner. As noted by the Washington [[Orig. Op. Page 5]] Supreme Court in Jepson v. Department of Labor & Indus., 89 Wn.2d 394, 404, 573 P.2d 10 (1977): "The word 'such' is a descriptive and relative adjective that refers back to and identifies something of like kind previously spoken of."

If paragraphs (a) through (d) were intended to be limitations on the types of surveys that had to be filed, we would expect the language to be phrased differently. We would expect the critical language to read: "A land surveyor shall file . . . a record of any such survey . . . which discloses . . . ."

In summary, then, the surveys that must be filed pursuant to RCW 58.09.040(1) are all those which establish, reestablish, or restore a corner on the boundary of two or more ownerships or a general land office corner.4/

Paragraphs (a) through (d) of RCW 58.09.040(1) do not limit the types of surveys required to be filed. However, when any of the conditions in paragraphs (a) through (d) is found, this shall be disclosed clearly on the record of survey being filed.5/

Question 2

Repeated for convenience, your next question is:

Does the Survey Recording Act require the filing of a record of survey subsequent to the physical location of a boundary line between two existing corner monuments?

In answering this question we refer again to RCW 58.09.040, which is the section that prescribes which surveys must be filed (subject to certain exceptions found in later sections). As discussed in connection with question 1 above, RCW 58.09.040 does not require that all records of surveys be filed. RCW 58.09.040 requires records of surveys to be filed when the survey involves the "establishment, reestablishment or restoration of a corner". Since your question presupposes "two existing corner [[Orig. Op. Page 6]] monuments",6/

the survey you describe does not appear to involve the "establishment, reestablishment or restoration" of any corners. Accordingly, it need not be recorded pursuant to chapter 58.09 RCW.7/

Question 3

Repeated for convenience, your third question is:

Does the answer to question 2 vary depending on the physical objects used to mark the boundary line, i.e., whether the line is marked by flags or by iron pipes?

In view of our negative answer to question 2, it is not necessary to reach question 3.

Question 4

Repeated for convenience, your fourth question is:

Does the Survey Recording Act require the filing of a record of survey subsequent to the reestablishment of a corner position previously recorded in the county under any local subdivision or platting law or ordinance?

This question requires an analysis of the relationship between RCW 58.09.040(1) and 58.09.090(1)(c). As discussed in connection with previous questions, RCW 58.09.040(1) requires [[Orig. Op. Page 7]] filing of a record of a survey involving the "establishment, reestablishment or restoration of a corner".

RCW 58.09.090 reads:

(1) A record of survey is not required of any survey:

(a) When it has been made by a public officer in his official capacity and a reproducible copy thereof has been filed with the county engineer of the county in which the land is located. A map so filed shall be indexed and kept available for public inspection. A record of survey shall not be required of a survey made by the United States bureau of land management. A state agency conducting surveys to carry out the program of the agency shall not be required to use a land surveyor as defined by this chapter;

(b) When it is of a preliminary nature;

(c) When a map is in preparation for recording or shall have been recorded in the county under any local subdivision or platting law or ordinance.

(2) Surveys exempted by foregoing subsections of this section shall require filing of a record of corner information pursuant to RCW 58.09.040(2). (Emphasis added.)

RCW 58.09.090(1) does not, by its express language, create any exemption to any filing requirements. It states: "A record of survey is not required . . . ." (Emphasis added.) This term is not defined in chapter 58.09 RCW, nor does the chapter anywhere impose any requirement to make a "record of survey". In some sections of the chapter is appears that a "record of survey" is not the same as "filing" the record of survey. See RCW 58.09.040, [58.09].050, [58.09].100, [58.09].110. However, elsewhere in the chapter it seems that making the record of survey and filing it are essentially the same thing. See RCW 58.09.060. Although the language does not expressly say so, we conclude that the exemptions in RCW 58.09.090(1) are exemptions from filing the "record of survey", not merely from making it.

The answer to your question depends on what is meant by "reestablishment . . . of a corner" in RCW 58.09.040(1). The purpose of RCW 58.09.090(1)(c) seems to be to avoid unnecessary duplication in filing records of survey. If the survey is done in connection with a map to be recorded under a local subdivision or platting law, then it is exempt from filing. Also, if the [[Orig. Op. Page 8]] survey simply uses corners that appear on a map already filed under a local subdivision or platting law, then it does not need to be filed. However, when the surveyor does not simply go from the corners on a previously filed subdivision or plat map but instead "reestablishes" the corner, then the record of the survey must be filed. "Reestablish", as we view it, means to redetermine the location of the corner according to sound principles of land surveying. It may be that the corner turns out to be at the same location as on the previously filed subdivision map or plat, but so long as the surveyor makes a conscious redetermination of the location of the corner, the record of survey must be filed pursuant to RCW 58.09.040(1).

Our conclusion is supported by RCW 58.09.010, which states that the purpose of chapter 58.09 RCW is "to provide a method for preserving evidence of land surveys . . . ." Presumably, if the corner had to be reestablished, then is was not sufficiently well monumented, the existence of the previously filed subdivision map or plat notwithstanding, and the record of survey should be filed.

Question 5

Your final question is as follows:

Does the answer to question 4 depend on whether the corner was previously monumented and the monument is lost or the corner was not originally monumented?

Your question presupposes, as does question 4, that there was a reestablishment or restoration of a corner. If the survey is not exempted by RCW 58.09.090(1)(c) and must be filed, then it does not matter whether a corner monument was lost or was never placed initially.8/

Thus, the answer to this question is no.

[[Orig. Op. Page 9]]

We trust that the foregoing will be of assistance to you.

Very truly yours,

KENNETH O. EIKENBERRY

Attorney General

SPENCER W. DANIELS

Assistant Attorney General

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FOOTNOTES *

1/RCW 58.09.020(3) defines "survey". It reads:

"Survey" shall mean the locating and monumenting in accordance with sound principles of land surveying by or under the supervision of a licensed land surveyor, of points or lines which define the exterior boundary or boundaries common to two or more ownerships or which reestablish or restore general land office corners.

2/See, e.g., Singleton v. Frost, 108 Wn.2d 723, 728, 742 P.2d 1224 (1987).

3/"A corner is a point of change of direction of the boundary of real property. It may be marked by a monument, fence, or other physical object, or it may not be marked at all." C. Brown, W.

Robillard & D. Wilson, Boundary Control and Legal Principles 86 (3d ed. 1986).

4/Some of these surveys may be exempt from being filed because of exemptions found elsewhere in chapter 58.09 RCW. See RCW 58.09.090.

5/Our conclusion is consistent with the description of the operation of RCW 58.09.040 in AGLO 1980 No. 31, which dealt with the authority of a county auditor to reject records of survey which do not comply with the act.

6/The statute does not define "monument". One legal dictionary defines "monument" as follows:

> In real-property law and surveying, monuments are visible marks or indications left on natural or other objects indicating the lines and boundaries of a survey. In this sense the term includes not only posts, pillars, stone markers, cairns, and the like, but also fixed natural objects, blazed trees, and even a water-course. Any physical object on ground which helps to establish location of line called for; it may be either natural or artificial, and may be a tree, stone, stake, pipe, or the like. Delphey v. Savage, 227 Md. 373, 177 A.2d 249, 251.

Black's Law Dictionary 909 (5th ed. 1979). See also WAC 332-120-010, which contains a somewhat different definition.

7/While such a survey need not be filed, if it is filed, it must comply with the provisions of chapter 58.09 RCW. See RCW 58.09.030.

8/As the Survey Recording Act continues in effect, instances of lost or unmonumented corners should decline. Chapter 58.09 RCW assumes that surveys performed in accordance with it will involve proper monumenting of corners which are established, reestablished, or restored. See RCW 58.09.010, [58.09].020(3), [58.09].040(2), [58.09].060, [58.09].120. See generally Comment, Boundary Law: The Rule of Monument Control in Washington, 7 U. Puget Sound L. Rev. 355, 371 n.87 (1984).

AGO_1990_No_009 Licenses - Board Of Registration For Architects - Architect - Engineers - Buildings - Cities And Towns - Counties

September 21, 1990

1. A registered architect or professional engineer must sign and stamp or seal each individual page containing a building construction drawing, or revision thereto, prepared or reviewed by him or her and submitted or permitted to be submitted in support of an application for a building permit, unless the activities are exempt from the requirement that drawings be signed and stamped or sealed by reason of RCW 18.08.410 or 18.43.130(1)-(7), (9).

2. In the absence of one of the exemptions in RCW 18.08.410, a person who is not a registered professional architect or professional engineer violates RCW 18.08.310 by preparing a design or construction drawing for a building and submitting that design, or permitting that design or drawing to be submitted, in support of a building application.

3. Under RCW 18.08.460(1) a local building official may accept a request for a building permit and issue the permit based on a design or construction drawing that does not bear the signature and stamp or seal of a registered architect or registered professional engineer, even if the activities are subject to the requirement that drawings be signed and stamped or sealed.

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Mary Faulk, Director

Department of Licensing

Highways-Licenses Building

Olympia, Washington 98504

Cite as: AGO 1990 No. 9

Dear Ms. Faulk:

By letter previously acknowledged, you requested our opinion on the following five questions:

1. Must a registered architect or a registered professional engineer sign and stamp or seal each individual page containing a building construction drawing, or revision thereto, prepared or reviewed by him or her and submitted, [[Orig. Op. Page 2]] or permitted to be submitted, by him or her in support of an application for a building permit?

2. If the answer to question 1 is no, in whole or in part, under what circumstances may a registered architect or registered professional

engineer submit, or permit to be submitted, a plan or drawing in support of an application for a building permit without his or her signature and stamp or seal without violating: (a) RCW 18.08.370(2), RCW 18.08.420(7), or WAC 308-12-081 (architects); or (b) RCW 18.43.070, RCW 18.43.130(8)(h) (engineers)?

3. In the absence of one of the exemptions found in RCW 18.08.410, does a person not a registered architect or a registered professional engineer violate RCW 18.08.310 by preparing a design or construction drawing for a building and submitting that design or drawing, or permitting that design or drawing to be submitted, in support of an application for a building permit?

4. In the absence of one of the exemptions found in RCW 18.08.410, does a person not a registered architect or a registered professional engineer violate RCW 18.08.310 by preparing a revision to a design or construction drawing previously filed in support of an application for a building permit and filing that revision, or permitting that revision to be filed, with local building officials?

5. Under RCW 18.08.460(1) must a local building official refuse to accept with a request for a building permit, or refuse to issue a building permit based upon, a design or construction drawing not bearing the signature and stamp or seal of a registered architect or a registered professional engineer, in the absence of the application to the design or drawing of one of the subsections of RCW 18.08.410?

Brief Answer

1. A registered architect or professional engineer must sign and stamp or seal each individual page containing a building construction drawing, or revision thereto, prepared or reviewed by him or her and submitted or permitted to be submitted in support of an application for a building permit, unless the activities are exempt from the requirement that drawings be signed and stamped or sealed by reason of RCW 18.08.410 or 18.43.130(1)-(7), (9).

[[Orig. Op. Page 3]]

2. The only circumstances under which a registered architect or professional engineer may submit, or permit to be submitted, a plan or drawing in support of an application for a building permit without signing and stamping or sealing the drawing is when the activity is specifically exempt from the requirement that drawings be signed and stamped or sealed by reason of RCW 18.08.410 or 18.43.130(1)-(7), (9).

3. In the absence of one of the exemptions in RCW 18.08.410, a person who is not a registered professional architect or professional engineer violates RCW 18.08.310 by preparing a design or construction drawing for a building and submitting that design, or permitting that design or drawing to be submitted, in support of a building application.

4. In the absence of one of the exemptions in RCW 18.08.410, a person who is not a registered architect of professional engineer does violate RCW 18.08.310 by preparing a revision to a design or construction drawing previously filed in support of an application for a building permit and filing the revision or permitting that revision to be filed with local building officials.

5. Under RCW 18.08.460(1) a local building official may accept a request for a building permit and issue the permit based on a design or construction drawing that does not bear

the signature and stamp or seal of a registered architect or registered professional engineer, even if the activities are subject to the requirement that drawings be signed and stamped or sealed.

Question 1

Your first question requires us to discuss statutes that involve both registered architects and registered professional engineers. Although we reach the same conclusion for both professions, we will discuss them separately.

A. Architects

The signing and sealing or stamping of documents by registered architects is statutorily governed by RCW 18.08.370(2) and [18.08].420(7). With respect to individual architects, RCW 18.08.370(2) states, in relevant part:

(2) Each registrant shall obtain a seal of the design authorized by the board bearing the architect's name, registration number, the legend "Registered [[Orig. Op. Page 4]] Architect," and the name of this state. Drawings prepared by the registrant shall be sealed and signed by the registrant when filed with public authorities. It is unlawful to seal and sign a document after a registrant's certificate of registration or authorization has expired, been revoked, or is suspended.

(Emphasis supplied.)

With respect to architects who have organized as a corporation or a joint stock association, RCW 18.08.420(7) states, in relevant part:

(7) All plans, specifications, designs, and reports when issued in connection with work performed by a corporation under its certificate of authorization shall be prepared by or under the direction of the designated architects and shall be signed by and stamped with the official seal of the designated architects in the corporation authorized under this chapter.

(Emphasis supplied.)

Additionally, we note that the State Board of Registration for Architects has adopted the following rule governing the signing and sealing or stamping of drawings:

Every architect licensed in the state of Washington shall have a seal of design authorized by the board, bearing the registrant's name, license number and the legend "Registered architect, state of Washington." The seal with the registrant's countersignature shall appear on every drawing filed with public authorities. A facsimile of the seal appears herewith. (Facsimile of seal omitted.)

No architect's stamp or countersignature shall be affixed to any drawings not prepared by the architect or his or her regularly employed subordinates, or reviewed by the architect. An architect who signs or seals drawings or specifications that he or she has reviewed is responsible to the same extent as if prepared by that architect.

(WAC 308-12-081) (Emphasis supplied.)

[[Orig. Op. Page 5]]

These statutes require that an architect sign and seal or stamp each individual page containing a building construction drawing prepared or reviewed by the architect and submitted or permitted by the architect to be submitted in support of an application for a building permit.

RCW 18.08.370(2) expressly requires that an architect sign and seal drawings which the architect has prepared "when filed with public authorities." Building permits are issued by cities or counties. RCW 19.27.085(3). Therefore, drawings submitted in support of a building permit have clearly been "filed with public authorities." Such drawings must be signed and sealed or stamped by an individual architect when submitted in support of a building permit.

With respect to architects practicing as a corporation or joint stock association, RCW 18.08.420(7) requires that all "plans, specifications, designs, and reports" must be signed and stamped or sealed when issued in connection with work performed by the corporation. RCW 18.08.420(7) does not define the meaning of "plans," "specifications," "designs," or "reports." Thus it is necessary to determine whether these terms encompass drawings.

Dictionary definitions may be resorted to in the absence of a statutory definition. Seattle Times Co. v. Benton County, 99 Wn.2d 251, 256, 661 P.2d 964 (1983). "Plan" is defined in relevant part as follows:

> 1: a drawing or diagram drawn on a plane: as a: a top view of a machine b: a representation of a horizontal section of a building - see GROUND PLAN

Webster's Third New International Dictionary 1729 (1981).

"Design" is defined in relevant part as follows:

> . . . a scheme for the construction, finish, and ornamentation of a building as embodied in the plans, elevations, and other architectural drawings pertaining to it . . .

(Emphasis supplied.)

Webster's Third New International Dictionary 611 (1981). Thus, drawings are encompassed within the terms "plans" and "designs" and must, therefore be signed and sealed or stamped when issued in connection with a project of the corporation.

[[Orig. Op. Page 6]]

RCW 18.08.370(2) provides that a registered architect shall sign and stamp or seal drawings he or she prepares. The statute does not specifically address the situation when a registered architect reviews drawings prepared by others. However, it is clear from other provisions of the chapter that the registered architect must sign and stamp or seal drawings that he or she reviews. RCW 18.08.410 exempts from the signing and stamping requirement:

> (9) Any person from designing buildings or doing other design work for structures . . . if the plans, which may include such design work, are stamped by a registered engineer or architect.

(Emphasis supplied.)

[[Orig. Op. Page 7]]

RCW 18.08.410(9) imposes an additional stamping requirement when drawings are prepared by others. Additionally, the State Board of Registration for Architects has adopted WAC 308-12-081, which provides that no architect shall sign and seal any drawings "not prepared by the architect or his or her regularly employed subordinates, or reviewed by the architect." (Emphasis supplied.) Thus, since drawings filed with public authorities must be signed and stamped or sealed by an architect, a reviewing architect must sign and stamp or seal drawings reviewed, but not prepared, by him or her.

The next issue which must be examined is whether each individual page of drawings submitted in support of a building permit must be signed and sealed or whether a group of drawings may be signed and sealed as a unit rather than individually.

The statutes governing professional architects do not expressly state whether registered architects must sign and stamp or seal each individual page of drawings submitted in support of a building permit or whether drawings may be signed and stamped or sealed as a unit. However, the general policy statement in RCW 18.08.235 clearly indicates that the purpose of licensing professional architects is "to safeguard life, health, and property, and to promote the public welfare." Likewise, the requirements that plans, specifications, designs and reports be signed and stamped or sealed is evidently intended to achieve the same purpose by assuring that building construction documents have been prepared by or under the direct supervision or responsible charge of a registered architect. We are of the opinion that this legislative purpose is best achieved by the signing and stamping or sealing by a registered architect of each individual page containing a drawing.

We note that the Board of Registration for Architects has adopted a construction similar to that of the statutes. The Board has adopted WAC 308-12-081 which requires "every drawing filed with public authorities" be signed and sealed. (Emphasis supplied.) As the agency charged with administering chapter 18.08 RCW, the board's interpretation of the statutes governing signing and sealing of drawings is entitled to great weight. Lumpkin v. Dep't of Social & Health Servs., 20 Wn. App. 406, 410, 581 P.2d 1060 (1978). Accordingly, we conclude that an architect must sign and seal each page containing a building construction drawing.

There is a major exception to the general requirement that each architectural drawing submitted in support of a building permit be signed and stamped or sealed by a registered architect. RCW 18.08.410 completely exempts certain activities from the requirements of chapter 18.08 RCW. If the drawings submitted in support of a building permit fall within one or more of the exempted activities, there is no requirement that they be signed and stamped or sealed by a registered architect.

B. Engineers

The signing and sealing or stamping of drawings by registered professional engineers is governed by RCW 18.43.070 and [18.43].130(8)(h). With respect to individual engineers, RCW 18.43.070 provides, in relevant part:

Each registrant hereunder shall upon registration obtain a seal of the design

authorized by the board, bearing the registrant's name and the legend "registered professional engineer" or "registered land surveyor." Plans, specifications, plats and reports prepared by the registrant shall be signed, dated, and stamped with said seal or facsimile thereof. Such signature and stamping shall constitute a certification by the registrant that the same was prepared by or under his direct supervision and that to his knowledge and belief the same was prepared in accordance with the requirements of the statute. It shall be unlawful for anyone to stamp or seal any document with said seal or facsimile thereof after the certificate of registrant named thereon has expired or been revoked, unless said certificate shall have been renewed or reissued.

(Emphasis added.) With respect to engineers who have organized as a corporation or joint stock association, RCW 18.43.130(8)(h) states:

[[Orig. Op. Page 8]]

(h) All plans, specifications, designs, and reports when issued in connection with work performed by a corporation under its certificate of authorization shall be prepared by or under the responsible charge of and shall be signed by and shall be stamped with the official seal of a person holding a certificate of registration under this chapter.

(Emphasis added.)

Additionally, we note that the State Board of Registration for Professional Engineers and Land Surveyors has adopted the following rule:

Engineers or land surveyors shall not affix their signature and seal to any engineering or land surveying plan or document dealing with subject matter outside their field of competence nor to any plan or document not prepared under their direct supervision.

"Under direct supervision" shall be construed to mean that the registrant providing such supervision shall have made the decisions on technical matters of policy and design. Furthermore, the registrant shall have exercised his professional judgment in all engineering and land surveying matters that are embodied in the plans, design, specifications or other documents involved in the work.

(WAC 196-24-095) (Emphasis added.)

RCW 18.43.070 expressly requires that an engineer practicing as an individual sign and seal or stamp "(p)lans, specifications, plats and reports" prepared by the engineer or under the engineer's direct supervision. With respect to engineers practicing as a corporation or a joint stock association, RCW 18.43.130(8)(h) requires that all "plans, specifications, designs, and reports" issued in connection with work performed by a corporation shall be signed and stamped or sealed by the engineer who prepared them or under whose "responsible charge" they were prepared.

[[Orig. Op. Page 9]]

RCW 18.43.130(8)(h) does not define the terms "plans" and "designs". In this respect it is similar to RCW 18.08.420(7) which deals with architects practicing in the corporate form. Our analysis of that section is equally applicable here. See supra, p. 5. The dictionary definitions of "plan" and "design" encompass the term drawing. Thus, plans must be signed and stamped or sealed when issued in connection with the project of the corporation.

RCW 18.43.070 deals specifically with the issue of whether a professional engineer must sign and stamp plans he or she has reviewed. Under the statute the signing and stamping constitutes "a certification by the [engineer] that the [plan] was prepared under his direct supervision and that to his knowledge and belief the [plan] was prepared in accordance with the requirements of the statute." This requirement of RCW 18.43.070 applies to plans the engineer has prepared and also to plans he or she has reviewed to ensure compliance with the statute.

With regard to the question of whether an engineer must sign and stamp or seal each individual page of a plan, our analysis in the context of architects also applies to engineers. See supra, p. 6. As with architects, the purpose of the licensing of professional engineers is "to safeguard life, health, and property, and to promote the public welfare." RCW 18.43.010. We are of the opinion that this purpose can best be served by the signing and stamping by a professional engineer of each individual page containing an engineering drawing.

As in the case of architects, there is a major statutory exception to the general requirement that drawings be signed and stamped or sealed by a professional engineer. RCW 18.43.130 exempts various activities from the requirements of chapter 18.43 RCW. If the drawing submitted in support of a building falls within any of the exceptions contained in RCW 18.43.130(1)-(7), (9)1/ it falls outside the scope of chapter 18.43 RCW and need not be signed and stamped or sealed by a professional engineer.

[[Orig. Op. Page 10]]

Question 2

In our answer to Question 1 we pointed out that there are statutory exemptions to the requirements that drawings be signed and stamped or sealed by a registered architect or professional engineer. See supra, p. 7, 9. This brings us to your second question.

If the answer to question 1 is "no" in whole or in part, under what circumstances may a registered architect or registered professional engineer submit, or permit to be submitted, a plan or drawing in support of an application for a building permit without his or her signature and stamp or seal without violating: (a) RCW 18.08.370(2), RCW 18.08.420(7), or WAC 308-12-081 (architects); or (b) RCW 18.43.070, RCW 18.43.130(8)(h) (engineers)?

The statutory exemptions available in the statutes governing architects are contained in RCW 18.08.410. This statute provides that chapter 18.08 "shall not affect or prevent" certain listed activities. The exemptions available in the statute governing professional engineers are set forth in RCW 18.43.130(1)-(7), (9). This statute provides that chapter 18.43 "shall not be construed to prevent or affect" certain activities.

Based on our review of the applicable statutes, these are the only exceptions to the requirements in both chapters that plans be signed and stamped or sealed by a registered architect or professional engineer.

Question 3

In the absence of one of the exemptions found in RCW 18.08.410, does a person not a registered architect or a registered professional engineer violate RCW 18.08.310 by preparing a design or construction drawing for a building and submitting that design or drawing, or permitting that design or drawing to be

submitted, in support of an application for a building permit?

The answer to this question turns on whether an individual is practicing architecture. In the absence of an exemption in RCW 18.08.410, an individual who is not a registered architect violates RCW 18.08.310 if he or she is practicing architecture.

RCW 18.08.310 states, in relevant part:

[[Orig. Op. Page 11]]

It is unlawful for any person to practice or offer to practice in this state, architecture, or to use in connection with his or her name or otherwise assume, use, or advertise any title or description including the word "architect," "architecture," "architectural," or language tending to imply that he or she is an architect, unless the person is registered or authorized to practice in the state of Washington under this chapter. The provisions of this section shall not affect the use of the words "architect," "architecture," or "architectural" where a person does not practice or offer to practice architecture.

In turn, "practice of architecture" is defined as follows by RCW 18.08.320(10):

(10) "Practice of architecture" means the rendering of services in connection with the art and science of building design for construction of any structure or grouping of structures and the use of space within and surrounding the structures or the design for construction of alterations or additions to the structures, including but not specifically limited to schematic design, design development, preparation of construction contract documents, and administration of the construction contract.

The activities described in question 3 are "preparing a design or construction drawing for a building and submitting that design or drawing, or permitting that design or drawing to be submitted, in support of an application for a building permit."

Therefore, we are of the opinion that these activities described in Question 3 constitute the practice of architecture. Accordingly, in the absence of one of the exemptions found in RCW 18.08.410, such activities by a person not a registered architect or professional engineer would violate RCW 18.08.310.

You have also asked in this question about the activities of registered professional engineers who are not registered architects. The activities of registered professional engineers are expressly governed by one of the exemptions contained in RCW 18.08.410. RCW 18.08.410(1) exempts from chapter 18.08 RCW the "practice of . . . engineering . . . by persons not registered as architects." Thus, a registered professional engineer does not violate RCW 18.08.310 when he or she is practicing engineering.

[[Orig. Op. Page 12]]

<u>Question 4</u>

In the absence of one of the exemptions found in RCW 18.08.410, does a person not a registered architect or a registered professional engineer violate RCW 18.08.310 by preparing a revision to a design or construction drawing previously filed in support of an

application for a building permit and filing that revision, or permitting that revision to be filed, with local building officials?

Our analysis in response to Question 3 applies equally to this question. The issue is whether preparing a revision to a design or construction drawing previously filed in support of an application for a building permit and filing that revision, or permitting that revision to be filed constitutes the practice of architecture as defined in RCW 18.08.320(10). We conclude that it does. Accordingly, in absence of one of the exemptions listed in RCW 18.08.410, these actions by an unregistered person constitute a violation of RCW 18.08.310.

Question 5

Under RCW 18.08.460(1) must a local building official refuse to accept with a request for a building permit, or refuse to issue a building permit based upon, a design or construction drawing not bearing the signature and stamp or seal of a registered architect or a registered professional engineer, in the absence of the application to the design or drawing of one of the subsections of RCW 18.08.410?

RCW 18.08.460(1) does not require a local building official to refuse to accept an application for a building permit or to refuse to issue a permit. RCW 18.08.460(1) states:

Any person who violates any provision of this chapter or any rule promulgated under it is guilty of a misdemeanor and may also be subject to a civil penalty in an amount not to exceed one thousand dollars for each offense.

(1) It shall be the duty of all officers in the state or any political subdivision thereof to enforce this chapter. Any public officer may initiate an action before the board to enforce the provisions of this chapter.

[[Orig. Op. Page 13]]

RCW 18.08.460(1) leaves the specific means of enforcing chapter 18.08 RCW up to the officers of the "state or any political subdivision thereof." It does not expressly authorize local building officials to refuse to accept building permit applications or refuse to issue building permits which are neither accompanied by properly signed and stamped or sealed drawings nor exempted from such requirements by RCW 18.08.410.

RCW 18.08.460 expressly authorizes only the following actions by public officers against persons who have violated chapter 18.08 RCW: (1) criminal prosecution; (2) civil action for violation of chapter 18.08 RCW in which the penalty is an amount not to exceed one thousand dollars; and (3) initiation of an action before the board to enforce the provisions of chapter 18.08 RCW. The choice of which action, if any, to pursue would rest with the government entity to whom the offending drawings were submitted.

Also, the purpose of RCW 18.08.460 is to penalize violations of chapter 18.08 RCW. In many cases, the person or company submitting unsigned, unstamped architectural drawings in support of a building permit will not have made the drawings. To refuse to accept an application for a building permit under such circumstances punishes the architects' client, not the architect. Such a result could not have been the intent of the Legislature in adopting RCW 18.08.460(1). Accordingly, we conclude that RCW 18.08.460(1) does not require local building officials to enforce chapter 18.08 RCW by refusing to accept permit applications or refusing to issue permits based upon design or construction drawings not signed and stamped or sealed by an architect or professional engineer.

Although RCW 18.08.460(1) does not require a local building official to refuse to accept a request for a building permit or refuse to issue a building permit, a local government entity has the statutory authority to enact such a requirement if it chooses. The requirements for a fully completed building permit application shall be defined by local ordinance. RCW 19.27.095(2). Thus, a city or county could, by local ordinance, provide that building permit applications be accompanied by architectural and engineering drawings which are signed and stamped or sealed in accordance with chapter 18.08 RCW and chapter 18.43 RCW and that non-complying applications will be rejected.

[[Orig. Op. Page 14]]

We trust the foregoing will be of assistance to you.

Sincerely,

WILLIAM B. COLLINS

Assistant Attorney General

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FOOTNOTES *

1/RCW 18.43.130(8) governs the practice of engineering by joint stock associations and corporations. RCW 18.43.130(8)(h) expressly requires that plans, specifications, designs and reports be signed and stamped or sealed by a professional engineer.

AGO 1996 no. 5 platting and subdivisions - counties - cities and towns

- EFFECT OF 1969 PLATTING ACT ON LAND PLATTED BEFORE ENACTMENT.

1. The requirements of chapter 58.17 RCW, enacted in 1969 and relating to platting and subdivisions, apply to land platted before 1937 under chapter 58.08 RCW or its predecessor statutes.

2. Cities and towns may accept plats and subdivisions filed pursuant to the 1937 platting act (chapter 58.16 RCW, repealed in 1969), but are not obligated to do so.

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February 29, 1996

The Honorable Mary Margaret Haugen

State Senator

P. O. Box 40482

Olympia, WA 98504-0482

Cite as: AGO 1996 No. 5

Dear Senator Haugen:

By letter previously acknowledged, you have requested an opinion on the following questions:

1. Do the requirements of chapter 58.17 RCW, relating to platting and subdivision, apply to land platted under chapter 58.08 RCW, before the enactment of chapter 58.17 RCW or its predecessor, chapter 58.16 RCW?

2. Do the requirements of chapter 58.17 RCW apply to land platted or subdivided under chapter 58.16 RCW, before chapter 58.16 RCW was repealed and replaced by chapter 58.17 RCW?

3. If the answer to either question 1 or question 2 is no, may a city or county nevertheless choose to treat a subdivision as valid, without requiring further process under chapter 58.17 RCW?

BRIEF ANSWERS

For the reasons stated in the analysis below, we conclude, reaffirming AGLO 1974 No. 7, that land platted before enactment of the 1937 platting and subdivision act (chapter 58.16 RCW) is still subject to the requirements of current law (now chapter 58.17 RCW), at least to the extent that such land has not already been developed. There may be factual issues as to the extent to which land platted before 1937 has been sold into separate ownership to such an extent as to make the imposition of current subdivision law so inequitable or unjust that the courts would decline to apply current subdivision requirements to such land.

Since the 1937 platting and subdivision act, codified as chapter 58.16 RCW, was substantially similar in scope to the 1969 act (chapter 58.17 RCW) which now controls, plats and subdivisions approved under the 1937 act were not invalidated by the enactment of the 1969 act, unless inconsistent with statutory law.

Since land platted before 1937 under the territorial platting statute does not meet the requirements of current subdivision law, a county or city lacks authority to accept such plats without conducting at least some review under current law.

ANALYSIS

Your questions are grounded in the history of platting and subdivision law. Before 1937, the only substantial procedural requirements for platting were found in a series of statutes now codified in chapter 58.08 RCW and dating (with some slight amendments) to an act of the 1857 Territorial Legislature. Laws of 1857, pp. 25-27; RRS §§ 9288 et seq. Plats before 1937 were simply recorded in the recorder's office of the county in which the land lay. RCW 58.08.010. There was no requirement that plats be reviewed or approved by any government officer or body.

Beginning in 1937, the Legislature (without ever repealing the core of what is still chapter 58.08 RCW) added additional prerequisites to land subdivision and development. In chapter 186, Laws of 1937, the Legislature required that all plats and subdivisions comprising of five or more lots be submitted to the legislative or planning authority of the government having jurisdiction (city or town if within the corporate boundaries of such a government, county otherwise). The Legislature also required authorized counties, cities and towns to enact ordinances and regulations setting standards for plats and subdivisions within their respective jurisdictions. The county auditors and assessors were directed to refuse to accept for filing any plat, subdivision, or dedication not properly approved. Laws of 1937, ch. 186, § 1 (formerly codified as RCW 58.16.100).

The 1937 platting statute was in turn superseded with the enactment of a new platting of a subdivision code in 1969. Laws of 1969, Ex. Sess., ch. 271 (codified as chapter 58.17 RCW). The 1969 act follows the same general pattern as the 1937 act, in that counties, cities, and towns retain the authority and responsibility to review and approve plats and subdivisions within their respective jurisdictions, and to enact local laws governing such approvals. The 1969 law adopts a new set of definitions, is somewhat more specific in the matters covered, and alters local governments' powers in a number of details. The 1969 act specifically repealed and superseded the 1937 act (Laws of 1969, Ex. Sess., ch. 271, § 36). It amended the 1857 platting statute in one small respect (see Laws of 1969, Ex. Sess., ch. 271, § 34, amending RCW 58.08.040), but otherwise left chapter 58.08 RCW unchanged.

Question 1.

Do the requirements of chapter 58.17 RCW, relating to platting and subdivision, apply to land platted under chapter 58.08 RCW, before the enactment of chapter 58.17 RCW or its predecessor, chapter 58.16 RCW?

As you point out in your letter (supplemented by enclosures presenting the problem in more detail), a good deal of land around the state was platted before 1937, in the sense that plats had been filed with the county auditors striking land off into lots and showing their boundaries. In some cases, the land was never developed as platted or sold off in individual lots, so that it remains to this day in undeveloped parcels of varying sizes and patterns of ownership. Your first question is whether, if a property owner now wishes to

develop such a parcel consisting of part or all of a pre-1937 plat, the owner must comply with the requirements of the current (1969) act, chapter 58.17 RCW.

As you note in your letter, we have already answered this question. In AGLO 1974 No. 7[1], we concluded that chapter 58.17 RCW and ordinances adopted pursuant to that chapter were fully applicable to a proposal to develop an old townsite, platted in about 1890 pursuant to what is now chapter 58.08 RCW, but, which was, in 1974, still open grazing land substantially in single ownership. We concluded that Okanogan County could fully apply its then current land use requirements to this old plat, including the requirement that the land be re-subdivided and new plats filed to meet current standards.

We have reviewed AGLO 1974 No. 7 and the authorities cited in it, and have read later cases and statutory material, and can find nothing that would change the well-reasoned conclusions reached in the 1974 opinion. Chapter 58.17 RCW remains essentially in its 1974 form, so there is no reason to reassess the legislative intent that the current law cover all "land" in the state. In a subsequent opinion, AGO 1980 No. 5, we impliedly followed the reasoning of AGLO 1974 No. 7 in concluding that the "resubdivision" of a lot platted under the 1937 act would be governed by the 1969 act. Although the platting laws have been construed a number of times by our courts in the past twenty years, none of the cases shed direct light on the subject of your question.[2]

Accordingly, we conclude that AGLO 1974 was correctly decided and that its reasoning should be followed today. The reasoning was based on three points, all equally forceful now: (1) the 1969 act covered all "land" and was not limited to land not yet platted or subdivided as of its enactment; (2) the analogy of the zoning laws concerning "nonconforming uses" implies that the mere platting of land in the past gives rise to no vested "right" to future sale or subdivision free of later-imposed land use restrictions; and, (3) the 1969 platting act was enacted for a new and very different purpose than the old territorial platting acts. The third point is particularly persuasive, in that the 1857 platting statute was essentially an aid to land conveyancing, in that it allowed property owners to file maps and surveys and to refer to lot and block numbers instead of describing property by metes and bounds. This was a convenience to the parties and probably served, through mapping and surveying, to reduce boundary disputes, but was in no sense a "land use" law. By contrast, the 1969 statute specifically grants local governments a wide measure of control over the way land is subdivided, sold, and developed.

We add a caveat to the discussion. AGLO 1974 No. 7 concerned open-land, never developed and still owned by one party. In such a case, property owners can claim no serious prejudice if, before actually selling or developing such land, they are required to comply with the 1969 act and any ordinances and rules enacted under it. It is certain, however, that in addition to the undeveloped old plats considered in the 1974 opinion, there are plats in the state which have been sold off and developed, or partially so. Where a pre-1937 plat has long since been sold, and now contains houses, shops, and streets, it may well be impracticable to require that the land be replatted under a new ordinance passed since 1969. Since there is no way to anticipate and analyze all the factual variables, it would probably be prudent for any ordinance implementing chapter 58.17 RCW to clearly specify the extent to which it requires replatting of land platted under earlier laws, and to set up substantive standards and/or procedural options to handle the obstacles which may be encountered in dealing with partially sold/partially developed plats.[3]

Question 2.

Do the requirements of chapter 58.17 RCW apply to land platted or subdivided under chapter 58.16 RCW, before chapter 58.16 RCW was repealed and replaced by chapter 58.17 RCW?

As you note in your letter, AGLO 1974 No. 7 did not reach this question. The reasoning of the 1974 opinion points to an answer, however. Whereas the 1969 platting act, like its 1937 predecessor, was intended to work "alongside" the old territorial platting laws, supplementing them with new and different requirements, the 1969 act explicitly repealed the 1937 act. A comparison of the 1937 and 1969 acts reveals that they are substantially similar, in that both go far beyond the mere recording of plats in requiring plat approval by the local jurisdiction in which the land is located and in authorizing local governments to enact ordinances and regulations concerning land use. Although slightly less comprehensive than its successor, the 1937 act was a true "land use" statute.

If that is the case, a parcel of land platted in, say, 1953, unlike a parcel platted in 1890, has a plat which has been reviewed and approved by a local government (a city, town, or county, depending on its location). In effect, it has a certification that the plat met the local land use standards that were in effect at the time of filing.[4] Furthermore, RCW 58.17.900 provided that

[a]ll ordinances and resolution enacted at a time prior to the passage of this chapter by the legislative bodies of cities, towns, and counties and which are in substantial compliance with the provisions of this chapter, shall be construed as valid and may be further amended to include new provisions and standards as are authorized in general law.

It is conceivable, then, that the standards applicable to a 1953 plat could still be applicable today, and the language cited specifically allows local governments to continue using their pre-1969 ordinances except when inconsistent with the new statute.

Therefore, we conclude that land platted under the 1937 act is not automatically subject to replatting or additional requirements due to the passage of the 1969 act, unless the original platting was inconsistent with the 1969 act itself. Local governments may, at their option, accept plats filed under the 1937 act unless, again, those plats are inconsistent with state statutory requirements.

However, we do not believe local governments are obligated to accept 1937-era plats, or precluded from enacting new requirements covering such land. That seems clear from the language in RCW 58.17.900 authorizing the amendment of pre-1969 ordinances, as well as the general pattern of both the 1937 and 1969 acts, which allow local governments to change their land use policies and amend or replace their subdivision ordinances from time-to-time.[5] For reasons similar to those discussed above in answer to your first question, we will not attempt to define just how far a city or county could go in requiring the repeated replatting of previously platted land. The extent to which land has actually been sold and developed under the earlier platting requirements would, again, be an important factor.

Question 3.

If the answer to either question 1 or question 2 is no, may a city or county nevertheless choose to treat a subdivision as valid, without requiring further process under chapter 58.17 RCW?

We have already answered this question with respect to land platted under the 1937 act--the subject of question 2, by concluding that, except where the original plat process is inconsistent with current statutory standards, a city or county may, at its option, continue to honor a plat processed under chapter 58.16 RCW, the 1937 act.

By contrast, however, we think the opposite answer is dictated as to land platted before 1937, by the reasoning of AGLO 1974 No. 7 as reaffirmed above in the discussion of your first question. Plats recorded before 1937 have never borne the scrutiny of any city or county, and have never been evaluated for their consistency with any land use policies.

To accept such plats and allow their development without any review for consistency with current land use regulations would result in non-uniform application of the current laws. It may well be, however, that counties and cities would wish to adopt an alternate procedure for reviewing such plats, since they have already been recorded with the county auditor, and in some cases have been partially or fully developed.

We trust the foregoing will be useful to you.

Very truly yours,

CHRISTINE O. GREGOIRE

Attorney General

JAMES K. PHARRIS

Senior Assistant Attorney General

[1] From 1974 to 1982, our office issued a series of Attorney General Letter Opinions (designated by AGLO numbers instead of the AGO series used for published formal opinions) which were not published as formal opinions, but were considered to have official status. The policy of our office is to adhere to official opinions previously issued unless the law or the facts have changed sufficiently to make an old opinion obsolete, or unless we were firmly convinced that an old opinion was in error.

[2] In Gilmore v. Hershaw, 83 Wn.2d 701, 521 P.2d 934 (1974), the Supreme Court ruled that chapter 58.17 RCW was not retroactive, in the sense of giving parties the statutory right of rescission granted in chapter 58.17 RCW for a transaction involving land platted under chapter 58.16 RCW (the 1937 act). It does not appear that AGLO 1974 No. 7 was based on the notion that chapter 58.17 RCW is "retroactive" in effect however; rather, it imposes a new and separate set of substantive standards and procedural prerequisites on land subdivided, sold, or developed after its effective date, whether or not a "plat" or map of such land had been previously recorded under chapter 58.08 RCW. Thus, I conclude that Gilmore is not inconsistent with our 1974 opinion, which in any case involved quite a different topic.

[3] In Chelan County v. Wilson, 49 Wn. App. 628, 744 P.2d 1106 (1987), the court of appeals ruled that a county ordinance applying to "all contiguous real property in one ownership . . . ." did not apply to a plat substantially sold off by an unrecorded real estate contract before the new ordinance's enactment. The court reached its conclusion by interpreting the language of the county ordinance itself, and thus did not reach the question whether a county or city would have statutory and constitutional power to require re-platting of partially-developed parcels.

[4] An exception would be a "short" plat or subdivision containing less than five lots. These were not subject to the 1937 requirements, but the 1969 act authorized local governments to regulate them.

[5]Under RCW 58.17.170, a developer can rely on the approval of a plat for five years after filing, unless the city or county makes extraordinary findings to justify changing its rules.

AGO 1998 no. 4 platting and subdivisions - counties - cities and towns - growth management act

- Effect of Growth Management Act on option of counties to require resubdivision of lands platted before 1937.

The Growth Management Act does not obligate a county to require the replatting or resubdivision of lands in the county which are outside any urban growth area and which were platted before 1937, but allows local flexibility in applying GMA standards to such lands.

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March 3, 1998

The Honorable David Skeen
Jefferson County Prosecuting Attorney
Courthouse - P.O. Box 1220
Port Townsend, WA 98368

Cite As:

AGO 1998 No. 4

Dear Mr. Skeen:

By letter previously acknowledged, you have requested our opinion on a series of questions we have rephrased into the following single question:

In AGLO 1974 No. 7 and again in AGO 1996 No. 5, the Attorney General's Office concluded that a county is not obligated to honor, for purposes of administering its land use regulations, an undeveloped plat filed before 1937, and would have the option of requiring the land covered by such a plat to be replatted or resubdivided to meet current land use regulations. Does the Growth Management Act (Chapter 36.70A RCW), especially as amended by Laws of 1997, Chapter 429, convert this "option" into a mandate, by requiring counties to maintain the rural character of lands located outside urban growth areas?

For the reasons stated in the analysis below, we answer this question in the negative.

ANALYSIS

Your letter makes reference to two earlier opinions issued by this office. In AGLO 1974 No. 7, we considered the situation presented by the unincorporated ghost town of Ruby, in Okanogan County, in which a plat had been filed about 1890 under territorial platting codes. Although a small town had briefly existed on the site, it had long since been abandoned and, as of 1974, the plat consisted of open grazing land, primarily owned by a single party. In response to a question from the Prosecuting Attorney, we concluded that the County could apply its current platting law if the owner of the land covered by the Ruby plat now sought to develop it. In other words, we concluded that the mere platting of land in 1890 (under an act which provided for no governmental review and approval, in marked contrast to modern land use laws) did not give the owners of the land a vested right to develop the land a century later.

We followed this opinion in AGO 1996 No. 5, concluding (among other things) that a county could require the owner of an undeveloped pre-1937 plat to comply with current county land-use laws before permitting development of the land in question. We added a caveat to our opinion, however, to the effect that its principles could not automatically be applied to plats which had been partially or fully developed. We recommended that any county ordinance on the subject ". . .clearly specify the extent to which it requires replatting of land platted under earlier laws, and to set up substantive standards and/or procedural options to handle the obstacles which may be encountered in dealing with partially sold/partially developed plats." AGO 1996 No. 5 at p. 5.

Your new question is about the relationship of the "option" discussed in these two former opinions to the responsibilities of a county under the Growth Management Act, codified as Chapter 36.70A RCW. You have especially asked about the impact of 1997 amendments to this act contained in Laws of 1997, ch. 429. As amended, RCW 36.70A.070 requires each county's comprehensive plan to include a rural element and sets forth standards to be followed in defining this element. Counties are directed to adopt techniques which will "accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character" and to ". . .reduce the inappropriate conversion of undeveloped

land into sprawling, low-density development in the rural area." You note that Jefferson County alone has a large number of lots platted before 1937, many of them inconsistent with current notions of "rural character" or "rural density." In light of this, you inquire whether the county, in order to meet its obligations under the Growth Management Act, is actually obligated to require the resubdivision of any land in the county which was platted before 1937, because otherwise the county may be held to be out of compliance with its Growth Management Act obligations.

While we recognize that the Growth Management Act requires counties to apply their planning and enforcement efforts to meet the goals and obligations contained in the Act, we do not read the Act as any absolute requirement that counties require resubdivision of all existing undeveloped or partially-developed plats which are inconsistent with the county's comprehensive plan. We reach this conclusion for two related reasons.

First, the language of the Growth Management Act gives each county considerable leeway in deciding how to apply the Act's requirements to local conditions. RCW 36.70A.030(15) defines "rural development" to consist of a "variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element." RCW 36.70A.070(5), relating to the required rural element in comprehensive plans, contains several provisions authorizing counties to vary from any single, fixed, notion of appropriate rural density. Subsection (5)(a) provides that ". . .[b]ecause circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record rexplaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter." Subsection (5)(b) specifically provides that the element include ". . .a variety of rural densities, uses, essential public facilities, and rural governmental services. . . " and goes on to state that ". . . counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character." Subsection (5)(d) contemplates that rural elements will include "[l]imited areas of more intensive rural development. . ." describing examples. We could find no language here or elsewhere in the Growth Management Act either expressly requiring the replatting of old plats or setting such a firm planning standard as to amount to such a requirement. The Act leaves room for counties to consider a variety of elements in planning in rural areas, and the extent and location of previously platted tracts of land is one logical element to consider.

Our second major reason for concluding that the Growth Management Act does not require the replatting of all old plats is found in the cautionary language in our earlier opinions. In both of those opinions, we concentrated on pre-1937 plats which remained undeveloped and were still in single ownership. As we noted in AGO 1996 No. 5, "[i]n such a case, property owners can claim no serious prejudice if, before actually selling or developing such land, they are required to comply with the 1969 act and any ordinances and rules enacted under it . . . ." However, we go on to note that many pre-1937 plats have been sold or developed to varying extents.

There are too many variables for us to suggest any fixed "bright line" in deciding which land can be subjected to replatting or current subdivision requirements. Does the land remain in single ownership? How many lots have been sold? Is the undeveloped portion of the plat a single block of land, or is the plat a "checkerboard" of developed and undeveloped lots? Is the land adjacent to an urban growth area, or to an unincorporated village or hamlet, or is it distant from even rural development? Is there any evidence that the platting has affected the market value of the land, or its tax assessment? If current subdivision regulations were applied to the plat, would it render some or all of the land economically worthless? Every plat reflects at least a historical expectation of development, and the acts taken in reliance of this expectation could vary from none at all to the expenditure of considerable money and effort. Given these variables, we think counties will not be able to avoid a sensitive, particularized analysis of their individual situations, leading to the development of standards that make sense for a particular county. We would expect the Growth Management

Hearings Boards and the courts to recognize a county's difficulty in balancing the equities in these cases, but we cannot guarantee the success of any specific approach.

Recent case law in the area underscores our cautious counsel on this issue. Even before our 1996 opinion, in Island County v. Dillingham Development Co., 99 Wn.2d 215, 662 P.2d 32 (1983), the State Supreme Court permitted a property owner to aggregate the small lots in a pre-1937 plat without requiring replatting or review by the county under current zoning law. The court viewed the aggregation as a "boundary line adjustment." Because the case is based on the peculiar circumstances of the particular plat before the court, we do not consider its holding inconsistent with our earlier opinions to the effect that a county can require resubdivision of undeveloped plats under some circumstances. Still, Dillingham would undoubtedly be cited in any challenge to our conclusions, and its reasoning could be extended to other cases involving old plats, especially where the equities were strongly in favor of the property owner.

The same is true of the recent case of Noble Manor Co. v. Pierce County, 133 Wn.2d 269, 943 P.2d 1378 (1997), in which the Court found that the filing of a "short plat" conferred on the property owner a "vested right" to develop the plat according to the land use regulations in effect at the time. The Court was careful to state that its decision was based upon the conclusion that a statute (RCW 58.17.033) conferred this "vested right" and did not amount to an expansion of the Court's general rule (see, e.g., Friends of the Law v. King County, 123 Wn.2d 518, 869 P.2d 1056 (1994)) that "vesting" occurs only upon the filing of a complete building permit application. Like the Island County case, Noble Manor was largely decided on the equities of the case before the Court. Both cases illustrate that the courts may search for new guiding principles when the equities are sufficiently strong.

To conclude, we reaffirm our previous opinion that a county may require a new review under Chapter 58.17 RCW, and potentially a replatting or new subdivision, of undeveloped land, still in single ownership, which was platted before 1937. However, we decline to read the Growth Management Act as absolutely requiring counties to "dishonor" their old plats.

We trust you will find the foregoing useful.

Very truly yours,

CHRISTINE O. GREGOIRE

JAMES K. PHARRIS
Sr. Assistant Attorney General