

Court of Appeals No. 48074-3-II

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

*respondent,*

v.

MOUNTAIN VIEW PLACE, LLC,

*appellant,*

and

RELIASTAR LIFE INSURANCE COMPANY; and  
CLARK COUNTY, WASHINGTON,

*defendants.*

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BRIEF OF APPELLANT

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Mark A. Erikson, WSBA #23106  
Erikson & Associates, PLLC  
Attorneys for Mountain View Place, LLC,  
as appellant  
110 West 13<sup>th</sup> Street  
Vancouver, WA 98660-2904  
Telephone (360) 696-1012  
E-mail: mark@eriksonlaw.com  
kris@eriksonlaw.com

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## I. INTRODUCTION

Appellant Mountain View, LLC, assembled five parcels comprising 5.76 acres at the intersection of NE 18<sup>th</sup> Street and I-205, with investment backed expectations of future commercial development. One of the parcels is improved with an apartment complex, while the other four contain older residences intended for demolition. WSDOT adopted a “limited access plan for I-205 in the vicinity of NE 18<sup>th</sup> Street,” in connection with the construction of an off-ramp at the intersection. WSDOT’s plan designated the existing driveway serving the apartments a “Type C” approach, limited access to serving only the existing apartment complex, and required WSDOT approval for any change of use. Mountain View appeals the trial court’s order determining public necessity.

\* \* \*

## II. ASSIGNMENT OF ERROR

### Assignment of Error:

Appellant, Mountain View Place, LLC, assigns error to the following:

1. Trial court’s grant of WSDOT’s motion for a determination “that the property and/or property rights described in Exhibit A-1 and Exhibit A-2 are necessary for [the State highway].” *CP 99-101, ln. 2-4.*

**Issues Pertaining to Assignments of Error**

**ISSUE 1:** Whether designation of a Type C access limited to existing uses on only one of Mountain View’s five contiguous parcels was contrary to law or arbitrary and capricious under definitive standards for exercise of agency discretion in WAC 468-58-100(1)? (Assignment of Error 1.)

**ISSUE 2:** Whether there is evidence sufficient to support the trial court’s decision “that the property and/or property rights described in Exhibit A-1 and Exhibit A-2 are necessary for [the State highway]?” (Assignment of Error 1.)

**ISSUE 3:** Whether Mountain View is entitled to an award of attorney fees and costs against WSDOT under 42 U.S.C. §1988 for state action which was contrary to law or arbitrary and capricious?

\* \* \*

**III. STATEMENT OF THE CASE**

Appellant Mountain View Place, LLC, owns an assemblage of five parcels, improved with an apartment complex on one of the parcels. The apartments take access exclusively from 18<sup>th</sup> Street, *CP 65* (flag lot), which WSDOT has designated as a “limited controlled access facility,” in connection with improvements to Interstate 205. *CP 97*, ln. 3-5.

WSDOT sought to condemn access rights from two of Mountain View's parcels which front on NE 18<sup>th</sup> Street, CP 2-7; and the trial court entered an *Order Adjudicating Public Use and Necessity* which limits access to a Type C approach serving only the existing apartment complex, and requires WSDOT approval for any change of use. CP 103.

\* \* \*

#### IV. SUMMARY OF ARGUMENT

WSDOT's provision of a Type C access, limited to the existing apartment complex on one of Mountain View's five adjoining parcels, was contrary to law, arbitrary and capricious because such access directly violates definitive standards requiring that the "type of approach . . . be commensurate with present and *potential* land use" on assembled parcels.

There is no evidence to support the trial court's decision that property and property rights sought are necessary for the proposed state highway because there is no evidence on the record which would satisfy the foregoing definitive standards for exercise of agency discretion.

WSDOT is liable for Mountain View's attorney fees and costs because arbitrary and capricious action subjects government agencies to liability under 42 U.S.C. §1983 as a matter of law.

## V. ARGUMENT

**Standard of review** In reviewing determinations of public necessity, the Court considers whether there is evidence to support the trial court decision, whether the State acted in bad faith, and whether the State's decision was contrary to law or arbitrary and capricious. *Washington State Convention & Trade Center v. Evans*, 136 Wash.2d 811, 823, 966 P.2d 1252, 1258 (1998); *Freeman v. State*, 178 Wash.2d 387, 404, 309 P.3d 437, 445 (2013); and RCW 47.12.010, *Appendix A-6*. The condemnor bears the burden of proving public necessity. *Evans*, 136 Wash.2d at 817.

**ISSUE 1:** Whether designation of a Type C access limited to existing uses on only one of Mountain View's five contiguous parcels was contrary to law or arbitrary and capricious under definitive standards for exercise of agency discretion in WAC 468-58-100(1)? (Assignment of Error 1.)

Rules governing determinations of public use and necessity were restated, recently, by the Washington Court of Appeals:

In determining public use and necessity, a trial court must make three separate but interrelated findings: (1) whether the proposed use is really public, (2) does the public interest require it, and (3) is the property to be acquired necessary for that purpose. . . . The latter two findings address necessity. . . . Although the terms overlap, a determination that an acquisition is for public use is not precisely the same as determining it is a public necessity. . . .

The question of whether the contemplated use is really a public use is a judicial question without regard to a legislative assertion that the use is public. . . .

A party challenging the legislative determination of necessity must establish “**arbitrary and capricious** conduct *amounting to constructive fraud.*”

*Bellevue v. Pine Forest Properties*, 185 Wash.App. 244, 259, 262, 340 P.3d 938, 945, 947 (2014), *review denied*, 183 Wash. 2d 1016, 355 P.3d 1152 (2015), bold emphasis added; citing *HTK Management v. Seattle Popular Monorail Authority*, 155 Wash.2d 612, 629, 121 P.3d 1166 (2005); *In re City of Seattle*, 104 Wash.2d 621, 623, 707 P.2d 1348 (1985); Wash. Const. art. 1, §16 (amend. 9); and *Public Utility District. No. 2 v. NAFTZI*, 159 Wash.2d 555, 577, 151 P.3d 176 (2007).

The phrase “arbitrary and capricious” is defined as “willful and unreasoning [action] taken without regard to the attending facts or circumstances.” *Washington Independent Telephone Association v. Washington Utilities and Transportation Commission*, 149 Wash.2d 17, 26, 65 P.3d 319 (2003). In *Mission Springs*, the Washington Supreme Court held that action “without lawful authority” was willful and unreasoning; hence, arbitrary and capricious. *Mission Springs v. Spokane*, 134 Wash.2d 947, 962, 954 P.2d 250, 257 (1998).

The State alleges that “WSDOT needs to acquire access rights from a portion of the Mountain View Property, Parcel No. 4-08353 [Assessor’s Parcel No. 163355 – CP 53, ln. 4-7; CP 54; CP 65], to ensure and preserve the safety and capacity improvements from the project. . . . [subject to] a break in limited access in the form of a Type ‘C’ off-and-on approach to allow the current driveway serving Parcel No. 4-08353 to remain in place.”

CP 33-34. The State further alleges:

WSDOT needs to acquire access rights from a portion of the Mountain View Property, Parcel No. 4-08366’s [Assessor’s Parcel No. 163358’s], southern property line. In this case, “limited access rights” includes all rights of ingress and egress (including all existing, future or potential easements of access, light, view, and air) to, from, and between I-205 along the entire southern property line adjacent to NE 18<sup>th</sup> Street.

CP 34.

The *Order Adjudicating Public Use and Necessity* limits the scope of use to “a multi-family apartment complex . . . [i]f the property use changes, the approach will not be perpetuated without the State’s prior written approval . . .” CP 130. As a result of the proposed condemnation, Mountain View will have no access to serve future development on its four undeveloped parcels (Assessor’s Parcel No’s 163356, 163357, 163358 and 163359 – CP 57-65) from NE 18<sup>th</sup> Street.

Standards governing access control are provided in the Administrative

Code as follows:

Full control of access should be provided along the crossroad from the centerline of a ramp or terminus of a transition taper for a minimum distance of three hundred feet. Upon determination by the department, full control of access may be provided for the first one hundred thirty feet from the centerline of the ramp or terminus of a transition taper and partial control or modified control of access may be provided for the remainder of the distance to the frontage road or local road for a total minimum distance for the two types of control of three hundred feet. Type A, B, C, D, E, and F road approaches, as defined hereafter under subsection (3) of this section, . . . may be permitted on that portion of the crossroad on which partial or modified control of access is established.

WAC 468-58-080(1)(d); *Appendix B-6*.

(b) Type A, B, C, D, E, and F approaches are defined as follows: . . .

(iii) Type C approach. Type C approach is an off and on approach in legal manner, for special purpose and width to be agreed upon. It may be specified at a point satisfactory to the state at or between designated highway stations. . . .

(v) Type E approach is a separated off and on approach in a legal manner, with each opening not exceeding thirty feet in width, for use necessary to the normal operations of a commercial establishment. It may be specified at a point satisfactory to the state at or between designated highway stations.

WAC 468-58-080(3); *Appendix B-7 to B-8*.

“Definitive standards” for exercise of discretion in determining the type of approach are provided as follows:

- (a) The type of approach for each parcel **shall be commensurate with the present and potential land use** and be **based on appraisals** which consider the following: . . .
  - (i) Local comprehensive plans, zoning and land use ordinances.
  - (ii) Property covenants and/or agreements.
  - (iii) City or county ordinances.
  - (iv) The highest and best use of the property.
  - (v) Highest use and best use of adjoining lands.
  - (vi) Change in use by merger of adjoining ownerships.
  - (vii) All other factors bearing upon proper land use of the parcel.

WAC 468-58-100(1), emphasis added; *Appendix B-15*.

The Washington Supreme Court has held that use of word “shall” in the Washington Administrative Code is mandatory (“consideration by the County Council of reasonable alternatives [in environmental impact statements] is mandatory.”) *King County v. Central Puget Sound GMHB*, 138 Wash.2d 161, 183, 979 P.2d 374 (1999); citing RCW 43.21C.030(c)(iii) and WAC 197-11-440(5)(b), *Appendix B-1 to B-2* (“An EIS *shall* contain the following . . . “[r]easonable alternatives *shall* include actions that could feasibly attain or approximate a proposal’s objectives”). Hence, mandatory language in above-quoted provisions governing the exercise of WSDOT discretion require that “the type of approach for each parcel *shall* be

commensurate with the present and potential land use,” based upon specified factors, including “comprehensive plans, zoning and land use ordinances.”

The Comprehensive Plan designation for five contiguous parcels owned by Mountain View is Urban Higher Density (UH), *CP 54, 57, 59, 61, and 63*; which contemplates multifamily (R-18, R-22, R-30, R-35) and mixed use (MX). *Vancouver Comprehensive Plan 2011-2030*, Table 1-5; *Appendix E-1*. In addition to 18 to 22 residential units per acre in R-18 and R-22 zones, Table 20.420.030-1, *Appendix F-1 to F-5*; the “MX” designation permits the following uses outright: Eating/Drinking Establishments, General Retail, and General and Medical Office, VMC Table 20.430.030-1, *Appendix F-6 to F-12*. A myriad of uses is contemplated under the Urban Higher Density designation, and the proposed limited approach should serve all of them under the definitive standard “commensurate with . . . potential land use.”

No property covenants nor agreements limit the use of the Mountain View property. It is not encumbered by zoning overlays. The highest and best use of the property and adjoining lands is defined by UH Comprehensive Plan and MX zoning designations discussed above. Ownership of respondents’ five parcels (Assessor’s Parcel Numbers 163355, 163356, 163357, 163358, and 163359) is already merged. *CP 53-65*.

Other factors bearing upon proper land use of the parcels include location at a freeway off-ramp, favoring uses involving significant automobile access. Hence, the proposed limited approach should serve all uses permitted in the MX zone on the assemblage of five parcels (depicted at CP 65 by Assessor's Parcel Numbers).

Turning, then, to the issue of whether the State's decision was contrary to law or arbitrary and capricious, the Court has opined as follows:

The courts' inherent power of review extends to administrative action which is contrary to law as well as that which is arbitrary and capricious. . . . An agency's violation of the rules which govern its exercise of discretion is certainly contrary to law and, just as the right to be free from arbitrary and capricious action, the right to have the agency abide by the rules to which it is subject is also fundamental.

*Pierce County Sheriff v. Civil Service Commission*, 98 Wash.2d 690, 694, 658 P.2d 648, 651 (1983); citing *Leonard v. Civil Service Commission*, 25 Wash.App. 699, 701-02, 611 P.2d 1290 (1980); *Wilson v. Nord*, 23 Wash.App. 366, 373, 597 P.2d 914 (1979); *Williams v. Seattle School District 1*, 97 Wash.2d 215, 221-22, 643 P.2d 426 (1982); *Tacoma v. Civil Service Board*, 10 Wash.App. 249, 250-51, 518 P.2d 249 (1973).

Upon analysis of the "history of reviewing administrative decisions, and the review afforded in other statutes dealing with necessity

determinations,” the Supreme Court elected to “review WSDOT’s [necessity] determination[s] under the arbitrary and capricious or contrary to law standard.” *Freeman*, 178 Wash.2d at 404. “[A]gency action that is in violation of a statute is, by definition, arbitrary and capricious, or contrary to law.” *Skamania County v. Columbia River Gorge Commission*, 144 Wash.2d 30, 57, 26 P.3d 241, 254 (2001).

WSDOT’s limitation to Type C access serving existing apartments on one of Mountain View’s five assembled parcels was arbitrary and capricious because it violated rules which govern exercise of agency discretion: “The type of approach for each parcel shall be commensurate with the present and potential land use and be based on appraisal [of definitive standards].” *Supra*.

\* \* \*

**ISSUE 2:** Whether there is evidence to support the trial court’s decision “that the property and/or property rights described in Exhibit A-1 and Exhibit A-2 are necessary for [the State highway]?” (Assignment of Error 1).

Use of the term “appraisals” in WAC 468-58-100(1) is revealing of the rule-makers’ intent. Had the rulemakers intended mere *determination* of access type, we would expect them to use that term, derivations of which appear four times in Chapter 468-58 WAC. “[T]he legislature is deemed to

intend a different meaning when it uses different terms.” *State v. Roggenkamp*, 153 Wash.2d 614, 625, 106 P.3d 196 (2005).

Black’s Law Dictionary, Sixth Ed., defines “appraisal” as follows:

A valuation or an estimation of value of property by disinterested persons of suitable qualifications. The process of ascertaining a value of an asset or liability that involves expert opinion rather than explicit market transactions.

The term is undefined in statutes and regulations governing condemnation by the State; however the chapter governing *Relocation Assistance – Real Property Acquisition Policy* provides a definition similar to the foregoing:

The term “appraisal” means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

RCW 8.26.020(13); *Appendix A-3*.

Common to the foregoing definitions is emphasis upon expert qualification and opinion, which would imply that the rulemakers intended approach types to be determined by experts rather than WSDOT staff. Moreover, the focus upon “presentation and analysis of relevant market information” would imply that the rulemakers intended an analytical report supported by evidence. In the present case, WSDOT provided no analysis nor evidence to support its determination under the “definitive standards” in

WAC 468-58-100(1)(a). Nor could any such analysis support a Type C approach limited to existing uses on one of five parcels because that very determination violates definitive standards that the “type of approach . . . be commensurate with present and *potential* land use” on assembled parcels.

Moreover, the record is devoid of any analysis pertaining to WSDOT Parcel No. 4-08366 (Assessor’s Parcel No. 163358), from which it seeks to condemn “all rights of ingress and egress (including all existing, future or potential easements of access, light, view, and air) to, from, and between I-205 along the entire southern property line adjacent to NE 18<sup>th</sup> Street.” *CP 34*. As to this parcel, WSDOT’s determination is facially invalid, contrary to law, arbitrary and capricious.

Of particular relevance, the trial court inquired as to whether all of Mountain View’s property is within 300 feet of I-205, *RP17, ln. 10-11*; and was given a detailed explanation concluding that 300 feet ended 10 to 15 feet from the southern edge of the existing apartment access, and that all of WSDOT Parcel No. 4-08366 (Assessor’s Parcel No. 163358) is outside of the 300 foot limitation in WAC 468-58-080(1)(c) and (d), *Appendix B-6* for “fully controlled highways;” and WAC468-58-080(2)(b) and (c), *Appendix B-6 to B-7*, for “partially controlled highways. *RP 19, ln. 14-16*.

There is no evidence to support the trial court's decision that property rights sought are necessary for the proposed state highway because there is no evidence on the record which would satisfy the statutory requirement of an appraisal of present and future uses on assembled parcels.

\* \* \*

**ISSUE 3:** Whether Mountain View is entitled to an award of attorney fees and costs against WSDOT under 42 U.S.C. §1988 for state action which was contrary to law or arbitrary and capricious?

Rules of Appellate procedure authorize an award of attorney fees and costs if granted under applicable law. RAP 18.1(a). The federal *Civil Rights Act* grants discretion to award attorney fees and costs on successful claims alleging deprivation of protected property rights under 42 U.S.C. §1983:

In any action or proceeding to enforce a provision of sections . . . 1983 . . . of this title . . ., the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs . . .

42 U.S.C. §1988; *Appendix C-2*. The Washington Supreme Court, in *Sintra*, articulated the elements of a claim under 42 U.S.C. §1983:

(1) the plaintiff must show that some person deprived it of a federal constitutional or statutory right; and (2) that person must have been acting under color of state law.

*Sintra v. Seattle*, 119 Wash.2d 1, 11, 829 P.2d 765 (1992).

Protected property rights to access upon public thoroughfares is firmly established in Washington caselaw:

The owner of property abutting upon a public thoroughfare has a right to free and convenient access thereto. This right of ingress and egress attaches to the land. It is a property right, as complete as ownership of the land itself.

*Walker v. State*, 48 Wash.2d 587, 589-90, 295 P.2d 328, 330 (1956); *Central Puget Sound Regional Transit Authority v. Eastey*, 135 Wash.App. 446, 461, 144 P.3d 322, 329 (2006).

The Washington Supreme Court holds that “procedural rights respecting permit issuance create property rights when they impose significant substantive restrictions on decision making.” *Mission Springs*, 134 Wash. 2d at 963; citing *Bateson v. Geisse*, 857 F.2d 1300, 1304-05 (9th Cir. 1988). Of course, no permits are at issue in cases of direct condemnation; however, Mountain View has protected property interests, not only in its existing access, *McMoran v. State*, 55 Wash.2d 37, 40, 345 P.2d 598, 599 (1959), citing *Walker*, 48 Wash. 2d at 589-90; but also in procedural rights under WAC 468-58-100(1), which impose significant restrictions on decision making in the condemnation process.

Federal constitutional rights at issue in the present case include the right to compensation for property taken for public purpose, U.S. Const.,

amend. 5; and due process, U.S. Const., amend. 14. While the State has not disputed Mountain View's right to compensation, the *amount* of compensation will be affected by the appraisal of access rights under WAC 468-58-100(1)(a). A Type E access, as advocated by Mountain View, is worth considerably more than the Type C access designated by WSDOT. In this connection, the rulemakers' use of the term "appraisal" becomes even more meaningful. *Supra*.

The Supreme Court held in *Lutheran Day Care* that "a finding of arbitrary and capricious governmental conduct under the traditional standard is sufficient, by itself, to violate substantive due process . . . as a matter of law," which "automatically subjects the government to damages under 42 U.S.C. §1983 for a violation of the federal Constitution." *Norquest/RCA-W Bitter Lake v. Seattle*, 72 Wash.App. 467, 481-82, 865 P.2d 18, 26, *review denied*, 124 Wash.2d 1021 (1994); citing *Lutheran Day Care v. Snohomish County*, 119 Wash.2d 91, 124-25, 829 P.2d 746 (1992), *cert. denied*, 506 U.S. 1079, 113 S.Ct. 1044, 122 L.Ed.2d 353 (1993); *Appendix C-1*.

\* \* \*

## VI. CONCLUSION

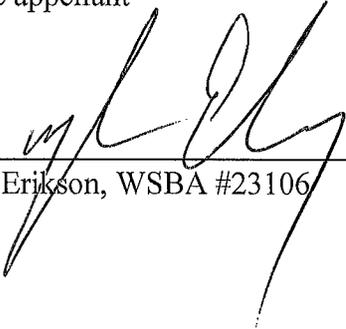
The trial court's *Order Adjudicating Public Use and Necessity* should

be reversed and remanded with instructions to allow unrestricted Type E approach serving all five of Mountain View's parcels, in the location of access serving the existing apartment complex. There is no evidence to support the trial court's decision that property and property rights sought are necessary for the proposed state highway because there is no evidence on the record which would satisfy definitive standards for exercise of agency discretion. WSDOT's provision of a Type C access limited to the existing apartment complex was contrary to law, arbitrary and capricious because such access directly violates definitive standards requiring that the "type of approach . . . be commensurate with present and *potential* land use" on assembled parcels. WSDOT is liable for Mountain View's attorney fees and costs because arbitrary and capricious action subjects government agencies to liability under 42 U.S.C. §1983 as a matter of law.

**RESPECTFULLY SUBMITTED** this 14<sup>th</sup> day of December, 2015.

ERIKSON & ASSOCIATES, PLLC  
Attorneys for the appellant

By:

  
\_\_\_\_\_  
Mark A. Erikson, WSBA #23106

**CERTIFICATE OF SERVICE**

**#48074-3-II**

I certify that on the 14th day of December 2015, I caused a true and correct copy of this *Brief of Appellants* to be served on the following in the manner indicated below:

**Counsel for the defendants:**

Matthew D. Huot (X) US Mail  
Assistant Attorney General ( ) Hand Delivery  
7141 Cleanwater Drive SW  
P O Box 40113 (X) E-mail, as agreed by  
Olympia, WA 98504-0113 recipient  
**E-mail: MattH4@ATG.WA.GOV**  
**tpcef@atg.wa.gov**  
**JennahW@atg.wa.gov**  
**LynnJ@atg.wa.gov**

Jane Vetto ( ) US Mail  
Deputy Prosecuting Attorney (X) Hand Delivery  
Clark County Prosecutor's Office –  
Civil Division ( ) E-mail, as agreed by  
1300 Franklin Street recipient  
P.O. Box 5000  
Vancouver, WA 98666-5000

By:   
Kris Eklove

West's Revised Code of Washington Annotated Title 8. Eminent Domain (Refs & Annos) Chapter 8.26. Relocation Assistance--Real Property Acquisition Policy
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West's RCWA 8.26.020

8.26.020. Definitions

Effective: July 22, 2011

Currentness

As used in this chapter:

- (1) The term "state" means any department, commission, agency, or instrumentality of the state of Washington.
- (2) The term "local public agency" applies to any county, city or town, or other municipal corporation or political subdivision of the state and any person who has the authority to acquire property by eminent domain under state law, or any instrumentality of any of the foregoing.
- (3) The term "person" means any individual, partnership, corporation, or association.
- (4)(a) The term "displaced person" means, except as provided in (c) of this subsection, any person who moves from real property, or moves his or her personal property from real property:
  - (i) As a direct result of a written notice of intent to acquire, or the acquisition of, such real property in whole or in part for a program or project undertaken by a displacing agency; or
  - (ii) On which the person is a residential tenant or conducts a small business, a farm operation, or a business defined in this section, as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, under a program or project undertaken by a displacing agency in any case in which the displacing agency determines that the displacement is permanent.
- (b) Solely for the purposes of RCW 8.26.035 (1) and (2) and 8.26.065, the term "displaced person" includes any person who moves from real property, or moves his or her personal property from real property:
  - (i) As a direct result of a written notice of intent to acquire, or the acquisition of, other real property in whole or in part on which the person conducts a business or farm operation, for a program or project undertaken by a displacing agency; or
  - (ii) As a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, of other real property on which the person conducts a business or a farm operation, under a program or project undertaken by a displacing agency where the displacing agency determines that the displacement is permanent.

(c) The term “displaced person” does not include:

(i) A person who has been determined, according to criteria established by the lead agency, to be either unlawfully occupying the displacement dwelling or to have occupied the dwelling for the purpose of obtaining assistance under this chapter; or

(ii) In any case in which the displacing agency acquires property for a program or project, any person (other than a person who was an occupant of the property at the time it was acquired) who occupies the property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

(5) The term “business” means any lawful activity, excepting a farm operation, conducted primarily:

(a) For the purchase, sale, lease, and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or other personal property;

(b) For the sale of services to the public;

(c) By a nonprofit organization; or

(d) Solely for the purposes of RCW 8.26.035, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(6) The term “farm operation” means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or for home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(7) The term “comparable replacement dwelling” means any dwelling that is (a) decent, safe, and sanitary; (b) adequate in size to accommodate the occupants; (c) within the financial means of the displaced person; (d) functionally equivalent; (e) in an area not subject to unreasonably adverse environmental conditions; and (f) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

(8) For purposes of RCW 8.26.180 through 8.26.200, the term “acquiring agency” means:

(a) A state agency or local public agency that has the authority to acquire property by eminent domain under state law; or

(b) Any state agency, local public agency, or person that (i) does not have the authority to acquire property by eminent domain under state law and (ii) has been designated an “acquiring agency” under rules adopted by the lead agency. However, the lead

8.26.020. Definitions, WA ST 8.26.020

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agency may only designate a state agency, local public agency, or a person as an “acquiring agency” to the extent that it is necessary in order to qualify for federal financial assistance.

(9) The term “displacing agency” means the state agency, local public agency, or any person carrying out a program or project, with federal or state financial assistance, that causes a person to be a displaced person.

(10) The term “federal financial assistance” means a grant, loan, or contribution provided by the United States, except any federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(11) The term “mortgage” means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of this state, together with the credit instruments, if any, secured thereby.

(12) The term “lead agency” means the Washington state department of transportation.

(13) The term “appraisal” means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

**Credits**

[2011 c 336 § 280, eff. July 22, 2011; 2003 c 254 § 1, eff. July 27, 2003; 1988 c 90 § 2; 1972 ex.s. c 34 § 1; 1971 ex.s. c 240 § 2.]

West's RCWA 8.26.020, WA ST 8.26.020

Current with all laws from the 2015 Regular Session and 2015 1st, 2nd, and 3rd Special Sessions

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West's Revised Code of Washington Annotated  
Title 43. State Government--Executive (Refs & Annos)  
Chapter 43.21C. State Environmental Policy (Refs & Annos)

West's RCWA 43.21C.030

43.21C.030. Guidelines for state agencies, local governments--Statements--Reports--Advice--Information

Effective: June 10, 2010

Currentness

The legislature authorizes and directs that, to the fullest extent possible: (1) The policies, regulations, and laws of the state of Washington shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all branches of government of this state, including state agencies, municipal and public corporations, and counties shall:

(a) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on the environment;

(b) Identify and develop methods and procedures, in consultation with the department of ecology and the ecological commission, which will insure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations;

(c) Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

(i) the environmental impact of the proposed action;

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) alternatives to the proposed action;

(iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and ir retrievable commitments of resources which would be involved in the proposed action should it be implemented;

(d) Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any public agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate federal, province, state, and local agencies, which are authorized to

develop and enforce environmental standards, shall be made available to the governor, the department of ecology, the ecological commission, and the public, and shall accompany the proposal through the existing agency review processes;

(e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(f) Recognize the worldwide and long-range character of environmental problems and, where consistent with state policy, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment;

(g) Make available to the federal government, other states, provinces of Canada, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(h) Initiate and utilize ecological information in the planning and development of natural resource-oriented projects.

**Credits**

[2010 c 8 § 7002, eff. June 10, 2010; 1971 ex.s. c 109 § 3.]

West's RCWA 43.21C.030, WA ST 43.21C.030

Current with all laws from the 2015 Regular Session and 2015 1st, 2nd, and 3rd Special Sessions

West's Revised Code of Washington Annotated  
Title 47. Public Highways and Transportation (Refs & Annos)  
Chapter 47.12. Acquisition and Disposition of State Highway Property (Refs & Annos)

West's RCWA 47.12.010

47.12.010. Acquisition of property authorized--Condemnation actions--Cost

Currentness

Whenever it is necessary to secure any lands or interests in land for a right-of-way for any state highway, or for the drainage thereof or construction of a protection therefor or so as to afford unobstructed vision therefor toward any railroad crossing or another public highway crossing or any point of danger to public travel or to provide a visual or sound buffer between highways and adjacent properties or for the purpose of acquiring sand pits, gravel pits, borrow pits, stone quarries, or any other land for the extraction of materials for construction or maintenance or both, or for any site for the erection upon and use as a maintenance camp, of any state highway, or any site for other necessary structures or for structures for the health and accommodation of persons traveling or stopping upon the state highways of this state, or any site for the construction and maintenance of structures and facilities adjacent to, under, upon, within, or above the right-of-way of any state highway for exclusive or nonexclusive use by an urban public transportation system, or for any other highway purpose, together with right-of-way to reach such property and gain access thereto, the department of transportation is authorized to acquire such lands or interests in land in behalf of the state by gift, purchase, or condemnation. In case of condemnation to secure such lands or interests in land, the action shall be brought in the name of the state of Washington in the manner provided for the acquiring of property for the public uses of the state, and in such action the selection of the lands or interests in land by the secretary of transportation shall, in the absence of bad faith, arbitrary, capricious, or fraudulent action, be conclusive upon the court and judge before which the action is brought that said lands or interests in land are necessary for public use for the purposes sought. The cost and expense of such lands or interests in land may be paid as a part of the cost of the state highway for which such right-of-way, drainage, unobstructed vision, sand pits, gravel pits, borrow pits, stone quarries, maintenance camp sites, and structure sites or other lands are acquired.

**Credits**

[1977 ex.s. c 151 § 46; 1967 c 108 § 4; 1961 c 13 § 47.12.010. Prior: 1937 c 53 § 25, part; RRS § 6400-25, part.]

West's RCWA 47.12.010, WA ST 47.12.010

Current with all laws from the 2015 Regular Session and 2015 1st, 2nd, and 3rd Special Sessions

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APPENDIX   A    
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Washington Administrative Code Title 197. Ecology, Department of (Environmental Policy, Council on) Chapter 197-11. SEPA Rules (Refs & Annos) Part Four. - Environmental Impact Statement (EIS)
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WAC 197-11-440

197-11-440. EIS contents.

Currentness

- (1) An EIS shall contain the following, in the style and format prescribed in the preceding sections.
  
- (2) **Fact sheet.** The fact sheet shall include the following information in this order:
  - (a) A title and brief description (a few sentences) of the nature and location (by street address, if applicable) of the proposal, including principal alternatives.
  
  - (b) The name of the person or entity making the proposal(s) and the proposed or tentative date for implementation.
  
  - (c) The name and address of the lead agency, the responsible official, and the person to contact for questions, comments, and information.
  
  - (d) A list of all licenses which the proposal is known to require. The licenses shall be listed by name and agency; the list shall be as complete and specific as possible.
  
  - (e) Authors and principal contributors to the EIS and the nature or subject area of their contributions.
  
  - (f) The date of issue of the EIS.
  
  - (g) The date comments are due (for DEISs).
  
  - (h) The time and place of public hearings or meetings, if any and if known.
  
  - (i) The date final action is planned or scheduled by the lead agency, if known. Agencies may indicate that the date is subject to change. The nature or type of final agency action should be stated unless covered in subsection (a) above.
  
  - (j) The type and timing of any subsequent environmental review to which the lead agency or other agencies have made commitments, if any.

APPENDIX B  
Page 1 of 16

(k) The location of a prior EIS on the proposal, EIS technical reports, background data, adopted documents, and materials incorporated by reference for this EIS, if any.

(l) The cost to the public for a copy of the EIS.

**(3) Table of contents.**

(a) The table of contents should list, if possible, any documents which are appended, adopted, or serve as technical reports for this EIS (but need not list each comment letter).

(b) The table of contents may include the list of elements of the environment (WAC 197-11-444), indicating those elements or portions of elements which do not involve significant impacts.

**(4) Summary.** The EIS shall summarize the contents of the statement and shall not merely be an expanded table of contents. The summary shall briefly state the proposal's objectives, specifying the purpose and need to which the proposal is responding, the major conclusions, significant areas of controversy and uncertainty, if any, and the issues to be resolved, including the environmental choices to be made among alternative courses of action and the effectiveness of mitigation measures. The summary need not mention every subject discussed in the EIS, but shall include a summary of the proposal, impacts, alternatives, mitigation measures, and significant adverse impacts that cannot be mitigated. The summary shall state when the EIS is part of a phased review, if known, or the lead agency is relying on prior or future environmental review (which should be generally identified). The lead agency shall make the summary sufficiently broad to be useful to the other agencies with jurisdiction.

**(5) Alternatives including the proposed action.**

(a) This section of the EIS describes and presents the proposal (or preferred alternative, if one or more exists) and alternative courses of action.

(b) Reasonable alternatives shall include actions that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation.

(i) The word 'reasonable' is intended to limit the number and range of alternatives, as well as the amount of detailed analysis for each alternative.

(ii) The 'no-action' alternative shall be evaluated and compared to other alternatives.

(iii) Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts either directly, or indirectly through requirement of mitigation measures.

(c) This section of the EIS shall:

(i) Describe the objective(s), proponent(s), and principal features of reasonable alternatives. Include the proposed action, including mitigation measures that are part of the proposal.

(ii) Describe the location of the alternatives including the proposed action, so that a lay person can understand it. Include a map, street address, if any, and legal description (unless long or in metes and bounds).

(iii) Identify any phases of the proposal, their timing, and previous or future environmental analysis on this or related proposals, if known.

(iv) Tailor the level of detail of descriptions to the significance of environmental impacts. The lead agency should retain any detailed engineering drawings and technical data, that have been submitted, in agency files and make them available on request.

(v) Devote sufficiently detailed analysis to each reasonable alternative to permit a comparative evaluation of the alternatives including the proposed action. The amount of space devoted to each alternative may vary. One alternative (including the proposed action) may be used as a benchmark for comparing alternatives. The EIS may indicate the main reasons for eliminating alternatives from detailed study.

(vi) Present a comparison of the environmental impacts of the reasonable alternatives, and include the no action alternative. Although graphics may be helpful, a matrix or chart is not required. A range of alternatives or a few representative alternatives, rather than every possible reasonable variation, may be discussed.

(vii) Discuss the benefits and disadvantages of reserving for some future time the implementation of the proposal, as compared with possible approval at this time. The agency perspective should be that each generation is, in effect, a trustee of the environment for succeeding generations. Particular attention should be given to the possibility of foreclosing future options by implementing the proposal.

(d) When a proposal is for a private project on a specific site, the lead agency shall be required to evaluate only the no action alternative plus other reasonable alternatives for achieving the proposal's objective on the same site. This subsection shall not apply when the proposal includes a rezone, unless the rezone is for a use allowed in an existing comprehensive plan that was adopted after review under SEPA. Further, alternative sites may be evaluated if other locations for the type of proposed use have not been included or considered in existing planning or zoning documents.

**(6) Affected environment, significant impacts, and mitigation measures.**

(a) This section of the EIS shall describe the existing environment that will be affected by the proposal, analyze significant impacts of alternatives including the proposed action, and discuss reasonable mitigation measures that would significantly mitigate these impacts. Elements of the environment that are not significantly affected need not be discussed. Separate sections are not required for each subject (see WAC 197-11-430(3)).

(b) General requirements for this section of the EIS.

(i) This section shall be written in a nontechnical manner which is easily understandable to lay persons whenever possible, with the discussion commensurate with the importance of the impacts. Only significant impacts must be discussed; other impacts may be discussed.

(ii) Although the lead agency should discuss the affected environment, environmental impacts, and other mitigation measures together for each element of the environment where there is a significant impact, the responsible official shall have the flexibility to organize this section in any manner useful to decision makers and the public (see WAC 197-11-430(3)).

(iii) This subsection is not intended to duplicate the analysis in subsection (5) and shall avoid doing so to the fullest extent possible.

(c) This section of the EIS shall:

(i) Succinctly describe the principal features of the environment that would be affected, or created, by the alternatives including the proposal under consideration. Inventories of species should be avoided, although rare, threatened, or endangered species should be indicated.

(ii) Describe and discuss significant impacts that will narrow the range or degree of beneficial uses of the environment or pose long term risks to human health or the environment, such as storage, handling, or disposal of toxic or hazardous material.

(iii) Clearly indicate those mitigation measures (not described in the previous section as part of the proposal or alternatives), if any, that could be implemented or might be required, as well as those, if any, that agencies or applicants are committed to implement.

(iv) Indicate what the intended environmental benefits of mitigation measures are for significant impacts, and may discuss their technical feasibility and economic practicability, if there is concern about whether a mitigation measure is capable of being accomplished. The EIS need not analyze mitigation measures in detail unless they involve substantial changes to the proposal causing significant adverse impacts, or new information regarding significant impacts, and those measures will not be subsequently analyzed under SEPA (see WAC 197-11-660(2)). An EIS may briefly mention nonsignificant impacts or mitigation measures to satisfy other environmental review laws or requirements covered in the same document (WAC 197-11-402(8) and 197-11-640).

(v) Summarize significant adverse impacts that cannot or will not be mitigated.

(d) This section shall incorporate, when appropriate:

(i) A summary of existing plans (for example: Land use and shoreline plans) and zoning regulations applicable to the proposal, and how the proposal is consistent and inconsistent with them.

(ii) Energy requirements and conservation potential of various alternatives and mitigation measures, including more efficient use of energy, such as insulating, as well as the use of alternate and renewable energy resources.

(iii) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(iv) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(e) Significant impacts on both the natural environment and the built environment must be analyzed, if relevant (WAC 197-11-444). This involves impacts upon and the quality of the physical surroundings, whether they are in wild, rural, or urban areas. Discussion of significant impacts shall include the cost of and effects on public services, such as utilities, roads, fire, and police protection, that may result from a proposal. EISs shall also discuss significant environmental impacts upon land and shoreline use, which includes housing, physical blight, and significant impacts of projected population on environmental resources, as specified by RCW 43.21C.110 (1)(d) and (f), as listed in WAC 197-11-444.

(7) **Appendices.** Comment letters and responses shall be circulated with the FEIS as specified by WAC 197-11-560. Technical reports and supporting documents need not be circulated with an EIS (WAC 197-11-425(4) and 197-11-440 (2)(k)), but shall be readily available to agencies and the public during the comment period.

(8) **(Optional)** The lead agency may include, in an EIS or appendix, the analysis of any impact relevant to the agency's decision, whether or not environmental. The inclusion of such analysis may be based upon comments received during the scoping process. The provision for combining documents may be used (WAC 197-11-640). The EIS shall comply with the format requirements of this part. The decision whether to include such information and the adequacy of any such additional analysis shall not be used in determining whether an EIS meets the requirements of SEPA.

**Credits**

Statutory Authority: RCW 43.21C.110. WSR 84-05-020 (Order DE 83-39), S 197-11-440, filed 2/10/84, effective 4/4/84.

Current with amendments adopted through the 15-21 Washington State Register dated, November 4, 2015.

WAC 197-11-440, WA ADC 197-11-440

Washington Administrative Code

Title 468. Transportation, Department of (Formerly: Highway Commission, Etc.) (Refs & Annos)

Chapter 468-58. Limited Access Highways (Refs & Annos)

WAC 468-58-080

468-58-080. Guides for control of access on crossroads and interchange ramps.

Currentness

(1) Fully controlled highways, including interstate.

(a) There shall be no connections to abutting property or local service or frontage roads within the full length of any 'off' or 'on' interchange ramp from a fully controlled limited access highway. Such ramp shall be considered to terminate at its intersection with the local road which undercrosses or overcrosses the limited access facility, provided that in urban areas 'off' and 'on' ramps may be terminated at local streets other than crossroads where necessary to service existing local traffic.

(b) There shall be no direct connections from the limited access facility in rural areas to local service or frontage roads except through interchanges.

(c) In both urban and rural areas access control on a fully controlled highway shall be established along the crossroad at an interchange for a minimum distance of three hundred feet beyond the centerline of the ramp or terminus of transition taper. If a frontage road or local road is located in a generally parallel position within three hundred fifty feet of a ramp, access control should be established along the crossroad and in addition for a minimum distance of one hundred thirty feet in all directions from the center of the intersection of the parallel road and crossroad.

(d) Full control of access should be provided along the crossroad from the centerline of a ramp or terminus of a transition taper for a minimum distance of three hundred feet. Upon determination by the department, full control of access may be provided for the first one hundred thirty feet from the centerline of the ramp or terminus of a transition taper and partial control or modified control of access may be provided for the remainder of the distance to the frontage road or local road for a total minimum distance for the two types of control of three hundred feet. Type A, B, C, D, E, and F road approaches, as defined hereafter under subsection (3) of this section, 'general,' may be permitted on that portion of the crossroad on which partial or modified control of access is established.

(2) Partially controlled highways.

(a) There shall be no connections to abutting property or local service or frontage roads within the full length of any 'off' or 'on' interchange ramp from a partially controlled limited access highway. Such ramp shall be considered to terminate at its intersection with the local road which undercrosses or overcrosses the limited access facility, provided that in urban areas 'off' and 'on' ramps may be terminated at local streets other than crossroads where necessary to service existing local traffic.

(b) In both urban and rural areas access control on a partially controlled highway shall be established along the crossroad at an interchange for a minimum distance of three hundred feet beyond the centerline of the ramp or terminus of transition taper. If a frontage road or local road is located in a generally parallel position within three hundred fifty feet of a ramp, access control should be established along the crossroad and in addition for a minimum distance of one hundred thirty feet in all directions from the center of the intersection of the parallel road and crossroad.

(c) Access control limits at the crossroads on a partially controlled highway should be established along the crossroad at a grade intersection for a minimum distance of three hundred feet from the centerline of the nearest directional roadway. If a parallel road is located within three hundred fifty feet of said grade intersection, access control should be established along the crossroad and in addition for a minimum distance of one hundred thirty feet in all directions from the center of the intersection of the parallel road and crossroad. Type D, E, and F approaches may be permitted closer than one hundred thirty feet from the center of the intersection only when they already exist and cannot reasonably be relocated.

(d) Access control limits at intersections on modified control highways should be established along the cross road for a minimum distance of one hundred thirty feet from the centerline of a two-lane highway or for a minimum of one hundred thirty feet from centerline of the nearest directional roadway of a four-lane highway. Type D, E, and F approaches should be allowed within this area only when no other reasonable alternative is available.

(3) General.

(a) Access control may be increased or decreased beyond or under the minimum requirements to fit local conditions if so determined by the department.

(b) Type A, B, C, D, E, and F approaches are defined as follows:

(i) Type A approach. Type A approach is an off and on approach in legal manner, not to exceed thirty feet in width, for sole purpose of serving a single family residence. It may be reserved by abutting owner for specified use at a point satisfactory to the state at or between designated highway stations.

(ii) Type B approach. Type B approach is an off and on approach in legal manner, not to exceed fifty feet in width, for use necessary to the normal operation of a farm, but not for retail marketing. It may be reserved by abutting owner for specified use at a point satisfactory to the state at or between designated highway stations.

(iii) Type C approach. Type C approach is an off and on approach in legal manner, for special purpose and width to be agreed upon. It may be specified at a point satisfactory to the state at or between designated highway stations.

(iv) Type D approach is an off and on approach in a legal manner not to exceed fifty feet in width for use necessary to the normal operation of a commercial establishment. It may be specified at a point satisfactory to the state at or between designated highway stations.

(v) Type E approach is a separated off and on approach in a legal manner, with each opening not exceeding thirty feet in width, for use necessary to the normal operations of a commercial establishment. It may be specified at a point satisfactory to the state at or between designated highway stations.

(vi) Type F approach is an off and on approach in a legal manner, not to exceed thirty feet in width, for the sole purpose of serving a wireless communication site. It may be specified at a point satisfactory to the state at or between designated highway stations.

The state shall only authorize such approach by the issuance of a nonassignable permit. The permit allows site access for the normal construction, operation and maintenance of the wireless communication site for the permit holder and its contractors but not its subtenants. If a sale or merger occurs that affects an existing wireless communication site, the new wireless communication provider will be authorized to utilize said approach upon the state's receipt of written notice of the sale or merger action. The wireless communication site access permit may be canceled upon written notice for reasons specified in the wireless communication site access permit general provisions. The permit will only be issued if it meets all state criteria, including, but not limited to, design and safety standards.

Only one wireless communication site access user per permit shall be allowed, but more than one permit may be issued for a single Type F approach.

Each permitted access user shall be required to pay to the state five hundred dollars annually in compensation for use of the state-owned access rights, at the time of the issuance of the permit and each year thereafter.

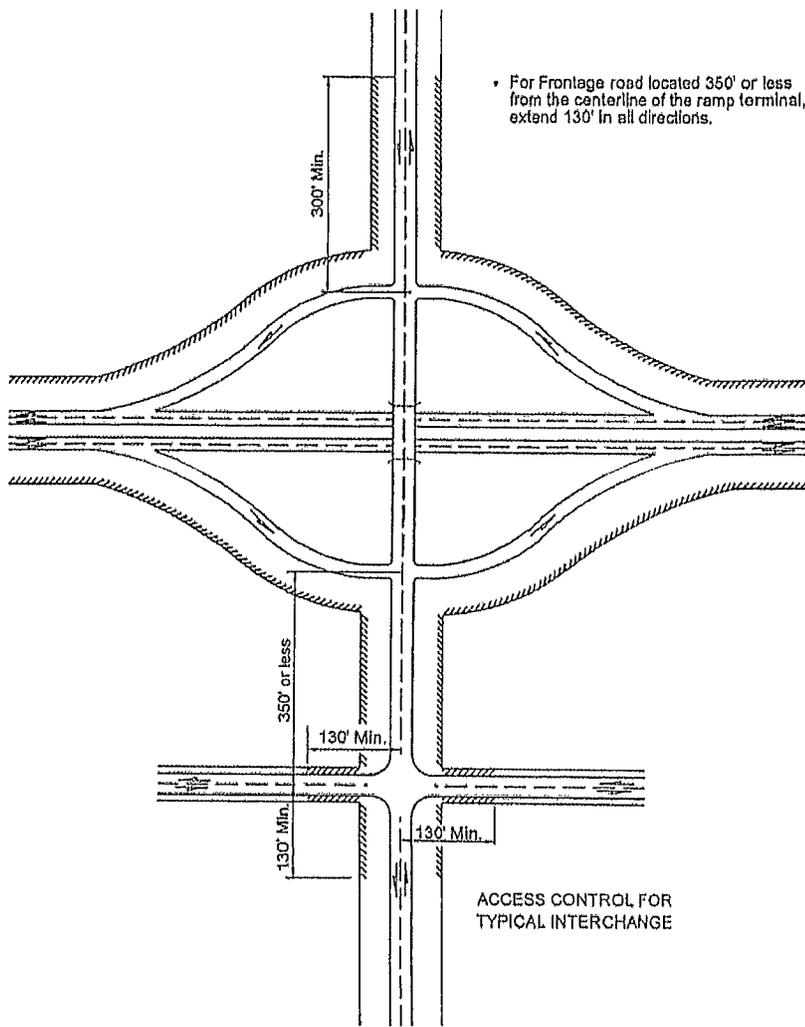
Since the state is the owner of the access, Type F approach permits shall not be issued pursuant to chapter 47.50 RCW and shall not confer a property right upon the permittee(s). An applicant for a Type F approach permit shall pay a nonrefundable access application fee when application is made in the amount of five hundred dollars for investigating, handling and granting the permit.

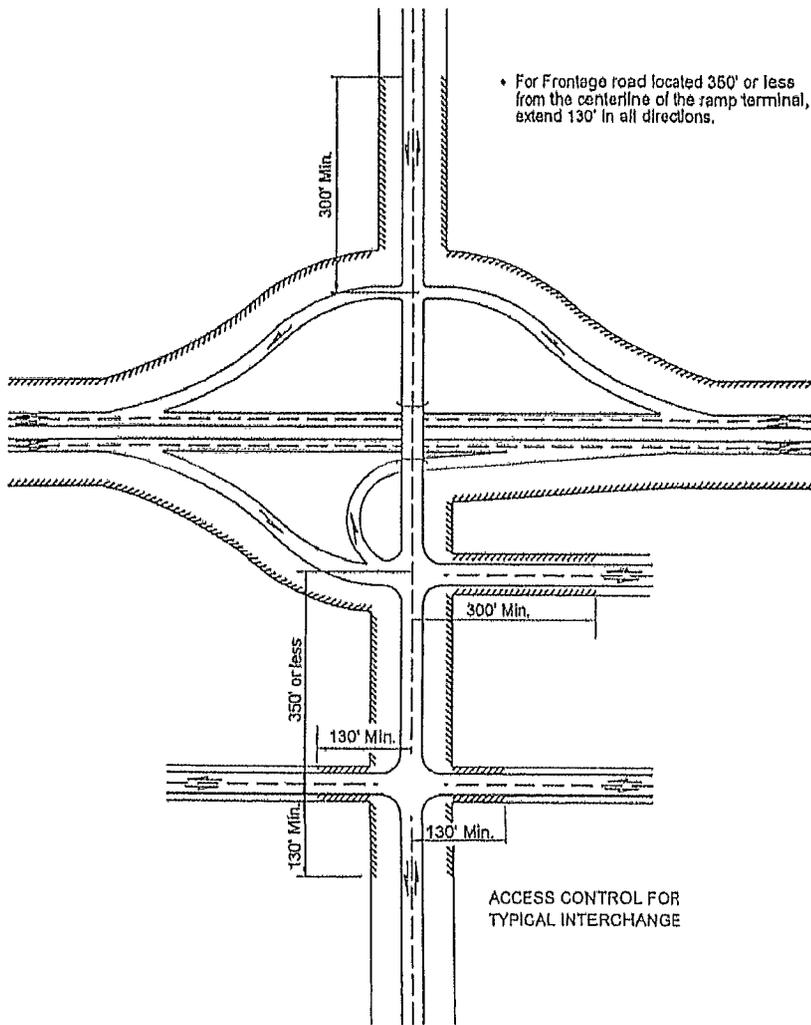
An application for wireless communication site access permit shall receive a response from the department of transportation within thirty working days from date of receipt of said application.

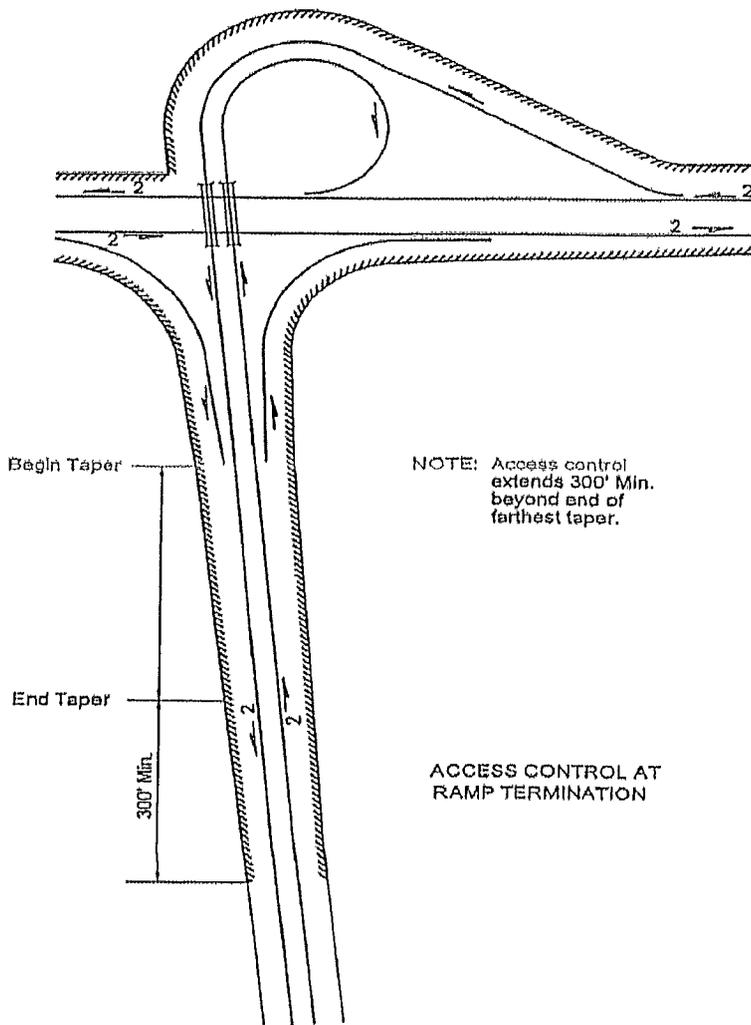
(c) Under no circumstances will a change in location or width of an approach be permitted unless approved by the secretary. Noncompliance or violation of these conditions will result in the immediate closure of the approach.

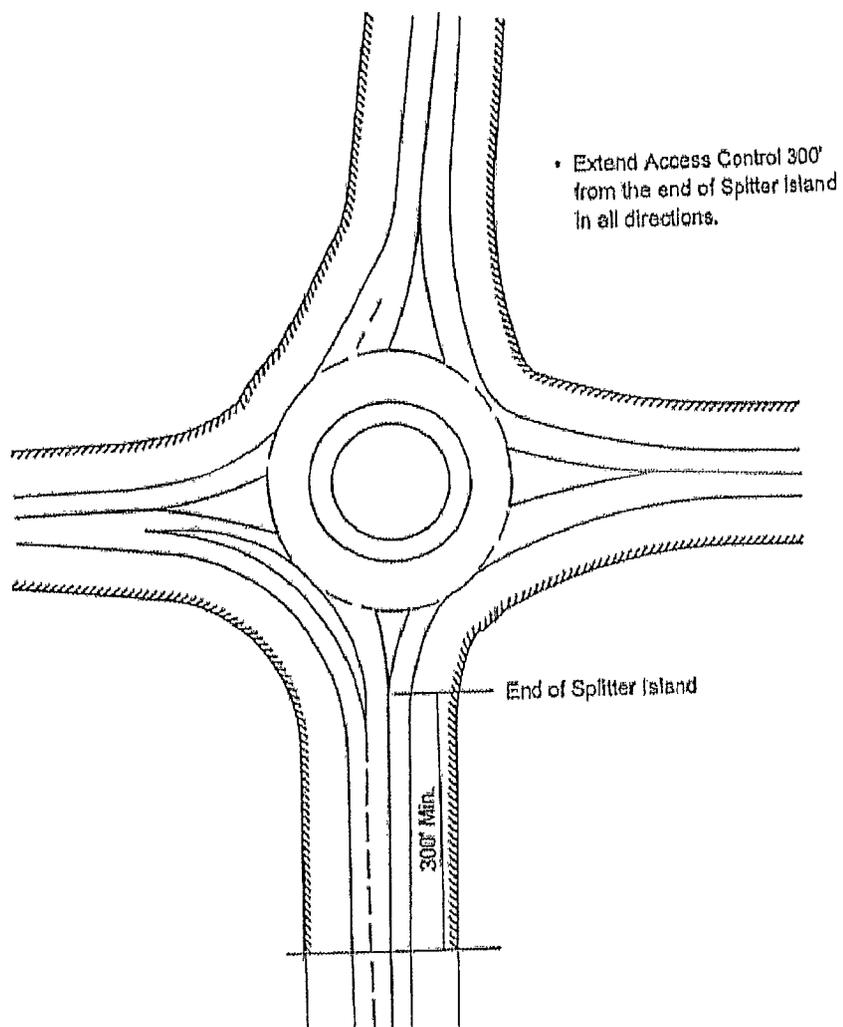
(d) Commercial approaches shall not be permitted within the limits of access control except where modified access control has been approved by the department.

(e) All access control shall be measured from the centerline of the ramps, crossroads or parallel roads or from the terminus of transition tapers. On multiple lane facilities measurement shall be from the centerline of the nearest directional roadway.

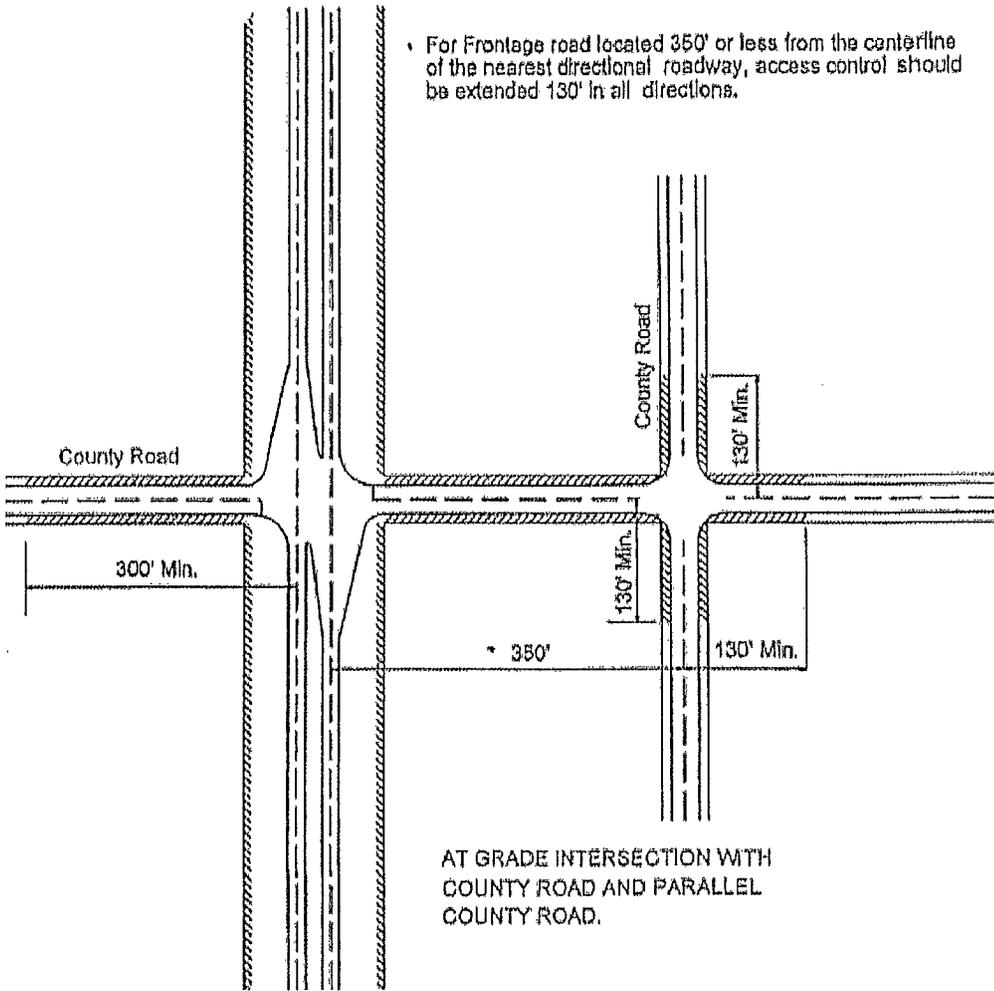




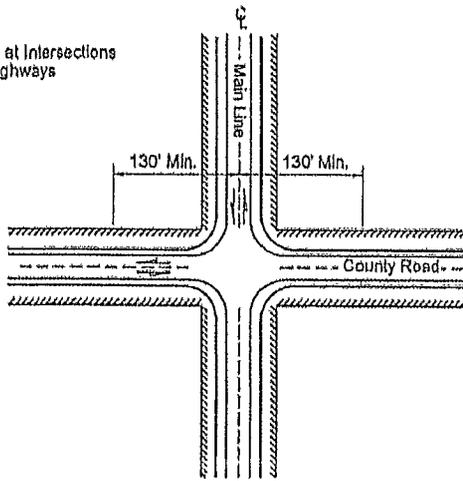




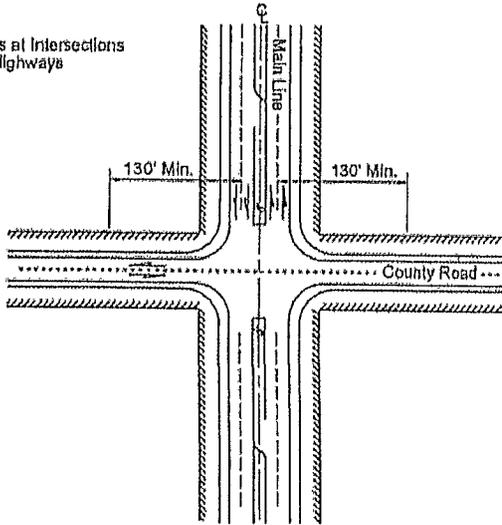
ACCESS CONTROL FOR TYPICAL ROUNDABOUT



Access Control Limits at Intersections  
Modified Control Highways  
Two-Lane



Access Control Limits at Intersections  
Modified Control Highways  
Multi-Lane



ACCESS CONTROL LIMITS AT INTERSECTIONS

Credits

Statutory Authority: RCW 47.52.027. WSR 03-11-076, S 468-58-080, filed 5/20/03, effective 6/20/03. Statutory Authority: RCW 47.01.101(5). WSR 87-15-021 (Order 109), S 468-58-080, filed 7/8/87. Statutory Authority: RCW 47.52.020. WSR 79-08-061 (Order 34), S 468-58-080, filed 7/23/79. Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), S 468-58-080, filed 12/20/78. Formerly WAC 252-20-051.

Current with amendments adopted through the 15-21 Washington State Register dated, November 4, 2015.

WAC 468-58-080, WA ADC 468-58-080

End of Document

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Washington Administrative Code

Title 468. Transportation, Department of (Formerly: Highway Commission, Etc.) (Refs & Annos)

Chapter 468-58. Limited Access Highways (Refs & Annos)

WAC 468-58-100

468-58-100. Guides for the application of modified access control on existing state highways.

Currentness

(1) Definitive standards for road approaches on modified access controlled highways shall be as follows:

(a) The type of approach for each parcel shall be commensurate with the present and potential land use and be based on appraisals which consider the following:

- (i) Local comprehensive plans, zoning and land use ordinances.
- (ii) Property covenants and/or agreements.
- (iii) City or county ordinances.
- (iv) The highest and best use of the property.
- (v) Highest use and best use of adjoining lands.
- (vi) Change in use by merger of adjoining ownerships.
- (vii) All other factors bearing upon proper land use of the parcel.

(b) The type of approaches\* to be considered are:

- (i) Type A (residential).
- (ii) Type B (farm).
- (iii) Type C (special use).
- (iv) Type D (commercial single 50 feet width).

(v) Type E (commercial double 30 feet width).

(c) Once established, the type, size and location of the approach may be modified by the secretary of transportation or his designee.

(d) When Type D or E approaches have been established, interim use of Type A or B approaches will be allowed.

(2) Design. The number and location of approaches on a modified access control highway shall be carefully planned to provide a safe highway compatible with present and potential land use. The following will be applied:

(a) Parcels which have access to another public road or street as well as frontage on the highway will not normally be allowed direct access to the highway.

(b) Approaches located in areas where sight limitations create undue hazard shall be relocated or closed.

(c) The number of access openings shall be held to a minimum. Access openings are limited to one approach for each parcel of land with the exception of extensive frontages where one approach is unreasonable or for Type E approaches which feature separate off and on approaches.

(d) Joint use of access approaches shall be considered, where feasible.

(e) New approaches will be considered at the time of plan adoption to prevent a physical 'landlock' by reason of access taking.

(f) Existing access points not meeting the test of these rules as described in this section, will be closed.

\*Refer to WAC 468-58-080 for definitions.

#### Credits

Statutory Authority: RCW 47.52.020. WSR 79-08-061 (Order 34), S 468-58-100, filed 7/23/79. Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), S 468-58-100, filed 12/20/78. Formerly WAC 252-20-090.

Current with amendments adopted through the 15-21 Washington State Register dated, November 4, 2015.

WAC 468-58-100, WA ADC 468-58-100

§ 1983. Civil action for deprivation of rights, 42 USCA § 1983

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KeyCite Yellow Flag - Negative Treatment  
Unconstitutional or Preempted Limited on Preemption Grounds by Molinelli-Freytes v. University of Puerto Rico, D.Puerto Rico, July 27, 2010

United States Code Annotated  
Title 42. The Public Health and Welfare  
Chapter 21. Civil Rights (Refs & Annos)  
Subchapter I. Generally

42 U.S.C.A. § 1983

§ 1983. Civil action for deprivation of rights

Effective: October 19, 1996

Currentness

<Notes of Decisions for 42 USCA § 1983 are displayed in six separate documents. Notes of Decisions for subdivisions I to IX are contained in this document. For additional Notes of Decisions, see 42 § 1983, ante.>

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

**CREDIT(S)**

(R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub.L. 104-317, Title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

42 U.S.C.A. § 1983, 42 USCA § 1983

Current through P.L. 114-86 (excluding P.L. 114-74 and 114-81) approved 11-5-2015

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KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

United States Code Annotated  
Title 42. The Public Health and Welfare  
Chapter 21. Civil Rights (Refs & Annos)  
Subchapter I. Generally

42 U.S.C.A. § 1988

§ 1988. Proceedings in vindication of civil rights

Effective: September 22, 2000  
Currentness

(a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C.A. § 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C.A. § 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C.A. § 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert fees

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

**CREDIT(S)**

(R.S. § 722; Pub.L. 94-559, § 2, Oct. 19, 1976, 90 Stat. 2641; Pub.L. 96-481, Title II, § 205(c), Oct. 21, 1980, 94 Stat. 2330; Pub.L. 102-166, Title I, §§ 103, 113(a), Nov. 21, 1991, 105 Stat. 1074, 1079; Pub.L. 103-141, § 4(a), Nov. 16, 1993, 107 Stat. 1489; Pub.L. 103-322, Title IV, § 40303, Sept. 13, 1994, 108 Stat. 1942; Pub.L. 104-317, Title III, § 309(b), Oct. 19, 1996, 110 Stat. 3853; Pub.L. 106-274, § 4(d), Sept. 22, 2000, 114 Stat. 804.)

42 U.S.C.A. § 1988, 42 USCA § 1988

Current through P.L. 114-86 (excluding P.L. 114-74 and 114-81) approved 11-5-2015

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United States Code Annotated Constitution of the United States Annotated Amendment V. Grand Jury; Double Jeopardy; Self-Incrimination; Due Process; Takings
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U.S.C.A. Const. Amend. V full text

Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy;  
Self-Incrimination; Due Process of Law; Takings without Just Compensation

Currentness

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

<Historical notes and references are included in the full text document for this amendment.>

<For Notes of Decisions, see separate documents for clauses of this amendment:>

<USCA Const. Amend. V--Grand Jury clause>

<USCA Const. Amend. V--Double Jeopardy clause>

<USCA Const. Amend. V--Self-Incrimination clause>

<USCA Const. Amend. V-- Due Process clause>

<USCA Const. Amend. V--Takings clause>

U.S.C.A. Const. Amend. V full text, USCA CONST Amend. V full text  
Current through P.L. 114-86 (excluding P.L. 114-74 and 114-81) approved 11-5-2015

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United States Code Annotated  
Constitution of the United States  
Annotated

Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection;  
Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV-Full Text

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE  
PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION;  
DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

**Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Section 2.** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

**Section 3.** No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

**Section 4.** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

**Section 5.** The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND..., USCA CONST Amend...

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<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

U.S.C.A. Const. Amend. XIV-Full Text, USCA CONST Amend. XIV-Full Text  
Current through P.L. 114-86 (excluding P.L. 114-74 and 114-81) approved 11-5-2015

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Table 1-5. Vancouver comprehensive plan land use designations

Comprehensive Plan designation	Corresponding Zoning	General Intent
<b>Residential</b>		
Urban Lower Density	R-2, R-4, R-6, R-9	Predominantly single-family detached residential development, with some allowances for duplexes, townhouses, and single-family homes on small lots using infill standards
Urban Higher Density	R-18, R-22, R-30, R-35, MX	Predominantly apartments and condominiums, with some allowance for attached housing (such as duplexes, townhouses, and small-lot single-family homes) and mixed use
<b>Commercial</b>		
Commercial and Mixed Use	CN Neighborhood Commercial	Small scale commercial uses and services primarily for nearby residences. Designated areas are typically less than 2 acres in size. These areas provide services within walking distance for the frequent needs of the surrounding residents and are generally small areas designed to be compatible with the surrounding residentially zoned neighborhoods.
	CC Community Commercial	Medium scale commercial uses and services, typically serving more than one neighborhood. Designated areas are typically between 2 and 10 acres in size, located near collector or arterial street intersections
	CG General Commercial	Medium to larger commercial use and services serving large sections of urban areas and beyond. Designated areas are typically in urban activity centers or along major travel routes connecting activity centers. General Commercial areas provide a full range of goods and services necessary to serve large areas and the traveling public. These areas are generally located at interchanges, along state highways and interstates, and adjacent to major and minor arterial roadways.
	CX City Center intensity	Specific to downtown Vancouver. A mix of generally higher commercial, residential, institutional uses envisioned
	WX Waterfront Mixed Use	A mix of residential, commercial, office and recreation uses along the Columbia River
	CPX Central Park Mixed Use	Specific to Vancouver Central Park. A mix of open space, recreation, educational, governmental, and public service uses developed according to policies and guidelines contained in the master plan document "A Park for Vancouver: A Concept Plan" (as amended).
	MX Mixed Use	A mix of residential, commercial, office and recreation uses
	RGX Riverview Gateway (1)	Specific to the Riverview Gateway subarea at the intersection of 192nd Avenue and SR-14. A mix of residential, mixed use, office, and light industrial uses
<b>Industrial</b>		
Industrial	OCI Office-Campus-Industrial	Combination of light industry, office, & limited supporting commercial uses
	IL Light Industrial	Light manufacturing, research, warehousing, and industrial services, with provisions for office uses. Generally clean uses not involving outdoor storage, noise or odors or use of rail or marine transport.
	IH Heavy Industrial	Intensive industrial manufacturing, service, production or storage often involving heavy truck, rail or marine traffic, or outdoor storage and generating vibration, noise and odors.
	A Airport	General Aviation airports and accessory uses
<b>Other</b>		
Open Space	P Park, GW Greenway, NA Natural Area	Areas intended for parks, greenways and natural areas
Public Facilities	All zones	Areas developed with schools, fire stations, colleges, hospitals and other large facilities serving the public

(1) RGX Riverview Gateway is also consistent with Low Density and High Density Residential, and Industrial Comprehensive Plan designations

**Section 20.420.030 Uses.**

A. Types of uses. For the purposes of this chapter, there are four kinds of use:

1. A permitted (P) use is one that is permitted outright, subject to all of the applicable provisions of this title.

2. A limited (L) use is permitted outright providing it is in compliance with special requirements, exceptions or restrictions.

3. A conditional use (C) is a discretionary use reviewed through the process set forth in Chapters 20.245 VMC and 20.210 VMC, governing Conditional Uses and Decision-Making Procedures, respectively.

4. A prohibited use (X) is one that is not permitted in a zoning district under any circumstances.

B. Use table. A list of permitted, limited, conditional, and prohibited uses in Higher Density residential zones is presented in Table 20.420.030-1.

<b>Table 20.420.030-1 Higher Density Districts Use Table</b>				
<b>USE</b>	<b>R-18</b>	<b>R-22</b>	<b>R-30</b>	<b>R-35</b>
<b>RESIDENTIAL</b>				
Household Living	P	P	P	P
Group Living	P	P	P	P
Transitional Housing	C <sup>2</sup>	C <sup>2</sup>	C <sup>2</sup>	C <sup>2</sup>
Home Occupation	L <sup>3</sup>	L <sup>3</sup>	L <sup>3</sup>	L <sup>3</sup>
<b>HOUSING TYPES</b>				
Single Dwelling Units, Attached	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	X
Single Dwelling Units, Detached	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	X <sup>5</sup>
Accessory Dwelling Units	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>
Duplexes	P	P	P <sup>4</sup>	P <sup>4</sup>
Multi-Dwelling Units	P	P	P	P
Manufactured Home Developments	L <sup>7</sup>	L <sup>7</sup> X	L <sup>7</sup> X	L <sup>7</sup> X
Designated Manufactured Home	L/X <sup>23</sup>	X	X	X
New Manufactured Home	L <sup>23</sup>	X	X	X
<b>CIVIC (Institutional)</b>				
Basic Utilities	C	C	C	C

**Table 20.420.030-1  
Higher Density Districts Use Table**

<b>USE</b>	<b>R-18</b>	<b>R-22</b>	<b>R-30</b>	<b>R-35</b>
Colleges	C	C	C	C
Community Recreation	C <sup>8</sup>	C <sup>8</sup>	C <sup>8</sup>	C <sup>8</sup>
Cultural Institutions	P/C <sup>9</sup>	P/C <sup>9</sup>	P/C <sup>9</sup>	P
<b>Day Care</b>				
- Family Day Care Home	P/C <sup>10</sup>	P/C <sup>10</sup>	P/C <sup>10</sup>	P/C <sup>10</sup>
- Child Care Center	L/C <sup>14</sup>	L/C <sup>14</sup>	L/C <sup>14</sup>	L/C <sup>14</sup>
- Adult Day Care	P/C <sup>11</sup>	P/C <sup>11</sup>	P/C <sup>11</sup>	P/C <sup>11</sup>
Emergency Services	C <sup>12</sup>	C <sup>12</sup>	C <sup>12</sup>	C <sup>12</sup>
Human Service Facilities	C <sup>2</sup>	C <sup>2</sup>	C <sup>2</sup>	C <sup>2</sup>
Medical Centers	C	C	C	C
<b>Parks/Open Space</b>				
- Neighborhood Parks	P	P	P	P
- Community Parks	L <sup>13</sup> /C	L <sup>13</sup> /C	L <sup>13</sup> /C	L <sup>13</sup> /C
- Regional Parks	L <sup>13</sup> /C	L <sup>13</sup> /C	L <sup>13</sup> /C	L <sup>13</sup> /C
- Trails	L <sup>13</sup> /C	L <sup>13</sup> /C	L <sup>13</sup> /C	L <sup>13</sup> /C
Postal Service	C	C	C	C
Religious Institutions	L/C <sup>14</sup>	L/C <sup>14</sup>	L/C <sup>14</sup>	L/C <sup>14</sup>
Schools	L/C <sup>14</sup>	L/C <sup>14</sup>	L/C <sup>14</sup>	L/C <sup>14</sup>
Social/Fraternal Clubs	C <sup>6</sup>	C <sup>6</sup>	C <sup>6</sup>	C <sup>6</sup>
Transportation Facility	P/C <sup>15</sup>	P/C <sup>15</sup>	P/C <sup>15</sup>	P/C <sup>15</sup>
<b>COMMERCIAL</b>				
Commercial Lodging	L/X <sup>16</sup>	L/X <sup>16</sup>	L/X <sup>16</sup>	L/X <sup>16</sup>
Eating/Drinking Establishments	L <sup>17</sup> /X	L <sup>17</sup> /X	L <sup>17</sup> /X	L <sup>17</sup> /X
<b>Entertainment-Oriented</b>				
- Adult Entertainment	X	X	X	X
- Indoor Entertainment	X	X	X	X
- Major Event Entertainment	X	X	X	X
<b>General Retail</b>				
- Sales-Oriented	L <sup>17</sup> /X	L <sup>17</sup> /X	L <sup>17</sup> /X	L <sup>17</sup> /X

**Table 20.420.030-1  
Higher Density Districts Use Table**

<b>USE</b>	<b>R-18</b>	<b>R-22</b>	<b>R-30</b>	<b>R-35</b>
- Personal Services	L <sup>17</sup> /X	L17/X	L <sup>17</sup> /X	L <sup>17</sup> /X
- Repair-Oriented	X	X	X	X
- Bulk Sales	X	X	X	X
- Outdoor Sales	X	X	X	X
<b>Motor Vehicle Related</b>				
- Motor Vehicle Sales/Rental	X	X	X	X
- Motor Vehicle Servicing/Repair	X	X	X	X
- Vehicle Fuel Sales	X	X	X	X
- EV Basic Charging Stations (accessory only)	P	P	P	P
- EV Rapid Charging Stations (accessory only)	P	P	P	P
- EV Battery Exchange Stations	X	X	X	X
<b>Office</b>				
- General	L <sup>17</sup> /X	L <sup>17</sup> /X	L <sup>17</sup> /X	L <sup>17</sup> /X
- Medical	L <sup>17</sup> /X	L <sup>17</sup> /X	L <sup>17</sup> /X	L <sup>17</sup> /X
- Extended	X	X	X	X
Self-Service Storage	X	X	X	X
Non-Accessory Parking	X	X	X	X
<b>INDUSTRIAL</b>				
Industrial Services	X	X	X	X
Manufacturing and Production	X	X	X	X
Railroad Yards	X	X	X	X
Research and Development	X	X	X	X
Warehouse/Freight Movement	X	X	X	X
Wholesale Sales	X	X	X	X
Waste-Related	X	X	X	X
Major Utility Facilities	X	X	X	X
<b>OTHER</b>				
Agriculture/Horticulture	P	P	P	P
Airport/Airpark	X	X	X	X

**Table 20.420.030-1  
Higher Density Districts Use Table**

USE	R-18	R-22	R-30	R-35
Animal Kennel/Shelters	X	X	X	X
Cemeteries	C <sup>18</sup>	C <sup>18</sup>	C <sup>18</sup>	C <sup>18</sup>
Detention & Post Detention Facilities	X	X	X	X
Dog Day Care	C <sup>19</sup>	C <sup>19</sup>	C <sup>19</sup>	C <sup>19</sup>
Heliports	X <sup>20</sup>	X <sup>20</sup>	X <sup>20</sup>	X <sup>20</sup>
Recreational or Medical Marijuana Facilities	X	X	X	X
Medical Marijuana Collective Gardens	X	X	X	X
Mining	X	X	X	X
Rail Lines/Utility Corridors	C	C	C	C
Basic Utilities	P	P	P	P
Temporary Uses	L <sup>21</sup>	L <sup>21</sup>	L <sup>21</sup>	L <sup>21</sup>
Wireless Communication Facilities	L/C/X <sup>22</sup>	L/C/X <sup>22</sup>	L/C/X <sup>22</sup>	L/C/X <sup>22</sup>

<sup>1</sup> Subject to the provisions of Chapter 20.810 VMC, Accessory Dwelling Units.

<sup>2</sup> Subject to the provisions of Chapter 20.870 VMC Human Service Facilities.

<sup>3</sup> Subject to the provisions of Chapter 20.860 VMC Home Occupations.

<sup>4</sup> Provided the minimum required residential density is met, on an overall project basis.

<sup>5</sup> Single-family dwelling units legally established prior to March 11, 2004, shall be considered permitted uses.

<sup>6</sup> Subject to the provisions of Section 20.895.040 VMC Community Recreation and Related Facilities.

<sup>7</sup> Subject to the provisions of Chapter 20.880 VMC, Manufactured Home Developments. Manufactured Home Developments established prior to July 1, 2005 are exempt from the standards of VMC 20.420.050G – Development Standards and may continue to exist and expand within existing previously-approved boundaries. An existing manufactured home in a development or subdivision may be replaced or may be relocated either to an approved manufactured home development or an approved manufactured home subdivision. Manufactured Home Developments in the R-22, R-30, R-35 zones are allowed as a Limited Use (L) only as part of a VMC 20.260 Planned Development that meets overall minimum density standards for the applicable zone.

<sup>8</sup> Subject to the additional provisions in Section 20.895.040 VMC.

<sup>9</sup> Libraries permitted only; all other cultural institutions are conditional uses.

- <sup>10</sup> Family day care homes for no more than 12 children are permitted when licensed by the state. Child care centers are permitted as conditional uses, subject to the provisions of Chapter 20.840 VMC Child Care Centers, unless part of a Planned Development, in which case they are approved subject to Chapter 20.260 VMC. All Child care facilities must be licensed by the state.
- <sup>11</sup> Adult day care facilities with 12 or fewer clients are permitted outright; larger facilities are permitted as conditional uses.
- <sup>12</sup> Subject to the provisions of Chapter 20.870 VMC, Human Service Facilities
- <sup>13</sup> Community, regional parks and trails that meet all of the development standards in Section 20.420.050 (E)(1),(2) and (3), respectively, are permitted by as limited uses; all others require a Conditional Use approval.
- <sup>14</sup> Schools, child care centers, and religious institutions that meet all of the locational criteria contained in Section 20.420.050(F) VMC are permitted by right; all others require conditional use approval. Child care centers permitted by right shall be consistent with VMC 20.840, Child Care Homes and Centers, and be subject to Type II review pursuant to VMC 20.210.050.
- <sup>15</sup> Except bus, trolley and street car stops, including bus shelters, which are allowed by right.
- <sup>16</sup> Bed-and-breakfasts establishments as limited uses subject to provisions of Chapter 20.830 VMC Bed-and- Breakfast Establishments; all other commercial lodging prohibited.
- <sup>17</sup> New commercial uses allowed as limited uses subject to special development restrictions in Section 20.420.060VMC. Existing commercial uses permitted if legally established prior to code effective date. However, alterations and expansions shall be subject to 20.245 (Conditional Use Permits).
- <sup>18</sup> Subject to the provisions in Section 20.895.030 VMC.
- <sup>19</sup> Subject to the provisions of Chapter 20.850 VMC, Dog Day Care.
- <sup>20</sup> Except as an accessory to a medical center.
- <sup>21</sup> Subject to provisions of Chapter 20.885, except sale of fireworks prohibited in residential zones.
- <sup>22</sup> Subject to the provisions of Chapter 20.890 VMC Wireless Communications Facilities.
- <sup>23</sup> A “designated manufactured home” is exempt from the development standards of 20.420.050G VMC and may continue to exist and expand. An existing unit may be replaced or may be relocated either to an approved manufactured home development or an approved manufactured home subdivision. After July 1, 2005, only “new manufactured homes” that also meet the “designated manufactured home” criteria will be permitted on individual lots not part of an existing approved manufacturing home development or manufactured home subdivision. Except that a new manufactured home placed on an individual lot after July 1, 2005, may be relocated as permitted by this Title if within (5) five years of the date of the original placement.
- <sup>24</sup> Subject to the provisions of Chapter 20.840 VMC, Child Care Centers. (M-4105, Amended, 11/17/2014, Sec 3-Effective 12/17/2014; M-4701, Amended, 03/03/2014, Sec 8-Effective 03/09/2014; M-4066, Amended, 12/16/2013, Sec 5; Effective 01/16/2014; M-4035, Amended, 12/03/2012, Sec 3-Effective 12/8/2012; M-4024, Amended, 09/10/2012, Sec 7-Effective 09/30/2012; M-4002, Amended, 12/05/2011, Sec 6-Effective 1/5/2012; M-3959, Amended, 07/19/2010, Sec 25-Effective 8/19/2010; M-3931, Amended, 11/02/2009, Sec 12-Effective 12/02/2009; M-3840, Amended, 08/06/2007, Sec 20; M-3730, Amended, 12/19/2005, Sec 13; M-3709, Amended, 06/20/2005, Sec 7; M-3701, Amended, 05/02/2005, Sec 15; M-3663, Amended, 08/02/2004, Sec 15; M-3643, Added, 01/26/2004)

**Section 20.430.030 Uses.**

A. Types of uses. For the purposes of this chapter, there are four kinds of use:

1. A permitted (P) use is one that is permitted outright, subject to all of the applicable provisions of this title.

2. A limited (L) use is permitted outright providing it is in compliance with special requirements, exceptions or restrictions.

3. A conditional use (C) is a discretionary use reviewed through the process set forth in Chapters 20.245 VMC and 20.210 VMC, governing Conditional Uses and Decision-Making Procedures, respectively.

4. A prohibited use (X) is one that is not permitted in a zoning district under any circumstances.

B. Use table. A list of permitted, limited, conditional, and prohibited uses in the commercial and mixed use zones is presented in Table 20.430.030-1.

Table 20.430.030 - 1 Commercial and Mixed-Use Districts Use Table

USE	CN	CC	CG	CX	WX	CPX <sup>1</sup>	MX <sup>2</sup>	RGX <sup>44</sup>
<b>RESIDENTIAL</b>								
Household Living	L <sup>4</sup>	L <sup>4</sup>	L <sup>4</sup>	L <sup>42</sup>	L <sup>5</sup>		P <sup>6</sup>	P
Group Living	P/C <sup>7</sup>		P <sup>6</sup>	P				
Transitional Housing	X	C <sup>9</sup>	L <sup>9</sup>	L <sup>9</sup>	C <sup>9</sup>		X	X
Home Occupation	L <sup>10</sup>		L <sup>10</sup>	L <sup>10</sup>				
<b>HOUSING TYPES</b>								
Single Dwelling Units, Attached	L <sup>4</sup>	L <sup>4</sup>	L <sup>4</sup>	L <sup>42</sup>	L <sup>4</sup>		P <sup>6</sup>	P
Single Dwelling Units, Detached	X	X	X	X	X		P <sup>6</sup>	P
Accessory Dwelling Units	X	X	X	X	X		P <sup>6</sup>	P
Duplexes	L <sup>4</sup>	L <sup>4</sup>	L <sup>4</sup>	L <sup>42</sup>	L <sup>4</sup>		P <sup>6</sup>	P
Multi-Dwelling Units	L <sup>4</sup>	L <sup>4</sup>	L <sup>4</sup>	L <sup>42</sup>	L <sup>4</sup>		P <sup>6</sup>	P
Existing Manufactured Home Development	X	X	X	X	X		X	X
Designated Manufactured Home	X	X	X	X	X		X	X
New Manufactured Home	X	X	X	X	X		X	X
<b>CIVIC (Institutional)</b>								
Basic Utilities	C	C	C	P	C		C	C

USE	CN	CC	CG	CX	WX	CPX <sup>1</sup>	MX <sup>2</sup>	RGX <sup>44</sup>
Colleges	X	C	C	P	C		P	P
Community Recreation	X	L <sup>11</sup>	L <sup>11</sup>	L <sup>11</sup>	L <sup>11</sup>		L <sup>11</sup>	L <sup>11</sup>
Cultural Institutions	L <sup>19</sup>	P	P	P	P		P	P
<b>Day Care</b>								
- Family Day Care Home	P/L <sup>13</sup>	P/L <sup>13</sup>	P/L <sup>13</sup>	P/L <sup>13</sup>	P/L <sup>13</sup>		P/L <sup>13</sup>	P/L <sup>13</sup>
- Child Care Center	L <sup>13</sup>	L <sup>13</sup>	L <sup>13</sup>	L <sup>13</sup>	L <sup>13</sup>		P/L <sup>13</sup>	P/L <sup>13</sup>
- Adult Day Care	P/C <sup>14</sup>	P	P	P	P		P	P
Emergency Services	X	C	P	P	C		P	P
Human Service Facilities	L <sup>9</sup>	L <sup>9</sup>	L <sup>9</sup>	L <sup>9</sup>	L <sup>9</sup>		L <sup>9</sup>	L <sup>9</sup>
Medical Centers	X	C	C	P	C		C	P
<b>Parks/Open Space</b>								
- Neighborhood Parks	P	P	P	P	P		P	P
- Community Parks	P	P	P	P	P		P	P
- Regional Parks	X	P	P	P	P		P	P
- Trails	P	P	P	P	P		P	P
Postal Service	L <sup>19</sup>	P	P	P	P		P	P
Religious Institutions	X	P	P	P	C		P	P
Schools (not truck driving schools)	C	P	P	P	P		P	P
Social/Fraternal Clubs	C	L <sup>11</sup>	L <sup>11</sup>	L <sup>11</sup>	L <sup>11</sup>		L <sup>11</sup>	L <sup>11</sup>
Transportation Facility	P	P	P	P	P		P	P
<b>Park &amp; Ride Facilities</b>								
Surface	X	L <sup>48</sup>	L <sup>48</sup>	X	X	X	X	X
Structure	X	L <sup>48</sup>	L <sup>48</sup>	L <sup>48</sup>	L <sup>48</sup>	L <sup>48</sup>	L <sup>48</sup>	X
<b>COMMERCIAL</b>								
Commercial Lodging	X	C	P	P	L/C <sup>18</sup>		L/C <sup>18</sup>	P
Eating/Drinking Establishments	L <sup>19/20</sup>	P	P	P	P		P	P
<b>Entertainment-Oriented</b>								
- Adult Entertainment	X	X	L <sup>23</sup>	X	X		X	X
- Indoor Entertainment	X	P/L <sup>24</sup>	P/L <sup>24</sup>	P/L <sup>24</sup>	P/L <sup>24</sup>		P/L <sup>24</sup>	P/L <sup>24</sup>
- Major Event Entertainment	X	X	P	P	C		C	X

USE	CN	CC	CG	CX	WX	CPX <sup>1</sup>	MX <sup>2</sup>	RGX <sup>44</sup>
<b>General Retail</b>								
- Sales-Oriented	L <sup>19</sup>	P	P	P <sup>25</sup>	P		P	P <sup>25, 46</sup>
- Personal Services	L <sup>19</sup>	P	P	P	P		P	P
- Repair-Oriented	X	P	P	P	X		P	P
- Bulk Sales	X	P	P	P	X		P	C
- Outdoor Sales	X	C	P/L <sup>26</sup>	P/L <sup>26</sup>	X		P/L <sup>26</sup>	X
Artisan and Specialty Goods Production	X	L <sup>40</sup>	L <sup>40</sup>	L <sup>40</sup>	X		X	X
<b>Motor Vehicle Related</b>								
- Motor Vehicle Sales/Rental	X	P <sup>27</sup>	P	P	X		C <sup>27</sup>	X, L <sup>45</sup>
- Motor Vehicle Servicing/Repair (entirely indoors)	X	P <sup>28</sup>	L <sup>28</sup>	L <sup>28</sup>	X		C <sup>28</sup>	X
- Vehicle Fuel Sales	X	L <sup>28</sup>	L <sup>28</sup>	L <sup>28</sup>	C		C <sup>28</sup>	X
- EV Basic Charging Stations (accessory and stand-alone)	P	P	P	P	P		P	P
- EV Rapid Charging Stations (accessory and stand-alone)	P	P	P	P	P		P	P
-EV Battery Exchange Stations	X	P	P	P	X		X	P
<b>Office</b>								
- General	L <sup>19</sup>	P	P	P	P		P	P
- Medical	L <sup>19</sup>	P	P	P	P		P	P
- Extended	X	P	P	P	X		X	X
Marina (See also VMC 20.760)	X	P	P	P	P		P	X
Non-Accessory Parking	X	C	C	C <sup>43</sup>	C		C	C <sup>43</sup>
Self-Service Storage	X	P <sup>3</sup>	P	X	X		X	X
<b>INDUSTRIAL</b>								
Industrial Services	X	C	C	X	X		X	C
Manufacturing and Production	X	C/X <sup>30</sup>	P/X <sup>31</sup>	P/X <sup>41</sup>	X		C/X <sup>32</sup>	P <sup>41</sup>
Railroad Yards	X	X	X	X	X	X	X	X

USE	CN	CC	CG	CX	WX	CPX <sup>1</sup>	MX <sup>2</sup>	RGX <sup>44</sup>
Research and Development	X	X	P	C	C		C	P
Warehouse/Freight Movement	X	X	X	X	X		X	X
Waste-Related	X	X	P <sup>47</sup>	X	X		X	X
Wholesale Sales	X	X	C	C	X		X	X
Major Utility Facilities	X	X	X	X	X		X	X
<b>OTHER</b>								
Agriculture/Horticulture	X	X	X	X	X		X	X
Airport/Airpark	X	X	X	X	X		X	X
Animal Kennel/Shelters	X	L <sup>33</sup>	L <sup>33</sup>	X	X		X	X
Cemeteries	X	C <sup>34</sup>	P <sup>34</sup>	C <sup>34</sup>	X		C <sup>34</sup>	X
Detention & Post Detention Facilities	X	X	C/X <sup>35</sup>	C/X <sup>35</sup>	X		X	X
Dog Day Care	L <sup>36</sup>	L <sup>36</sup>	L <sup>36</sup>	L	L <sup>36</sup>		L <sup>36</sup>	L <sup>36</sup>
Heliports	X	X	X	C <sup>37</sup>	C <sup>37</sup>		C <sup>37</sup>	C <sup>37</sup>
Medical Marijuana Collective Gardens	X	X	X	X	X		X	X
Recreational Marijuana, Production or Processing	X	X	X	X	X		X	X
Recreational Marijuana Retail	X	L <sup>49</sup>	L <sup>49</sup>	X	X		X	X
Mining	X	X	X	X	X		X	C
Rail Lines/Utility Corridors	C	P	P	P	C		C	P
Temporary Uses	L <sup>26</sup>	L <sup>26</sup>	L <sup>26</sup>	L <sup>26</sup>	L <sup>26</sup>		L <sup>26</sup>	L <sup>26</sup>
Wireless Communication Facilities	X	L/C/X <sup>3</sup> <sub>9</sub>	L/C/X <sup>39</sup>	L/C/X <sup>39</sup>	L/C/X <sup>39</sup>		L/C/X <sup>39</sup>	L/C/X <sup>39</sup>

<sup>1</sup> Refer to Vancouver Central Park Plan District, 20.640.

<sup>2</sup> Refer to Mixed Use standards in 20.430.060.

<sup>3</sup> A single ground floor caretaker/security/manager residence is allowed if it is an integral part of a mini-storage building.

- <sup>4</sup> Must be located above the ground floor of the structure with exception of Community Commercial (CC) zoned properties fronting Broadway Street and located within the Uptown Village District of the Vancouver City Center Subarea Plan (refer to 20.430.020B).
- <sup>5</sup> Must have a minimum density of 10 dwelling units/net acre.
- <sup>6</sup> Allowed pursuant to mixed use standards of 20.430.060.
- <sup>7</sup> Residential Care Homes with six or fewer residents and any required on-site staff permitted by right in housing above the ground floor; all larger group home uses are permitted conditionally.
- <sup>8</sup> The language for this footnote has been deleted.
- <sup>9</sup> Subject to provisions of Chapter 20.870 VMC Human Service Facilities.
- <sup>10</sup> Subject to the provisions of Chapter 20.860 VMC Home Occupations.
- <sup>11</sup> Subject to provisions of Section 20.895.040 VMC Community Recreation and Related Facilities.
- <sup>12</sup> This footnote is repealed.
- <sup>13</sup> Family day care homes for no more than 12 children are permitted when licensed by the state. Child care centers (13 or more children) are Limited (L), subject to a Type II procedure in Chapter 20.210. Child care centers can also be approved as part of a Planned Development, VMC 20.260. In all cases child care centers must meet the standards outlined in Chapter 20.840 VMC.
- <sup>14</sup> In the CN zone, adult day care facilities for six or fewer adults allowed outright in the CN zone, all other facilities are permitted as conditional uses.
- <sup>15</sup> The language for this footnote has been deleted.
- <sup>16</sup> The language for this footnote has been deleted.
- <sup>17</sup> Transportation facilities are permitted except for large or land-intensive facilities such as park-and-ride lots and water taxi and ferry stations.
- <sup>18</sup> Bed-and-breakfast establishments are allowed as limited uses, subject to the provisions in Chapter 20.830 VMC, and all other lodging allowed as conditional uses.
- <sup>19</sup> Limited uses subject to the development standards in Section 20.430.040(D) VMC.
- <sup>20</sup> Eating and drinking establishments are permitted only in conjunction with another permitted use on site. Exclusively or predominantly drive-through eating and drinking establishments are prohibited.
- <sup>22</sup> Limited uses subject to the development standards in Section 20.430.050(B) VMC.
- <sup>23</sup> Subject to provisions in Section 20.820 VMC Adult Entertainment.
- <sup>24</sup> Provisions in Section 20.895.060 VMC apply to Indoor Target Shooting Ranges.

- <sup>25</sup> Pawnshops allowed in CX and CG Districts only. No more than four (4) pawnshop establishments allowed in the CX District.
- <sup>26</sup> Subject to provisions in Chapter 20.885 VMC Temporary Uses.
- <sup>27</sup> Sales/rental lots for motor vehicles only are subject to the following criteria: (a) the lot size is approximately 200' by 200', or 100' by 100' if a corner lot, though smaller lots will be considered if shown to meet all other requirements; (b) reviewed and approved by the City Transportation Manager for on-site circulation, access, and parking plan; (c) located on a primary arterial with average traffic in excess of 10,000 vehicle trips per day; (d) employee/customer parking is provided at a rate of one space plus an additional space per each 5,000 sq. ft. of lot area; (e) there is no vehicle display in setback areas, and all setbacks are landscaped rather than paved.
- <sup>28</sup> Subject to provisions in Section 20.895.070 VMC, Motor Vehicle Fuel Sales and Repair.
- <sup>29</sup> The language for this footnote has been deleted.
- <sup>30</sup> Micro-breweries and manufacturing of optical, medical and dental devices, goods, and equipment allowed by conditional use; all others prohibited.
- <sup>31</sup> Micro-breweries, bakeries, printing, publishing, binding, lithography, repair shops for tools, scientific/professional instruments and motors, and manufacturing of optical, medical and dental devices, goods, and equipment allowed outright; all others prohibited.
- <sup>32</sup> Micro-breweries allowed by conditional use; all others prohibited.
- <sup>33</sup> Subject to provisions in Section 20.895.020 VMC Animal Kennel/Shelters.
- <sup>34</sup> Subject to provisions in Section 20.895.030 VMC Cemeteries.
- <sup>35</sup> Secure Transition Facilities as per 20.855.020(B)(6)(a) are prohibited.
- <sup>36</sup> Subject to the provisions in Chapter 20.850 VMC Dog Day Care.
- <sup>37</sup> Subject to provisions in Section 20.895.080 VMC Private Landing Strips and Heliports. Airpark related uses are permitted in Pearson Airpark and Evergreen Airport only.
- <sup>38</sup> The language for this footnote has been deleted.
- <sup>39</sup> Subject to requirements in Chapter 20.890 VMC Wireless Telecommunications Facilities.
- <sup>40</sup> Subject to limitations in Section 20.430.050A. Uses defined in Section 20.160.020 C 10.
- <sup>41</sup> Printing, binding, lithography, repair shops for tools, scientific/professional instruments and motors, computer research or assembly, and manufacturing of optical, medical and dental devices, goods and equipment permitted outright; all others prohibited.
- <sup>42</sup> Ground floor residential is allowed within the CX zone with the exception of properties fronting Main Street between Sixth Street and Mill Plain.

<sup>43</sup>Parking structures are permitted outright.

<sup>44</sup>Allowed subject to provisions of Riverview Gateway Plan District Standards 20.680, and associated Master Plan adopted for the area of proposed development.

<sup>45</sup>Motor vehicle rental permitted where ancillary to another use.

<sup>46</sup>Retail uses shall not exceed 50,000 square feet in total floor space unless included in a mixed use building with other uses accounting for at least 20% of floor space, and is in full compliance with Riverview Plan District Design Guidelines.

<sup>47</sup>Neighborhood recycling and/or yard debris collection centers which are exempt from a state solid waste handling permits are permitted; all other waste-related uses prohibited. If a neighborhood recycling and/or yard debris collection center is handling organic materials, they shall not be stored on site for a period longer than 7 days.

<sup>48</sup> See Section 20.430.040.E, Park & Ride Facilities development standards.

<sup>49</sup> Subject to 20.884 VMC.

(M-4701, Amended, 03/03/2014, Sec 4-Effective 03/09/2014; M-4035, Amended, 12/03/2012, Sec 4-Effective 12/8/2012; M-4034, Amended, 12/03/2012, Sec 13-Effective 01/03/2013; M-4024, Amended, 09/10/2012, Sec 8-Effective 09/30/2012; M-4002, Amended, 12/05/2011, Sec7-Effective 1/5/2012; M-4002, Amended, 12/05/2011, Sec 7-; M-3959, Amended, 07/19/2010, Sec 26-Effective 8/19/2010; M-3931, Amended, 11/02/2009, Sec 16-Effective 12/02/2009; M-3922, Amended, 07/06/2009, Sec 22; M-3911, Amended, 02/02/2009, Sec 5 - Effective 03/04/2009; M-3891, Amended, 11/03/2008, Sec 5 - Effective 12/03/08; M-3865, Amended, 01/28/2008, Sec 3; M-3840, Amended, 08/06/2007, Sec 22; M-3832, Amended, 06/18/2007, Sec 6; M-3730, Amended, 12/19/2005, Sec 19; M-3709, Amended, 06/20/2005, Sec 9; M-3701, Amended, 05/02/2005, Sec 17; M-3698, Amended, 04/03/2005, Sec 5; M-3667, Amended, 09/13/2004, Sec 3; M-3663, Amended, 08/02/2004, Sec 17; M-3643, Added, 01/26/2004)

# ERIKSON & ASSOCIATES LAW

**December 14, 2015 - 1:19 PM**

## Transmittal Letter

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A copy of this document has been emailed to the following addresses:

[matth4@atg.wa.gov](mailto:matth4@atg.wa.gov)

[tpeef@atg.wa.gov](mailto:tpeef@atg.wa.gov)

[jennahw@atg.wa.gov](mailto:jennahw@atg.wa.gov)

[lynnj@atg.wa.gov](mailto:lynnj@atg.wa.gov)