

**Title 9**  
**ENVIRONMENT\***

Chapters:

**9.04 State Environmental Policy Act**

**9.10 Wetlands**

**9.20 Notification of Used Oil Recovery Sites**

**9.24 Fish and Wildlife Habitat Conservation Areas**

**9.30 Agricultural Burning Permit**

**9.40 Critical Aquifer Recharge Area Designation and Protection**

**9.50 Water Conservancy Board**

\* Editor's Note: Resolution 28000 (passed June 24, 1974) regarding shoreline management is on file in the office of the county auditor.

**Chapter 9.04**

**STATE ENVIRONMENTAL POLICY ACT\***

Sections:

**9.04.010 State act adopted by reference.**

**9.04.020 SEPA guidelines adopted by reference.**

**9.04.030 Definitions.**

**9.04.040 Time limits applicable to the SEPA process.**

**9.04.060 Use of exemptions.**

**9.04.070 Lead agency determination and responsibilities.**

**9.04.080 Environmental checklist.**

**9.04.085 Appeal.**

**9.04.090 Preparation of EIS.**

**9.04.110 Designation of official to perform consulted agency responsibilities for the county.**

**9.04.120 Designation and duties of responsible official.**

**9.04.130 Public access to documents.**

**9.04.140 Fees.**

\* Prior ordinance history: Ords. 31939 and 65463.

**9.04.010 State act adopted by reference.**

The county adopts by reference the policies of the State Environmental Policy Act as expressed in RCW 43.21C.010 and 43.21C.020.  
(Res. 65547 (part), 2006).

**9.04.020 SEPA guidelines adopted by reference.**

The county adopts by reference the following sections or subsections of Chapter 197-11 of the Washington Administrative Code, the "SEPA Guidelines" adopted by the state of Washington, council on Environmental Policy, and amended by the Department of Ecology: WAC 197-11-010 Through WAC 197-11-955, and as hereafter amended.  
(Res. 65547 (part), 2006).

#### **9.04.030 Definitions.**

In addition to those definitions contained within WAC 197-11-040, the following terms shall have the following meanings, unless the context indicates otherwise:

"CEP" or "the Council on Environmental Policy," when used regarding action to be taken subsequent to midnight, June 30, 1976, means the Washington State Department of Ecology. This meaning also applies to all such references in the Washington Administrative Code (WAC) sections or subsections incorporated into this chapter by reference.

"County" means Whitman County, Washington.

"Department" means any division, subdivision or organizational unit of the county established by ordinance, rule, or order.

"SEPA guidelines" means WAC Chapter 197-11 adopted by the Council on Environmental Policy and amended by the Department of Ecology.  
(Res. 65547 (part), 2006).

#### **9.04.040 Time limits applicable to the SEPA process.**

The following time limits, expressed in calendar days, shall apply to the processing of all private projects and to those governmental proposals submitted to the county by other agencies:

- A. Categorical Exemptions. Identification of categorically exempt actions shall occur within seven days of submission of an adequate application.
- B. Threshold Determinations.
  - 1. Threshold determinations which can be made based upon review of the environmental checklist submitted by applicant should be completed within fifteen days of submission of an adequate application and the completed checklist.
  - 2. Threshold determinations requiring further information from the applicant or consultations with other agencies with jurisdiction should be completed within fifteen days of receiving the requested information from the applicant or the consulted agency. Requests by the county for such further information should be made within fifteen days of the submission of an adequate application and completed checklist. When a request for further information is submitted to a consulted agency, the county shall wait a maximum of thirty days for the consulted agency to respond.

3. Threshold determinations which require that further studies, including field investigations, be initiated by the county, should be completed within thirty days of the submission of an adequate application and the completed checklist.
4. Threshold determinations on actions where the applicant recommends in writing that an EIS be prepared because of the significant impact asserted and described in the application shall be completed within fifteen days of submission of an adequate application and the completed checklist.
5. The time limits set forth in this subsection shall not apply to withdrawals of affirmative and negative threshold determinations.
6. When a threshold determination is expected to require more than fifteen days to complete and a private applicant requests notification of the date when a threshold determination will be made, the lead agency shall transmit to the private applicant a written statement as to the expected date of decision.

(Res. 65547 (part), 2006).

#### **9.04.060 Use of exemptions.**

A. The applicability of the exemptions shall be determined by each department within the county which received an application for a license, or in the case of governmental proposals, by that department initiating the proposal. A determination by any such department that a proposal is exempt shall be final and not subject to administrative review.

B. If a proposal includes a series of exempt actions which are physically or functionally related to each other, some of which are exempt and some which are not, the proposal is not exempt.

C. If the proposal includes a series of exempt actions which are physically or functionally related to each other, but which together may have significant environmental impact, the proposal is not exempt.

D. If it is determined that a proposal is exempt, none of the procedural requirements of these guidelines apply to the proposal. No environmental checklist shall be required for an exempt proposal.

E. A department which is determining whether or not a proposal is exempt shall ascertain the total scope of the proposal and the governmental licenses required. If a proposal includes a series of actions physically or functionally related to each other, some of which are exempt and some of which are not, the proposal is not exempt. For any such proposal, the lead agency shall be determined, even if the license application which triggers the department's consideration is otherwise exempt. If the lead agency is the county, then the responsible official shall be designated.

F. If a proposal includes both exempt and nonexempt actions, exempt actions may be authorized with respect to the proposal prior to compliance with the procedural requirements of these guidelines subject to the following limitations:

1. No major action (nonexempt action) shall be authorized;
2. No action shall be authorized which will irrevocably commit the county to approve or authorize a major action;
3. A department may withhold approval of an exempt action which would lead to modification of the physical environment when such modifications would serve no purpose if later approval of a major action is not secured; and
4. A department may withhold approval of exempt actions which would lead to substantial financial expenditures by a private applicant which would serve no purpose if later approval of a major action is not secured.

(Res. 65547 (part), 2006).

#### **9.04.070 Lead agency determination and responsibilities.**

A. Any department within the county receiving or initiating a proposal, any portion which involves a major action, shall determine the lead agency for that proposal pursuant to WAC 197-11-050. This determination shall be made for each proposal involving a major action unless the lead agency has been previously determined, or the department is aware that another department or agency is in the process of determining the lead agency.

B. In those instances in which the county is the lead agency, the responsible official of the county shall supervise compliance with the threshold determination, and if an EIS is necessary shall supervise the preparation of the draft and final EIS.

C. In those instances in which the county is not the lead agency, all departments of the county, subject to the limitations of the WAC, shall utilize and consider as appropriate either the declaration of nonsignificance or the final EIS of the lead agency in conjunction with the decisions of the county on the proposal. In such instances, no county department shall prepare or require preparation of a declaration of nonsignificance or EIS in addition to that prepared by the lead agency.

D. In the event that the county or any department thereof receives a lead agency determination made by another agency which does not appear to be in accord with WAC 197-11-050, it may object thereto. Any such objection must be made and resolved within fifteen days of receipt of the determination, or the county must petition the Washington State Department of Ecology for a lead agency determination within the fifteen-day time period. Any such petition on behalf of the county shall be initiated by the department of public works.

E. Departments of the county are authorized to make agreements as to lead agency status; provided, that any such agreement involving assumption of lead agency status by the county will first be approved by the responsible official for the county and that any department which will incur responsibilities as a result of any such agreement will approve the agreement.

F. Any department making a lead agency determination for a private project shall require sufficient information from the applicant to ascertain which other agencies have jurisdiction over the proposal.

(Res. 65547 (part), 2006).

#### **9.04.080 Environmental checklist.**

A. Except as provided in 197-11-305, a completed environmental checklist, or a copy thereof, substantially in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other entitlement for use not specifically exempted herein. This checklist shall be the basis for a determination by the county as to lead agency status and, if the county is determined to be the lead agency, then for the threshold determination.

B. For all proposals for which the county is the lead agency, the responsible official of the county shall make the threshold determination pursuant to the criteria and procedures of WAC 197-11-300 through 197-11-390.  
(Res. 65547 (part), 2006).

#### **9.04.085 Appeal.**

A. Appeal of the intermediate steps under SEPA (e.g., lead agency determination, scoping, draft EIS adequacy) shall not be allowed.

B. Appeals of SEPA procedures shall be limited to review of a final threshold determination (DS, DNS or mitigated DNS) or final EIS.

C. Only one administrative appeal of a threshold determination or of the adequacy of an EIS is allowed; successive administrative appeals are not allowed.

D. An open record appeal shall be allowed to the board of county commissioners of any decision by the responsible official or county agency or board conditioning or denying a proposal under authority of SEPA, only if the responsible official's or county agency or board's decision on the underlying governmental action is a ministerial permit decision that does not require a public hearing, and only if that permit decision is appealable to the board of county commissioners and the SEPA appeal is consolidated with an appeal of the permit decision, and only if the SEPA determination has not already gone through one administrative appeal.

E. Except as provided in subsections F of this section, any allowed appeals of procedural and substantive determinations under SEPA shall be consolidated with a hearing on, or appeal of, the underlying governmental action in a single open record hearing before the county official or body designated to hear and decide the underlying governmental action or appeal thereof. The hearing or appeal shall be one at which the county official or body will render a decision on the proposed action. For example, an appeal of the adequacy of an EIS must be consolidated with a hearing on a conditional use permit. If the county's procedures do not provide for a hearing on or appeal of the underlying governmental action, the county shall not hold a SEPA administrative appeal, except as allowed in subsection F of this section.

F. The following appeals of SEPA procedural or substantive determinations shall not be consolidated with a hearing on or appeal of the underlying action:

1. An appeal of determination of significance (DS).

2. An appeal of a procedural determination made by the county when it is the project proponent or is funding a project and chooses to conduct its review under SEPA, including any appeals of its procedural determinations, prior to submitting an application for a project permit. Subsequent appeals of substantive determinations by an agency with jurisdiction over the proposed project shall be allowed under the SEPA appeal procedures of the agency with jurisdiction.
3. An appeal of a procedural determination made by the county on a nonproject action.

G. In order to appeal a SEPA determination, an appellant must act promptly. Any administrative appeal of threshold determinations shall be filed with the responsible official who issued the EPA determination within fourteen days after the final determination has been made by the responsible official. At the time of filing an appeal, the appellant must pay any fees due for a SEPA appeal in accordance with County Code Section 9.04.140.

H. Procedural determinations made by the responsible official shall be entitled to substantial weight in any appeal proceeding.

I. For any appeal under this section, the county shall provide for the preparation of a record for use in any subsequent appeal proceedings, which record shall consist of, at a minimum, the following:

1. Findings and conclusions;
2. Testimony under oath, taped or electronically recorded or written transcript;
3. Any additional written record.

If an administrative appeal of determinations relating to SEPA is available under the procedures of this section, that procedure must be used before any person may seek judicial review of any SEPA issue that could have been reviewed under such procedures.  
(Res. 65547 (part), 2006).

#### **9.04.090 Preparation of EIS.**

A. The draft and final EIS shall be prepared either by the responsible official or his designee or by a private applicant or consultant retained by the private applicant. In the event the responsible official determines that the applicant will be required to prepare an EIS, the applicant shall be so notified immediately after completion of the threshold determination.

B. In the event that an EIS is to be prepared by a private applicant or a consultant retained by the private applicant, the responsible official assure that the EIS is prepared in a responsible manner and with appropriate methodology. The responsible official shall direct the areas of research and examination to be undertaken, as well as the organization of the resulting document.

C. In the event that the responsible official or his designee is preparing an EIS, the responsible official may require a private applicant to provide data and information which is not in the possession of the county relevant to any or all areas to be covered by the EIS.

D. No matter who participates in the preparation of an EIS, it must be approved by the responsible official prior to distribution.

E. In all occasions of EIS preparation the applicant is encouraged to provide information to the responsible official.  
(Res. 65547 (part), 2006).

#### **9.04.110 Designation of official to perform consulted agency responsibilities for the county.**

A. The department of public works shall be responsible for the preparation of the written comments for the county in response to a consultation request prior to a threshold determination, participation in predraft consultation, or reviewing of a draft EIS.

B. The official designated in subsection A shall be responsible for compliance by the county with WAC 197-11-500 through 197-11-570 wherever the county is a consulted agency, and is authorized to develop operating procedures which will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the county.  
(Res. 65547 (part), 2006).

#### **9.04.120 Designation and duties of responsible official.**

A. For those proposals for which the county is the lead agency, the responsible official shall be the director of the department of public works or his designee.

B. Duties of the responsible official are as follows:

1. The responsible official shall make the threshold determination, supervise preparation of any required EIS, and perform any other functions assigned to the lead agency or responsible official by those sections of the SEPA guidelines which were adopted by reference in Section 9.04.020, for all proposals for which the county is the lead agency.
2. The responsible official may select an environmental checklist review team of at least three members selected for expertise in the fields of environmental science, soils, land use planning, public health and sanitation, public administration or any other areas of expertise deemed appropriate by the responsible official.
3. The review team shall study and report to the responsible official on those checklists referred for report to the review team by the responsible official. The review team may at the direction of the responsible official consult experts and witnesses from outside the review team.
4. On the day following an environmental checklist review the team shall submit to the responsible official a single written report for each checklist submitted to the review team by the responsible official. A majority report shall be submitted by the review team and shall contain comments on the adverse or lack of adverse environmental impact of the proposed action.

(Res. 65547 (part), 2006).

#### **9.04.130 Public access to documents.**

All documents required by the SEPA guidelines shall be retained by the county and made available in accordance with RCW 42.17.  
(Res. 65547 (part), 2006).

#### **9.04.140 Fees.**

The following fees shall be required for actions by the county in accordance with the provisions of this chapter:

- A. All applicants and appellants shall be required to pay all fees in accordance with the fee schedule of the public works department in effect at the time of the filing of the application or appeal. The time periods provided by this chapter for making a threshold determination shall not begin to run until payment of the applicant's fee.
- B. Environmental Impact Statement.
  - 1. For all proposals requiring an EIS for which the county is the lead agency and for which the responsible official determines that the EIS shall be prepared by employees of the county, the county may charge and collect a reasonable fee from any applicant to cover costs incurred by the county in the participation of an EIS. If it is determined that an EIS is required, applicants shall be advised of projected costs of the statement prior to actual preparation and shall post bond or otherwise insure payment of such costs.
  - 2. The responsible official may determine that the county will contact directly with a consultant for preparation of environmental documents for activities initiated by such costs and expenses directly to the applicant. Such consultants shall be selected by mutual agreement of the county and the applicant after a call for proposals. Applicants may be required to post bond or otherwise insure payment of such costs.
  - 3. In the event that a proposal is modified so that an EIS is no longer required, the responsible official shall refund any costs collected under subsections (B)(1) and (B)(2) of this section where the costs were not actually incurred or the money spent by the county.
- C. Copies of Documents. The county may charge any person for copies of any document prepared pursuant to the requirements of this chapter, and for mailing thereof, in a manner provided by RCW Chapter 42.17.

(Res. 65547 (part), 2006).

### **Chapter 9.10**

#### **WETLANDS\***

## Sections:

**9.10.010 Declaration of intent.**

**9.10.015 Definitions.**

**9.10.020 Determination of wetland boundaries.**

**9.10.030 Classification of wetlands (rating system).**

**9.10.040 Exempt activities.**

**9.10.045 Nonregulated wetlands.**

**9.10.050 Allowed activities.**

**9.10.060 Wetland buffers.**

**9.10.070 Wetland mitigation.**

**9.10.080 Wetland mitigation banking.**

**9.10.090 Wetland reports and mitigation plans.**

**9.10.100 Appeal.**

**9.10.110 Penalty.**

\* Editor's note: Res. 47633 added Wetlands as Chapter 9.03 and was editorially corrected to be 9.10 to match the text of the resolution.

### **9.10.010 Declaration of intent.**

The purpose of this chapter is to protect and conserve the wetlands of Whitman County by regulating development within or adjacent to wetlands, while providing property owners with reasonable economic use of their land. This ordinance is adopted pursuant to and in accordance with RCW 36.70A, implementing SHBN 2929, known as the Growth Management Act. (Res. 47633 (part), 1994).

### **9.10.015 Definitions.**

As used in this chapter:

"Activity" means human activity associated with the use of land or its resource.

"Applicant" means a person who files an application for permit under this chapter and who is either the owner of the land on which that proposed activity would be located, a lessee of the land, or the authorized agent of the owner.

"Artificial wetland" means a wetland which is made, contrived or produced by human skill and labor.

"Buffer" means an area that surrounds and protects a wetland from adverse impacts to the functions of a wetland. Buffer width is measured outward from the wetland boundary.

"Camas marsh" means a marsh which contains those plants which belong to the genus *Camassia*.

"Candidate species" means a native species under review for possible listing by federal or state agencies as endangered, threatened or sensitive. Currently listed state threatened or state sensitive species may also be designated as state candidate species if their status is in question. (They are listed in Washington Department of Wildlife Policy 4802.)

"Compensatory mitigation" means replacing project-induced wetland losses or impacts and includes but is not limited to the following:

1. "Restoration" means actions performed to re-establish wetland, or wetland buffer functional characteristics and processes which have been lost by alterations, activities or catastrophic events within an area which no longer meets the definition of a wetland.
2. "Creation" means actions performed to intentionally establish a wetland, a portion of a wetland and/or a wetland buffer where one did not formerly exist.
3. "Enhancement" means actions performed to improve the condition of existing wetlands or wetland buffers so that the functions they provide are increased or improved.

"County public works director and/or county engineer" means the Whitman County public works director and/or the county engineer, or his/her designee.

"CZC area" means certificate of zoning compliance area or the area which has been delineated for the planned building or development.

"Delineation" means the precise determination of wetland boundaries in the field according to the application of a specific methodology as described in the 1987 Corps of Engineers Wetlands Delineation Manual, the 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands, or as either are amended.

"Degraded wetland" means a wetland altered through impairment of some physical or chemical property which results in reduction of one or more wetland functions.

"Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

"Development envelope (also termed building envelope)" means the area of a site or a parcel of land for which building construction has been approved. For rural residences, this has been defined for certificates of zoning compliance as the area of a parcel in which it is suitable to construct structures and allow for uses such as wells, drain fields, driveways, etc.

"Emergency" means an event or set of circumstances which demand immediate action to preserve public health, protect human life and property. Financial circumstances are not emergencies.

"Emergent wetland" means a wetland with at least thirty percent of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.

"Endangered species" means a native species that is listed by the federal or state government as endangered.

"Functions or beneficial functions" means the beneficial roles served by wetlands, including but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, wave attenuation, aesthetic value protection, and recreation (not listed in order of priority).

"Grading" means excavation or fill or any combination thereof, including but not limited to the establishment of a grade following the demolition of a structure or preparation of a site for construction or development.

"Habitat" means the natural abode of a plant or animal, especially the particular location where it normally grows or lives.

"High quality vegetative buffer" means a wetland buffer comprised of multilevel dense vegetation including shrubs.

"Hydric soil" means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

"Impacts" means effects of one thing upon another.

"In-kind mitigation" means to replace wetlands with substitute wetlands whose characteristics closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement "in-category."

"Intermittent drainages" means drainages as defined on the United States Geological Survey 7.5 minute series quadrangle maps, shown as a dotted and dashed blue line.

"Isolated wetlands" means those regulated wetlands which:

1. Have no surface water connection to a stream, lake or river;
2. Are outside of and not contiguous to any one hundred-year floodplain of a lake, river, or stream; and
3. Have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.

"Minor modification" means a modification which does not adversely impact wetland functions.

Mitigation. See "compensatory mitigation" definition.

"Monitoring" means periodic evaluation of a wetlands restoration, creation or enhancement site to determine changes at the site, such as vegetation growth, hydrologic changes, soil development, and use of the site by birds and animals.

"NRCS" means Natural Resource Conservation Service. This federal agency was previously known as the Soil Conservation Service (SCS).

"Natural Resource Conservation Service (NRCS) maps" means those maps which have been created by the local Natural Resource Conservation Districts using NWI maps as a base and cross-checked with the soil survey maps. These maps are more accurate than NWI maps and to some extent have been field checked. The

original maps are on file in the NRCS--Colfax office and the planning office has a copy on file.

"N.W.I. maps" National Wetland Inventory maps.

"Off-site" means a location with a different legal property description than that containing in the specified wetland or affected portion thereof.

"Off-site mitigation" means restoration or replacement of wetland not adjacent to the site on which a wetland has been or will be degraded.

"Ongoing agriculture" means those activities conducted on agricultural lands and involved in the production of crops or livestock; for example, the operation and maintenance of pastures and hayfields, farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals or irrigation drainage ditches, changes between agricultural activities, and normal maintenance, repair or operation of existing serviceable structures, facilities or improved areas. Activities which bring a currently inactive area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five years, unless the idle land is registered in a federal or state soil conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals or drainage ditches related to an ongoing agricultural activity.

"On-site" means anywhere within the property having the same legal description as the specified wetland or affected portion thereof.

"On-site mitigation" means restoration or replacement of a wetland at or very near the site where a wetland has been or will be degraded by a regulated activity.

"O.H.W.M. (ordinary high water mark)" means the mark on all lakes, streams and tidal water that will be found by examining the beds and banks and ascertaining where the presence and action of waters so common and usual and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland in respect to vegetation. (RCW 90.58.030(2)(b)).

"Out-of-kind mitigation" means the restoration or creation of a wetland with vegetation and other characteristics not resembling those of a specified wetland.

"Perennial drainage" means drainages as defined on the United States Geological Survey 7.5 minute quad maps, shown as a solid blue line.

"Planning office" means the Whitman County planning office.

"Practicable alternative" means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and having less impacts to wetlands. It may involve using an alternative site in the general region that is available to the applicant and feasibly be used to accomplish the project.

"Primary drainage basin" means the basin of the stream or tributary within which a project is proposed.

"Qualified wetland professional" means an individual who or a team that is S.W.S. (Society of Wetland Scientists) certified or has the equivalent in academic qualifications and field experience for making competent wetland delineations, reports and recommendations necessary to implement the provisions of this chapter.

"RCW" means the Revised Code of Washington, or all laws, general and permanent, of the state of Washington.

"Regulated activities" means activities not identified as exempt or permitted.

"Riparian wetland" means wetlands located at the shore of a lake, river, drainage (perennial or intermittent), or pond.

"Scrub-shrub wetland" means a regulated wetland with at least thirty percent of its surface area covered by woody vegetation less than twenty feet in height as the uppermost strata.

"Sensitive species" means a native species, as defined by federal or state agencies, that is vulnerable or declining and is likely to become endangered or threatened in a significant portion of its range without cooperative management or removal of threats.

"Serviceable structures" means a structure which has not deteriorated to the extent that it would have to be replaced. The Whitman County zoning code describes a structure that has lost more than seventy-five percent of its assessed value as being required to conform to the code when replaced or repaired.

"SHBN" means Washington State House Bill Number.

"Site" means any lot or parcel of land or contiguous combination thereof, where activities are proposed, performed or permitted.

"Subject property" means the site where an activity requiring a permit or approval under this chapter will occur.

"Threatened species" means a native species, as defined by state and federal agencies, that is likely to become endangered within the foreseeable future throughout all or a significant portion of its range without cooperative management or removal of threats.

"Unavoidable and necessary impacts" means impacts to wetlands that remain after an applicant for a wetland permit has demonstrated that no practicable alternative exists for the proposed project.

"Vernal systems" means seasonal depression wetlands typically occurring high in the drainage that derive their hydrology from rainfall and a small immediate watershed. Vernal systems are formed as a result of accumulation of surface water in an isolated basin that at no time of the year would have a natural outlet or inlet and water is entirely absent from the surface for part of the year.

"WAC" means Washington Administrative Code.

"Watershed" means the geographic region within which water drains into particular river, stream or body of water.

"Wetland(s)" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetlands sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands, if permitted by the county or city (as defined by the Growth Management Act).

"Wetland classes" means descriptive groupings of wetlands according to a taxonomy of wetland bottom or bed features, and the type of vegetation, such as "emergent," "scrub-shrub" or "forested," as defined by the U.S. Fish and Wildlife Service's Classification of Wetlands and Deepwater Habitats of the United States (FWS/OBS-79-31 (Cowardin et al., 1979)) and incorporated into the NWI hierarchy.

"Wetland permits" means any permit issued, conditioned or denied specifically to implement this chapter.

"Wetland report" means a report required for development projects where wetlands may be affected.

"Wetland type" means a more narrow grouping of wetlands than wetland class according to a description of vegetation, such as "emergent," "scrub-shrub" and "forested."  
(Res. 47633 (part), 1994).

#### **9.10.020 Determination of wetland boundaries.**

A. Determination of wetland boundaries shall be done in accordance with the delineation methodologies accepted by the U.S. Army Corps of Engineers, U.S. Department of Agriculture and the Washington State Department of Ecology as specified in either the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1989), or the Corps of Engineers Wetland Delineation Manual (1987), (or as any of the delineation methodologies are amended).

B. Delineation of wetland boundaries by a qualified wetland professional, shall be the responsibility of the applicant. A wetlands report, as required in Section 9.10.090, shall provide a site analysis including: a determination of the exact location of the wetland boundary; an analysis of wetland functions; and shall incorporate a wetland rating according to the wetlands rating system criteria as defined in Section 9.10.030.

C. The county public works director and/or the county engineer may verify the accuracy of the wetland boundary, and render adjustments to the boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the county public works director and/or the county engineer may, at the applicant's expense, obtain a second expert to perform a delineation. The report of both experts shall be considered by the county public works director and/or the county engineer in making a final administrative decision, unless appealed to the Whitman County board of adjustment (see Section 19.05.030).

D. Rural Residential Site and Wetland Exemption. Since rural residential siting is strictly controlled by the county zoning ordinance and short subdivision ordinance, a wetland delineation by a wetland specialist shall not be required if the applicant can demonstrate that the CZC (certificate of zoning compliance) area, which is equivalent to the building or development envelope, is at least two hundred feet away from wetland(s), including but not limited to those designated by National Wetland Inventory (NWI) or Natural Resource Conservation Service (NRCS) maps. A parcel where this distance cannot be maintained shall require a delineation and is subject to the requirements of this chapter.

1. The CZC area shall be designated on the site plan. The CZC file is kept permanently on the record in the planning office. If a short plat is not to be filed, the applicant must attach to the deed a statement that there is/are wetland(s) on the property, and that the planning office, building inspection and auditor records need to be checked before development is undertaken, so as to prevent a violation of wetlands protection.
2. If land is being divided via the short plat procedure, the wetland and the distance from it shall be shown on the short plat mylar filed with the county auditor.

E. The county public works director and/or the county engineer, in approving the requirements for a wetland boundary determination shall consider the following: (1) evidence of the wetland location according to the NWI/NRCS; (2) contact the Natural Resource Conservation Service for wetland location and size determination; and (3) the proposal and its proximity to the wetland and wetland buffer areas and/or its probable environmental impacts. If access to a neighboring parcel is denied, the best available information shall be used.

F. The county public works director and/or the county engineer's administrative decision may be appealed through a two step appeal procedure. The first step would require the applicant to hire a wetland specialist to submit a report and delineation of the wetland. If the county public works director and/or the county engineer's administrative decision is appealed to the second step it would follow procedures detailed in Section 19.05.030.  
(Res. 47633 (part), 1994).

### **9.10.030 Classification of wetlands (rating system).**

The following rating system is adopted for the purpose of determining the size of wetland buffers, determining mitigation ratios, and reviewing permits under this chapter.

- A. Category I: regulated wetlands of exceptional function based on the presence of threatened or endangered species, sensitivity due to disturbance and irreplaceable ecological functions.
  1. Documented habitat for endangered or threatened species recognized by state or federal agencies; or
  2. High quality native wetland communities, including documented Classes I or II quality natural heritage wetland sites, as designated by state agencies; or,
  3. Wetlands which:

- a. Are equal or greater than five acres in size, and
  - b. Have three or more wetland types, and
  - c. Have an open water component of at least 0.5 acre in area, or comprising at least ten percent of the total area of the wetland, or
4. Wetlands of Exceptional Local Significance. Reserved for future amendment. (The criteria for such a designation shall be developed and adopted by Whitman County under appropriate public review and administrative appeal procedures. The criteria may include, but not be limited to: rarity, groundwater recharge areas, significant habitats, unique educational sites or other specific functional values within a watershed or other regional boundary. This criteria, when developed, will be added as an appendix to the ordinance codified in this chapter).

B. Category II:

1. Regulated wetlands that do not contain features outlined in Category I; and
2. Habitat that has been recognized for candidate or sensitive plant or animal species by federal or state agencies; or
3. Wetlands which:
  - a. Are equal or greater than one acre in size, and
  - b. Have forty to sixty percent open water in dispersed patches, and
  - c. Have two or more wetland vegetated classes (a vegetative class must be at least 0.5 acre in size or comprise at least ten percent of the entire wetland); or
4. Riparian wetlands along perennial drainages; or
5. Camas marshes and riparian wetland forests greater than 0.5 acre; or
6. Wetlands that are documented by the Washington Department of Fish and Wildlife as regionally significant waterfowl concentration areas; or
7. Vernal systems in the arid regions of Whitman County.

C. Category III:

1. Regulated wetlands that do not contain features outlined in Categories I, II or IV; or
2. Riparian wetlands along intermittent drainages.

D. Category IV:

1. Regulated wetlands that do not meet the criteria of Categories I, II or III-B; and
2. Isolated wetlands that are less than or equal to one acre in size; and have only one wetland vegetative class; and have monotypic vegetation (only one dominant plant species).

(Res. 47633 (part), 1994).

**9.10.040 Exempt activities.**

The following uses shall be allowed within a wetland or wetland buffer to the extent that they are not prohibited by any other chapter or law and provided they are conducted using best management practices, except where such activities result in the conversion of a regulated wetland or wetland buffer to a use to which it was not previously subjected and provided further that forest practices and conversions shall be governed by RCW Chapter 76.09 and its rules:

- A. Emergency Permit. Notwithstanding the provisions of this chapter or any other laws to the contrary, the county public works director and/or the county engineer may grant an emergency wetlands permit if:
1. The county public works director and/or the county engineer determines that immediate action is needed to preserve public health and safety, human life or property. Financial circumstances shall not be considered;
  2. The anticipated threat or loss may occur before a permit be issued or modified under the procedures otherwise required by this chapter and other applicable laws;
  3. Any emergency permit granted shall incorporate, to the extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for nonemergency activities under this act and shall:
    - a. Be limited in duration to the time required to complete the authorized emergency activity, not to exceed ninety days, and
    - b. Require, within this ninety-day period, the restoration of any wetland altered as a result of this emergency activity, except that if more than ninety days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration.

Issuance of an emergency permit by the county public works director and/or the county engineer does not preclude the necessity to obtain necessary approvals from appropriate federal and state authorities.

Notice of the issuance of the emergency permit and request for public comments shall be published once in the newspaper having a general circulation in Whitman County no later than ten days

after issuance of the emergency permit.

The emergency permit may be terminated at any time upon determination by the county public works director and/or the county engineer that the action was not or is no longer necessary to protect human health or the environment.

- B. All ongoing agriculture activities are exempt from this chapter. Only when an agricultural activity changes to a nonagricultural land use will it be subject to regulation by this chapter.
- C. Relationship to Other Jurisdictional Agencies. In cases where other agencies exert jurisdictional control over wetlands; including, but not limited to, the Army Corps of Engineers, the United States Fish and Wildlife Service, the Environmental Protection Agency, United States Department of Agriculture, or the Washington State Departments of Fish and Wildlife, or Ecology, and it is determined by the county public works director and/or the county engineer that the permit conditions satisfy the requirements of this chapter, the county public works director and/or the county engineer may allow requirements imposed by these jurisdictions to substitute for the requirements of this chapter. The county public works director and/or the county engineer's decision shall be in writing and mailed to the applicant. Applicants must submit a copy of the agency's application, permit conditions, and detailed plans to the county public works director and/or the county engineer in order for this exemption to be reviewed and judged.

(Res. 47633 (part), 1994).

#### **9.10.045 Nonregulated wetlands.**

- A. Category III wetlands: less than five thousand four hundred forty-five square feet or one-eighth acre.
  - B. Category IV Wetlands: less than twenty-one thousand seven hundred eighty square feet or one-half acre.
  - C. Intentionally created artificial wetlands from a nonwetland site that were not required to be constructed as mitigation for adverse wetland impacts. These may include, but are not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment ponds, farm ponds not contiguous, as defined in this chapter, and landscape amenities. The applicant shall bear the burden of proving that the wetland was intentionally created from a nonwetland site. In the case where enhancements or restorations are made to non-regulated, or Category III or IV wetlands, for purposes other than mitigation, the original rating shall be maintained even if the changes would otherwise result in a higher classification.
- (Res. 47633 (part), 1994).

#### **9.10.050 Allowed activities.**

The following activities shall be allowed within a wetland or wetland buffer to the extent that they are not prohibited by any other chapter or law.

- A. Conservation or preservation of soil, water, vegetation, fish, shellfish and other wildlife;

- B. Activities having minimal adverse impacts on wetland buffers and wetlands. These may include low intensity, passive activities such as short term scientific or education activities, and sports fishing or hunting. (This does not include driving a vehicle into or through the wetland or buffer);
- C. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the wetland by changing existing topography, water conditions or water sources;
- D. Maintenance of existing ditches and drainages associated with an operation, provided that the operation does not modify the wetland's existing hydrology;
- E. Navigation aids and boundary markers;
- F. Boat mooring buoys;
- G. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, wetland impacts shall be minimized and disturbed areas shall be immediately restored;
- H. The following uses are allowed within wetlands and/or wetland buffers provided that wetland impacts are minimized and that disturbed areas are immediately restored:
  - 1. Normal maintenance, repair or operation of existing serviceable structures, facilities or improved areas. Maintenance and repair does not include any modification that changes the character, scope or size of the original structure, facility or improved area and does not include the construction of a maintenance road, or
  - 2. Minor modification of existing serviceable structures within a buffer zone where modification does not adversely impact wetland functions;
- I. Removal or destruction of noxious weeds, as listed in Chapter 16-750 WAC and in accordance with RCW 17.10, Washington State Noxious Weeds Law; provided, that:
  - 1. The removal or control of noxious weeds shall occur within an approved time schedule, and the method of removal or control shall be approved by the county weed board after consultation with other appropriate agencies,
  - 2. Pesticides shall be applied by applicators licensed by the Washington State Department of Agriculture, and shall be applied in accordance with the permitting requirements of the Washington State Department of Ecology, and
  - 3. Cleared areas created by the removal of noxious weeds shall be revegetated to the satisfaction of the NRCS or the local conservation district;
- J. Development within existing industrial zones, commercial zones, complying rural residences,

and rural community zones, when such development is regulated by other agencies, and a permit such as and not limited to Hydraulic Approval Permit (State Dept. of Fish and Wildlife); Water Quality Modification (State Dept. of Ecology); Shorelines Management Act (State Dept. of Ecology); Wetlands Permit issued by the U.S. Army Corps of Engineers; and/or U.S. Fish and Wildlife, is obtained for the project; and further provided, that wetland impacts are minimized and that unimproved areas not developed but disturbed in the process of development are restored.

(Res. 47633 (part), 1994).

#### **9.10.060 Wetland buffers.**

A. **Buffer Widths.** Wetland buffers shall be required for all regulated activities adjacent to wetlands. Any wetlands created, restored or enhanced as compensation for approved wetland alterations shall also include the buffer required for the category of the created, restored or enhanced wetland. All buffers shall be measured from the wetland boundary as surveyed in the field pursuant to the requirements of Section 9.10.020. The width of the wetland buffer shall be determined according to the rating assigned to the wetland in accordance with Section 9.10.030.

B. **Standard Buffer Widths.**

1. For Category I wetlands, the standard buffer zone width shall be two hundred feet.
2. For Category II wetlands, the standard buffer zone width shall be one hundred feet.
3. For Category III wetlands, the standard buffer zone width shall be fifty feet.
4. For Category IV wetlands, the standard buffer zone width shall be twenty-five feet.

C. **Increased Buffer Width.** The public works director and/or the county engineer may require increased buffer widths on a case-by-case basis when a larger buffer is necessary to protect wetland functions. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions of the wetland. The documentation must include the following criteria:

1. The wetland is used by a plant or animal species listed by the federal government or the state as endangered, threatened, sensitive or documented priority species or habitats, or essential or outstanding potential habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
2. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts; or
3. The adjacent land has minimal vegetative cover or slopes greater than thirty percent.

D. **Reduction of Standard Buffer Width.** The public works director and/or the county engineer may reduce the standard buffer width on a case-by-case basis where it can be demonstrated that:

1. The adjacent land has a high quality vegetative buffer, has less than fifteen percent slopes which drain into the wetland, and no direct or indirect, short-term or long-term, adverse impacts to wetlands will result from a regulated activity. The public works director and/or the county engineer may require long-term monitoring of the project and subsequent corrective actions if adverse impacts to wetlands are discovered; or
2. The project includes a buffer enhancement plan using native vegetation which substantiates that an enhanced buffer will improve the functional attributes of the buffer to provide additional protection for wetland functions. (An enhanced buffer shall not result in greater than a fifty percent reduction in the standard buffer width; or
3. The adjacent land is on a stable high bank above the wetland and it can be clearly determined that no adverse impact will result from the activity.

(Res. 47633 (part), 1994).

**9.10.070 Wetland mitigation.**

A. Wetlands Restoration, Creation and Enhancement.

1. Any person who degrades wetlands shall restore, create or enhance equivalent areas or greater areas of wetlands than those altered in order to compensate for loss of wetland acreage or functions. It shall be the responsibility and expense of this person to hire a qualified professional to plan and supervise the implementation of said restorations, creations or enhancements. Mitigation plans must be submitted, in accordance to Section 9.10.090, to the planning office for approval prior to implementation of the mitigation.

2. Acreage Replacement Ratio. The following standard ratios shall apply to creation or restoration of wetlands which are disturbed:

Category I	6:1	Except for wetlands associated with the Snake River which are only Category I because of the salmonids; then the ratio will be decreased to 3:1.
Category II	3:1	
Category III	2:1	
Category IV	1.25:1	

The first number represents the compensatory amount of acreage to replace the amount of degraded wetland acreage, which is the second number.

3. Increased Replacement Ratio. The standard replacement ratio may be increased under the following circumstances:
  - a. High degree of uncertainty as to the probable success of the proposed restoration or creation;

- b. Significant period of time between destruction and replication of wetland functions;
  - c. Losses in functions and other uses, such as recreation, scientific research and education, are greater than fifty percent;
  - d. Not possible to create or restore same type of wetland;
  - e. Off-site mitigation is offered.
4. Decreased Replacement Ratio. The standard replacement ratio may be decreased under the following circumstances:
- a. Scientifically supported evidence which demonstrates that no net loss of wetland function is attained under the decreased ratio;
  - b. In all cases, a minimum acreage replacement ratio of 1:1 shall be required;
  - c. In the event an emergency permit is granted, the circumstances which led to the wetland or buffer damage may allow a 1:1 replacement.

B. Any applicant proposing to develop within a wetland may propose to enhance existing wetlands in order to compensate for wetland losses. Applicants proposing to enhance wetlands shall identify how the enhancement will replace the functions lost by wetland alteration.

C. A wetlands enhancement project shall be considered; provided, that enhancement for one function will not degrade another function or value. Acreage replacement ratios may be increased up to fifty percent to recognize existing functions. Category I wetlands shall not be enhanced but may be enlarged.

D. The planning office may waive the requirements of this chapter when a proposal is intended exclusively for the enhancement of an existing regulated wetland, when the following conditions are met:

- 1. The enhancement activity is not associated with project development; and
- 2. The project is approved by the State Dept. of Fish and Wildlife, State Dept. of Ecology, Army Corps of Engineers, or the U.S. Fish and Wildlife Service.

E. In-Kind/Out-of-Kind Mitigation. In-kind mitigation shall be provided except where the applicant can demonstrate that:

- 1. The wetland system is already degraded and out-of-kind replacement will result in a wetland with greater functional value;
- 2. Technical problems such as exotic vegetation and changes in watershed hydrology make implementation of in-kind mitigation impossible;

3. Where out-of-kind replacement is accepted, greater acreage replacement ratios may be required to compensate for lost functional values.

F. On-Site/Off-Site Mitigation. On-site mitigation shall be provided except where the applicant can demonstrate that:

1. The hydrology and ecosystem of the original wetland and those who benefit from the hydrology and ecosystem will not be damaged by the on-site loss; and
2. On-site mitigation is not scientifically feasible due to problems with hydrology, soils or factors such as other potentially adverse impacts from surrounding land uses; or
3. Existing functional values at the site of the proposed restoration are significantly greater than lost wetland functional values; or
4. Off-site mitigation is preferred to occur within the same watershed as the wetland loss is occurring.

G. Mitigation Site Selection. In selecting mitigation sites, applicants shall pursue siting in the following order of preference:

1. Disturbed or degraded wetland(s);
2. Sites which were formerly wetlands; and
3. Other sites.

H. Timing. Where feasible, mitigation projects shall be completed prior to activities that will disturb wetlands. Bonding is required if mitigation projects cannot be completed prior to project completion. Construction of mitigation projects shall be timed to reduce impacts to existing wildlife and flora. (Res. 47633 (part), 1994).

#### **9.10.080 Wetland mitigation banking.**

Reserved for future amendment. (The criteria for such a designation shall be developed and adopted by Whitman County under appropriate public review and administrative appeal procedures.) (Res. 47633 (part), 1994).

#### **9.10.090 Wetland reports and mitigation plans.**

A. Wetland Reports. This report shall include a written assessment and accompanying maps of the impacted wetland including, at a minimum, wetland delineation and rating as determined by Sections 9.10.020 and 9.10.030; existing wetland acreage; proposed wetland impacts; alternatives to wetland impacts; proposed wetland buffer; vegetative, faunal and hydrologic characteristics; soil and substrate conditions and topographic elevations and shall be submitted as a part of the wetland permit application.

B. Mitigation Plans. All wetland restoration, creation and/or enhancement projects required pursuant to this chapter either as a permit condition or as the result of an enforcement action shall follow a mitigation plan prepared by qualified wetland professionals meeting county requirements. The applicant or violator shall receive written approval of the mitigation plan prior to commencement of any wetland restoration, creation or enhancement activity. The mitigation plan shall contain at least the following components:

1. Baseline Information. A written assessment and accompanying maps of the impacted wetland including, at a minimum, wetland delineation and rating as determined by Sections 9.10.020 and 9.10.030; existing wetland acreage; proposed wetland impacts; alternatives to wetland impacts; proposed wetland buffer; vegetative, faunal and hydrologic characteristics; soil and substrate conditions and topographic elevations. If the mitigation site is different from the impacted wetland site, baseline information should also include: the watershed; surface hydrology; existing and proposed adjacent land uses; proposed buffers; and ownership.
2. Environmental Goals and Objectives. A written report shall be provided identifying goals and objectives and describing; site selection criteria; mitigation goals; target evaluation species and resource functions; dates for beginning and completion; and a complete description of the functions sought in the new or enhanced wetland. The goals and objectives shall be related to the functions of the original wetland, or if out-of-kind, the type of wetland to be emulated. The report shall also include an analysis of the likelihood of success of the compensation project at duplicating the original wetland, and the long-term viability of the project, based on the experiences of comparable projects, if any.
3. Monitoring Program. Specific measurable criteria approved by the planning office, shall be provided for evaluating whether the goals and objectives of the mitigation project are being achieved, and for determining when and if remedial action or contingency measures should be implemented. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria. The monitoring program will continue for three to five years after the completion of the project and be bonded. Reporting results of the monitoring program to the planning office shall be the responsibility of the applicant.

D. Detailed Construction Plans. Written specifications and descriptions of mitigation techniques and a planting plan for vegetation shall be provided, as specified by the planning office.

E. Construction Oversight. The construction of the mitigation project shall be monitored by a qualified wetland professional to insure success of the mitigation program.

F. Contingency Plan. The plan must identify potential courses of action that can be taken when monitoring or evaluation indicates project performance standards are not being met.

G. Permit Conditions. Any mitigation project prepared pursuant to this section shall become part of the wetland permit application.

H. Performance Bonds and Demonstration of Competence. The applicant shall provide bonds ensuring fulfillment of the mitigation project, monitoring program, and any contingency measure and shall be

posted in the amount of one hundred and twenty-five percent of the expected project cost of mitigation. An administrative fee for the mitigation project may be assessed to reimburse the county for costs incurred during the course of the monitoring program. The applicant shall also provide if requested, demonstration of administrative, supervisory, and technical competence, financial resources, and scientific expertise of sufficient standing to successfully execute the mitigation plan.

I. Consultation with Other Agencies. Applicants are encouraged to consult with federal, state, local agencies having expertise or interest in a mitigation proposal.  
(Res. 47633 (part), 1994).

#### **9.10.100 Appeal.**

Appeal of any administrative wetlands ordinance decision shall be limited to the applicant, and shall be heard by the hearings examiner committee, as established by Chapter 19.07 of this code.  
(Res. 47633 (part), 1994).

#### **9.10.110 Penalty.**

Any person violating the provisions of this chapter shall be subject to the penalties described in Chapter 1.12 of this code.  
(Res. 47633 (part), 1994).

### **Chapter 9.20**

#### **NOTIFICATION OF USED OIL RECOVERY SITES**

##### Sections:

**9.20.010 Declaration of intent.**

**9.20.020 Description of required service.**

**9.20.030 Description of location and description of signs.**

**9.20.040 Enforcement.**

#### **9.20.010 Declaration of intent.**

The Washington State Legislature has declared automotive used oil to be a resource, which is in the public interest to recover to greatest extent possible. The legislature has also declared that much household used oil enters the environment each year causing much damage. It was also found that damage can be alleviated by requiring a convenient collection system for the collection of household used oil in concert with the education of the public as to locations. The legislature has provided in RCW 70.951.040 that retailers of automotive oil provide this education to their customers through the posting of signs, and that local government be responsible to enforce this provision.

(Res. 48943 (part), 1995).

#### **9.20.020 Description of required service.**

Retail sellers of automotive oil must post and maintain signs regarding used for oil recycling according to the provisions of this chapter.

(Res. 48943 (part), 1995).

#### **9.20.030 Description of location and description of signs.**

- A. Signs must be posted in a location visible to the public at either of three locations: automotive display, cash register, or exterior window facing. Signs will be made available to vendors by Whitman County.
- B. Signs must be at least eleven inches by fourteen inches and must contain as a minimum:
1. The oil drop with the recycling symbol inside;
  2. The phrase "Recycle Used Oil";
  3. The listing of at least one of the closest used oil collection center(s);
  4. The 1-800-RECYCLE information line number and/or its local equivalent for location of publicly available used oil collection centers;
  5. Graphics or phrases encouraging the recycling of used oil is highly recommended.
- (Res. 48943 (part), 1995).

#### **9.20.040 Enforcement.**

Enforcement of this chapter is delegated to the health district/department as part of the solid waste enforcement program authorized by Chapter 70.95 RCW. The health district shall report to the board annually as to its efforts to enforce this chapter. [Statutory authority: Chapters 70.95, 70.95I and 70.105 RCW.]  
(Res. 48943 (part), 1995).

### **Chapter 9.24**

#### **FISH AND WILDLIFE HABITAT CONSERVATION AREAS**

##### Sections:

- 9.24.010 Declaration of intent.
- 9.24.020 Definitions.
- 9.24.025 Designation.
- 9.24.030 Applicability.
- 9.24.040 Exempt and nonregulated habitat.
- 9.24.050 Allowed activities.
- 9.24.060 Land owners voluntary designation procedure.
- 9.24.070 Fish and wildlife buffers.
- 9.24.080 Fish and wildlife mitigation.
- 9.24.090 Habitat reports and mitigation plans.
- 9.24.100 Penalty.

#### **9.24.010 Declaration of intent.**

It is the intent of Whitman County to recognize the importance of protecting fish and wildlife habitat conservation areas while at the same time ensuring the continuation of ongoing agriculture, mining and forestry

by their exemption. Implementation of this chapter is directed toward preserving fish and wildlife resources by discouraging development incompatible with these areas.

Various federal, state, and private agencies and individuals currently manage established fish and wildlife habitat conservation areas within Whitman County. In recognition of their experience and expertise in local habitat management, Whitman County supports their efforts to preserve and protect these critical fish and wildlife habitat conservation areas by acknowledging that cooperation and communication are essential to achieve common habitat conservation goals.

Because 93.75 percent of Whitman County (as of a June 7, 1995 analysis) is in private ownership, there is opportunity for the citizens and public agencies to work together for common goals. The county should encourage private owners to preserve fish and wildlife habitat conservation areas. There are many opportunities for private landowners to protect these areas. Protection can and should take place with respect for private property rights.

All existing and ongoing agricultural, mineral and forestry land uses and/or activities are exempt from this chapter. Only when agricultural, mineral, or forestry land or activities change the land's use will it be subject to regulation by this chapter. This chapter is adopted pursuant to and in accordance with RCW 36.70A, implementing SHBN 2929, known as the Growth Management Act. (Res. 49102 (part), 1995).

#### **9.24.020 Definitions.**

As used in this chapter:

"Activity" means human activity associated with the use of land or its resource.

"Applicant" means a person who files an application for permit under this chapter and who is either the owner of the land on which that proposed activity would be located, a lessee of the land, or the authorized agent of the owner.

"Buffer" means an area that surrounds and protects habitat areas and their functions from adverse impacts. Buffer width is measured outward from the habitat conservation area boundary.

"Candidate species" means a native species under review for possible listing by federal or state agencies as endangered, threatened or sensitive. Currently listed state threatened or state sensitive species may also be designated as state candidate species if their status is in question. (Candidate species as listed in Washington Department of Wildlife Policy 4802, as now or hereafter amended.)

"County public works director" and/or the "county engineer" means the Whitman County, public works director and/or the county engineer, or his/her designee.

"CZC area" means certificate of zoning compliance area or the area which has been delineated for the planned building or development.

"Development" means any man-made change to improved or unimproved real estate, including but not

limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

"Development envelope" (also termed building envelope) means the area of a site or a parcel of land for which building construction has been approved. For rural residences, this has been defined for certificates of zoning compliance as the area of a parcel in which it is suitable to construct structures and allow for uses such as wells, drain fields, driveways, etc.

"Emergency" means an event or set of circumstances which demands immediate action to preserve public health, protect human life and property. Financial circumstances are not emergencies.

"Endangered species" means a native species that is listed by the federal or state government as endangered.

"Existing and ongoing agriculture, mineral, and forestry land uses or activities" means those land uses or activities conducted on agricultural, mineral or forestry lands and involved in the production of crops or livestock, minerals, logs, trees, or forest products; for example, thinning, trimming or spraying of trees; the mining and crushing of rock; the operation and maintenance of pastures and hayfields, farm and stock ponds or drainage ditches; operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches; and normal maintenance, repair or operation of existing serviceable structures, facilities or improved areas. Activities which bring a currently inactive area into agricultural, mineral or forestry use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a nonagricultural, nonmineral, or nonforestry use or has lain idle for more than five years, unless the idle land is registered in a federal or state soil conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals or drainage ditches related to an existing ongoing agricultural, mineral or forestry activity.

"Fish and wildlife habitat area permits" means any permit issued, conditioned or denied specifically to implement this chapter.

"Fish and wildlife habitat conservation areas" (WAC 365-190-080, as now or hereafter amended) means:

1. Areas with which federal or state endangered, threatened and sensitive species have a primary association;
2. Priority habitats and species, using criteria developed by the Washington Department of Fish and Wildlife's Priority Habitats and Species Program;
3. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;
4. Waters of the state (WAC 365-190-080 [5] [vi], Title 222 WAC, as now or hereafter amended);
5. Lakes, ponds, streams and rivers planted with game fish by a governmental entity (these include water bodies planted under the auspices of a federal, state or local program or which support

important fish species as identified by the Washington Department of Fish and Wildlife); or

6. Federal, state and private natural area preserves and natural resource conservation areas.

"Fish and wildlife report" means a report required for development projects where priority habitats for fish and wildlife may be affected.

"Grading" means excavation or fill or any combination thereof, including but not limited to the establishment of a grade following the demolition of a structure or preparation of a site for construction or development.

"Habitat" means the natural abode of a plant or animal, especially the particular location where it normally grows or lives.

"In-kind mitigation" means to replace habitat with substitute habitat whose characteristics closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement "in-category."

"Intermittent drainage" means drainage as defined on the United States Geological Survey 7.5 minute series quadrangle maps, shown as a dotted and dashed blue line.

"Minor modification" means a modification which does not adversely impact functions.

"Mitigation" means replacing project-induced habitat losses or impacts and includes but is not limited to the following:

1. "Restoration"-Actions performed to re-establish habitat and/or buffer functional characteristics and processes which have been lost by alterations, activities, or catastrophic events within an area which no longer meets the definition of fish and wildlife habitat;
2. "Creation"-Actions performed to intentionally establish a habitat area, a portion of a fish and wildlife habitat or buffer where one did not formerly exist;
3. "Enhancement"-Actions performed to improve the condition of existing habitat or buffer so that the functions it provides are increased or improved.

"Monitoring" means periodic evaluation of a fish and wildlife restoration, creation or enhancement site to determine changes at the site, such as vegetation growth, hydrologic changes, soil development, and use of the site by birds and animals.

"Natural Resource Conservation Service (NRCS) maps" means those maps which have been created by the local Natural Resource Conservation Service and Conservation Districts using soil survey maps as a basis. These maps have to some extent been field checked. The original maps are on file in the NRCS Colfax office and the Planning Office may have a copy on file.

"Off-site" means a location with a different legal property description than that contained in the specified fish and wildlife habitat conservation area or affected portion thereof.

"Off-site mitigation" means restoration or replacement of a fish and wildlife habitat conservation area that is not on or adjacent to the site on which a habitat area has been or will be degraded.

"O.H.W.M. (ordinary high water mark)" means the mark on all lakes, streams and tidal water that will be found by examining the beds and banks and ascertaining where the presence and action of waters so common and usual and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland in respect to vegetation. [RCW 90.58.030(2)(b), as now or hereafter amended.]

"On-site" means anywhere within the property having the same legal description as the specified fish and wildlife habitat conservation area or affected portion thereof.

"On-site mitigation" means restoration or replacement of fish and wildlife habitat at or very near the site where a habitat has been or will be degraded by a regulated activity.

"Out-of-kind mitigation" means the restoration or creation of a fish and wildlife habitat conservation area with vegetation and other characteristics not resembling those of a specified fish and wildlife habitat conservation area.

"Perennial drainage" means drainage as defined on the United States Geological Survey 7.5 minute quad maps, shown as a solid blue line.

"PHS" means Priority Habitats and Species List as defined in the Washington State Department of Fish and Wildlife's Priority Habitats and Species List (January 1995), as now or as hereafter amended.

"Planning office" means the Whitman County planning office.

"Practicable alternative" means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and that would have less impacts to fish and wildlife habitat conservation areas than the proposed action. It may involve using an alternative site in the general region that is available to the applicant and can feasibly be used to accomplish the project.

"Primary drainage basin" means the basin of the stream or tributary within which a project is proposed.

"Qualified fish and wildlife specialist" or "specialist" means an individual or a team that is on the Whitman County list of qualified fish and wildlife specialists, or is professionally certified to have the academic qualifications and/or field experience to make competent fish and wildlife habitat evaluations and to develop reports for habitat preservation and/or protection and recommendations necessary to implement the provisions of this chapter.

"RCW" means the Revised Code of Washington, or all laws, general and permanent, of the state of Washington.

"Riparian" means areas located at the shore of a lake, river, stream (perennial or intermittent) or pond.

"NRCS" means Natural Resource Conservation Service (formerly SCS, Soil Conservation Service).

"Sensitive species" means a native species, as defined by federal or state agencies, that is vulnerable or declining and is likely to become endangered or threatened in a significant portion of its range without cooperative management or removal of threats.

"Serviceable structures" means a structure which has not deteriorated to the extent that it would have to be replaced. The Whitman County zoning code describes a structure that has lost more than seventy-five percent of its assessed value as being required to conform to code when replaced or repaired.

"SHBN" means Washington State House bill number.

"Site" means any lot or parcel of land or contiguous combination thereof, where development and/or activities are proposed, performed or permitted.

"Subject property" means the site where an activity requiring a permit or approval under this chapter will occur.

"Threatened species" means a native species, as defined by state and federal agencies, that is likely to become endangered within the foreseeable future throughout all or a significant portion of its range without cooperative management or removal of threats.

"Unavoidable and necessary impacts" means impacts to fish and wildlife habitat conservation areas that remain after an applicant for a fish and wildlife habitat conservation area permit has demonstrated that no practicable alternative exists for the proposed project.

"WAC" means Washington Administrative Code.

"Waters of the state" (RCW 90.48.020, as now or hereafter amended) means lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington.

"Watershed" means the geographic region within which water drains into a particular river, stream or body of water.

"WSDFW" means Washington State Department of Fish and Wildlife.  
(Res. 49102 (part), 1995).

#### **9.24.025 Designation.**

A. The Washington State Department of Fish and Wildlife map entitled "Priority Habitats and Species of Whitman County and Vicinity Map," as now or hereafter amended or modified, is adopted and incorporated in this section as if set forth in full, as it pertains to designating the locations of endangered species, candidate endangered species, threatened species, candidate threatened species, sensitive species, candidate sensitive species, priority habitats and/or priority species as the means by which the fish and wildlife habitat conservation areas within Whitman County are designated.

B. Those areas identified, on the priority habitats and species of Whitman County and vicinity map, as locations of endangered species, candidate endangered species, threatened species, candidate threatened species, sensitive species, candidate sensitive species, priority habitats and/or priority species are designated as fish and wildlife habitat conservation areas and shall be protected as set forth in this chapter.

C. The Department of Fish and Wildlife annually updates its priority habitats and species maps based upon new information obtained during the interim; this update information is retained within the Department in a database entitled "Priority Habitats and Species Database, (PHS)." As applicable in this chapter, the PHS shall be used to augment the priority habitats and species of Whitman County and vicinity map for identification and designation of fish and wildlife habitat conservation areas within Whitman County. (Res. 50773 § 1, 1996).

#### **9.24.030 Applicability.**

A. An applicant shall be required to obtain a fish and wildlife habitat evaluation for any parcel upon which a county permit or approval is required, except from those exempted herein.

Except, if the applicant delivers a letter to the director of public works, county engineer, or their designee, from an authorized agent for the Washington State Department of Fish and Wildlife establishing that the project's parcel is not within a location designated on its Priority Habitats and Species of Whitman County and Vicinity Map, no further action under this chapter will be required.

If the evaluation reveals the existence of an endangered species or candidate endangered species, the appropriate state or federal agency shall be immediately notified and its recommended protection plan shall be implemented. Should the evaluation reveal the existence of a threatened species, sensitive species, candidate threatened species, candidate sensitive species, priority habitats (as defined by the Washington Department of Fish and Wildlife) or priority species (as defined by the Washington Department of Fish and Wildlife), the applicant will be required to submit a habitat report and mitigation plan.

B. The fish and wildlife habitat evaluation and any subsequent habitat report and mitigation plan shall be in writing, prepared and certified (in accordance with RCW 9A.72.085) by a qualified fish and wildlife specialist and submitted to the Whitman County planning department for analysis, review or implementation.

C. The Whitman County board of county commissioners (board), shall by resolution create a list of persons found by them to be qualified as fish and wildlife habitat specialists. The process, procedure and criteria for creating and maintaining such a list shall be at the discretion of the board.

D. The list of qualified fish and wildlife specialists, as created by the board, shall be given to each applicant. The applicant may either hire a specialist from this list or may hire a qualified fish and wildlife specialist of his/her own choosing.

E. A fish and wildlife habitat evaluation and/or a habitat report and mitigation plan submitted by a specialist listed on the county's list of qualified fish and wildlife specialists shall be accepted. However, if either is found to be unacceptable by the county public works director or his designee based upon sound scientific evidence, or verified eye witness account, the fish and wildlife habitat evaluation or habitat report and

mitigation plan shall fall within the process and procedure found in subsection F of this section.

F. A fish and wildlife habitat evaluation and/or a habitat report and mitigation plan submitted by any person not on the county's list of qualified fish and wildlife specialists shall be reviewed by the county public works director or his designee with the assistance of any governmental agency or an expert from the county's list of specialists.

1. If the fish and wildlife habitat evaluation or habitat report and mitigation plan is found to be factually and scientifically valid the document will be accepted and implemented.
2. If the fish and wildlife habitat evaluation or habitat report and mitigation plan is found to be of questionable factual or scientific validity, the county shall retain an expert from the county's specialist list, other than any reviewing specialist, who shall prepare a re-evaluation and/or new plan. All necessary expenses for any re-evaluation and/or new plan shall be paid by the applicant to the county prior to issuance of any permit or approval being issued. The re-evaluation and/or new plan shall be accepted by the county for implementation.

The applicant may appeal to the Whitman County hearing examiner's committee, which shall determine which of the two submitted fish and wildlife habitat evaluations and/or habitat report and mitigation plans will be implemented. The decision of the hearing examiner's committee shall be final and conclusive unless within ten days from the date of such decision the applicant or the county files an appeal in the Superior Court of Whitman County.

G. Relationship to Other Jurisdictional Agencies: In cases where other agencies exert jurisdictional control over fish and wildlife habitat areas (including, but not limited to, the Army Corps of Engineers, the United States Fish and Wildlife Service, the Environmental Protection Agency, United States Department of Agriculture, Bureau of Land Management or the Washington State Departments of Fish and Wildlife, Natural Resources, or Ecology) and it is determined by the county public works director and/or the county engineer that the permit conditions satisfy the requirements of this chapter. The county public works director and/or the county engineer may allow requirements imposed by these jurisdictions to substitute for portions of the requirements of this chapter, the county public works director and/or the county engineer's decision shall be in writing and mailed to the applicant. Applicants must submit a copy of the agency's application, permit conditions, and detailed plans to the county public works director and/or the county engineer in order for this exemption to be reviewed and judged.

(Res. 50773 § 2, 1996; Res. 49102 (part), 1995).

#### **9.24.040 Exempt and nonregulated habitat.**

A. All ongoing agricultural, mineral and forestry activities and uses are exempt from this chapter. Only when an agricultural activity changes to a nonagricultural use, or a mineral activity changes to a nonmineral use, or, a forestry activity changes to a nonforestry use, will such parcel then be subject to regulation by this chapter.

B. Emergency Permit. Notwithstanding the provisions of this chapter or any other laws to the contrary, the county public works director and/or the county engineer may grant an emergency fish and wildlife habitat conservation areas permit if:

1. The county public works director and/or the county engineer determines that immediate action is needed to preserve public health and safety, human life or property. Financial circumstances shall not be considered;
2. The anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this chapter and other applicable laws;
3. Any emergency permit granted shall incorporate, to the extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for nonemergency activities under this act and shall:
  - a. Be limited in duration to the time required to complete the authorized emergency activity, not to exceed ninety days, and
  - b. Require, within this ninety-day period, the restoration of any fish and wildlife habitat conservation area altered as a result of this emergency activity, except that if more than ninety days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration;
4. Issuance of an emergency permit by the county public works director and/or the county engineer does not preclude the necessity to obtain necessary approvals from appropriate federal and state authorities;
5. Notice of the issuance of the emergency permit and request for public comments shall be published once in the newspaper having a general circulation in Whitman County no later than ten days after issuance of the emergency permit;
6. The emergency permit may be terminated at any time upon determination by the county public works director and/or the county engineer that the action was not or is no longer necessary to preserve public health and safety, human life or property.

C. Rural Residential Site Exemption. Since rural residential siting is strictly controlled by the county zoning ordinance, a review of the fish and wildlife habitat area shall not be required for existing rural residential sites, or those existing parcels which can qualify as conforming non-farm rural residential sites via the "CZC" (certificate of zoning compliance) process.

However, all new subdivisions, short and long plats, will be subject to this chapter. If land is being divided via the short plat procedure, the fish and wildlife habitat area, as defined by the priority habitats and species document, and the distance from it shall be shown on the short plat mylar filed with the county auditor. (Res. 50773 § 3, 1996; Res. 49102 (part), 1995).

#### **9.24.050 Allowed activities.**

The following activities shall be allowed within a fish and wildlife habitat conservation area or buffer to the extent that they are not prohibited by any other chapter or law:

- A. Conservation or preservation of soil, water, vegetation, fish, shellfish and other wildlife;
- B. Activities having minimal adverse impacts on fish and wildlife habitat areas and buffers. These may include low intensity, passive activities such as short term scientific or education activities, and sports fishing or hunting;
- C. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the fish and wildlife habitat conservation area by changing existing topography, long term effects on water conditions or water sources;
- D. Maintenance of existing ditches and drainages associated with an existing operation, provided that the operation does not modify existing hydrology;
- E. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, impacts shall be minimized and disturbed areas shall be immediately restored;
- F. The following uses are allowed within habitat or habitat buffers provided that impacts are minimized and that disturbed areas shall be restored within a reasonable period of time:
  - 1. Normal maintenance, repair or operation of existing serviceable structures, facilities or improved areas. Maintenance and repair does not include any modification that changes the character, scope or size of the original structure, facility or improved area and does not include the construction of a maintenance road, or
  - 2. Minor modification of existing serviceable structures within a buffer zone where modification does not adversely impact habitat functions;
- G. Removal or destruction of noxious weeds, as listed in Chapter 16-750 WAC and in accordance with RCW 17.10 Washington State Noxious Weeds Law, provided that:
  - 1. The removal or control of noxious weeds shall occur within an approved schedule, and the method of removal or control shall be approved by the county weed board after consultation with other appropriate agencies;
  - 2. Pesticides shall be applied by applicators licensed by the Washington State Department of Agriculture, and shall be applied in accordance with the permitting requirements of the Washington State Department of Ecology; and
- H. Development within existing industrial zones, commercial zones, complying rural residences, and rural community zones, when such development is regulated by other agencies, and a permit such as and not limited to Hydraulic Approval Permit (State Dept. of Fish and Wildlife); Forestry Permit (Dept. of Natural Resources); Water Quality Modification (State Dept. of Ecology); Shorelines Management Act (State Dept. of Ecology); permits issued by the U.S. Army Corps of

Engineers; and/or U.S. Fish and Wildlife and/or Bureau of Land Management, obtained for the project, and further provided that habitat impacts are minimized and that unimproved areas not developed but disturbed in the process of development are restored.

(Res. 49102 (part), 1995).

#### **9.24.060 Land owners voluntary designation procedure.**

A. The process by which habitats are designated as being critical for threatened, endangered or sensitive fish, wildlife and/or plants will be similar to other resource areas of this inventory for Whitman County. Upon application for new development, relevant criteria and available knowledge will be matched to determine the status of the area under consideration. Consultation with the Washington Department of Fish and Wildlife's Priority Habitat and Species Program is a first step in establishing grounds for designation.

For designation of important fish and wildlife habitat conservation areas, consideration of a specific species and/or habitat will involve a nomination process relying heavily on public input at the local level. Actual determination shall rest upon the judgment of the board of county commissioners after a hearing process to obtain public comment has been conducted.

If designated, compliance with the following management policies and subsequent interim/final development regulation will be assigned for these areas to protect the resource values. However, designation is not intended to deny development opportunities; rather, it is aimed at steering growth to more suitable areas where fish and wildlife values will not be unduly compromised.

B. A process is provided for listing or delisting other habitats and species that are important locally to the people of Whitman County. This action may be initiated at the request of the land owner to the board of county commissioners. Any such request shall be in writing and shall include:

1. The common and scientific name for a species under consideration;
2. Habitat location on a map (scale 1:24,000);
3. Demonstrate a need for special consideration based on:
  - a. Declining or increasing population,
  - b. Sensitivity to habitat manipulation, or
  - c. Commercial or game value or other special value, such as public appeal;
4. Habitat management recommendations, including potential uses and restrictions of the habitat areas, seasonally sensitive areas and other guidelines necessary for the protection of the species;
5. Reasons for the species/habitat to be designated or deleted from designation as a priority habitat or species;
6. Name and address of the nominator;

7. Other supporting documentation.

Submitted proposals will be reviewed by the county public works director and/or the county engineer, WSDFW, and/or other local, state or federal agencies or experts for comments and recommendations regarding accuracy of the data and effectiveness of proposed management strategies.

A public hearing shall be held by the board of county commissioners for proposals found to be completed pursuant to the hearing process contained in Chapter 19.04 of the Whitman County zoning code as amended. Approved nominations will be designated priority habitats/species as appropriate and will be given all protection under this chapter afforded other priority habitats and species.  
(Res. 49102 (part), 1995).

**9.24.070 Fish and wildlife buffers.**

A. Buffer widths shall be those recommended by the State Department of Fish and Wildlife, or those approved by them, or as decided by the hearing examiner committee. These shall depend upon the kind of habitat and species needing protection, and shall be determined on a case-by-case basis.

B. Standard buffer widths shall follow Priority Habitats and Species List recommendations.  
(Res. 49102 (part), 1995).

**9.20.080 Fish and wildlife mitigation.**

Any person who degrades a fish and wildlife habitat conservation area as designated or as revealed in the development review process shall restore, create or enhance equivalent or greater area than that altered in order to compensate for loss of habitat. It shall be the responsibility and expense of this person to hire a qualified fish and wildlife specialist to plan and supervise the implementation of said restorations, creations or enhancements.  
(Res. 49102 (part), 1995).

**9.04.090 Habitat reports and mitigation plans.**

A. Habitat Reports. This certified report shall include a written assessment and accompanying maps of the impacted habitat including, at a minimum, buffer, vegetative, fauna and hydrologic characteristics; and soil and substrate conditions and topographic elevations and shall be submitted as a part of the fish and wildlife habitat conservation area permit application. This report may be certified by compliance with RCW 9a.72.085, as now or as hereafter amended.

B. The State Department of Fish and Wildlife or fish and wildlife specialist, in reviewing the requirements for a development shall consider the following: (1) evidence of the priority habitats defined in the PHS manual; (2) information in the Soil Survey produced by the Natural Resource Conservation Service (NRCS) for possible location and size of the habitat area; and (3) the proposal shall minimize the impact and disturbance to the fish and wildlife habitat areas and buffer areas. If access to a neighboring parcel is denied, the best available information shall be used.

C. Mitigation Plans. All fish and wildlife habitat restoration, creation and/or enhancement projects required pursuant to this chapter either as a permit condition or as the result of an enforcement action shall follow a mitigation plan prepared by qualified habitat professional and submitted to the public works director and/or county engineer for approval. The applicant or violator shall receive written approval of the mitigation plan prior to commencement of any fish and wildlife habitat conservation area restoration, creation or enhancement activity. The mitigation plan shall contain at least the following components:

1. Baseline Information. A written assessment and accompanying maps of the impacted buffer; vegetative, fauna and hydrologic characteristics; soil and substrate conditions and topographic elevations. If the mitigation site is different from the impacted habitats, baseline information should also include: the watershed; surface hydrology; existing and proposed adjacent land uses; proposed buffers; and ownership.
2. Environmental Goals and Objectives. A written report shall be provided identifying goals and objectives and describing site selection criteria; mitigation goals; target evaluation species and resource functions; dates for beginning and completion; and a complete description of the functions sought in the new or enhanced habitat. The goals and objectives shall be related to the functions of the original fish and wildlife habitat conservation area. The report shall also analyze the likelihood that the compensation project will successfully duplicate the original fish and wildlife habitat conservation area, and the long-term viability of the project, based on comparable projects, if any.
3. Monitoring Program. Specific measurable criteria and goals approved by the Whitman County public works director and/or county engineer, shall be provided for evaluating whether the goals and objectives of the mitigation project are being achieved, and for determining when and if remedial action or contingency measures should be implemented. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria. The monitoring program will continue for three to five years after the completion of the project and will be bonded. Reporting results of the monitoring program to the Whitman County public works director and/or county engineer shall be the responsibility of the applicant.
4. Detailed Construction Plans. Written specifications and descriptions of mitigation techniques and a planting plan for vegetation shall be provided, as specified by the Whitman County public works director and/or county engineer.
5. Construction Oversight. The construction of the mitigation project shall be monitored by a qualified fish and wildlife specialist to ensure success of the mitigation program.
6. Contingency Plan. The plan must identify potential courses of action that can be taken when monitoring or evaluation indicates project performance standards are not being met.
7. Permit Conditions. Any mitigation project prepared pursuant to this section shall become part of the fish and wildlife permit application.
8. Performance Bonds and Demonstration of Competence. The applicant shall provide bonds

ensuring fulfillment of the mitigation project, monitoring program, and any contingency measure and shall be posted in the amount of one hundred and twenty-five percent of the expected project cost of mitigation. An administrative fee for the mitigation project shall be assessed to reimburse the county for costs incurred during the course of the monitoring program. If requested, the applicant shall also provide sufficient evidence of competency to successfully execute the mitigation plan, to include the following: administrative, supervisory and technical competence; financial resources; and scientific expertise.

9. Consultation with Other Agencies. Applicants are encouraged to consult with federal, state and local agencies having expertise or interest in a mitigation proposal.

(Res. 49102 (part), 1995).

#### **9.24.100 Penalty.**

Any person violating the provisions of this chapter shall be subject to the penalties described in the General Penalty chapter (Chapter 1.12) of this code.

(Res. 49102 (part), 1995).

### **Chapter 9.30**

#### **AGRICULTURAL BURNING PERMIT**

##### Sections:

**9.30.010 Authority.**

**9.30.020 Policy and procedure authority.**

**9.30.030 Agricultural burning permit task force-Creation.**

**9.30.040 Fee schedule-Refunds-Disbursements.**

**9.30.050 Conditions on permits.**

**9.30.060 Enforcement.**

**9.30.070 Violations-Penalty.**

**9.30.080 Exceptions.**

**9.30.090 Severability.**

#### **9.30.010 Authority.**

Whitman County will serve as the permitting authority, pursuant to the authority delegated by the Department of Ecology, for agricultural burning in the unincorporated areas of Whitman County. The Whitman County extension office or their designated representative will serve as the permitting agent on behalf of Whitman County.

(Res. 49144 (part), 1996).

#### **9.30.020 Policy and procedure authority.**

The Whitman County board of county commissioners will cause to be prepared policy and procedures for agricultural burning that will include permitting responsibilities, applicant responsibilities, fee requirements, and complaint review.

(Res. 49144 (part), 1996).

#### **9.30.030 Agricultural burning permit task force-Creation.**

The Whitman County agricultural burning permit task force is established. The Whitman County board of county commissioners will appoint the nine volunteer members of the task force with the following criteria: four agricultural producers representing commodity associations, four agricultural producers representing each of the four conservation districts in Whitman County and one non-agricultural producer representing the public at large. Each member shall be appointed for a term of three years, except for the first year's appointments, in which case three members shall be appointed for a one-year term, three members for a two-year term and three members for three-year terms.

The task force shall act as citizen advisory group to the board of county commissioners as to policy and procedure for agricultural burning and permitting.

(Res. 49144 (part), 1996).

#### **9.30.040 Fee schedule-Refunds-Disbursements.**

The Whitman County board of county commissioners shall establish by resolution a variable fee schedule for burning permits for agricultural burns greater than ten acres. The fee schedule may be modified as deemed necessary by the board.

- A. The applicant must pay the fee prior to receiving a permit. Refunds are allowed from Ecology administration and research fund fees for portions not burned provided the adjusted fee after subtracting refunds is no less than twenty-five dollars.
- B. A special agricultural burn permit account will be established by the Whitman County treasurer. The Whitman County treasurer will make proper disbursement of all fees twice annually, on or before June 30th and December 30th of each year.
- C. The fee schedule for agricultural burning permits in Whitman County shall be as follows:
  1. The county annual permitting program administrative fee will be thirty-five dollars annually.
  2. The state-imposed Department of Ecology administration fee will be twenty-five cents per acre burned.
  3. The state-directed research fund fee shall be fifty cents per acre burned.

(Res. 49144 (part), 1996).

#### **9.30.050 Conditions on permits.**

The permitting agent shall have sole discretion to condition all permits to minimize emissions insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions. The burning permit holder, and his agents or employees, shall comply with all other applicable local, state, or federal laws and agreements.

(Res. 49144 (part), 1996).

### **9.30.060 Enforcement.**

Violations requiring enforcement will be referred directly to the Washington State Department of Ecology.  
(Res. 49144 (part), 1996).

### **9.30.070 Violations-Penalty.**

Violations and/or penalties will be determined by the Washington State Department of Ecology.  
(Res. 49144 (part), 1996).

### **9.30.080 Exceptions.**

This chapter, with supporting policies and procedures, applies only to the agricultural activity of field burning. It does not apply to the burning of orchard prunings, natural vegetation along fence lines, irrigation ditches, drainage ditches, and other essential pathways or natural vegetation blown by the wind. It does not apply to spot burning of ten acres or less for the year (cumulative). For all other kinds of agriculture burning a permit is required if burning more than ten acres annually (cumulative).  
(Res. 49144 (part), 1996).

### **9.30.090 Severability.**

If any section, subsection, clause, phrase, or work in the ordinance codified in this chapter or in the supporting policy and procedures or any provision adopted by reference therein, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining ordinance, policy and procedures, or any provision adopted by reference therein.  
(Res. 49144 (part), 1996).

## **Chapter 9.40**

### **CRITICAL AQUIFER RECHARGE AREA DESIGNATION AND PROTECTION**

#### Sections:

**9.40.010 Intent.**

**9.40.020 Definitions.**

**9.40.030 Relationship to other jurisdictional agencies.**

**9.40.035 Procedure.**

**9.40.040 Classification.**

**9.40.050 Exemptions.**

**9.40.055 Emergency permit.**

**9.40.060 Evaluation.**

**9.40.070 Designation and protection.**

#### **9.40.010 Intent.**

It is the intent of Whitman County to promote the public's health and safety by establishing a procedure to identify and protect areas within the county that are found to have a critical recharging effect on aquifers used for potable water. These areas serve the vital function of replenishing aquifers which account for virtually all of

the water for drinking in the county. Potable water is an essential life sustaining element. Preventing contamination is necessary to avoid exorbitant costs, hardships and potential harm to the people of Whitman County. The identification of areas with critical recharging effects on aquifers used for potable water is intended to assist in protecting the quantity and quality of ground water in the aquifer for the use and benefit of the citizens of the county.  
(Res. 51238 (part), 1997).

#### **9.40.020 Definitions.**

1. "Activity" means human activity associated with the use of land or its resource.
2. "Applicant" means a person who files an application for a permit under this chapter and who is either the owner of the land on which that proposed activity would be located, a lessee of the site, or the authorized agent of the owner.
3. "Areas with a critical recharging effect on aquifers used for potable water" or "aquifer recharge areas" means areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water. (WAC 365-190-030(2)).
4. "Aquifer" means those areas of underground water-bearing stratum identified as the Wanapum Basalt (a.k.a. Upper or Wanapum Aquifer), and/or the Grande Ronde Basalt (a.k.a. Lower or Grande Ronde Aquifer) underlying Whitman County and used as sources for potable water.
5. "Buffer" means an area that surrounds and protects aquifer recharge areas and their functions from adverse impacts.
6. "Contamination" means the presence of a constituent or substance in ground water located within an aquifer that renders the water nonpotable, and/or exceeds the maximum allowable concentration for such constituent or substance as provided by either state or federal law.
7. "County public works director and/or the county engineer" means the Whitman County public works director and/or the county engineer, or his/her designee.
8. "Critical" means crucial or of supreme importance.
9. "CZC area" means certificate of zoning compliance area or the area which has been delineated for the planned building or development.
10. "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.
11. "Development envelope" (also termed "building envelope") means the area of a site or a parcel of land for which development has been approved. For rural residences, this has been defined for certificates of zoning compliance as the area of a parcel in which it is suitable to construct structures and allow for uses such as wells, drain fields, driveways, etc.

12. "Emergency" means an event or set of circumstances which demands immediate action to preserve public health, protect human life and property. Financial circumstances are not emergencies.

13. "Grading" means excavation or fill or any combination thereof, including but not limited to the establishment of a grade following the demolition of a structure or preparation of a site for construction or development.

14. "Minor modification" means a modification which does not adversely impact functions.

15. "Ongoing agriculture, mineral and forestry land activities" means those land activities conducted on agricultural, mineral or forestry lands and involved in the production of crops or livestock; minerals, logs, trees or forest products: for example, thinning, trimming or spraying of trees, the mining and crushing of rock, the operation and maintenance of pastures and hayfields, farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, and normal maintenance, repair or operation of existing serviceable structures, facilities or improved areas. Activities which bring a currently inactive area into agricultural, mineral or forestry use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a nonagricultural, nonmineral or nonforestry use or has lain idle for more than five years, unless the idle land is registered in a federal or state soil conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals or drainage ditches related to an existing ongoing agricultural, mineral or forestry activity.

16. "O.H.W.M." (ordinary high water mark) means the mark on all lakes, streams and ponds that will be found by examining the beds and banks and ascertaining where the presence and action of waters so common and usual and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland in respect to vegetation. (RCW 90.58.030(2)(b), as now or hereafter amended).

17. "Perennial" means containing water continuously year round. Exception, in applying WCC 9.40.060(A)(8) the United States Geologic Survey map's legend designation as "perennial" shall apply. (The latest USGS map(s) for the Whitman County area is the 1964 edition, if a subsequent edition is published it shall become the official reference for this criterion.)

18. "Potable water" means water which meets the quality standards for drinking prescribed by the United States Environmental Protection Agency's National Interim Primary Drinking Water Regulations, published in 40 CFR Part 141, and 40 CFR 147.2400. (Adopted in part from Department of Labor and Industries, General Safety and Health Standards, WAC 296-24-12002, as now or hereafter amended).

19. "Planning office" means the Whitman County planning office.

20. Qualified Ground Water Scientist. For the purposes of this chapter a "qualified ground water scientist" must be a hydrogeologist, engineer, hydrologist, geoscientist, or other person, including a resource technician employed by the applicable conservation district and/or the Natural Resource Conservation Service, who meets all the following criteria: (a) has received a baccalaureate or post-graduate degree in the natural sciences or engineering; and (b) has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certification or completion of accredited

university programs that enable that individual to make sound professional judgments regarding those issues set forth in WCC 9.40.060(C).

21. "RCW" means the Revised Code of Washington.
22. "Recharge effect" means the process of adding to or replacing water within an aquifer.
23. "NRCS" means Natural Resource Conservation Service (formerly SCS, Soil Conservation Service).
24. "Serviceable structures" means a structure which has not deteriorated to the extent that it would have to be replaced. The Whitman County zoning code describes a structure that has lost more than seventy-five percent of its assessed value as being required to conform to code when replaced or repaired.
25. "Site" means any lot or parcel of land or contiguous combination thereof, where development and/or activities are proposed, performed or permitted.
26. "Subject property" means the site where an activity requiring a permit or approval under this chapter will occur.
27. "WAC" means Washington Administrative Code.
28. "Watershed" means the geographic region within which water drains into a particular river, stream, or body of water.
29. "WCC" means the Whitman County Code.
30. RCW 9A.72.085. As referred to in this chapter, provides:

"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct": \_\_\_\_\_ (Date and Place) \_\_\_\_\_ (Signature)  
(Res. 51238 (part), 1997).

#### **9.40.030 Relationship to other jurisdictional agencies.**

In cases where other agencies exert jurisdictional control over aquifer recharge areas (including, but not limited to, the Army Corps of Engineers, the United States Fish and Wildlife Service, the Environmental Protection Agency, United States Department of Agriculture, Bureau of Land Management or the Washington State Departments of Fish and Wildlife, Natural Resources, or Ecology) and it is determined by the county public works director and/or the county engineer that the permit conditions satisfy the requirements of this chapter, the county public works director and/or the county engineer may allow requirements imposed by these jurisdictions to substitute for portions, if not all, of the requirements of this chapter. The county public works director and/or the county engineer's decision shall be in writing and mailed to the applicant. Applicants must submit a copy of the agency's application, permit conditions and detailed plans to the county public works director and/or the county engineer in order for this exemption to be reviewed and accepted or rejected.  
(Res. 51238 (part), 1997).

#### **9.40.035 Procedure.**

A. An applicant seeking to develop property which requires any type of county permit or approval shall submit with the application a certified statement, complying with RCW 9A.72.085, (see WCC 9.40.020(30)), listing each of the criteria as set forth in WCC 9.40.060(A) and indicating that it either applies or does not apply to the parcel or its present or future development. Any application that fails to contain this statement or fails to indicate whether any one of the criteria applies or does not apply, shall be rejected and only accepted upon resubmission of the completed statement. "Unknown" or a similar response will not be accepted.

B. If the development meets either criterion under WCC 9.40.060(A)(3) or (A)(4), or if the site or development meets any two of the remaining criteria in WCC 9.40.060(A), the planning office shall direct the applicant to comply with WCC 9.40.060(B) and submit a certified hydrogeologic assessment.

C. If an applicant's statement asserts that none of the WCC 9.40.060(A) criterion apply to the parcel or its present or future development, the planning office may accept the statement and proceed with the permitting or approval process. Except, if the planning office has or obtains information, prior to the permit or approval being finalized, which clearly establishes the applicant's statement is incorrect, in which case the applicant will be advised in writing of the inconsistent information and advised to either: (1) provide an amended statement adding the designated criterion as being applicable and obtain a hydrogeologic assessment; or (2) present sufficient countering information clearly establishing that the basis for the planning office's concern is incorrect. If the applicant selects to proceed under subsection (2), upon receipt of the applicant's information the planning office shall review the information and obtain whatever additional assistance may be required to resolve the issue. The final determination concerning whether a hydrogeologic assessment is required shall be with the director of public works. The director of public works' decision shall be final and no interlocutory appeal shall be allowed. Any issue concerning a hydrogeologic assessment shall be joined with any final appeal process pursuant to the procedure applicable to the specific permitting or approval process involved.

D. The applicant and the planning office shall accept the hydrogeologic assessment's findings, conclusions and all recommendations, conditions and/or requirements contained therein pertaining to an aquifer recharge area.

E. Should the hydrogeological assessment conclude that the development will have a critical effect on an aquifer recharge area, then the applicant shall incorporate all the recommendations, conditions and/or requirements for protecting the area having a critical recharging effect on aquifers used for potable water into the development's plan. The completed hydrogeologic assessment shall be received by the planning office with the development's plans setting out the mitigation measures and their implementation as required by the assessment before any permit or approval is granted. The granting of any permit or approval shall be conditioned upon complete and continued implementation of the mitigation measures. The planning office shall have the responsibility to monitor all recommendations, conditions and/or requirements as set forth in the hydrogeologic assessment for protecting the areas with a critical recharging effect on aquifers used for potable water and enforce, through its applicable permitting or approval process and/or any other applicable statutes or ordinances, the implementation and continued maintenance of the hydrogeological assessment's recommendations, conditions and/or requirements.  
(Res. 51238 (part), 1997).

#### 9.40.040 Classification.

A. Due to the unique hydrologic features of Whitman County, areas having a critical recharging effect on aquifers used for potable water shall be classified on the basis of critical importance in maintaining the potability of the water contained within the aquifer. The primary sources of potable water in Whitman County are the Wanapum and Grande Ronde aquifers. Overburden aquifers in the Palouse loess formation are typically of low yield and have been found to be insignificant for supplying potable water.

B. There are four general processes by which surface water is transferred into an aquifer.

1. Diffuse aquifer recharge involves rainfall and snow melt percolating through the soils of the county over geologic time periods, (thousands of years), and entering the aquifers used for potable water. This process allows for the potential removal of contaminants by filtration, chemical reaction and biological interaction, such that in Whitman County the water entering the aquifers by this process is of extremely high quality. This process, county wide, accounts for a high percentage of the quantity of water entering the aquifers from within the county. However, with a total of one million three hundred seventy-seven thousand nine hundred twenty square acres within the county, the amount of rain fall or snow melt attributable to any parcel of twenty acres or less, (i.e., 1/68, 896th), is statistically insignificant for consideration.
2. Rapid aquifer recharge involves a direct contact between surface water or surface runoff water and the aquifer. Concerning the two aquifers underlying Whitman County, this appears to be a result of surface water or surface runoff water entering the aquifers via the geological formation referred to as the "sediments of Bovill," which are located primarily on the eastern edge of the Pullman-Moscow basin in Latah County, Idaho, near Moscow Mountain. The "sediments of Bovill" may account for a considerable quantity of recharge in the Idaho portion of the Pullman-Moscow Basin. However, this process has not been documented to occur within Whitman County to the best available science.
3. Interconnected aquifer recharge involves the transfer of surface water from a perennial stream, lake or pond into the ground water and then through natural geologic features, such as fissures and coarse grained sediments, into the aquifer. This process falls between the diffuse aquifer recharge and the rapid aquifer recharge processes in both the time involved for water to move into the aquifer and the natural purification process. Quantitatively, there has not been sufficient research to determine the amount of surface water entering the aquifer from within Whitman County through this process. However, due to the high quality of the aquifer water under Whitman County the scientific community theorizes the amount is minimal in relation to the overall recharging of the aquifer through the diffuse and rapid recharge processes.
4. Artificial aquifer recharge involves the transfer of surface or ground water into an aquifer through a course created by humans. In Whitman County this consists entirely of existing or abandoned water wells. In this process the potential for contamination of the aquifer is at its highest level and requires the most stringent level of protection. For development, these protections are presently provided for in RCW 18.104, Water Well Construction, and under the exclusive control of the Department of Ecology.

(Res. 51238 (part), 1997).

#### **9.40.050 Exemptions.**

All ongoing agricultural, mineral and forestry activities are exempt from this chapter. Only when an agricultural activity changes to a nonagricultural use, or a mineral activity changes to a nonmineral use, or a forestry activity changes to a nonforestry use, will such parcel then be subject to regulation by this chapter. (Res. 51238 (part), 1997).

#### **9.40.055 Emergency permit.**

Notwithstanding the provisions of this chapter or any other laws to the contrary, the county public works director and/or the county engineer may grant an emergency permit in an aquifer recharge area if:

- A. The county public works director and/or the county engineer determines that immediate action is needed to preserve public health, safety, human life or property. Financial circumstances shall not be considered;
- B. The anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this chapter and other applicable laws;
- C. Any emergency permit granted shall incorporate, to the extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for nonemergency activities under this act and shall:
  - 1. Be limited in duration to the time required to complete the authorized emergency activity, not to exceed ninety days, and
  - 2. Require, within this ninety-day period, the restoration of any aquifer recharge area altered as a result of this emergency activity, except that if more than ninety days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration;
- D. Issuance of an emergency permit by the county public works director and/or the county engineer does not preclude the necessity to obtain necessary approvals from appropriate federal and state authorities;
- E. Notice of the issuance of the emergency permit and request for public comments shall be published once in the newspaper having a general circulation in Whitman County no later than ten days after issuance of the emergency permit;
- F. The emergency permit may be terminated at any time upon determination by the county public works director and/or the county engineer that the action was not or is no longer necessary to preserve public health, safety, human life or property.

(Res. 51238 (part), 1997).

#### **9.40.060 Evaluation.**

A. Evaluation. Any development, not otherwise excepted from this chapter, requiring any type of county approval or permit shall be required to obtain a hydrogeologic assessment if (i) either the site or the development meets two or more of the following criteria, or (ii) the development meets either subsection (A)(3) or (A)(4) of this section:

1. Within a wellhead protection zone designated under WAC 246-290;
2. The site has ten feet or less of unconsolidated sediment formed of loess and/or glacial outwash and is located in a channeled scabland with exposed basalt outcroppings within five hundred feet of the development envelope;
3. The site will be utilized for hazardous substance, (as now or hereafter defined in RCW 70.105D.020 (7)), processing, storage or handling in applications or quantities larger than is typical of household use;
4. The site will be utilized for hazardous waste treatment and storage as set forth in RCW 70.105 Hazardous Waste Management, as now or hereafter amended;
5. The development involves a subdivision, or, long or short plat and includes present or future plans to construct three or more dwelling units, (see WCC 19.03.200 as now or hereafter defined), and the dwelling units will not be connected to a public sewer system;
6. A proposed commercial and industrial site that is not on a public sewer system and the main structure exceeds four thousand square feet;
7. Commercial feedlots;
8. The development envelope is within two hundred feet of the O.H.W.M. of a river, stream, lake or pond and by reference to the USGS map is identified as "perennial" thereon. (See 9.40.020(17)).

(To assist applicants in complying with subsection (A)(8) of this section, the following is a nonexclusive list of generally accepted rivers, streams, and a lake within the county that are or portions are identified as being "perennial": North and South Forks of the Palouse River, Palouse River, Snake River, Union Flat Creek, Paradise Creek, Rock Lake, Rock Creek, Hangman Creek, and Pine Creek.)

B. If a hydrogeologic assessment is required, it shall be conducted by a qualified ground water scientist, as defined in WCC 9.40.020(20).

C. The hydrogeologic assessment shall include as a minimum the following information:

1. The professional qualifications of the qualified ground water scientist and the qualifications of any person(s) involved with conducting any portion of the assessment;
2. The reference and information sources used in making the assessment;

3. A description of the site's geologic and hydrogeologic settings; for subdivisions, or long or short plats, this will include all parcels planned or intended for present or future development;
4. Identification of any underlying aquifer(s);
5. Measured or inferred, ground water elevation, flow direction, hydraulic gradient and if determined by inference the specific data used to make the inference;
6. Depth to water table;
7. Measured or estimated permeability of surficial soil and geologic materials and if estimated stating the specific data upon which the estimate is based;
8. Within two thousand five hundred feet of the proposed present or future development envelope, an inventory of water wells, springs, lakes, perennial rivers, perennial streams, and perennial ponds of two acres or more;
9. Proposed source of water for the site(s);
10. Proposed method of sewage disposal for the development;
11. A susceptibility assessment of the site(s) as being an interconnected aquifer recharge area;
12. Discussion of the critical recharging effect on aquifers used for potable water that the site may have;
13. Discussion of the risk factors involved in the development that will affect the potability of the aquifer;
14. Recommendations for changes in the development proposal, if needed, to substantially minimize the stated risk of aquifer contamination;
15. The hydrogeologic assessment shall be in writing, certified in accordance with RCW 9A.72.085, (See WCC 9.40.020(30)) and submitted to the Whitman County planning office for analysis, review and/or implementation.

D. The diffuse aquifer recharge process may be excluded from consideration in the assessment unless the development envelope exceed twenty acres.  
(Res. 51238 (part), 1997).

#### **9.40.070 Designation and protection.**

A. Designation. There is insufficient scientific data, at this time, to determine with any specificity the location of areas having a critical recharging effect on aquifers used for potable water within the boundary of Whitman County. However, the best available science suggests that the above criteria will assist in

determining the existence of such areas. Therefore, any area found via this chapter to be an area having a critical recharging effect on an aquifer used for potable water shall be designated a critical aquifer recharge area, and a map maintained by the Whitman County planning office shall set forth each such area.

B. Protection. Any proposed development in an area found to have a critical recharging effect on an aquifer used for potable water as determine through this chapter shall, by use of best available science, mitigate the potential for contaminating the aquifer.  
(Res. 51238 (part), 1997).

## **Chapter 9.50**

### **WATER CONSERVANCY BOARD**

#### Sections:

**9.50.010 Authorization for Whitman County water conservancy board.**

**9.50.020 Water board purpose and objective.**

**9.50.030 Water board formation and administrative authority.**

**9.50.040 Water board operations.**

**9.50.050 Amendments to the bylaws.**

**9.50.060 Effective date.**

#### **9.50.010 Authorization for Whitman County Conservancy Board.**

As approved by Ordinance No. 56749 of the Whitman County Commissioners, the Whitman County water Conservancy Board (hereafter referred to as the Water Board) is established as a public corporate and political body, and a separate unit of local government in Washington State, as authorized under Title 90 RCW. Conduct and operations of the Water Board shall be in compliance with Title 90 RCW and are subject to review by the Director of the Washington State Department of Ecology.  
(Ord. 59415 (part), 2002: Ord. 56748 (part), 2000).

#### **9.50.020 Water Board purpose and objective.**

1. The Water Board shall expedite the administrative process for non-contested and voluntary water transfers among water right holders and shall convey greater operational control to local water managers and water right holders.

2. Voluntary water transfers between users can re-allocate water use in a manner that will result in more efficient applications of water resources to reduce water shortages, to save capital outlays, to reduce development costs, and to provide an incentive for investment in water conservation efforts by water right holders.

(Ord. 59415 (part), 2002: (Ord. 56748 (part), 2000).

#### **9.50.030 Water Board formation and administrative authority.**

1. The Whitman County Water Conservancy Board is formed under legislative authority by ordinance of the Whitman County Commissioners and which specifies the need for a Water Board within the county area.

2. The Water Board shall consist of five Commissioners appointed by the Whitman County Commissioners to serve six-year terms with an initial Water Board Chairman designated by the Whitman County Commissioners. The terms for initial appointments to the Water Board shall be staggered to serve as two, four, and six-year terms respectively, from the date of appointment. Water Board appointments shall be at the discretion of the Whitman County Commissioners and shall not be limited to water right holders petitioning for board formation; however, the county Commissioners must ensure that individual water right holders who divert water for use within the county are represented on the Water Board.

3. The Whitman County Commissioners may elect to appoint to the Water Conservancy Board an alternate member who shall fulfill all requirements of the Principal Water Board members but shall have no right to vote or participate in decision making unless a Principal Board member through written notice indicates an inability to attend and participate in decision making, whereupon the alternate may act in such Water Board member's place. The Whitman County Commissioners may determine the term of the alternate board member.

4. Appointments to the Water Board shall be from legal residents of Whitman County. The Water Board Commissioners shall serve without compensation.

5. Water Board Commissioners may not participate in Water Board decisions to approve water transfers until they have successfully completed the necessary training related to water transfers within the state as provided by and mandated by the Washington State Department of Ecology.

6. The Water Board constitutes an independently funded entity and may provide for its own funding as determined by the Water Board Commissioners. The Water Board may accept grants or stipends; may adopt fees for processing applications for transfers of water rights; and, may provide for funding under other lawful means as approved by the Water Board. The Water Board may not impose taxes or acquire property by the exercise of eminent domain.

7. The Water Board may acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or interest therein; may enter into and perform all necessary contracts; may enter into contracts with or appoint necessary agents for professional services; may perform lawful acts required to carry out its management obligations; and, may sue or be sued.

8. The Water Board will determine a schedule for meetings and the conduct of business with notice of meetings published within county newspapers. Water board activities are subject to the open public meetings act under Title 42 RCW.  
(Ord. 59415 (part), 2002; Ord. 56748 (part), 2000).

#### **9.50.040 Water Board operations.**

1. The Water Board provides a water transfer exchange through which water right holders may seek a formal water right transfer of all or part of their legitimately established water right. The Water Board may review water transfer proposals that involve all types of water transfers, such as intra- and inter-sector transfers (within or between different beneficial uses); short-term or long-term transfers (leases); or permanent water transfers, but is not limited to surface or ground water rights, permanent or seasonal. The Water Board may approve transfers involving a change in place of use, point of diversion or withdrawal, purposes of use, and quantity permitted.

2. The Water Board may approve the transfer of a water right or claim filed under Title 90 RCW that has not been adjudicated. Neither the Water Board's approval of a transfer, nor the director's (DOE) approval of the Water Board's action constitutes an adjudication of the validity, priority, or quantity of the transferor's water right; and, such approval does not preclude or prejudice a subsequent challenge to the transferor's water right.

3. The Water Board shall maintain and publish all information made available to it concerning water rights listed with the Water Board and concerning application to the Water Board for approval of a water transfer functioning as an open water exchange.

4. Application to the Water Board for water transfer shall be made on a form provided by, and/or reviewed by, the Washington State Department of Ecology and shall contain such information as deemed necessary or required by the Water Board in order to act upon the application. The application shall include, but not be limited to, information sufficient to establish to the Water Board's satisfaction the transferor's right to the quantity of water being transferred; a description of any applicable limitations on the right to use water, including the point of diversion or withdrawal; place of use; source of supply; purpose of use; quantity of use permitted; time of use; and, period of use.

5. The transferor and transferee of any proposed water transfer may apply to the Water Board for approval of the transfer of the proposed water to be transferred if it is currently diverted or used within Whitman County; or, if it would be used within Whitman County with transfer approval. In case of a proposed water transfer in which water that is currently being used within Whitman County would be diverted to outside of the geographic boundaries of the county, the Water Board shall hold a public hearing within the county of the proposed diversion. The Water Board shall provide for prominent publication of notice of such hearings in the county newspaper for the purpose of affording an opportunity for interested persons to comment on the transfer proposal.

6. With the filing of an application to the Water Board, the Water Board shall publish notice of the filing in county newspapers and send notice to the director of the Washington State Department of Ecology. Any person or entity may submit comments to the Water Board concerning the notice of the water transfer application.

7. Any water right holder claiming detriment or injury (impairment) to an existing water right as a result of a proposed water transfer may formally intervene in the application process before the Water Board. When detriment or injury is claimed, the Water Board shall hold a formal public hearing concerning the transfer. The Water Board shall receive, or request from the party claiming injury, such evidence as it deems necessary to determine the validity of the claim of impairment. If the Water Board determines that the claim of impairment is valid, then it may in its discretion deny approval of the water transfer, unless the applicant and the impaired party agree on a solution mutually acceptable to applicant and impaired party and approved by the Water Board.

8. If a majority of the Water Board determines that an application is complete following review, and that the transfer can be made without impairment to existing water rights, the Water Board shall issue the applicant a certificate approving the transfer subject to review by the director of the Washington State Department of Ecology.

9. If the Water Board approves a water right application that is formally challenged as creating an impairment under the Water Board's review process, then the Water Board shall submit notice by mail to the party claiming impairment of the Water Board's action; and, the Water Board shall inform the party claiming impairment of the right to appeal the Water Board's decision before the director of the Washington State Department of Ecology.

10. When a transfer is approved by the Water Board, the Water Board shall submit a copy of the certificate conditionally approving the transfer and of the record of decision (ROD), which summarizes the information, and findings on which the Water Board based their decision to the director of the Washington State Department of Ecology. The director has forty-five days in which to take action for approval or denial of the certificate. If no action is taken by the conclusion of the forty-five day period, the Water Board's decision is final.

11. A Water Board commissioner, who has an ownership interest in a water right subject to an application for transfer before the Water Board, shall not participate directly in the review process or in the Water Board's certificate decision. A Water Board commissioner who is an employee of a public or private water purveyor that has an ownership interest in a water right subject to an application for transfer before the Water Board shall not participate directly in the review process or in the Water Board's certificate decision.

12. The Water Board will keep a complete record of water transfer filings, and associated documents and information described in the above sections, at the Whitman conservation district offices located in Colfax, Washington; and, it will provide a copy of the same record to the appropriate regional office of the Department of Ecology.  
(Ord. 59415 (part), 2002: Ord. 56748 (part), 2000).

#### **9.50.050 Amendments to the bylaws.**

1. These bylaws may be altered, amended, or repealed by a majority of the Water Board at a regular or special meeting of the Water Board, subject to final approval by the Whitman County Board of Commissioners and subject to review by the Director of the Washington State Department of Ecology.  
(Ord. 59415 (part), 2002: Ord. 56748 (part), 2000).

#### **9.50.060 Effective date.**

1. These bylaws are subject to review by the director of the Washington State Department of Ecology within forty-five days following receipt of the bylaws and the county's ordinance forming the Water Board.

2. These bylaws shall be effective upon notification of review completion by the Washington State Department of Ecology but in no event not later than the allowed forty-five day period.

3. These bylaws are subject to approval by the Whitman County board of Commissioners and by the initiating Water Board.  
(Ord. 59415 (part), 2002: Ord. 56748 (part), 2000).