

PROPOSED CHANGES TO WAC CHAPTER 135-110 & ELECTION GUIDE



Conservation District Elections & Appointments

Bill Eller, SCC Election Officer



CONSERVATION DISTRICTS
OF WASHINGTON STATE

your window to healthy lands

September 17, 2020

AGENDA

- Elections Background
- Washington Administrative Code Rule-making Timeline
- Proposed WAC Changes & New Election Guide
- Adoption of WAC Changes & Guide



ELECTION BACKGROUND

“The Commission shall establish procedures for elections, canvass the returns and announce the official results thereof.”

RCW 89.08.190

Chapter 135-110 WAC

Election and replacement of conservation district supervisors

[Complete Chapter](#)

WAC Sections

GENERAL

- [135-110-100](#) Purpose and authority.
- [135-110-110](#) Definitions.
- [135-110-120](#) Compliance.
- [135-110-130](#) Documents provided to conservation commission to be copies.
- [135-110-140](#) Records retention.
- [135-110-150](#) Conservation district must remain impartial.
- [135-110-160](#) Legal boundaries of conservation district to be available.
- [135-110-170](#) Only one ballot per voter may be counted.
- [135-110-180](#) Disruptive acts prohibited.

ESTABLISHING ELECTION, PROVIDING NOTICE

- [135-110-200](#) Conservation district must hold election.
- [135-110-210](#) Conservation district must adopt election resolution.
- [135-110-220](#) Due notice required before and after election resolution.
- [135-110-230](#) Conservation district appoints election supervisor.
- [135-110-240](#) Election may be on-site, remote, or both.
- [135-110-250](#) Voting must be accessible.

CANDIDATE ELIGIBILITY, FILING, NOMINATION, VERIFICATION, WITHDRAWAL

- [135-110-300](#) Every candidate must be a qualified district elector.
- [135-110-310](#) Some candidates must be landowners or farm operators.
- [135-110-320](#) Submission of candidate information required to be elected.

CD ELECTION TIMELINE



<p>ELECTION TRAINING, REVIEW PROCEDURES, ADOPT POLICIES</p>	<p>PREPARE FOR ELECTION – NOTICES TO PUBLIC, ADOPT ELECTION RESOLUTION</p>	<p>BY STATUTE, ELECTIONS MUST BE HELD DURING THIS TIME</p>	<p>FINISH ELECTION REPORTING FORMS, COMMISSION CANVASES RETURNS</p>	<p>ELECTION WINNERS CERTIFIED AND ANNOUNCED</p>
<p>August – October</p>	<p>October – December</p>	<p>January – March</p>	<p>April</p>	<p>3rd Thursday in May</p>

CHANGE BEGINS



- September 2018: Conservation Commission (Commission) directs staff to look into election WAC changes
- Conservation District Elections and Appointments Committee (CDEAC) created
- Oct-Dec 2018: call for volunteers
- Jan-July 2019: CDEAC meets

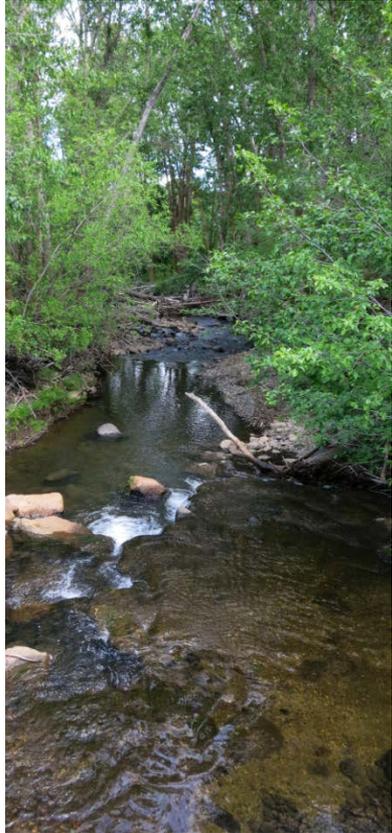
MEMBERS OF CDEAC



- CD Supervisors:
 - Larry Davis, Whatcom CD
 - Paul Pickett, Thurston CD
 - Doug Rushton, Thurston CD
- CD Staff:
 - Dawn Bekenyi, Whatcom CD
 - George Boggs, Whatcom CD
 - Pam Furchtenicht, Palouse CD
 - Lisa Martin, Cowlitz / Wahkiakum CD
 - Sarah Moorehead, Thurston CD
 - Mark Nielson, Benton & Franklin CD
 - Ava Souza, King CD
- Commission Staff:
 - Bill Eller
 - Karla Heinitz

CDEAC PACKAGE PROPOSED

- July 2019: CDEAC package proposed
- July 2019 - Dec 2019: package to conservation districts for comment
- December 2019: package presented to Commission & Commission directs staff to pursue WAC rule-making
- March 2020: The Commission
 - Removes proposal to set all CD elections for one week, &
 - Notes disfavor of proposed provision to cancel CD elections if only one candidate applies



RULE-MAKING TIMELINE

- April 24, 2020: Rule-making announcement ([CR-101 form / Announcement Notice filed](#))
- April-June 2020: Rule language and other documents and information prepared
- June 22, 2020: Propose rule filed ([CR-102 filed](#)), posted on our web page and through social media
 - Notices published
 - June 24, 2020 in the *District Digest*
 - August 1, 2020 through GovDelivery
- Public hearings held:
 - August 6, 2020: Public hearing held (webinar only)
 - August 11, 2020: Public hearing held (webinar only)



RULE-MAKING TIMELINE

- September 1, 2020: Public comment period ends
- September 1-16, 2020:
 - Staff reviewed the public comments
 - Prepared the responsiveness document for consideration by the Commission
 - Revised proposed WAC rules based on comments received
 - Commission leadership reviews responsiveness document & revised proposed rules
 - Prepared the adoption packet for the Code Reviser
- (Anticipated) September 17, 2020: Rule adopted
- (Anticipated) September 21, 2020: File the CR-103 form
- Amended rules in effect by around November 1, 2020



WSCC Rulemaking Timeline

DEVELOP DRAFT PROPOSED RULE	ANNOUNCE RULEMAKING CR-101	PROPOSE RULE CR-102	PUBLIC HEARINGS	PUBLIC COMMENT PERIOD	EVALUATE COMMENTS & RESPOND	ADOPT RULE CR-103
September 2018 - December 2019	April 24, 2020	June 22, 2020	August 6 & August 11, 2020	June 22, 2020 – September 1, 2020	September 1-16, 2020	September 17, 2020



PUBLIC COMMENT PERIOD

Options for submitting formal comments that become part of the official record:

1. Written comments sent by **US Mail** must be received no later than the end date of the formal comment period – 5 p.m., September 1, 2020.
2. Written comments sent by **E-mail or Fax** must be received no later than the end date of the formal comment period – 5 p.m., September 1, 2020.
3. **Verbal and/or written** comments were taken at the public hearing.

All comments received during the formal public comment period become part of the official record (responsiveness summary) required by the APA.



PUBLIC COMMENT RECEIVED

- Nine written comments were received
 - Eight persons submitted eight written comments using our online comment form
 - One person submitted comments informally by email
- Most comments addressed multiple changes to the WAC
- All comments, along with the Commission's responses, are included in the responsiveness document



PUBLIC HEARING – AUGUST 6

- Thirteen persons attended
- Proposal to change the word “must” to “shall” in all instances in WAC Chapter 135-110.
 - Prior to the start of the official hearing and during the presentation portion of the meeting (not official testimony)
 - Commission staff clarified that, though that was the original proposal, public comment received thus far and Commission staff investigation likely will cause staff to recommend the Commission not make those changes
- During the official hearing, written testimony via the “Questions” box on the webinar dashboard was taken from just one person – Tom Salzer. His statement was as follows:

The Washington Association of Conservation Districts appreciates the public process and inclusive approach that the Washington State Conservation Commission is taking in seeking input on proposed election rule changes. Thank you.

PUBLIC HEARING - AUGUST 11

- Seven persons attended the Tuesday, August 11, 2020 hearing
- No one testified



RESPONSIVENESS DOCUMENT

- Completed by staff after the September 1, 2020 comment period ended
- Reviewed by Commission leadership between September 2, 2020 & September 16, 2020
- Includes responses to all comments received during the comment period (June 22, 2020 through September 1, 2020)
 - Comments were received through our [on-line comment form](#)
 - One written comment was received during the August 6 public hearing



WAC 135-110 & Changes

WAC Title 135, Chapter 110 - Sections

- 100 General
- 200 Establish Election, Providing Notice
- 300 Candidate Eligibility, Filing, Nomination, Verification, Withdrawal
- 400 Preparing For Election Day, Balloting, Polling Officers
- 500 Ballots, Voting, Poll Sites, Mail-in Elections
- 600 Election Day
- 700 After Voting Closes
- 800 Emergencies
- 900 Vacancies, Removal, and Replacement

100's GENERAL

- 135-110-100 Purpose and authority
- 135-110-110 Definitions
- ~~135-110-120 Compliance~~
- 135-110-130 Documents provided to conservation commission to be copies
- 135-110-140 Records retention
- 135-110-150 Conservation district must remain impartial
- 135-110-160 Legal boundaries of conservation district to be available
- 135-110-170 Only one ballot per voter may be counted
- 135-110-180 Disruptive acts prohibited

200's ESTABLISH ELECTION, PROVIDING NOTICE

- 135-110-200 Conservation district must hold election
- 135-110-210 Conservation district must adopt election resolution
- 135-110-220 Due notice required before and after election resolution
- 135-110-230 Conservation district appoints election supervisor
- 135-110-240 Election may be on-site, remote, or both
- 135-110-250 Voting must be accessible

300's CANDIDATE ELIGIBILITY, FILING, NOMINATION, VERIFICATION, WITHDRAWAL

- 135-110-300 Every candidate must be a qualified district elector
- 135-110-310 Some candidates must be landowners or farm operators
- 135-110-320 Submission of candidate information required to be elected
- 135-110-330 Filing deadline
- ~~▪ 135-110-340 Only nominated candidates may appear on official ballot~~
- 135-110-350 Types of candidacy
- 135-110-355 Election supervisor must verify candidate eligibility
- 135-110-360 Undeclared write-in candidate may be elected if no person files
- ~~▪ 135-110-370 Incumbent automatically reelected if no other person files~~
- 135-110-380 Candidate may withdraw candidacy in writing
- 135-110-385 Effect of votes cast for withdrawn, deceased, or ineligible candidate

400's PREPARING FOR ELECTION DAY, BALLOTING, POLLING OFFICERS

- 135-110-400 Conservation district to obtain list of registered voters
- 135-110-410 Conservation district must set deadline for requesting absentee and mail-in ballots
- 135-110-420 Conservation district must not use certain lists
- 135-110-430 Conservation district may publish candidate-provided information
- 135-110-440 Employees and municipal officers of district must not be polling officers
- 135-110-450 Polling officers monitor poll-site activities
- 135-110-460 Polling officers verify voters, issue ballots and count votes
- ~~■ 135-110-470 Election supervisor may perform polling officer duties~~

500's BALLOTS, VOTING, POLL SITES, MAIL-IN ELECTIONS

- 135-110-500 Conservation district must create official ballot
- ~~135-110-515 Conservation district must make ballots available~~
- 135-110-520 Absentee ballots must be provided on request
- ~~135-110-530 Provisional ballots must be provided when voter eligibility is in question~~
- ~~135-110-540 Functional equivalent of paper ballot required~~
- 135-110-550 Poll lists must be used
- 135-110-560 Mail-in, absentee, and provisional ballots must be double-envelope balloting
- 135-110-570 Election supervisor safeguards ballots except in a poll-site election
- 135-110-580 Poll sites must be accessible

600's ELECTION DAY

- 135-110-600 Electioneering prohibited
- 135-110-610 Every voter must be verified as eligible
- 135-110-620 Conservation district must provide polling officers at each poll site
- 135-110-630 Each poll site must have ballot box and signage
- 135-110-640 Conservation district must assure privacy in voting
- 135-110-650 Polls to close at published time but may be extended

700's AFTER VOTING CLOSES

- 135-110-700 Opening ballots
- 135-110-710 Polling officers to retain custody of ballots until counted
- 135-110-720 Polling officers may announce unofficial results
- 135-110-730 Tie in unofficial election results
- 135-110-740 When no eligible candidate is elected
- 135-110-750 Ballot results must be reported
- 135-110-760 Conservation Commission canvasses returns, determines compliance, announces winners
- 135-110-770 Elections are final when certified and announced
- 135-110-780 Declaration voiding an election
- 135-110-790 Procedure for contesting elections
- 135-110-795 Compliance

800's EMERGENCIES

- 135-110-800 Emergency relocation or rescheduling of election
- 135-110-810 Signage and notice required
- ~~135-110-820 Conservation commission to be informed~~

900's VACANCIES, REMOVAL, AND REPLACEMENT

- 135-110-900 Only vacant offices may be filled
- 135-110-910 Supervisors must be eligible to serve
- 135-110-920 Resignation from office
- 135-110-930 Ceasing to be a registered voter
- 135-110-940 Death of the incumbent
- ~~135-110-950 Declaration voiding an election~~
- 135-110-960 Removal from office
- 135-110-970 Replacement

TWO KINDS OF WAC CHANGES

1. Original package of changes, as proposed in December 2019 & March 2020
2. Changes as a result of the public comment & public hearing process

CHANGES AFTER COMMENT

1. Retaining the word “must” in all instances, rather than changing to “shall”
2. The proposed definition of candidate required information was clarified to read "*Candidate required information*" means the *factual information a candidate must provide on the candidate information form to be eligible for election*"
3. Repealing WAC 135-110-370, which would result in all CDs holding elections without the possibility of cancellation
4. The phrase “*as per the provisions in WAC 135-110-970*” was added to WAC 135-110-740 to make clear that a vacancy created when no eligible candidate is elected is governed by the procedure in WAC 135-110-970

REPEALING WAC 135-110-370

- Eliminates the cancelling of an election
- All CDs will have an election every year
- Since the inception of WAC Chapter 135-110 in November 2010, on average 67% of conservation districts cancel their election
- Results:
 - Higher burden on CDs, CD staff, and increased work load for Commission staff
 - Increased voter and candidate participation

WAC Change Package Included

- 1) Removing the distinction between absentee, mail-in, or in-person ballots
- 2) Consolidating candidate types into just two – those who will appear on the ballot and those who will not
- 3) Eliminating the automatic disqualification of write-in candidates when a ballot contains a candidate whose name is pre-printed on the ballot
- 4) Eliminating nominators and the nominating petition

Highlights Include

- 5) Creating a distinction between candidate required and optional information
- 6) Aligning the CD election retention schedule with the Secretary of State's schedule
- ~~7) Setting all CD elections during a full calendar week in March, excluding Sunday~~

Note: The Commission, at their March 2020 meeting, removed this change from the change package.

- 8) Setting deadlines for certain notices, reporting, and form submittal

Highlights include

- 9) Requiring CD staff to be trained in conducting elections, as per the adopted EQAP
- 10) Explicitly allowing election supervisor duties to be delegated to others
- 11) Requiring poll sites to be open for a minimum of 4 consecutive hours
- 12) Cancelling an election when just one single candidate files by the filing deadline**

Special Note: *In March 2020, the Commission decided to leave this change in the proposed change package, but wanted Commission staff to note that it was disfavored by the Commission due to legislator concerns, and likely wouldn't survive the final adoption process.*

Highlights include

- 13) Setting out the procedure and effect of candidate withdraw
- 14) Clarifying who can serve as polling officers
- 15) Clarifying when electronic signatures and filing can be used
- 16) Setting out the procedure for complaining about or challenging an election
- 17) Setting out the procedure for filling vacancies in elected positions

Some Changes in Depth

3) Eliminating the automatic disqualification of write-in candidates when a ballot contains a candidate whose name is pre-printed on the ballot

- **WAC 135-110-360.**
 - If no one files by the candidate filing deadline, or
 - If all who file by the candidate filing deadline are found to be ineligible by the election supervisor, then
 - Only write-in candidates can be elected
 - Provided they are eligible
 - Must submit the candidate required information within 28 days of the election and be found eligible by the election supervisor

5) Creating a distinction between candidate required and optional information

- WAC 135-110-110 Definitions.
- The proposed definition of *candidate required information* was clarified to read "*Candidate required information*" means the *factual information a candidate must provide on the candidate information form to be eligible for election.*"
 - Distinct from “candidate optional information”
 - Candidate optional information is any other information, which may also include candidate required information, and is usually found in a candidate statement.

8) Setting deadlines for certain notices, reporting, and form submittal

- WAC 135-110-220 (1).
- The notice of the intent to adopt an election resolution was eliminated. A CD must publish the notice of the adopted election resolution (the time, place and manner of the election) **within 7 days of the board meeting**
 - **Just one notice**
 - Must be published in the newspaper (at a minimum – may be published by the CD in other media as well (website, social media, newsletters, etc.))

Just One Notice – Published within 7 Days of the Board Meeting

Notice of the Intent to Adopt an Election Resolution

The Teton Conservation District Board of Supervisors will hold a meeting at x:xx pm on November XX, 2020 at XYZ location to adopt a resolution setting the date, time, and location of an election to fill a Conservation District Supervisor's expiring term.

ELIMINATED

Election Resolution

An election for a board seat on the Teton Conservation District will be held on (month) (day), (year), at the Teton Conservation District, xxxx Main St, Anytown, WA. Polls will open at x:xx am and close at x:xx pm. Registered voters who reside within the Conservation District boundary are eligible to vote. Elections procedures are available at the district office. Ballots are available upon request for eligible voters, but must be requested on or before (month) (day), (year) by (time). Please contact the District office at xxx.xxx.xxxx or at the District office at xxxx Main St, Anytown, WA for ballots or if you have any questions.

8) Setting deadlines for certain notices, reporting, and form submittal

- WAC 135-110-750.
- EF2, which contains the ballot results, must now be reported to the Commission
 - **Within 14 days of the election** (changed from 28 days)
 - Unless, after consultation with the Commission, the election supervisor determines more time is needed

9) Requiring CD staff to be trained in conducting elections, as per the adopted EQAP

- **WAC 135-110-230 (e).**
- **Requires that the election supervisor “be trained in election policy and procedure as per conservation commission requirements.”**
 - **The Commission recommends that a backup for the election supervisor be trained as well**
 - **Training, for now, means attending a web-based training**
 - **Training is recorded so can be viewed / taken anytime**
 - **Documented on the EFI with a checkbox**

I 2) Cancelling an election when just one single candidate files by the filing deadline

- **WAC 135-110-370.**
 - Entirely eliminated
 - Elections cannot be cancelled
 - All CDs will have an election each year, even if no declared candidates are on the ballot (write-ins can/will be elected)

14) Clarifying who can serve as polling officers

- WAC 135-110-440.
- Clarifies that none of the following can serve as polling officers:
 - CD employees - unless the person is the appointed election supervisor
 - CD supervisors
 - CD interns
 - Conservation Commission employees, including RMs

16) Setting out the procedure for complaining about or challenging an election

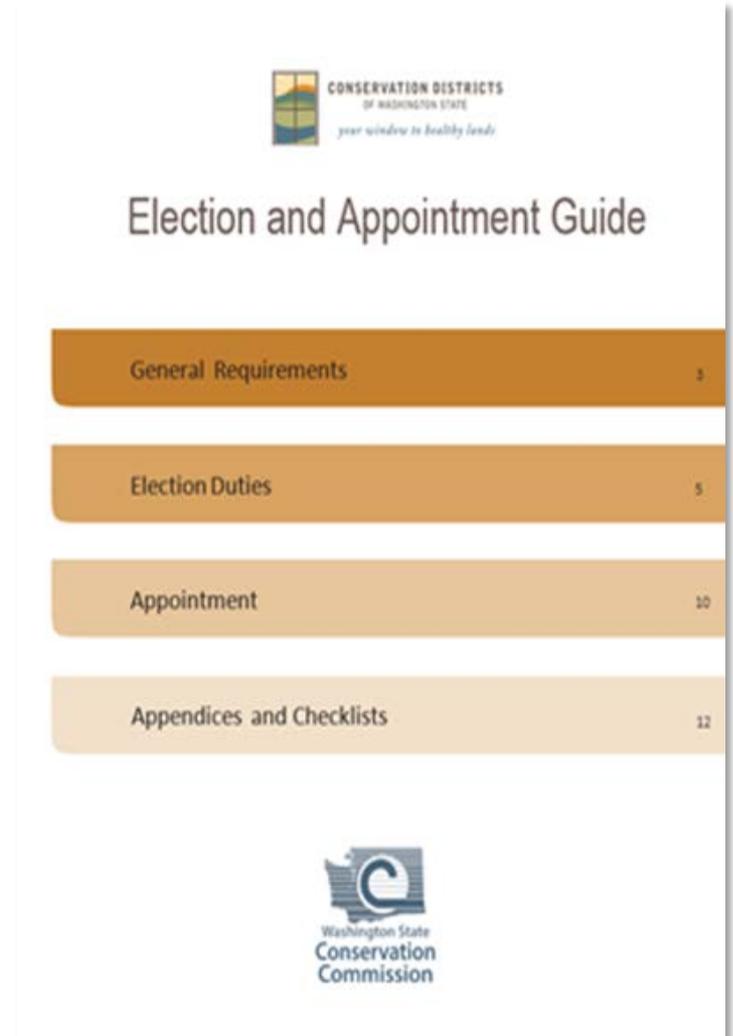
- WAC 135-110-790.
 - In writing using an online form
 - Received no later than April 30th
 - Forwarded to the executive director of the Commission, who
 - Notifies the chair and vice chair of the Commission, the chair of the affected CD, the election supervisor of the affected CD, Commission staff assigned to that CD, and the Commission's elections officer that a complaint has been filed, and
 - Informs the chair and vice chair of the Commission of the estimated length of the investigation, and provides updates on the status of the investigation
 - The Commission's elections officer investigates
 - When complete, a written report will be provided to the executive director
 - The executive director reviews the report and determines:
 - The complaint does not rise to the level of significant noncompliance with election procedure sufficient to warrant the noncertification of the election or
 - The complaint does rise to the level of significant noncompliance with election procedure sufficient to warrant the noncertification of the election.
 - If the complaint does not rise to the level of significant noncompliance, the executive director may recommend that the election be certified and announced by the Commission.
 - If the complaint does rise to the level of significant noncompliance, the executive director may recommend that the election not be certified and announced, and request that the CD hold another election as per the procedure in WAC 135-110-780.

17) Setting out the procedure for filling vacancies in elected positions

- WAC 135-110-970.
- Same process as was set out in the Election Manual
- Vacancies in election positions filled by the CD board, but after consultation with the Commission
- Prospective replacements must be qualified to serve
- Due notice must be provided to the community
- An application process is required with a board resolution that
 - Acknowledges the vacancy,
 - Allows a four week period for applicants to apply, and
 - Includes in the notice the minimum applicant requirements

Election & Appointment Guide

- Updated for readability
 - All WAC rule language taken out (will need to read the WAC now)
- Reflects new WAC changes
 - Checklists
 - Sample resolution
 - Policies updated
 - Ballot requests
 - Notices
 - Candidate optional information (candidate statements)
 - Filling elected position vacancies
 - Candidate recruitment





Action: Adoption of WAC Changes & Guide

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