

INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION
OPEN PUBLIC HEARING - WACS

*These minutes
issued 2-1-78
to TAC/IAE*

DATE: January 27, 1978

TIME: 1:00 p.m.

PLACE: Transportation Commissioners' Board Room, Wing D-1, Highways Administration Building, Olympia, Washington 98502

+ general public

INTERAGENCY COMMITTEE MEMBERS PRESENT:

Warren Bishop, Pullman
Micaela Brostrom, Chairman, Mercer Island
Helen Engle, Tacoma
Peter Wyman, Spokane

Charles Odegaard, Director, Parks and Recreation Commission

INTERAGENCY COMMITTEE MEMBERS ABSENT:

Michael Ross, Seattle
W. A. Bulley, Director, Dept. of Transportation
Bert L. Cole, Commissioner of Public Lands
Wilbur Hallauer, Director, Department of Ecology
Gordon Sandison, Director, Department of Fisheries
Ralph H. Larson, Director, Department of Game
Kasuo Watanabe, Director, Commerce and Economic Development Department

STAFF OF TECHNICAL ADVISORY COMMITTEES (STATE OR LOCAL) AND MEMBER AGENCIES PRESENT:

Assistant Attorney General
Dick, John

Commerce and Economic Development
Smith, Merlin

Ecology, Department of
Lawrence, Richard

Fisheries, Department of
Costello, Richard

Game, Department of
Brigham, James

Interagency Committee for Outdoor Recreation
Bailey, Ron, RRS
Cole, Kenn, Chief, Management Services
Frazier, Marjorie M., Admin. Sec.
Leach, Eugene, RRS
Moore, Glenn, Chief, Project Admin.
Pelton, Jerry, Chief, Planning Services
Taylor, Ron, RRS
Wilder, Robert L., Administrator
Romero, Frank, Agency Accounts Officer

Natural Resources, Dept. of
O'Donnell, Al

APPENDICES TO OFFICIAL
MINUTES ONLY: Appendix:
Form CR-1 Notice #7962 "A"
Filed with Code Reviser
Amending WAC Chapter 286 "B"
Existing WAC Chapter 286 "C"
Official letters received "D"
commenting on Amendments to
WACS.

"E"

Park and Recreation Commission
Clark, John

Financial Management, Office of
Stevenson, Nancy

Transportation, Department of
Mylroie, Willa

Local TAC members present:

Fearn, William, Director, Park and Recreation, City of Spokane
Glundberg, William O., Director, Tac. Metropolitan Park District, Tacoma
McCallum, Mary, Seattle Park and Recreation Department
Bender, Fred, Asst. Reg. Director, Heritage Conservation and Recreation Services,
(formerly Bureau of Outdoor Recreation)

1. Open Hearing Called to Order, determination of a quorum, introductions: Chairman Brostrom reconvened the IAC Special meeting at 1:00 p.m. declaring an Open Public Hearing as authorized and publicized through regulations of the Open Public Meetings Act. Since a quorum was not present, the Chairman advised the Open Public Hearing would be held under the regulations to provide information on amended Washington Administrative Code of the IAC (revisions, additions) to the Committee and to provide testimony from those organizations and individuals on various chapters and sections of the WACS for the benefit of the Committee members present. A continuation of the Open Public Hearing was contemplated for the first week in February.

Chairman Brostrom introduced Mr. John Dick for the reading of the official notification for rules adoption of the IAC. (Code Reviser Form CR-1, Notice #7962, filed on December 31, 1977 attached to these minutes.) Mr. Dick stated the full matter of the rules being proposed was contained in the Notice and had been stated in the press release issued prior to the Hearing; further, legal notices had been provided through the press as required by the Open Public Meetings Act. The Chairman noted that copies of the Amended proposed rules as well as the existing WACS of the IAC were available on the information material table on entry into the meeting room. Chairman Brostrom stated letters which had been received concerning the WACS had been made an official part of the record and were available at the Hearing upon contacting the Chairman should any organization or individual wish to review same. She then called upon Mr. Robert Wilder, Administrator of the IAC, to conduct the review of the WACS section-by-section.

Mr. Wilder stated: (1) The amended WACS would be reviewed section-by-section; (2) Staff of the IAC would then comment on any remarks or suggestions which had been sent to the IAC on each particular section to insure input of the public and state agencies involved; (3) following staff report, Committee members would be asked for any discussion of each section; (4) upon completion of Committee input, those persons wishing to discuss a section would then be called upon for their remarks. He stated it was essential each person coming to the microphone for remarks give his/her name and agency being represented. The audience was further advised the meeting was being taped through the microphone system.

- (3) If policies or procedures are to be applied to organizations and individuals outside of the IAC, organizations and agencies concerned must be advised and included in discussions.
- (4) 286-04-060 would authorize IAC to adopt procedural guidelines and this would take place outside of the Administrative Procedures Act, and would not have force or effect of a WAC; however, Association of Washington Cities felt this could strike at what the Legislature has established for all state agencies by RCW 34.04, the APA Act.
- (5) Interest of State Legislature in strengthening the APA and insuring that state agencies adhere to the provisions of that legislation was reinforced during the 1977 Legislative Session in which three bills were enacted into law: Washington State Registers Act being one of these clearly setting up procedures for state agencies to follow.
- (6) Commented on the three main points of Assoc. of Washington Cities (letter of January 27, 1978 to the Committee on file with the IAC):
 - (a) Adoption of 286-04-060 would comprise agency rule-making and as such must be accomplished in accordance with APA and adopted into the Washington Administrative Code rules.
 - (b) RCW 34.04.022 - provides for uniform procedural rules to be followed by state agencies.
 - (c) RCW 34.04.020 (2), provides that each agency, to assist interested persons in dealing with it, "shall adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information and make submissions or requests. No person shall be required to comply with agency procedure not adopted as a rule as required herein...." (emphasis supplied by Association of Washington Cities.)
- (7) Urged the IAC to adhere to statutory procedures established by the State Legislature for establishing policies, requirements and procedures affecting individuals and organizations who do business with the agency.

At conclusion of Mr. Lockwood's remarks, the Chairman asked John Dick, Assistant Attorney General, whether the proposed changes in the WACS had been discussed with him and whether his advice had been taken in regard to the procedural guidelines being guidelines only to eligible agencies and not official WACS. Mr. Dick replied in the affirmative.

Mr. Bishop felt since the Assistant Attorney General had so advised staff of the agency that proper steps were being followed in amending the existing WACS without addition of the procedural guidelines, and since there appeared to be a question on whether this was legally permissible, a FORMAL ATTORNEY GENERAL OPINION should be obtained by the Administrator on the entire matter as soon as possible. The Chairman agreed and so instructed the Administrator.

Kathy Scanlon 286-04-060
(Speaking for Walter Hundley, Supt., Seattle Parks and Recreation Department)

- (1) Advised Mr. Hundley could not be present due to previous commitments.
- (2) Referred to Mr. Hundley's letter of January 27, 1978 to the Committee..(on file with the IAC.)
 - (a) Seattle seriously concerned about this particular section of the WACS. Does not define formulation and application of "procedural guidelines". These are important. Action of the Committee in September 1977 increasing the minimum local match for IAC funding, and also limiting jurisdictions to a maximum of one project approval per funding session, would and did significantly change the accessibility to local agencies of state and federal funds administered by the IAC.
 - (b) Seattle felt these policies constituted substantive rather than mere procedural administrative actions.
 - (c) Felt procedural Guidelines should be adopted under the WACS, since recent actions adopted by the Committee at September 1977 meeting constitute Administrative Procedures under APA.
 - (d) Urged Committee consider adoption of the new section only if it is amended to include a clearly understandable definition of "procedural guideline".

There were no questions by the Committee or the audience concerning WAC 286-04-060.

WAC 286-06-020 - Amending
Definitions

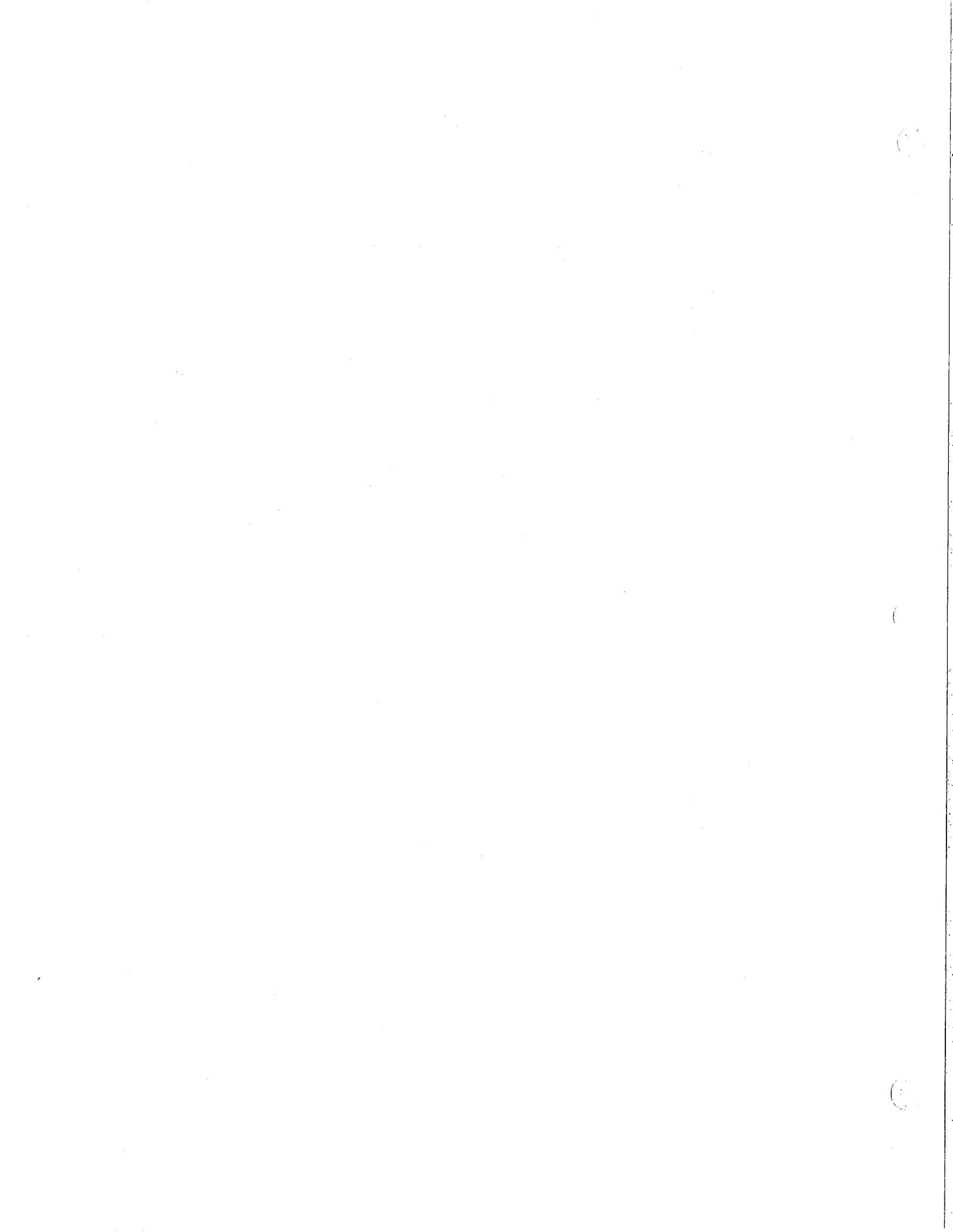
Change in name of Department of Highways - Transportation - Director to Secretary thereof.
There were no questions by the Committee or the audience concerning WAC 286-06-020

WAC 286-06-040 - Amending
Operations and Procedures.

Change in address to include Mail Stop KP-11.
There were no questions by the Committee or the audience concerning WAC 286-06-040.

WAC 286-06-060 - Amending
Public Records Officer

Change designated the Administrator rather than Chairman to appoint Records Officer.
There were no questions by the Committee or the audience concerning WAC 286-06-060.



to local -- could not the Administrative Code reflect same verbiage?

Staff response: Not so. Referendum 28 requires that the bond proceeds administered by IAC be divided equally between the state agencies and the local public bodies. The proposed legislation for a new bond issue authorization includes the flexibility cited by Mr. Webster.

There were no questions by the Committee or the audience concerning WAC 286-16-030.

Amending WAC 286-16-040
Matching Requirements

Comments received:

Charles Odegaard, Director 286-16-040 2 (a)
Parks and Rec. Commission Recommend all WACS reflect that State Legislature appropriates ORV funds directly to each state agency, 100 percent for each project and/or program.
(SEE 286-24-020 (1))

Staff response: WAC's applicable to ORV funds must be treated in the manner presented to the Committee. ORV funds will be distributed to both state and local government applicants on a competitive basis. Therefore, no prediction as to how much any state agency might receive can be made for inclusion in the agency's budget for subsequent direct appropriation. OFM has been consulted on this matter and the present understanding is that ORV funds in the Outdoor Recreation Account will be appropriated to IAC for distribution as part of the grant-in-aid program. Grants of ORV funds to state agencies would be handled on an inter-agency reimbursement basis.

There were no questions by the Committee or the audience concerning WAC 286-16-040.

Amending WAC 286-16-070
State Agency Requirements

Agency must submit to IAC six-year capital improvement program, etc.

There were no questions by the Committee or the audience concerning WAC 286-16-070

Amending WAC 286-16-080
Reimbursement Policy

Comments received:

James Brigham
Department of Game

286-16-080 (2)

Understand this would conform to HCRS (BOR) policy; technically waivers could be granted by HCRS; is it desirable to totally eliminate the possibility of granting a waiver?

Staff response:

The WAC as written is consistent with HCRS policy and IAC policy as indicated to date. If the WACS are supposed to set forth Committee policy, then it is desirable to eliminate the inference that waivers might be granted in this situation.

In response to question of Mr. Bishop, Mr. Wilder explained this would not preclude site planning and preliminary engineering, construction specifications -- which would still be eligible. Agencies would be required not to "break ground". Mr. Brigham asked Mr. Moore if BOR Guidelines specifically disallow waivers for development projects. Mr. Moore replied in the negative.

There were no further questions from the Committee or the audience on WAC 286-16-080.

Amending WAC 286-20-010
Procedures - Scope of Chapter

Changing All Terrain wording to Off-Road - to conform to legislation enacted into law.

There were no questions from the Committee or the audience on WAC 286-20-010.

REPEALER - WAC 286-20-030
Deadlines

There were no questions from the Committee or the audience on repealing of this section of the WAC.

Amending WAC 286-24-010
Funding of Projects - Scope of Chapter

Included wording "chapter contains rules relating to the manner of funding
...other than Off-Road Vehicle funds.....to conform to law.

There were no questions from the Committee or the audience on WAC 286-24-010

Amending WAC 286-24-020
Project Contract

Clarified execution of the project contract.

Comments received:

Charles Odegaard, Director 286-24-020 Do projects appropriated by Legislature
Parks and Rec. Commission directly to state agency need additional
Committee approval?

Staff response: Yes, if not on master list. Otherwise, the project has
been "approved by the Committee at a public meeting" --
the meeting at which the MASTER LIST of the agency's projects
has been approved by the Committee.

Mr. Bishop noted that in the WACS it had been made clear this section was discussing only those projects funded through the Outdoor Recreation Account and Mr. Odegaard's question was not addressed to a project appropriated directly to the Park and Recreation Commission from some other source.

There were no further questions from the Committee or the audience on WAC 286-24-020.

Amending WAC 286-24-040
Disbursement of Funds

There were no questions from the Committee or the audience on WAC 286-24-040, the changes being merely of housekeeping nature.

Off-Road Vehicle

At this point, Mr. Wilder called upon Greg Lovelady, of the IAC staff (Trails Coordinator) for a presentation on the proposed Off-Road Vehicle Funding Program.

Mr. Lovelady introduced the following persons: (ORV)

Gary Buffo	Franklin County	Roger Purdom	Chelan County
Bill Henager	Grant County	Wayne Bowen	Thurston County
Sam Angove	Spokane County	Vern Veasey	Clark County
Charles Butler	Yakima County	Tom Thompson	NMA Trail Div.
	Don Phillips	Cowlitz County	

Mr. Wilder extended to the above persons the appreciation of staff and the Committee for their efforts in reviewing and drafting the Off-Road Vehicle Funding Program under the new law.

Mr. Lovelady proceeded with graphic demonstration of the ORV program up to the present time, outlining in his speech the historical involvement of the IAC in the ORV program, the philosophy behind the recommendations being made by staff

and those who have assisted in the guidelines drafting, and pertinent facts leading to the recommendations of staff for the funding program.

- His points included
- A. The Rapid Growth and Popularity of ORV's;
 - B. The Legal requirements as specified in RCW 46.09;
 - C. ORV's "pay their own way"
 - D. Sole source of state agency matching funds.

He basically outlined the "old" All-Terrain Vehicle Program of 1971-77 -- which had been funded through an inventory system, and the present or "new" Off-Road Vehicle Grant Program with its opportunities and potential problems.

The new system will allow the IAC to change quality and quantity of ORV programs, and the IAC will be able to set priorities. Individual projects will be rated on their merits, thus only the highest qualified projects would be recipients of grants. The main problem concerns maintenance and management funding to be considered on the life of the project -- the IAC would give such notice to eligible agencies if approved.

Mr. Lovelady then officially acknowledged receipt and review of comments received from state agencies and organizations/individuals concerned in the ORV program which have been made a matter of record with the IAC. These comments would be reviewed later in the meeting by Mr. Jerry Pelton, Chief, Planning Services, IAC. The comments involved: provisions for funding maintenance and management of ORV facilities up to 100% of the reasonable cost incurred during the useful life of the facility; provision to advance sufficient monies applicant may "draw" upon; include federal government in worthy ORV projects; provision for repayment to ORV account if monies not used within certain time; flexibility within projects; and site inspection matters.

Mr. Wilder and Mr. Lovelady noted that the Assistant Attorney General had advised just recently that funds could not be advanced, and thus it would be necessary to go the reimbursement route.

(Mr. Odegaard arrived at 2:11 p.m. during the discussions.)

In summation Mr. Wilder stated, the parameters re ORV funding recognize the need to: (1) expediting them; (2) getting the facilities "on the ground"; (3) trying to avoid duplication; (4) not preclude flexibility; (5) and try to build upon experience. He called upon Mr. Pelton for summation of comments on the WACS pertaining to Off-Road Vehicles -- Chapter 286-26.

Amending WAC 286-26-010
Scope of Chapter

To change reference to all-terrain vehicle funds to off-road vehicle funds.

There were no questions or comments by the Committee or audience on WAC 286-26 010.

Amending WAC 286-26-020
Definitions

To change definitions to conform to the new law.

Staff response: 286-26-040 applied to ORV funds only and the granting of up to 100% of the project amount from this source is the proposal being considered in this section.
286-16-040 applies to grants to local agencies from Outdoor Recreation Account funds other than ORV.

There were no further comments or questions from the Committee or the audience on WAC 286-26-040.

Amending WAC 286-26-060
Disbursement of Funds (formerly Distribution of funds)

Mr. Pelton read the revised pink page which had been inserted in the Committee's kit material by the secretary, and had already been inserted in the WAC revisions distributed to the general public attending the meeting. He referred to recent Assistant Attorney General advice that it would not be possible for ORV funds to be advanced, thus the sentence pertaining to advancement had been changed to read:

"Except as otherwise provided herein the Administrator or his designee will authorize disbursement of funds allocated to a project only on a reimbursable basis, after the agency has....."

Mr. Wilder stated for the record that the staff had discussed the matter thoroughly and felt the agency could be expeditious in handling reimbursement on a monthly basis, that staff would assist the agencies through the mechanics of reimbursement procedures as rapidly as possible.

Mr. Pelton was asked to read comments received:

Comments received:

Charles Odegaard, 286-26-060 Since project funds are appropriated
Director, Park and directly to each state agency, this section
Rec. Commission is not applicable to state agencies as
written.

Staff response: This chapter of WACS deals with ORV matters. ORV funds
were NOT directly appropriated to state agencies in the
current biennium (ATV funds were). ORV funds will be
budgeted for appropriation to the IAC for distribution as
grants to state and local agencies in succeeding biennia
(see explanation in reference to 286-16-040 2 (a).)

Bert Cole, Commissioner 286-26-060 "Should be rewritten to read that a portion
of Public Lands, DNR of ORV project funds would normally be
advanced to the successful applicant in
keeping with my comments."

Staff response: This would be illegal according to the Assistant Attorney
General.

Comments were asked of Committee members; there being none, comments were asked

from the audience. Several persons addressed the Committee members as follows:

(1) Sam Angove, Director, Parks and Recreation, Spokane County:

- (a) Preferred to receive funds in advance. Was concerned with inability to receive reimbursement from the IAC in timely manner.
- (b) County was meanwhile paying interest on the money involved (5.4%). Felt the WAC should speak to the amount of interest during the time of building and construction of the ORV areas, and ORV funds should pay that interest.

Mr. Bishop stated this would be part of the legal question to be addressed through Mr. John Dick, Assistant Attorney General, and the Attorney General's Office. Would the interest be a reimbursable cost? Could the state pay it from ORV funds?

(2) Wayne Bowen, Thurston County:

- (a) Interest problem also was of concern to Thurston County.
- (b) Seriously concerned with having monies advanced rather than reimbursed. Appreciated having the Attorney General look into whether advancement of funds would be possible.

(3) Charles Butler, Yakima County:

- (a) Questioned the 10% retainage; difficult to explain to county commissioners and those involved in getting the project.
- (b) County commissioners won't endorse change to reimbursable rather than advance of funding. Had letter on hand for delivery to Administrator complimenting staff on arriving at decisions re ORV funding in advance. Unable to deliver that letter because of change in the clause to "reimbursable".
- (c) Felt ORV drafted guidelines were received too late to be reviewed adequately.

(4) Joe Wernex, Dept. of Natural Resources

- (a) Reiterated Mr. Bert Cole's comments regarding 286-26-060 suggesting there be advance funding of ORV.
- (b) Read Mr. Cole's letter, which he stated was still valid. If "old" ATV funds were advanced 100%, why could not "new" ORV funds be treated likewise?

At this point, Mr. Kenn Cole, Chief, Management Services, IAC, explained that the "old" ATV funds were mandated by law to be paid not advanced; they were to be paid on a formula basis of an existing formula; a block grant. Thus, the funds were not an advance of the State's credit.

(5) Roger Purdom, Chelan County:

- (a) If interest could be eligible cost --would be a better situation for counties.
- (b) Suggested legislation be submitted to amend the law so that monies could be used to pay for the interest.

(6) Ron Morgenthaler, NW Motorcycle Assoc.:

- (a) Would like to see funds advanced. The counties who do participate in programs, such as Referendum 28, do so without advance funding. Suggested the ORV program be on advance basis.

(7) Larry Otos, Thurston County:

- (a) Asked Kenn Cole for explanation of advance funding given to Thurston County from Ref. 28 in the past. Mr. Cole explained there was a provision in the guidelines which speaks to an advance of funds, but in essence this is a direct payment by the IAC for the property through an escrow arrangement -- the state's credit is not being advance. The IAC is making a direct payment in that instance. The money was not given to Thurston County to hold.

Mr. Otos asked Mr. Cole if the money for ORV acquisition could be placed in escrow. The reply was in the affirmative.

Mr. Roger DeSpain asked the Chairman if it would be possible to come back to some of the matters being discussed at the time the ORV Guidelines are on the table for discussion. He felt there were a number of items influencing the ORV guidelines presently being discussed. On conferring with the Chairman, Mr. Wilder stated there would be no problem in taking up some of the matters on the WACS at the same time as ORV Guidelines are being discussed.

Mr. Wilder then returned to the WAC review:

Amending WAC 286-26-070
Fund Accountability

There were no questions or comments from the Committee or the audience on WAC 286-26-070.

REPEALER - WAC 286-26-050
Apportionment of Funds

Repealer necessary to conform to the new law on ORV and funding thereof. Dealt with the inventory funding process.

There were no questions or comments from the Committee or the audience on WAC 286-26-050 repeal.

The Chairman advised the action of the Committee in reviewing the WACS today

at the Open Public Hearing was considered official action of the IAC though it had not been possible to vote on the WACS due to the lack of a quorum. She stated the Open Public Hearing could reconvene on action of the Committee the week of February 6th in Olympia at the Transportation Commissioners' Board Room at 2:00 p.m. when called through action of the Chairman and Committee.

Mr. Angove asked the anticipated date of application of the WACS if they were adopted the week of the 6th of February. Mr. Wilder replied the IAC would still meet all legal deadlines required.

Mr. Bishop asked when the Chairman turned to the next item of business -- review of the ORV Proposed Guidelines, would it be possible to discuss these if questions were raised also about the WACS pertaining to ORVS? In response to question from the Chairman on this matter, Mr. John Dick ruled if the meeting on WACS is concluded, then any further comments on the WACS sections would not be a matter of public record under the Open Public Hearing. Mr. Bishop then asked if the Guidelines on ORVS would be a part of the WACS being discussed at the Open Public Hearing. Mr. Dick replied in the negative. He stated the advice from the Attorney General's Office has been that it is legitimate and legal for the Interagency Committee for Outdoor Recreation to adopt guidelines as guidelines and not as WACS -- administrative rules or regulations -- and therefore, it is not necessary to go through the WAC Administrative Procedures Act process to do so.

Mr. Wilder then asked if the WAC hearing were concluded and during ORV Guidelines discussion it became necessary to refer back to the WACS, would it be possible to reopen the hearing on the WACS. Mr. Dick replied in the affirmative -- for that portion the Chairman and Committee so desired to reopen.

Chairman Brostrom then declared the Open Public Hearing regarding the WACS closed for comments, etc., and recessed until opened again for discussion of WACS business.

(At this point the Special Meeting of the IAC, January 27, 1978, which had begun at 9:10 a.m. continued with discussion of ORV Guidelines.)

(At the conclusion of the Special Meeting of the IAC, January 27, 1978, the Chairman declared the WAC Open Public Hearing again recessed to RECONVENE the week of Feb. 6th, at 2 p.m., in the Transportation Commissioners' Board Room, Highways Administration Bldg., Wing D-1, Olympia, at 2 p.m. -- date to be selected through conference with all twelve Committee members by the Administrator. Notice of continued Open Public Hearing to be sent to all those interested persons involved, and proper form to be filed with the Code Reviser's Office for such continuation.)

RATIFIED BY THE COMMITTEE

Michaela Brostrom
MICHAELA BROSTROM, CHAIRMAN

3 / 30 / 78
DATE