

**Minutes for October 21, 2013**

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**074708 THE BOARD OF WHITMAN COUNTY COMMISSIONERS** met in their Chambers in the Whitman County Courthouse, Colfax, Washington for **Monday, October 21, 2013** at **9:00 a.m.** Chairman Michael Largent, Arthur Swannack and Dean Kinzer, Commissioners and Maribeth Becker, CMC, Clerk of the Board attended.

**9:00 a.m. - Call to Order/Board Business/Workshop.**

Present: Gary Petrovich and Kelli Campbell.

**074709 1.** Items discussed included criminal justice contracts and accounting/financial issues. No action taken.

**9:45 a.m. - Recess.**

**10:00 a.m. - Reconvene/Pledge of Allegiance.**

Present: Bill Tensfeld.

**D074709A 2.** Flag Salute.

**CONSENT AGENDA:**

**D074709B 3. Motion** by Commissioner Swannack to accept the consent agenda. Motion **seconded** by Commissioner Kinzer and **carried**.

**074710 4.** General Claims/Veterans/Payroll warrants numbered **306559-306671** for **\$397,849.07** approved.

**074711 5.** October 7, 2013 minutes approved.

**074712-074716 6.** Personnel change orders approved.

**074717-074718 7.** Commissioner Swannack **moved** Commissioner Kinzer **seconded** the motion and it **carried** to approve the Kittcom interlocal agreements.

**074719 8.** Commissioner Kinzer **moved** Commissioner Swannack **seconded** the motion and it **carried** to reappoint Mary Collins to a 4-year term on the Planning Commission. Ms. Collins' term will expire 12/31/16.

**CORRESPONDENCE:**

**074720 9.** The excess levy amounts approved for collection by voters of the Pullman School District for 2014 was received from the Pullman Public Schools.

**074721 9A.** A notice of liability and inaction, October 7, 2013 regarding Smart Meter and Personal Wireless Services Facilities was received from Karen Nold, Means for Change.

**BOCC MINUTES-10/21/13**

**074722 9B.** Notice was received for the PBC-KIP Communication Tower conditional use permit application #C-13-3 hearing before the Pullman Board of Adjustment.

**074723 9C.** An executed copy of Administrative Offices of the Courts interagency agreement #IAA14143 for CASA funding received.

**074724 10.** Commissioners' pending list reviewed.

**10:25 a.m. - Recess.**

**11:00 a.m. - Reconvene/Board Business Continued/Public Works.**

Present: Mark Storey, Alan Thomson, Jerry Basler, Dan Gladwill, Judy McMurray and Cheryl Holcomb.

**ACTION ITEMS**

**074725 11.** Hearing convened by the Chairman for the proposed N-Hot Water LLC zone change. The Board having reviewed the information did not require a staff report. There being no comments from those in attendance, the hearing was adjourned.

**074726 12.** Commissioner Swannack **moved** Commissioner Kinzer **seconded** the motion and it **carried** to accept the Planning Commission's recommendation to approve the zone change of a 4.21 acre parcel and a 1.07 acre parcel for N-Hot Water LLC from Agricultural District to a Heavy Industrial District.

**ORDINANCE NO. 074726**

**AN ORDINANCE AMENDING THE WHITMAN COUNTY ZONING MAP TO CHANGE THE ZONING FROM AGRICULTURAL DISTRICT TO A HEAVY INDUSTRIAL DISTRICT.**

BE IT ORDAINED and enacted by the Board of County Commissioners of Whitman County, State of Washington, it having been determined by the Board after hearing the Recommendations and Findings of Fact of the Whitman County Planning Commission that these should be accepted and this action is consistent with the Whitman County Comprehensive Plan.

Change the zoning of the two N-Hot Water LLC parcels from the Agricultural District to a Heavy Industrial District as may be allowed by the Whitman County Zoning Ordinance, Chapter 19.04. The site of this proposed rezone is located approximately two miles north of Colfax on the west side of SR 195 at 40278 SR 195, in the SE ¼ of Section 35, Township 17 N., Range 43 E., W.M., Whitman County, Washington.

PASSED AND APPROVED by the Board of Whitman County Commissioners of Whitman County, Washington, on the 21<sup>st</sup> day of October, 2013.

BOARD OF COUNTY COMMISSIONERS  
OF WHITMAN COUNTY, WASHINGTON

Michael Largent, Chairman

ATTEST:

\_\_\_\_\_  
Arthur D Swannack, Commissioner

\_\_\_\_\_  
Maribeth Becker, CMC  
Clerk of the Board

\_\_\_\_\_  
Dean Kinzer, Commissioner

**074727**      **13.** Hearing convened by the Chairman for proposed revisions to the Critical Areas ordinance. Alan Thomson summarized the proposed revisions as presented and noted Whitman County's ordinance is being used as a model ordinance by the state. There being no comments from those in attendance, the hearing was adjourned.

**074728**      **14.** Commissioner Kinzer **moved** Commissioner Swannack **seconded** the motion to approve the amendment of the Whitman County Critical Areas ordinance by replacing Chapter 9.10-Wetlands; Chapter 9.20-Fish and Wildlife Habitat Conservation Areas; Chapter 9.40-Critical Aquifer Recharge Area Designation and Prevention; and Chapter 19.50-Flood Management Overlay District with Chapter 9.05-Critical Areas. Commissioner Swannack said much of this has been forced on the county by the DOE/EPA. The other members personally commended Planning staff for crafting some charting paths. Alan Thomson was of the option that landowners should not be burdened if not necessary. Motion **carried**.

**ORDINANCE NO. 074728**

**AN ORDINANCE ADOPTING WHITMAN COUNTY CODE:  
CHAPTER 9.05 - CRITICAL AREAS**

**AND REPEALING WHITMAN COUNTY CODE:**

**CHAPTER 9.10 - WETLANDS**

**CHAPTER 9.20 - FISH AND WILDLIFE HABITAT CONSERVATION AREAS**

**CHAPTER 9.40 - CRITICAL AQUIFER RECHARGE AREA DESIGNATION AND PREVENTION**

**CHAPTER 19.50 - FLOOD MANAGEMENT OVERLAY DISTRICT**

This revision of the Whitman County critical areas ordinance fulfills the updating requirements of the Growth Management Act. These changes are consistent with the Whitman County Comprehensive Plan and Zoning Ordinance.

BE IT ORDAINED and enacted by the Board of County Commissioners of Whitman County, State of Washington, it having been determined by the Board after hearing the Planning Department's Recommendations and Findings of Fact, after the Board's public hearing and adoption of Findings of Fact.

PASSED AND APPROVED by the Board of Whitman County Commissioners of Whitman County, Washington, on the 21st day of October, 2013.

BOARD OF COUNTY COMMISSIONERS  
OF WHITMAN COUNTY, WASHINGTON

\_\_\_\_\_  
Michael Largent, Chairman

ATTEST:

\_\_\_\_\_  
Arthur D Swannack, Commissioner

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Maribeth Becker, CMC  
Clerk of the Board

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Dean Kinzer, Commissioner

**CHAPTER 9.05 - CRITICAL AREAS**

**Section 9.05 General Provisions**

**Section 9.05A Wetlands**

**Section 9.05B Fish and Wildlife Habitat Conservation Areas**

**Section 9.05C Critical Aquifer Recharge Areas**

**Section 9.05D Geologically Hazardous Areas**

**Section 9.05E Frequently Flooded Areas**

**Purpose and General Provisions**

**9.05.010 Repeal**

**9.05.020 Authority and Title**

**9.05.030 Purpose**

**9.05.040 Relationships to Other Regulations**

**9.05.050 Severability**

**9.05.060 Jurisdiction – Critical areas Fees**

**9.05.070 Protection of Critical Areas**

**Best Available Science**

**9.05.080 Best Available Science**

**Applicability, Exemptions, and Exceptions**

**9.05.090 Applicability**

**9.05.100 Exemptions**

**9.05.110 Exceptions – Public Agency and Utility**

**9.05.120 Exceptions – Reasonable Use**

**Allowed Activities**

**9.05.130 Allowed Activities**

**Critical Area Project Review Process**

**9.05.140 General Requirements**

**9.05.150 Critical Area Pre-application Consultation**

**9.05.160 Critical Area Identification Form**

**Critical Area Report**

**9.05.170 Critical Area Report – Requirements**

**9.05.180 Critical Area Report – Mitigation Requirements**

**9.05.190 Mitigation Sequencing**

**9.05.200 Mitigation Plan Requirements**

**9.05.210 Innovative Mitigation**

**Determination Process**

**9.05.220 Determination**

**9.05.230 Review Criteria**

**9.05.240 Favorable Determination**

**9.05.250 Unfavorable Determination**

**9.05.260 Completion of the Critical Area Review**

**9.05.270 Appeals**

**Variances**

**9.05.280 Variances**

**Unauthorized Alterations and Enforcement**

**9.05.290 Unauthorized Critical Area Alterations and Enforcement**

**Definitions**

**9.05.300 Definitions**

**PURPOSE AND GENERAL PROVISIONS**

**Section 9.05.010 – Repeal**

The current Whitman County Codes Chapter 9.10 – Wetlands, Chapter 9.20 – Fish and Wildlife Habitat Conservation Areas, Chapter 9.40 –Critical Aquifer Recharge Area Designation and Prevention, and Chapter 19.50 – Flood Management Overlay District are hereby repealed in their entirety and are replaced with this Chapter. Repeal of Chapters 9.10, 9.20, 9.40 and 19.50 does not affect any existing permits, land use applications or requirements, or existing enforcement actions.

**Section 9.05.020 – Authority and Title**

- A. As provided herein, the County Planner is given the authority to interpret and apply, and the responsibility to enforce this Chapter to accomplish the stated purpose.
- B. The County may withhold, condition, or deny development permits or activity approvals to ensure that the proposed action is consistent with this Chapter.
- C. This Chapter is known as the Whitman County Critical Areas Ordinance.

**Section 9.05.030 – Purpose**

- A. The purpose of this Chapter is to designate and classify ecologically sensitive and hazardous areas and to protect these areas and their functions and values, while also allowing for reasonable use of private property.
- B. This Chapter is to implement the goals, policies, guidelines, and requirements of the Whitman County Comprehensive Plan and the Growth Management Act.
- C. The County finds that critical areas provide a variety of valuable and beneficial biological and physical functions that benefit the County and its residents, and/or may pose a threat to human safety or to public and private property. The beneficial functions and values provided by critical areas include, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage,

conveyance and attenuation of flood waters, ground water recharge and discharge, erosion control, protection from hazards, historical, archaeological, and aesthetic value protection, and recreation.

D. **Goals.** By limiting development and alteration of critical areas, this Chapter seeks to:

1. Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides and steep slope failures, erosion, seismic events, effects from volcanic eruptions, or flooding;
2. Maintain healthy, functioning ecosystems through the protection of unique, fragile, and valuable elements of the environment, including ground and surface waters, wetlands, fish and wildlife and their habitats, and to conserve the biodiversity of plant and animal species;
3. Direct activities not dependent on critical areas resources to less ecologically sensitive sites and mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas; and
4. Prevent cumulative adverse environmental impacts to water quality, wetlands, fish and wildlife habitat, and the overall net loss of wetlands, frequently flooded areas, and habitat conservation areas.

E. The regulations of this Chapter are intended to protect critical areas in accordance with the Growth Management Act and through the application of the best available science, as determined according to WAC 365-195-900 through 365-195-925, and in consultation with state and federal agencies and other qualified professionals.

F. This Chapter is to be administered with flexibility and attention to site-specific characteristics. It is not the intent of this Chapter to make a parcel of property unusable by denying its owner reasonable economic use of the property or to prevent the provision of public facilities and services necessary to support existing development and planned for by the community without decreasing current service levels below minimum standards.

G. The County's enactment or enforcement of this Chapter shall not be construed for the benefit of any individual person or group of persons other than the general public.

**Section 9.05.040 – Relationship to Other Regulations**

A. These critical areas regulations shall apply as an overlay and in addition to zoning and other regulations adopted by the County.

B. Any individual critical area adjoined by another type of critical area shall have the buffer and meet the requirements that provide the most protection to the critical areas involved. When any provision of this Chapter or any existing regulation, easement, covenant, or deed restriction conflicts with this Chapter, that which provides more protection to the critical areas shall apply.

C. Compliance with the provisions of this Chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Shoreline Substantial Development permits, Floodplain Development permits, Hydraulic Permit Act (HPA) permits, Section 106 of the National Historic Preservation Act, U.S. Army Corps of Engineers Section 404 permits, State Section 401 Water Quality Certifications or Administrative Orders, and National Pollution Discharge Elimination System permits). The applicant is responsible for complying with these requirements, apart from the process established in this Chapter.

- D. Whitman County has opted in to the Voluntary Stewardship Program (VSP) pursuant to RCW 36.70A.700-760. Agricultural activities in and around critical areas will be addressed through the county's implementation of the VSP. However, compliance with the VSP does not constitute compliance with other federal, state, and local regulations and permit requirements as described in 9.05.040 (C).

**Section 9.05.050 – Severability**

If any clause, sentence, paragraph, section, or part of this Chapter or the application thereof to any person or circumstances shall be judged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered. The decision shall not affect or invalidate the remainder of any part thereof and to this end the provisions of each clause, sentence, paragraph, section, or part of this law are hereby declared to be severable.

**Section 9.05.060 - Jurisdiction of Critical Areas**

- A. The County shall regulate all uses, activities, and developments within, adjacent to, or likely to affect, one or more critical areas, consistent with the best available science and the provisions herein.
- B. Critical areas regulated by this Chapter include:
1. Wetlands as designated in Wetlands, Chapter 9.05A;
  2. Fish and wildlife habitat conservation areas as designated in Fish and Wildlife Habitat Conservation Areas, Chapter 9.05B;
  3. Critical aquifer recharge areas as designated in Critical Aquifer Recharge Areas, Chapter 9.05C;
  4. Geologically hazardous areas as designated in Geologically Hazardous Areas, Chapter 9.05D; and
  5. Frequently flooded areas as designated in Frequently Flooded Areas, Chapter 9.05E.
- C. All areas within the County meeting the definition of one or more critical areas, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this Chapter.

**Section 9.05.070 - Protection of Critical Areas**

Any action taken pursuant to this Chapter shall result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the best available science. All actions and developments shall be designed and constructed in accordance with Mitigation Sequencing, Section 9.05.190 to avoid, minimize, and restore all adverse impacts. Applicants must first demonstrate an inability to avoid or reduce impacts, before restoration and compensation of impacts will be allowed. No activity or use shall be allowed that results in a net loss of the functions or values of critical areas.

**BEST AVAILABLE SCIENCE**

**Section 9.05.080 – Best Available Science**

- A. **Protect Functions and Values of Critical Areas With Special Consideration to Anadromous Fish.** Critical area reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish, such as salmon and bull trout, and their habitat.
- B. **Best Available Science to be Consistent with Criteria.** The best available science is that scientific information applicable to the critical area prepared by local, state, or federal natural resource agencies, a qualified scientific professional, or team of qualified scientific professionals that is consistent with criteria established in WAC 365-195-900 through WAC 365-195-925.

C. **Characteristics of a Valid Scientific Process.** In the context of critical areas protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government's regulatory decisions, and in developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas. To determine whether information received during the permit review process is reliable scientific information, the County Planner shall determine whether the source of the information displays the characteristics of a valid scientific process. Such characteristics are as follows:

1. **Peer Review.** The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The proponents of the information have addressed the criticism of the peer reviewers. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed;
2. **Methods.** The methods used to obtain the information are clearly stated and reproducible. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to ensure their reliability and validity;
3. **Logical Conclusions and Reasonable Inferences.** The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained;
4. **Quantitative Analysis.** The data have been analyzed using appropriate statistical or quantitative methods;
5. **Context.** The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge; and
6. **References.** The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information.

E. **Absence of Valid Scientific Information.** Where there is an absence of valid scientific information or incomplete scientific information relating to a critical area leading to uncertainty about the risk to critical area function of permitting an alteration of or impact to the critical area, the County Planner shall take a "precautionary or a no-risk approach," that strictly limits development and land use activities until the uncertainty is sufficiently resolved.

## **APPLICABILITY, EXEMPTIONS, AND EXCEPTIONS**

### **Section 9.05.090 – Applicability**

- A. The provisions of this Chapter shall apply to all lands, all land uses and development activity, and all structures and facilities in the County, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the County. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of this Chapter.
- B. The County shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, without first ensuring compliance with the requirements of this Chapter, including, but not limited to, the following: building permit, clearing and grading permit, forest practices permit,



conditional use permit, shoreline conditional use permit, shoreline substantial development permit, shoreline exemption, shoreline variance, short subdivision, subdivision, planned unit development, binding site plan, zoning variance, zoning code amendment, or any other adopted permit or required approval not expressly exempted by this Chapter.

- C. Approval of a permit or development proposal pursuant to the provisions of this Chapter does not discharge the obligation of the applicant to comply with the provisions of this Chapter.

**Section 9.05.100 – Exemptions**

- A. **Exemption Request and Review Process.** The proponent of the activity may submit a written request for exemption to the County Planner that describes the activity and states the exemption listed in this Section that applies. The County Planner shall review the exemption request to verify that it complies with this Chapter and approve or deny the exemption. If the exemption is approved, it shall be placed on file with the Planning Department. If the exemption is denied, the proponent may continue in the review process and shall be subject to the requirements of this Chapter.
- B. **Exempt Activities and Impacts to Critical Areas.** All exempted activities shall use reasonable methods to avoid potential impacts to critical areas. To be exempt from this Chapter does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense.
- C. **Exempt Activities.** The following developments, activities, and associated uses shall be exempt from the provisions of this Chapter, provided that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements:
1. **Emergencies.** Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of this Chapter. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. The person or agency undertaking such action shall notify the County within one (1) working day following commencement of the emergency activity. Within thirty (30) days, the County Planner shall determine if the action taken was within the scope of the emergency actions allowed in this Subsection. If the County Planner determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions of Unauthorized Alterations and Enforcement (Section 9.05.290) shall apply. After the emergency, the person or agency undertaking the action shall fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved critical area report and mitigation plan. The person or agency undertaking the action shall apply for review, and the alteration, critical area report, and mitigation plan shall be reviewed by the County in accordance with the review procedures contained herein. Restoration and/or mitigation activities must be initiated within one (1) year of the date of the emergency, and completed in a timely manner.
  6. **Operation, Maintenance, or Repair.** Operation, maintenance, or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. Operation and maintenance includes

vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities, provided that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species.

7. **Passive Outdoor Activities.** Recreation, education, and scientific research activities that do not degrade the critical area, including fishing, hiking, and bird watching. Trails must be constructed pursuant to Public and Private Pedestrian Trails [Section 9.05.130(C)(5)]; and
8. **Forest Practices.** Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practices regulations, Title 222 WAC, and those that are exempt from the County's jurisdiction, provided that forest practice conversions are not exempt.
9. **All Existing and Ongoing Agricultural Activities.** Existing and ongoing agricultural activities as defined in RCW 84.34.020(2) and Section 9.05.300 – Definitions (Existing and Ongoing Agricultural Activities) are exempt from this Chapter. If agricultural activities cease then that land would be subject to this ordinance.

**Section 9.05.110 – Public Agency and Utility Exception**

- A. If the application of this Chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this Section.
- B. **Exception Request and Review Process.** An application for a public agency and utility exception shall be made to the County and shall include a critical area identification form; critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The County Planner shall prepare a recommendation to the Board of Adjustment or Hearing Examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with public agency and utility exception review criteria in Subsection (D).
- C. **Hearing Body/Examiner Review.** The Board of Adjustment or Hearing Examiner shall review the application and the County Planner's recommendation, and conduct a public hearing pursuant to the provisions of the applicable County code. The Board of Adjustment or Hearing Examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in Subsection (D).
- D. **Public Agency and Utility Review Criteria.** The criteria for review and approval of public agency and utility exceptions follow:
  1. There is no other practical alternative to the proposed development with less impact on the critical areas;
  2. The application of this Chapter would unreasonably restrict the ability to provide utility services to the public;
  3. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
  4. The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and
  5. The proposal is consistent with other applicable regulations and standards.

- E. **Burden of Proof.** The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

**Section 9.05.120 - Reasonable Use Exception**

- A. If the application of this Chapter would deny all reasonable economic use of the subject property, the County shall determine if compensation is an appropriate action, or the property owner may apply for an exception pursuant to this Section.
- B. **Exception Request and Review Process.** An application for a reasonable use exception shall be made to the County and shall include a critical area identification form; critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW) (SEPA documents). The County Planner shall prepare a recommendation to the Board of Adjustment or Hearing Examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in Subsection (D).
- C. **Hearing Body/Examiner Review.** The Board of Adjustment or Hearing Examiner shall review the application and conduct a public hearing pursuant to the provisions of the applicable County code. The Board of Adjustment or Hearing Examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use exception review criteria in Subsection (D).
- D. **Reasonable Use Review Criteria.** Criteria for review and approval of reasonable use exceptions follow, one or more may apply:
1. The application of this Chapter would deny all reasonable economic use of the property;
  2. No other reasonable economic use of the property has less impact on the critical area;
  3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;
  4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this Chapter, or its predecessor;
  5. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
  6. The proposal will result in no net loss of critical area functions and values consistent with the best available science; or
  7. The proposal is consistent with other applicable regulations and standards.
- E. **Burden of Proof.** The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

**ALLOWED ACTIVITIES**

**Section 9.05.130 - Allowed Activities**

- A. **Critical Area Report.** Activities allowed under this Chapter shall have been reviewed and permitted or approved by the County or other agency with jurisdiction, but do not require submittal of a separate critical area identification form or critical area report, unless such submittal was required previously for the

underlying permit. The County Planner may apply conditions to the underlying permit or approval to ensure that the allowed activity is consistent with the provisions of this Chapter to protect critical areas.

**B. Required Use of Best Management Practices.** All allowed activities shall be conducted using best management practices that result in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The County shall observe the use of best management practices to ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.

**C. Allowed Activities.** The following activities are allowed:

1. **Permit Requests Subsequent to Previous Critical Area Review.** Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits) if all of the following conditions have been met:
  - a. The provisions of this Chapter have been previously addressed as part of another approval;
  - b. There have been no material changes in the potential impact to the critical area or buffer since the prior review;
  - c. There is no new information available that is applicable to any critical area review of the site or particular critical area;
  - d. The permit or approval has not expired or, if no expiration date, no more than five years has elapsed since the issuance of that permit or approval; and
  - e. Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured.
2. **Modification to Existing Structures.** Structural modification of, addition to, or replacement of an existing legally constructed structure that does not further alter or increase the impact to the critical area or buffer and there is no increased risk to life or property as a result of the proposed modification or replacement, provided that restoration of structures substantially damaged by fire, flood, or act of nature must be initiated within one (1) year of the date of such damage, as evidenced by the issuance of a valid building permit, and diligently pursued to completion.
3. **Activities within the Improved Right-of-Way.** Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a County authorized private roadway except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater; subject to the following:
  - a. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the right-of-way improvement, including disturbed areas; and
  - b. Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance.
4. **Minor Utility Projects.** Utility projects which have minor or short-duration impacts to critical areas, as determined by the County Planner in accordance with the criteria below, and which do not significantly impact the function or values of a critical area(s), provided that such projects are constructed with best management practices and additional restoration measures are provided. Minor activities shall not result in the transport of sediment or increased stormwater. If utilities

cross under or go over streams this may require an HPA from the Washington Department of Fish and Wildlife. Such allowed minor utility projects shall meet the following criteria:

- a. There is no practical alternative to the proposed activity with less impact on critical areas;
  - b. The activity involves the placement of a utility pole, street signs, anchor, or vault or other small component of a utility facility; and
  - c. The activity involves disturbance of an area less than 75 square feet.
5. **Public and Private Pedestrian Trails.** Public and private pedestrian trails, except in wetlands, fish and wildlife habitat conservation areas, or their buffers, subject to the following:
- a. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas; and
  - b. Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report.
6. **Select Vegetation Removal Activities.** The following vegetation removal activities, provided that no vegetation shall be removed from a critical area or its buffer without approval from the County Planner:
- a. The removal of the following vegetation with hand labor and light equipment:
    - i. Invasive and noxious weeds as listed by the Whitman County Weed Department.
  - b. The removal of trees from critical areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property, provided that:
    - i. The applicant submits a report from a certified arborist, registered landscape architect, or professional forester that documents the hazard and provides a replanting schedule for the replacement trees;
    - ii. Tree cutting shall be limited to pruning and crown thinning, unless otherwise justified by a qualified professional. Where pruning or crown thinning is not sufficient to address the hazard, trees should be removed or converted to wildlife snags;
    - iii. All vegetation cut (tree stems, branches, etc.) shall be left within the critical area or buffer unless removal is warranted due to the potential for disease or pest transmittal to other healthy vegetation;
    - iv. The landowner shall replace any trees that are removed with new trees at a ratio of two replacement trees for each tree removed (2:1) within one (1) year in accordance with an approved restoration plan. Replacement trees may be planted at a different nearby location if it can be determined that planting in the same location would create a new hazard or potentially damage the critical area. Replacement trees shall be species that are native and indigenous to the site and a minimum of one (1) inch in diameter-at-breast height (dbh) for deciduous trees and a minimum of six (6) feet in height for evergreen trees as measured from the top of the root ball;
    - v. If a tree to be removed provides critical habitat, such as an eagle perch, a qualified wildlife biologist shall be consulted to determine timing and methods or removal that will minimize impacts; and
    - vi. Hazard trees determined to pose an imminent threat or danger to public health or safety, to public or private property, or of serious environmental degradation may be removed or pruned by the landowner prior to receiving written approval from the county provided that within fourteen (14) days following such action, the landowner

shall submit a restoration plan that demonstrates compliance with the provisions of this Chapter.

- c. Measures to control a fire or halt the spread of disease or damaging insects consistent with the state Forest Practices Act; Chapter 76.09 RCW, provided that the removed vegetation shall be replaced in-kind or with similar native species within one (1) year in accordance with an approved restoration plan; and
  - d. Unless otherwise provided, or as a necessary part of an approved alteration, removal of any vegetation or woody debris from a habitat conservation area or wetland shall be prohibited.
7. **Chemical Applications.** The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary, as approved by the County, provided that their use shall be restricted in accordance with state Department of Fish and Wildlife Management Recommendations and the regulations of the state Department of Agriculture and the U.S. Environmental Protection Agency;
  8. **Minor Site Investigative Work.** Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored.
  9. **Agricultural Ditch Cleaning and Construction.** Historically, agricultural landowners have cleaned out drainages on their property for flood control and cleaning out drain tiles. This practice can continue on existing (prior to December 23, 1985) ditches, but a floodplain evaluation is required if a floodplain is present and a wetland evaluation is required if a wetland (not farmed) is present. Construction of new drainage ditches or the relocation of existing drainage ditches through farmed or non-farmed wetlands requires permitting.

## **CRITICAL AREA PROJECT REVIEW PROCESS**

### **Section 9.05.140 - General Requirements**

A. As part of this review, the County shall:

1. Verify the information submitted by the applicant;
2. Evaluate the project area and vicinity for critical areas;
3. Determine whether the proposed project is likely to impact the functions or values of critical areas; and
4. Determine if the proposed project adequately addresses the impacts and avoids impacts to the critical area associated with the project.

B. If the proposed project is within, adjacent to, or is likely to impact a critical area, the County shall:

1. Require a critical area report from the applicant that has been prepared by a qualified professional;
2. Review and evaluate the critical area report;
3. Determine whether the development proposal conforms to the purposes and performance standards of this Chapter, including the criteria in Review Criteria, Section 9.05.220;
4. Assess the potential impacts to the critical area and determine if they can be avoided or minimized; and
5. Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of this Chapter.

**Section 9.05.150 – Critical Area Pre-application Consultation**

Any person preparing to submit an application for development or use of land that may be regulated by the provisions of this Chapter shall conduct a consultation meeting with the County Planner prior to submitting an application for development or other approval. At this meeting, the County Planner shall discuss the requirements of this Chapter; provide critical area maps, scientific information, and other source materials; outline the review process; and work with the activity proponent to identify any potential concerns that might arise during the review process, in addition to discussing other permit procedures and requirements.

**Section 9.05.160 - Critical Area Identification Form**

A. **Submittal.** Prior to the County’s consideration of any proposed activity not found to be exempt under Exemptions [Section 9.05.100] or allowed pursuant to Allowed Activities [Section 9.05.130], the applicant shall submit to the department a complete critical area identification form on forms provided by the County.

B. **Site Inspection.** Upon receipt of a project application and a critical area identification form, the County Planner shall, if he/she deems necessary, conduct a site inspection to review critical area conditions on site. The County Planner shall notify the property owner of the inspection prior to the site visit. Reasonable access to the site shall be provided by the property owner for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.

C. **Critical Area Identification Form Review Process.** The County Planner, or his/her designee, shall review the critical area identification form, conduct a site inspection if necessary, and review other information available pertaining to the site and the proposal and make a determination as to whether any critical areas may be affected by the proposal and if a more detailed critical area report shall be submitted.

1. **Decision Indicators.** The County Planner may use the following indicators to assist in determining the need for a critical area report:
  - a. Indication of a critical area on the County critical areas maps that may be impacted by the proposed activity;
  - b. Information and scientific opinions from appropriate agencies, including but not limited to the departments of Fish and Wildlife, Natural Resources, and Ecology;
  - c. Documentation, from a scientific or other reasonable source, of the possible presence of a critical area; or
  - d. A finding by a qualified professional or a reasonable belief by the County Planner that a critical area may exist on or adjacent to the site of the proposed activity.

**D. Decision on Identification Form.**

1. **No Critical Areas Present.** If after a site visit and review of all pertinent data the County Planner’s analysis indicates that the project area is not within or adjacent to a critical area or buffer and that the proposed activity is unlikely to degrade the functions or values of a critical area, then the County Planner shall rule that the critical area review is complete and note on the identification form the reasons that no further review is required. A summary of this information shall be included in any staff report or decision on the underlying permit.
2. **Critical Areas Present, But No Impact – Waiver.** If the County Planner determines that there are critical areas within or adjacent to the project area, but that the best available science shows that the proposed activity is unlikely to degrade the functions or values of the critical area, the County Planner may waive the requirement for a critical area report. A waiver may be granted if there is substantial evidence that all of the following requirements will be met:
  - a. There will be no alteration of the critical area or buffer;

- b. The development proposal will not impact the critical area in a manner contrary to the purpose, intent, and requirements of this Chapter; and
- c. The proposal is consistent with other applicable regulations and standards.

A summary of this analysis and the findings shall be included in any staff report or decision on the underlying permit.

3. **Critical Areas May Be Affected by Proposal.** If the County Planner determines that a critical area or areas may be affected by the proposal, then the County Planner shall notify the applicant that a critical area report must be submitted prior to further review of the project, and indicate each of the critical area types that should be addressed in the report.

- E. **County Planner's Determination Subject to Reconsideration.** A determination regarding the apparent absence of one or more critical areas by the County Planner is not an expert certification regarding the presence of critical areas and the determination is subject to possible reconsideration and reopening if new information is received. If the applicant wants greater assurance of the accuracy of the critical area review determination, the applicant may choose to hire a qualified professional to provide such assurances.

## **CRITICAL AREA REPORT**

### **Section 9.05.170 - Critical Area Report Requirements**

A. **Preparation by Qualified Professional.** If required by the County Planner in accordance with Section 9.05.160(D)(3), the applicant shall submit a critical area report prepared by a qualified professional as defined herein.

B. **Incorporating of Best Available Science.** The critical area report shall use scientifically valid methods and studies in the analysis of critical area data and field reconnaissance and reference the source of science used. The critical area report shall evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of this Chapter.

C. **Minimum Report Contents.** At a minimum, the report shall contain the following:

1. The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;
2. A copy of the site plan for the development proposal including:
  - a. A map to scale depicting critical areas, buffers, the development proposal, and any areas to be cleared; and
  - b. In the case of commercial or industrial development, a description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations. No stormwater plan is required for single-family residential construction.
3. The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
4. Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area;
5. A statement specifying the accuracy of the report, and all assumptions made and relied upon;
6. An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;
7. An analysis of site development alternatives including a no development alternative;



8. A description of reasonable efforts made to apply mitigation sequencing pursuant to Mitigation Sequencing Section 9.05.190 to avoid, minimize, and mitigate impacts to critical areas;
  9. Plans for adequate mitigation, as needed, to offset any impacts, in accordance with Mitigation Plan Requirements Section 9.05.200, including, but not limited to:
    - a. The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and
    - b. The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment.
  10. A discussion of the performance standards applicable to the critical area and proposed activity;
  11. Any additional information required for the critical area as specified in the corresponding chapter.
- D. Unless otherwise provided, a critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the County Planner.

**Section 9.05.180 - Critical Area Report – Mitigation Requirements**

- A. The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided in this Chapter, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall be mitigated using the best available science in accordance with an approved critical area report, so as to result in no net loss of critical area functions and values.
- B. Mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.
- C. Mitigation shall not be implemented until after County approval of a critical area report that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved critical area report.

**Section 9.05.190 - Mitigation Sequencing**

Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following sequential order of preference:

- A. Avoiding the impact altogether by not taking a certain action or parts of an action;
- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
- C. Rectifying the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;
- D. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;

- E. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
- F. Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
- G. Monitoring the hazard or other required mitigation and taking remedial action when necessary. Mitigation for individual actions may include a combination of the above measures.

**Section 9.05.200 - Mitigation Plan Requirements**

When mitigation is required, the applicant shall submit for approval by the County a mitigation plan as part of the critical area report. The mitigation plan shall include:

- A. **Environmental Goals and Objectives.** The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and including:
  - 1. A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;
  - 2. A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and
  - 3. An analysis of the likelihood of success of the compensation project.
- B. **Performance Standards.** The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of this Chapter have been met.
- C. **Detailed Construction Plans.** The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as:
  - 1. The proposed construction sequence, timing, and duration;
  - 2. Grading and excavation details;
  - 3. Erosion and sediment control features;
  - 4. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
  - 5. Measures to protect and maintain plants until established.

These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to **show construction techniques or anticipated final outcome.**

- D. **Monitoring Program.** The mitigation plan shall include a program for monitoring construction of the compensation project and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years 1, 3, 5, and 7 after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years.

- E. **Contingency Plan.** The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

**Section 9.05.210 – Innovative Mitigation**

- A. The County may encourage, facilitate, and approve innovative mitigation projects that are based on the best available science. Advance mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this Section wherein one or more applicants, or an organization with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all of the following circumstances exist:
1. Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;
  2. The group demonstrates the organizational and fiscal capability to act cooperatively;
  3. The group demonstrates that long-term management of the habitat area will be provided; and
  4. There is a clear potential for success of the proposed mitigation at the identified mitigation site.
- B. Conducting mitigation as part of a cooperative process does not reduce or eliminate the required replacement ratios.

**DETERMINATION PROCESS**

**Section 9.05.220 – Determination**

The County Planner shall make a determination as to whether the proposed activity and mitigation, if any, is consistent with the provisions of this Chapter. The County Planner’s determination shall be based on the criteria of Review Criteria, Section 9.05.230.

**Section 9.05.230 - Review Criteria**

- A. Any alteration to a critical area, unless otherwise provided for in this Chapter, shall be reviewed and approved, approved with conditions, or denied based on the proposal’s ability to comply with all of the following criteria:
1. The proposal minimizes the impact on critical areas in accordance with Mitigation Sequencing, Section 9.05.190;
  2. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
  3. The proposal is consistent with the general purposes of this Chapter and the public interest;
  4. Any alterations permitted to the critical area are mitigated in accordance with Mitigation Requirements, Section 9.05.180;
  5. The proposal protects the critical area functions and values consistent with the best available science and results in no net loss of critical area functions and values; and
  6. The proposal is consistent with other applicable regulations and standards.
- B. The County may condition the proposed activity as necessary to mitigate impacts to critical areas and to conform to the standards required by this Chapter.

C. Except as provided for by this Chapter, any project that cannot adequately mitigate its impacts to critical areas in the sequencing order of preferences in Section 9.05.190 shall be denied.

**Section 9.05.240 - Favorable Determination**

If the County Planner determines that the proposed activity meets the criteria in Review Criteria, Section 9.05.230 and complies with the applicable provisions of this Chapter, the County Planner shall prepare a written notice of determination and identify any required conditions of approval. The notice of determination and conditions of approval shall be included in the project file and be considered in the next phase of the County's review of the proposed activity in accordance with any other applicable codes or regulations.

Any conditions of approval included in a notice of determination shall be attached to the underlying permit or approval. Any subsequent changes to the conditions of approval shall void the previous determination pending re-review of the proposal and conditions of approval by the County Planner.

A favorable determination should not be construed as endorsement or approval of any underlying permit or approval.

**Section 9.05.250 - Unfavorable Determination**

If the County Planner determines that a proposed activity does not adequately mitigate its impacts on the critical areas and/or does not comply with the criteria in Review Criteria, Section 9.05.230 and the provisions of this Chapter, the County Planner shall prepare written notice of the determination that includes findings of noncompliance.

No proposed activity or permit shall be approved or issued if it is determined that the proposed activity does not adequately mitigate its impacts on the critical areas and/or does not comply with the provisions of this Chapter.

Following notice of determination that the proposed activity does not meet the review criteria and/or does not comply with the applicable provisions of this Chapter, the applicant may request consideration of a revised critical area report. If the revision is found to be substantial and relevant to the critical area review, the County Planner may reopen the critical area review and make a new determination based on the revised report.

**Section 9.05.260 - Completion of the Critical Area Review**

The County's administrative determination regarding critical areas pursuant to this Chapter shall be final concurrent with the final decision to approve, condition, or deny the development proposal or other activity involved.

**Section 9.05.270 – Appeals**

Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of this Chapter may be appealed to the Board of Adjustment according to the provisions set out in Whitman County Code Section 19.05.030.

**VARIANCES**

**Section 9.05.280 – Variances**

A. Variances from the standards of this Chapter may be authorized by the County in accordance with the procedures set forth in Section 19.06 of the Whitman County Code. The Board of Adjustment shall review the request and make a written finding that the request meets or fails to meet the variance criteria.

- B. Variance Criteria.** A variance may be granted only if the applicant demonstrates that the requested action conforms to all of the criteria set forth as follows:
1. Special conditions and circumstances exist that are peculiar to the land, the lot, or something inherent in the land, and that are not applicable to other lands in the same district;
  2. The special conditions and circumstances do not result from the actions of the applicant;
  3. A literal interpretation of the provisions of this Chapter would deprive the applicant of all reasonable economic uses and privileges permitted to other properties in the vicinity and zone of the subject property under the terms of this Chapter, and the variance requested is the minimum necessary to provide the applicant with such rights;
  4. Granting the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other lands, structures, or buildings under similar circumstances;
  5. The granting of the variance is consistent with the general purpose and intent of this Chapter, and will not further degrade the functions or values of the associated critical areas or otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property;
  6. The decision to grant the variance includes the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat; and
  7. The granting of the variance is consistent with the general purpose and intent of the Whitman County Comprehensive Plan and adopted development regulations.
- C. Conditions May Be Required.** In granting any variance, the County may prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts, and to ensure conformity with this Chapter.
- D. Time Limit.** The County shall prescribe a time limit within which the action for which the variance is required shall be begun, completed, or both. Failure to begin or complete such action within the established time limit shall void the variance.
- E. Burden of Proof.** The burden of proof shall be on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application.

## **UNAUTHORIZED ALTERATIONS AND ENFORCEMENT**

### **Section 9.05.290 - Unauthorized Critical Area Alterations and Enforcement**

- A.** When a critical area or its buffer has been altered in violation of this Chapter, all ongoing development work shall stop and the critical area shall be restored. The County shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of this Chapter.
- B. Requirement for Restoration Plan.** All development work shall remain stopped until a restoration plan is prepared and approved by the County. Such a plan shall be prepared by a qualified professional using the best available science and shall describe how the actions proposed meet the minimum requirements described in Subsection (C). The County Planner shall, at the violator's expense, seek expert advice in

determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

**C. Minimum Performance Standards for Restoration**

1. For alterations to critical aquifer recharge areas, frequently flooded areas, wetlands, and habitat conservation areas, the following minimum performance standards shall be met for the restoration of a critical area, provided that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:
  - a. The historic structural and functional values shall be restored, including water quality and habitat functions;
  - b. The historic soil types and configuration shall be replicated;
  - c. The critical area and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historic functions and values should be replicated at the location of the alteration; and
  - d. Information demonstrating compliance with the requirements in Section 9.05.200 - Mitigation Plan Requirements, shall be submitted to the County Planner.
2. For alterations to flood and geological hazards, the following minimum performance standards shall be met for the restoration of a critical area, provided that, if the violator can demonstrate that greater safety can be obtained, these standards may be modified:
  - a. The hazard shall be reduced to a level equal to, or less than, the pre-development hazard;
  - b. Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and
  - c. The hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.

**D. Site Investigations.** The County Planner is authorized to make site inspections and take such actions as are necessary to enforce this Chapter. The County Planner shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.

**E. Penalties.** Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of this Chapter shall be guilty of a misdemeanor. Each day or portion of a day during which a violation of this Chapter is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this Chapter shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The County may levy civil penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of this Chapter. The civil penalty shall be assessed at a maximum rate of \$300 dollars per day per violation.

**Section 9.05.300 - Definitions**

Words not defined in this Chapter shall be as defined in the County Code, the Washington Administrative Code, or the Revised Code of Washington. Words not found in these codes shall be as defined in the Webster's Third New International Dictionary, latest edition.

**A**

**Active Fault** – A fault that is considered likely to undergo renewed movement within a period of concern to humans. Faults are commonly considered to be active if the fault has moved one or more times in the last 10,000 years, but faults may also be considered active in some cases if movement has occurred in the last 500,000 years.

**Adjacent** – Immediately adjoining (in contact with the boundary of the influence area) or within a distance that is less than that needed to separate activities from critical areas to ensure protection of the functions and values of the critical areas. Adjacent shall mean any activity or development located:

- a. On a site immediately adjoining a critical area;
- b. A distance equal to or less than the required critical area buffer width and building setback.

**Alluvial Fan Flooding** – Flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

**Alkali Wetlands** - Alkali wetlands are characterized by the occurrence of shallow saline water. In eastern Washington these wetlands contain surface water with specific conductance that exceeds 3000 micromhos/cm. The salt concentrations in these wetlands have resulted from a relatively long-term process of groundwater surfacing and evaporating.

**Alteration** – Any human induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to grading, filling, channelizing, dredging, clearing (vegetation), construction, compaction, excavation, or any other activity that changes the character of the critical area.

**Anadromous Fish** – Fish that spawn and rear in freshwater and mature in the marine environment. While Pacific salmon die after their first spawning, adult char (bull trout) can live for many years, moving in and out of saltwater and spawning each year. The life history of Pacific salmon and char contains critical periods of time when these fish are more susceptible to environmental and physical damage than at other times. The life history of salmon, for example, contains the following stages: upstream migration of adults, spawning, inter-gravel incubation, rearing, smoltification (the time period needed for juveniles to adjust their body functions to live in the marine environment), downstream migration, and ocean rearing to adults.

**Applicant** – A person who files an application for permit under this Title and who is either the owner of the land on which that proposed activity would be located, a contract purchaser, or the authorized agent of such a person.

**Avalanche Hazard** – An area susceptible to a large mass of snow or ice, sometimes accompanied by other material, moving rapidly down a mountain slope.

**Aquifer** – A geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

**Aquifer, Confined** – An aquifer bounded above and below by beds of distinctly lower permeability than that of the aquifer itself and that contains ground water under sufficient pressure for the water to rise above the top of the aquifer.

**Aquifer Recharge Areas** – Areas that, due to the presence of certain soils, geology, and surface water, act to recharge ground water by percolation.

**Aquifer, Sole Source** – An area designated by the U.S. Environmental Protection Agency under the Safe Drinking Water Act of 1974, Section 1424(e). The aquifer(s) must supply fifty percent (50%) or more of the drinking water for an area without a sufficient replacement available.

**Aquifer Susceptibility** – The ease with which contaminants can move from the land surface to the aquifer based solely on the types of surface and subsurface materials in the area. Susceptibility usually defines the rate at which a contaminant will reach an aquifer unimpeded by chemical interactions with the vadose zone media.

**Aquifer, Unconfined** – An aquifer not bounded above by a bed of distinctly lower permeability than that of the aquifer itself and containing ground water under pressure approximately equal to that of the atmosphere. This term is synonymous with the term "water table aquifer."

**Area of Shallow Flooding** – An area designated AO or AH Zone on the Flood Insurance Rate Map(s). The base flood depths range from one (1) to three (3) feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

## B

**Base Flood** – A flood event having a one percent (1%) chance of being equaled or exceeded in any given year, also referred to as the 100-year flood. Designations of base flood areas on Flood Insurance Rate Map(s) always include the letters A or V.

**Basement** – Any area of the building having its floor below ground level on all sides.

**Best Available Science** – Current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 925. Sources of the best available science are included in Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas published by the Washington State Department of Commerce.

**Best Management Practices (BMPs)** – Conservation practices or systems of practices and management measures that:

- a. Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics and sediment;
- b. Minimize adverse impacts to surface water and ground water flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;
- c. Protect trees and vegetation designated to be retained during and following site construction and use native plant species appropriate to the site for re-vegetation of disturbed areas; and
- d. Provide standards for proper use of chemical herbicides within critical areas.
- e. The County shall monitor the application of best management practices to ensure that the standards and policies of this Chapter are adhered to.

**Biodiversity** – The variety of animal and plant life and its ecological processes and interconnections – represented by the richness of ecological systems and the life that depends on them, including human life and economies.

**Bog** – A low-nutrient, acidic wetland with organic soils and characteristic bog plants, which is sensitive to disturbance and impossible to re-create through compensatory mitigation.



**Buffer or Buffer Zone** – An area that is contiguous to and protects a critical area which is required for the continued maintenance, functioning, and/or structural stability of a critical area.

**C**

**Channel Migration Zone (CMZ)** – The lateral extent of likely movement along a stream or river during the next one-hundred (100) years as determined by evidence of active stream channel movement over the past one-hundred (100) years. Evidence of active movement over the one-hundred (100) year time frame can be inferred from aerial photos or from specific channel and valley bottom characteristics. The time span typically represents the time it takes to grow mature trees that can provide functional large woody debris to streams. A CMZ is not typically present if the valley width is generally less than two (2) bankfull widths, if the stream or river is confined by terraces, no current or historical aerial photographic evidence exists of significant channel movement, and there is no field evidence of secondary channels with recent scour from stream flow or progressive bank erosion at meander bends. Areas separated from the active channel by legally existing artificial channel constraints that limit bank erosion and channel avulsion without hydraulic connections shall not be considered within the CMZ.

**Compensation Project** – Actions necessary to replace project-induced critical area and buffer losses, including land acquisition, planning, construction plans, monitoring, and contingency actions.

**Compensatory Mitigation** – Replacing project-induced losses or impacts to a critical area, and includes, but is not limited to, the following:

- a. Restoration – Actions performed to reestablish wetland functional characteristics and processes that have been lost by alterations, activities, or catastrophic events within an area that no longer meets the definition of a wetland;
- b. Creation – Actions performed to intentionally establish a wetland at a site where it did not formerly exist;
- c. Enhancement – Actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality; and
- d. Preservation – Actions taken to ensure the permanent protection of existing, high-quality wetlands.

**Conservation Easement** – A legal agreement that the property owner enters into to restrict uses of the land. Such restrictions can include, but are not limited to, passive recreation uses such as trails or scientific uses and fences or other barriers to protect habitat. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property, therefore, providing permanent or long-term protection.

**County Planner** - The director of the county planning department or other responsible official or other city staff granted the authority to act on behalf of the County Planner.

**Creation** – The manipulation of the physical, chemical, or biological characteristics to develop a wetland on an upland or deep water site, where a wetland did not previously exist. Creation results in a gain in wetland acreage and function. A typical action is the excavation of upland soils to elevations that will produce a wetland *hydro period* and hydric soils, and support the growth of hydrophytic plant species.

**Critical Aquifer Recharge Area** – Areas designated by WAC 365-190-080(2) that are determined to have a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2).

**Critical Areas** – Critical areas include any of the following areas or ecosystems: aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and wetlands, as defined in RCW 36.70A.

**Critical Facility** – A facility for which even a slight chance of flooding, inundation, or impact from a hazard event might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, and installations that produce, use, or store hazardous materials or hazardous waste.

**Cumulative Impacts or Effects** – The combined, incremental effects of human activity on ecological or critical area functions and values. Cumulative impacts result when the effects of an action are added to or interact with the effects of other actions in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis and changes to policies and permitting decisions.

## D

**Delineation** - Wetland delineation establishes the existence (location) and physical limits (size) of a wetland for the purposes of federal, state, and local regulations.

**Developable Area** – A site or portion of a site that may be utilized as the location of development, in accordance with the rules of this Chapter.

**Development** – Any activity upon the land consisting of construction or alteration of structures, earth movement, dredging, dumping, grading, filling, mining, removal of any sand, gravel, or minerals, driving of piles, drilling operations, bulk heading, clearing of vegetation, or other land disturbance. Development includes the storage or use of equipment or materials inconsistent with the existing use. Development also includes approvals issued by the County that binds land to specific patterns of use, including but not limited to, subdivisions, short subdivisions, zone changes, conditional use permits, and binding site plans. Development activity does not include the following activities:

- a. Interior building improvements;
- b. Exterior structure maintenance activities, including painting and roofing;
- c. Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning, and weeding; and
- d. Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells; individual utility service connections; and individual cemetery plots in established and approved cemeteries.

**Development Permit** – Any permit issued by the County, or other authorized agency, for construction, land use, or the alteration of land.

## E

**Eastside Steppe** - No forested vegetation type dominated by broadleaf herbaceous flora (i.e., forbs), perennial bunchgrasses, or a combination of both. Blue bunch Wheatgrass (*Pseudoroegneria spicata*) is often the prevailing cover component along with Idaho Fescue (*Festuca idahoensis*), Sandberg Bluegrass (*Poa secunda*), Rough Fescue (*F. campestris*), or needlegrass (*Achnatherum* spp.). Steppe plant communities in drier sites

typically have a sparse cover of grasses and forbs. Meadowlike communities characterized by a very dense cover of native perennial forbs and bunchgrasses are supported in areas with greater precipitation or on soils with higher moisture-holding capacity. Shrubs are either absent or scattered in the overstory of steppe habitat (see Shrub-steppe for sites with more prominent shrub cover). When sparse shrub cover is present, sagebrush (*Artemisia* spp.) and rabbitbrush (*Chrysothamnus* spp.) are commonly found in drier steppe, while Bitterbrush (*Purshia tridentata*), Common Snowberry (*Symphoricarpos albus*) and rose (*Rosa* spp.) are often present in more meadowlike expressions. Sites with less disturbed soils often have a layer of algae, mosses, or lichens. At some more disturbed sites, non-native species such as Cheatgrass (*Bromus tectorum*), Spotted Knapweed (*Centaurea biebersteinii*), Yellow Star-thistle (*Centaurea solstitialis*), or Kentucky Bluegrass (*Poa pratensis*) may be co-dominant species. The habitat known as Palouse Prairie fits within the definition of Eastside Steppe.

**Elevated Building** – A building that has no basement and its lowest elevated floor is raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

**Enhancement** – The manipulation of the physical, chemical, or biological characteristics of a wetland to heighten, intensify or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in wetland function(s) and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Examples are planting vegetation, controlling non-native or *invasive species*, and modifying site elevations to alter hydroperiods.

**Erosion** – The process whereby wind, rain, water, and other natural agents mobilize and transport particles.

**Erosion Hazard Areas** – At least those areas identified by the U.S. Department of Agriculture National Resources Conservation Service as having a “severe” rill and inter-rill erosion hazard.

**Existing and Ongoing Agricultural Activities** - Those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops and livestock, including but not limited to operation, maintenance and conservation measures of farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and normal operation, maintenance or repair of existing serviceable structures, facilities or improved areas. New activities which bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area in which it was conducted is proposed for conversion to a nonagricultural use or has lain idle for a period of longer than five years, unless the idle land is registered in a federal or state soils conversation program. Forest practices are not included in this definition.

**Exotic** – Any species of plants or animals, which are foreign to the planning area.

## F

**FEMA** – Federal Emergency Management Agency. The agency that oversees the administration of the National Flood Insurance Program.

**Fish and Wildlife Habitat Conservation Areas** – Areas necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as designated by WAC 365-190-080(5). These areas include:

- a. Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association;

- b. Habitats of local importance, including but not limited to areas designated as priority habitat by the Washington Department of Fish and Wildlife;
- c. Commercial and recreational shellfish areas;
- d. Kelp and eelgrass beds;
- e. Herring and smelt spawning areas;
- f. Naturally occurring ponds under twenty (20) acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds;
- g. Waters of the state, including 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;
- h. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
- i. State natural area preserves and natural resource conservation areas; and
- j. Land essential for preserving connections between habitat blocks and open spaces.

**Fish Habitat** – Habitat that is used by fish at any life stage at any time of the year, including potential habitat likely to be used by fish that could be recovered by restoration or management and includes off-channel habitat.

**Flood or Flooding** – A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation of runoff of surface waters from any source.

**Flood Insurance Map** – The official map on which the Federal Insurance Administration has delineated the areas of special flood hazards and include the risk premium zones applicable to the community. Also known as “flood insurance rate map” or “FIRM.”

**Flood Insurance Study** – The official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map, and the water surface elevation of the base flood.

**Floodplain** – The total land area adjoining a river, stream, watercourse, or lake subject to inundation by the base flood.

**Flood Protection Elevation** – The elevation that is one (1) foot above the base flood elevation.

**Flood Resistant Material** – Materials designed to be resistant to the impacts associated with flooding and defined and described in detail in the Federal Emergency Management Agency’s Technical Bulletin #2-93, 1993 and FEMA publication FEMA-348, Protecting Building Utilities from Flood Damage.

**Floodway** – The channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without cumulatively increasing the surface water elevation more than one (1) foot. Also known as the "zero rise floodway."

**Forested Wetland** – A wetland with at least thirty percent (30%) of the surface area covered by woody vegetation greater than twenty (20) feet in height that is at least partially rooted within the wetland.

**Frequently Flooded Areas** – Lands in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance, and attenuation functions, as determined by the Planning Director in accordance with WAC 365-190-080(3). Frequently

flooded areas perform important hydrologic functions and may present a risk to persons and property. Classifications of frequently flooded areas include, at a minimum, the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

**Functions and Values** – The services provided by critical areas to society, including, but not limited to, improving and maintaining water quality, providing fish and wildlife habitat, supporting terrestrial and aquatic food chains reducing flooding and erosive flows, wave attenuation, historical or archaeological importance, educational opportunities, and recreation.

## G

**Geologically Hazardous Areas** – Areas that may not be suited to development consistent with public health, safety, or environmental standards, because of their susceptibility to erosion, sliding, earthquake, or other geological events as designated by WAC 365-190-080(4). Types of geologically hazardous areas include: erosion, landslide, seismic, mine, and volcanic hazards.

**Ground Water** – Water in a saturated zone or stratum beneath the surface of land or a surface water body.

**Ground Water, Perched** – Ground water in a saturated zone is separated from the underlying main body of ground water by an unsaturated rock zone.

**Growth Management Act** – RCW 36.70A and 36.70B, as amended.

## H

**Habitat Conservation Areas** – Areas designated as fish and wildlife habitat conservation areas.

**Habitats of Local Importance** – These areas include a seasonal range or habitat element with which a given species has a primary association, and which, if altered may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alterations such as cliffs, talus, and wetlands. (WAC 365-190-030)

**Hazard Areas** – Areas designated as frequently flooded areas or geologically hazardous areas due to potential for erosion, landslide, seismic activity, mine collapse, or other geological condition.

**Hazardous Substances** – Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC 173-303-090 or 173-303-100.

**Hydraulic Project Approval (HPA)** – A permit issued by the Washington Department of Fish and Wildlife for modifications to waters of the state in accordance with Chapter 75.20 RCW.

**Hydric Soil** – A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in accordance with WAC 173-22-035 as revised.

## I

**Impervious Surface** – Any alterations to the surface of a soil that prevents or retards the entry of water into it compared to its undisturbed condition, or any reductions in infiltration that cause water to run off the surface in greater quantities or at an increased rate of flow compared to that present prior to development. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater.

**In-Kind Compensation** – To replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity.

**In-Lieu-Fee Program** – An agreement between a regulatory agency (state, federal, or local) and a single sponsor, generally a public agency or non-profit organization. Under an in-lieu-fee agreement, the mitigation sponsor collects funds from an individual or a number of individuals who are required to conduct compensatory mitigation required under a wetland regulatory program. The sponsor may use the funds pooled from multiple permittees to create one or a number of sites under the authority of the agreement to satisfy the permittees' required mitigation.

**Infiltration** – The downward entry of water into the immediate surface of soil.

**Inter-Rill** – Areas subject to sheet wash.

**Isolated Wetlands** – Those wetlands that are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream and have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water, including other wetlands.

## J

**Joint Aquatic Resource Permits Application** – A single application form that may be used to apply for hydraulic project approvals, shoreline management permits, approvals of exceedance of water quality standards, water quality certifications, coast guard bridge permits, Washington State Department of Natural Resources use authorization, and U.S. Army Corps of Engineers permits.

## L

**Lahars** – Mudflows and debris flows originating from the slopes of a volcano.

**Landslide Hazard Areas** – Areas that are potentially subject to risk of mass movement due to a combination of geologic landslide resulting from a combination of geologic, topographic, and hydrologic factors. These areas are typically susceptible to landslides because of a combination of factors including: bedrock, soil, slope gradient, slope aspect, geologic structure, ground water, or other factors.

## M

**Mature Forested Wetland** – A wetland where at least one acre of the wetland surface is covered by woody vegetation greater than 20 feet in height with a crown cover of at least 30 percent and where at least 8 trees/acre are 80 to 200 years old OR have average diameters (dbh) exceeding 21 inches (53 centimeters) measured from the uphill side of the tree trunk at 4.5 feet up from the ground.

**Mitigation** – Avoiding, minimizing, or compensating for adverse critical areas impacts. Mitigation, in the following sequential order of preference, is:

- a. Avoiding the impact altogether by not taking a certain action or parts of an action;
- b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
- c. Rectifying the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project;
- d. Minimizing or eliminating a hazard by restoring or stabilizing the hazard area through engineered or other methods;
- e. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
- f. Compensating for the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
- g. Monitoring the hazard or other required mitigation and taking remedial action when necessary. Mitigation for individual actions may include a combination of the above measures.

**Monitoring** – Evaluating the impacts of development proposals on the biological, hydrological, and geological elements of such systems, and assessing the performance of required mitigation measures throughout the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features, including gathering baseline data.

## N

**Native Vegetation** – Plant species that occur naturally in a particular region or environment and were not introduced by human activities.

**Natural Heritage Wetlands** - Wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as high quality, relatively undisturbed wetlands, or wetlands that support state Threatened, or Endangered plant species are Category I wetlands.

## O

**Off-Site Compensation** – To replace critical areas away from the site on which a critical area has been impacted.

**On-Site Compensation** – To replace critical areas at or adjacent to the site on which a critical areas has been impacted.

**Ordinary High Water Mark** – That mark which is found by examining the bed and banks of water bodies and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, that the soil has a character distinct from that of the abutting upland in respect to vegetation.

## P

**Permeability** – The capacity of an aquifer or confining bed to transmit water. It is a property of the aquifer or confining bed and is independent of the force causing movement.

**Porous Soil Types** – Soils, as identified by the National Resources Conservation Service, U.S. Department of Agriculture, that contain voids, pores, interstices, or other openings which allow the passing of water.

**Practical Alternative** – 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, with less of an impact to critical areas.

**Preservation** – The removal of a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This term includes the purchase of land or easements, repairing water control structures or fences, or structural protection. Preservation does not result in a gain of wetland acres but may result in a gain in functions over the long term.

**Prior Converted Croplands** – Prior converted croplands (PCCs) are defined in federal law as wetlands that were drained, dredged, filled, leveled or otherwise manipulated, including the removal of woody vegetation, before December 23, 1985, to enable production of an agricultural commodity, and that: 1) have had an agricultural commodity planted or produced at least once prior to December 23, 1985; 2) do not have standing water for more than 14 consecutive days during the growing season, and 3) have not since been abandoned. The Growth Management Act, RCW 36.70A.030(21), requires local governments to regulate wetlands that meet the definition of biological wetlands. This includes Prior Converted Croplands (PCCs), farmed wetlands and isolated wetlands. These wetlands provide critical functions and habitat and are regulated by this ordinance (see the definition of “wetlands” and Chapter 9.05A). If a PCC or farmed wetland changes to a non-agricultural use, or is abandoned, they may be regulated under federal, state or local laws. As long as a PCC or farmed wetland stays in agricultural use no delineation is required.

**Project Area** – All areas within fifty (50) feet of the area proposed to be disturbed, altered, or used by the proposed activity or the construction of any proposed structures. When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire parcel, at a minimum.

## Q

**Qualified Professional** – A person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and have at least five years of related work experience.

- a. A qualified professional for wetlands must be a professional wetland scientist with at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the state or federal manuals, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans;
- b. A qualified professional for habitat must have a degree in biology or a related degree and professional experience related to the subject species;
- c. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington;



- d. A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

## R

**RCW 36-70A Growth Management Act** – Enacted by the Washington State Legislature to express the public's interest in the conservation and the wise use of our lands by protecting the environment and enhancing the state's high quality of life, including air and water quality, and the availability of water.

**Re-establishment** – The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in rebuilding a former wetland and results in a gain in wetland acres and functions. Activities could include removing fill, plugging ditches, or breaking drain tiles.

**Rehabilitation** – The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions and processes of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or returning tidal influence to a wetland.

**Repair or Maintenance** – An activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

**Restoration** – Measures taken to restore an altered or damaged natural feature, including:

- a. Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and
- b. Actions performed to re-establish structural and functional characteristics of the critical area that have been lost by alteration, past management activities, or catastrophic events.

**Riparian Area** - Areas adjacent to aquatic systems with flowing water that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other. The width of these areas extends to that portion of the terrestrial landscape that directly influences the aquatic ecosystem by providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian-associated wildlife. Widths shall be measured from the ordinary high water mark or from the top of the bank if the ordinary high water mark cannot be identified. It includes the entire extent of the floodplain and the extent of vegetation adapted to wet conditions as well as adjacent upland plant communities that directly influence the stream system. Riparian habitat areas include those riparian areas severely altered or damaged due to human development activities.

**Recharge** – The process involved in the absorption and addition of water to ground water.

**Rills** – Steep-sided channels resulting from accelerated erosion. A rill is generally a few inches deep and not wide enough to be an obstacle to farm machinery. Rill erosion tends to occur on slopes, particularly steep slopes with poor vegetative cover.

## S

**Scientific Process** – A valid scientific process is one that produces reliable information useful in understanding the consequences of a decision. The characteristics of a valid scientific process are as follows:

- a. Peer Review. The information has been critically reviewed by other qualified scientific experts in that scientific discipline;
- b. Methods. The methods that were used are standardized in the pertinent scientific discipline or the methods have been appropriately peer-reviewed to ensure their reliability and validity;
- c. Logical Conclusions and Reasonable Inferences. The conclusions presented are based on reasonable assumptions supported by other studies and are logically and reasonably derived from the assumptions and supported by the data presented;
- d. Quantitative Analysis. The data have been analyzed using appropriate statistical or quantitative methods;
- e. Context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge;
- f. References. The assumptions, techniques, and conclusions are well referenced with citations to pertinent existing information.

**Seeps** – A spot where water oozes from the earth, often forming the source of a small stream.

**Seismic Hazard Areas** – Areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.

**SEPA** – Washington State Environmental Policy Act, Chapter 43.21C RCW.

**Shrubsteppe** - A nonforested vegetation type consisting of one or more layers of perennial bunchgrasses and a conspicuous but discontinuous layer of shrubs (see Eastside Steppe for sites with little or no shrub cover). Although Big Sagebrush (*Artemisia tridentata*) is the most widespread shrub-steppe shrub, other dominant (or co-dominant) shrubs include Antelope Bitterbrush (*Purshia tridentata*), Threetip Sagebrush (*A. tripartita*), Scabland Sagebrush (*A. rigida*), and Dwarf Sagebrush (*A. arbuscula*). Dominant bunchgrasses include (but are not limited to) Idaho fescue (*Festuca idahoensis*), Bluebunch Wheatgrass (*Pseudoroegneria spicata*), Sandberg Bluegrass (*Poa secunda*), Thurber's Needlegrass (*Achnatherum thurberianum*), and Needle-and-Thread (*Hesperostipa comata*). In areas with greater precipitation or on soils with higher moisture-holding capacity, shrub-steppe can also support a dense layer of forbs (i.e., broadleaf herbaceous flora). Shrub-steppe contains various habitat features, including diverse topography, riparian areas, and canyons. Another important component is habitat quality (i.e., degree to which a tract resembles a site potential natural community), which may be influenced by soil condition and erosion; and the distribution, coverage, and vigor of native shrubs, forbs, and grasses. Sites with less disturbed soils often have a layer of algae, mosses, or lichens. At some more disturbed sites, non-natives such as Cheatgrass (*Bromus tectorum*) or Crested Wheatgrass (*Agropyron cristatum*) may be co-dominant species.

**Soil Survey** – The most recent soil survey for the local area or county by the National Resources Conservation Service, U.S. Department of Agriculture.

**Species** – Any group of animals or plants classified as a species or subspecies as commonly accepted by the scientific community.

**Species, Endangered** – Any wildlife species native to the state of Washington that is seriously threatened with extinction throughout all or a significant portion of its range within the state (WAC 232-12-297, Section 2.4).

**Species of Local Importance** – Those species of local concern designated by the County due to their population status or their sensitivity to habitat manipulation.

**Species, Priority** – Any fish or wildlife species requiring protective measures and/or management guidelines to ensure its persistence at genetically viable population levels as classified by the Washington Department of Fish and Wildlife, including endangered, threatened, sensitive, candidate and monitor species, and those of recreational, commercial, or tribal importance.

**Species, Threatened** – Any wildlife species native to the state of Washington that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range within the state without cooperative management or removal of threats (WAC 232-12-297, Section 2.5).

**Species, Sensitive** – Any wildlife species native to the state of Washington that is vulnerable or declining and is likely to become endangered or threatened throughout a significant portion of its range within the state without cooperative management or removal of threats (WAC 232-12-297, Section 2.6).

**Stream** – An area where open surface water produces a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices, or other entirely artificial watercourses, unless they are used by salmonids or are used to convey a watercourse naturally occurring prior to construction. A channel or bed need not contain water year-round, provided there is evidence of at least intermittent flow during years of normal rainfall.

## U

**Unavoidable Impacts** – Adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

## V

**Vernal Pools** - Vernal pool ecosystems are formed when small depressions in the scabrock or in shallow soils fill with snowmelt or spring rains.

## W

**Washington Administration Code (WAC)** – Administrative guidelines implementing the Growth Management Act, WAC 365-190 and WAC 365-195, as amended.

**Wetlands** – Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation 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 non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

**Wetland Buffer** - An area contiguous to and which protects a critical area that is required for the continual maintenance, functioning, and/or structural stability of a critical area.

**Wetland Mitigation Bank** – A site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing advance mitigation to compensate for future, permitted impacts to similar resources.

**Wetland Mosaic** – An area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; on average, patches are less than 100 feet from each other; and areas delineated as vegetated wetland are more than 50% of the total area of the entire mosaic, including uplands and open water.

## **CHAPTER 9.05A WETLANDS**

### **Section 9.05A.010 – Purpose**

The purposes of this Chapter are to:

- A. Recognize and protect the beneficial functions performed by many wetlands, which include, but are not limited to, providing food, breeding, nesting and/or rearing habitat for fish and wildlife; recharging and discharging ground water; contributing to stream flow during low flow periods; stabilizing stream banks and shorelines; storing storm and flood waters to reduce flooding and erosion; and improving water quality through biofiltration, absorption, and retention and transformation of sediments, nutrients and toxicants.
- B. Regulate land use to avoid adverse effects on wetlands and maintain the functions and values of wetlands throughout Whitman County.
- C. Establish review procedures for development proposals in and adjacent to wetlands.
- D. Be consistent with the requirements of 36.70A RCW and to implement the goals and policies of the Whitman County Comprehensive Plan for protecting wetlands.

### **Section 9.05A.020 – Identification and Rating**

- A. Identification and Delineation. Wetlands shall be identified and delineated by a qualified wetland professional in accordance with WAC 173-22-035 as revised. If a wetland report is deemed necessary it will follow the requirements in Section 9.05A.060. A wetland delineation should result in three things:
  1. A wetland boundary clearly marked in the field.
  2. A map that clearly identifies data collection points and the boundaries of the delineated wetland.
  3. A report that explains how the boundary was determined. It should include:
    - a. A description of how and when the delineation was done;
    - b. Data forms used to delineate the wetland area;
    - c. The map described in #2 above; and
    - d. A soil survey map.

A list of approved wetland professionals is available from the planning office. Wetlands means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. All areas within the county meeting the wetland designation criteria in WAC 173-22-035 as revised, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this Chapter. Planning staff uses the National Wetlands Inventory (NWI) maps in the planning office as a basis to

identify the location of wetlands in the County. Project proponents are responsible for determining whether a wetland area exists and is regulated pursuant to this chapter.

Wetland reports are valid for five (5) years after which the County Planner shall determine whether a revision or additional assessment is necessary.

B. Rating. Wetlands shall be rated according to the Washington State Department of Ecology wetland rating system, as set forth in the Washington State Wetland Rating System for Eastern Washington (Ecology Publication #04-06-015, or as revised and approved by Ecology), which contains the definitions and methods or determining if the criteria below are met:

1. Category I wetlands are: 1) alkali wetlands; 2) wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as high quality wetlands; 3) bogs; 4) mature and old-growth forested wetlands over ¼ acre with slow-growing trees; 5) forests with stands of aspen; and 6) wetlands that perform many functions very well (scores of 70 points or more). These wetlands are those that 1) represent a unique or rare wetland type; or 2) are more sensitive to disturbance than most wetlands; or 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or 4) provide a high level of function.
2. Category II wetlands are: 1) forested wetlands in the floodplains of rivers; 2) mature and old-growth forested wetlands over ¼ acre with fast-growing trees; 3) vernal pools; and 4) wetlands that perform functions well (scores between 51-69 points).
3. Category III wetlands are 1) vernal pools that are isolated and 2) wetlands with a moderate level of functions (scores between 30-50 points). Wetlands scoring between 30 and 50 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.
4. Category IV wetlands have the lowest level of functions (scores fewer than 30 points) and are often heavily disturbed. These are wetlands that we should be able to replace, and in some cases be able to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions and also need to be protected.

C. Illegal modifications. Wetland rating categories shall not change due to illegal modifications made by the applicant or with the applicant's knowledge.

D. The requirement for a full delineation and rating may be waived under the following circumstances:

1. After consultation with the department of Ecology, the County Planner may waive the requirement for a wetland report if there is substantial evidence showing that there will be no alteration of the critical area or buffer due to the proposed development.
2. If the criteria in D1 above is not met then the requirement for a wetland delineation and rating may be waived by the County Planner for any construction if a qualified wetland specialist determines that:
  - a. Sufficient information exists for staff to estimate the boundaries of a wetland without a delineation; and
  - b. The proposed development is not located within the buffer distances identified in Section 9.05A.050.

A wetland specialist Recommendation Form shall be submitted to the Whitman County Planning Department documenting the above exceptions, a and b.

**Section 9.05A.030 - Regulated Activities**

- A. For any regulated activity, a critical areas report may be required to support the requested activity.
- B. The following activities are regulated if they occur in a regulated wetland or its buffer. Ongoing agricultural activities in prior converted croplands and farmed wetlands are excluded:
  - 1. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind. This includes routine maintenance of ditches for flood control in mapped special flood hazard areas.
  - 3. The dumping of, discharging of, or filling with any material.
  - 4. The draining, flooding, or disturbing the water level or water table.
  - 5. The placing of obstructions.
  - 6. The construction, reconstruction, demolition, or expansion of any structure.
  - 7. The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.

**Section 9.05A.040 - Exemptions and Allowed Uses in Wetlands**

- A. The following wetlands are exempt from the buffer and mitigation provisions contained in this Chapter. In order to verify the following conditions, a critical area report must be submitted.
  - 1. All isolated Category III and IV wetlands less than 1,000 square feet that:
    - a. Are not associated with riparian areas or buffer;
    - b. Are not part of a wetland mosaic;
    - c. Do not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife or species of local importance identified in WCC Chapter 9.20;
    - d. Are not a vernal pool;
    - e. Are not an alkali wetland; and
    - f. Do not contain aspen stands.
- B. Activities Allowed in Wetlands and Buffers. The activities listed below are allowed in wetlands. These activities do not require submission of a critical area report, except where such activities result in a loss of the functions and values of a wetland or wetland buffer. These activities include:
  - 1. Those activities and uses conducted pursuant to the Washington State Forest Practices Act and its rules and regulations, WAC 222-12-030, where state law specifically exempts local authority, except those developments requiring local approval for Class 4 – General Forest Practice Permits (conversions) as defined in RCW 76.09 and WAC 222-12.
  - 2. Conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland.
  - 3. 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, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.
  - 4. Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column will be disturbed.
  - 5. Enhancement of a wetland through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that

appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

6. Educational and scientific research activities.
7. Normal and routine maintenance and repair of any existing public or private building provided that the maintenance or repair does not expand the footprint of the building toward the wetland. An expansion of the building to the rear, facing away from the wetland is exempt from the buffer and mitigation provisions contained in this Chapter.
8. All ongoing agriculture activities are exempt from this ordinance. This includes Prior Converted Croplands (PCCs) and farmed wetlands. Only when an agricultural activity changes to a non-agricultural land use will it be subject to regulation by this ordinance.

### **Section 9.05A.050 - Wetland Buffers**

A. Buffer Requirements. The buffer widths in Table 9.1 have been established in accordance with the best available science. They are based on the category of wetland, the intensity of adjacent land use (as determined in Table 9.2), and the habitat score as determined by a qualified wetland professional using the Washington state wetland rating system for eastern Washington.

1. The buffer widths in Table 9.1 assume that the buffer is vegetated with a native plant community appropriate for the eco-region. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.
2. The buffer widths recommended for proposed land uses with high-intensity impacts to wetlands can be reduced to those recommended for moderate-intensity impacts under the following conditions:
  - a. For wetlands that score moderate or high for habitat (20 points or more for the habitat functions), the width of the buffer can be reduced if both of the following criteria are met:
    - i. A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other Priority Habitats as defined by the Washington State Department of Fish and Wildlife (“relatively undisturbed” and “vegetated corridor” are defined in questions H 2.1 and H 2.2.1 of the *Washington State Wetland Rating System for Eastern Washington – Revised* (Hruby 2004a)). Priority Habitats in eastern Washington include:
      - Wetlands
      - Riparian zones
      - Aspen stands
      - Cliffs
      - Prairies
      - Caves
      - Stands of Oregon White Oak
      - Old growth forests
      - Talus slopes
      - Urban natural open space (for current definitions of Priority Habitats see <http://wdfw.wa.gov/hab/phshabs.htm>)

The corridor must be protected for the entire distance between the wetland and the Priority Habitat by some type of legal protection such as a conservation easement.

- ii. Measures to minimize the impacts of different land uses on wetlands, such as the examples summarized in Table 9.3, are applied.
- b. For wetlands that score less than 20 points for habitat, the buffer width can be reduced to that required for moderate land-use impacts by applying measures to minimize the impacts of the proposed land uses (see examples in Table 9.3).

**Table 9.1 Wetland Buffer Requirements Eastern Washington**

<b>Wetland Characteristics</b>	<b>Buffer Widths by Impact of Proposed Land Use</b>	<b>Other Measures Recommended for Protection</b>
<b>Category IV wetlands (for wetlands scoring less than 30 points for all functions)</b>		
Score for all 3 basic functions is less than 30 points	Low - 25 ft Moderate – 40 ft High – 50 ft	No recommendations at this time
<b>Category III wetlands (for wetlands scoring 30 – 50 points for all functions or isolated vernal pools)</b>		
Moderate level of function for habitat (score for habitat 20 - 28 points)	Low - 75 ft Moderate – 110 ft High – 150 ft	No recommendations at this time
Not meeting above characteristic	Low - 40 ft Moderate – 60 ft High – 80 ft	No recommendations at this time
<b>Category II wetlands (for wetlands scoring 51-69 points for all functions or having the “Special Characteristics” identified in the rating system)</b>		
High level of function for habitat (score for habitat 29 - 36 points)	Low - 100 ft Moderate – 150 ft High – 200 ft	Maintain connections to other habitat areas
Moderate level of function for habitat (score for habitat 20 - 28 points)	Low - 75 ft Moderate – 110 ft High – 150 ft	No recommendations at this time
High level of function for water quality improvement and low for habitat (score for water quality 24 - 32 points; habitat less than 20 points)	Low - 50 ft Moderate – 75 ft High – 100 ft	No additional surface discharges of untreated runoff
Vernal pool	Low - 100 ft Moderate – 150 ft High – 200 ft OR Develop a regional plan to protect the most important vernal pool complexes – buffers of vernal pools outside protection zones can then be reduced to: Low - 40 ft Moderate – 60 ft High – 80 ft	No intensive grazing or tilling in the wetland



Wetland Characteristics	Buffer Widths by Impact of Proposed Land Use	Other Measures Recommended for Protection
Riparian forest	Buffer width to be based on score for habitat functions or water quality functions	Riparian forest wetlands need to be protected at a watershed or sub-basin scale (protection of the water regime in the watershed) Other protection based on needs to protect habitat and/or water quality functions
Not meeting above characteristics	Low - 50 ft Moderate - 75 ft High - 100 ft	No recommendations at this time
<b>Category I wetlands (for wetlands scoring 70 points or more for all functions or having the “Special Characteristics” identified in the rating system).</b>		
Natural Heritage Wetlands	Low - 125 ft Moderate - 190 ft High - 250 ft	No additional surface discharges to wetland or its tributaries No septic systems within 300 ft Restore degraded parts of buffer
Bogs	Low - 125 ft Moderate - 190 ft High - 250 ft	No additional surface discharges to wetland or its tributaries Restore degraded parts of buffer
Forested	Buffer size to be based on score for habitat functions or water quality functions	If forested wetland scores high for habitat, need to maintain connectivity to other natural areas Restore degraded parts of buffer
Alkali	Low - 100 ft Moderate - 150 ft High - 200 ft	No additional surface discharges to wetland or its tributaries Restore degraded parts of buffer
High level of function for habitat (score for habitat 29 - 36 points)	Low - 100 ft Moderate - 150 ft High - 200 ft	Maintain connections to other habitat areas Restore degraded parts of buffer
Moderate level of function for habitat (score for habitat 20 - 28 points)	Low - 75 ft Moderate - 110 ft High - 150 ft	No recommendations at this time
High level of function for water quality improvement (24 - 32 points) and low for habitat (less than 20 points)	Low - 50 ft Moderate - 75 ft High - 100 ft	No additional surface discharges of untreated runoff
Not meeting any of the above characteristics	Low - 50 ft Moderate - 75 ft High - 100 ft	No recommendations at this time

Level of Impact from Proposed Change in Land Use	Types of Land Use Based on Common Zoning Designations
High	<ul style="list-style-type: none"> <li>• Commercial</li> <li>• Urban</li> <li>• Industrial</li> <li>• Institutional</li> <li>• Retail sales</li> </ul>

	<ul style="list-style-type: none"> <li>Residential (more than 1 unit/acre)</li> <li>High-intensity recreation (golf courses, ball fields, etc.)</li> </ul>
Moderate	<ul style="list-style-type: none"> <li>Residential (1 unit/acre or less)</li> <li>Moderate-intensity open space (parks with biking, jogging, etc.)</li> <li>Paved trails</li> <li>Building of logging roads</li> <li>Utility corridor or right-of-way shared by several utilities and including access/maintenance road</li> </ul>
Low	<ul style="list-style-type: none"> <li>Forestry (cutting of trees only)</li> <li>Low-intensity open space (hiking, bird-watching, preservation of natural resources, etc.)</li> <li>Unpaved trails</li> <li>Utility corridor without a maintenance road and little or no vegetation management.</li> </ul>

**Table 9.2 Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands.**

**Table 9.3 Examples of measures to minimize impacts to wetlands from proposed change in land use that have high impacts. (This is not a complete list of measures.)**

<b>Disturbance</b>	<b>Required Measures to Minimize Impacts</b>
Lights	<ul style="list-style-type: none"> <li>Direct lights away from wetland</li> </ul>
Noise	<ul style="list-style-type: none"> <li>Locate activity that generates noise away from wetland</li> <li>If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</li> <li>For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer</li> </ul>
Toxic runoff	<ul style="list-style-type: none"> <li>Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</li> <li>Establish covenants limiting use of pesticides within 150 ft of wetland</li> <li>Apply integrated pest management</li> </ul>
Stormwater runoff	<ul style="list-style-type: none"> <li>Retrofit stormwater detention and treatment for roads and existing adjacent development</li> <li>Prevent channelized flow from lawns that directly enters the buffer</li> <li>Use Low Intensity Development techniques (per PSAT publication on LID techniques)</li> </ul>
Change in water regime	<ul style="list-style-type: none"> <li>Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</li> </ul>
Pets and human disturbance	<ul style="list-style-type: none"> <li>Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion;</li> <li>Place wetland and its buffer in a separate tract or protect with a conservation easement</li> </ul>

Disturbance	Required Measures to Minimize Impacts
Dust	<ul style="list-style-type: none"> <li>• Use best management practices to control dust</li> </ul>
Disruption of corridors or connections	<ul style="list-style-type: none"> <li>• Maintain connections to offsite areas that are undisturbed</li> <li>• Restore corridors or connections to offsite habitats by replanting</li> </ul>

3. **Increased Wetland Buffer Area Width.** Buffer widths shall be increased on a case-by-case basis as determined by the Director of Public Works or the County Planner when a larger buffer is necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the wetland. The documentation must include but not be limited to the following criteria:
  - a. The wetland is used by a plant or animal species listed by the federal government or the state as endangered, threatened, candidate, sensitive, monitored or documented priority species or habitats, or essential or outstanding habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
  - b. The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or
  - c. The adjacent land has minimal vegetative cover or slopes greater than 30 percent.
4. Buffer averaging to *improve wetland protection* may be permitted when **all** of the following conditions are met:
  - a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a “dual-rated” wetland with a Category I area adjacent to a lower-rated area;
  - b. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas report from a qualified wetland professional;
  - c. The total area of the buffer after averaging is equal to the area required without averaging;
  - d. The buffer at its narrowest point is never less than either  $\frac{3}{4}$  of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever is greater.
5. Averaging to *allow reasonable use* of a parcel may be permitted when all of the following are met:
  - a. There are no feasible alternatives to the site design that could be accomplished without buffer averaging;
  - b. The averaged buffer will not result in degradation of the wetland’s functions and values as demonstrated by a critical areas report from a qualified wetland professional;
  - c. The total buffer area after averaging is equal to the area required without averaging;
  - d. The buffer at its narrowest point is never less than either  $\frac{3}{4}$  of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever is greater.

**B. Measurement of Wetland Buffers.** All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.

- C. **Buffers on Mitigation Sites.** All mitigation sites shall have buffers consistent with the buffer requirements of this Chapter. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.
- D. **Buffer Maintenance.** Except as otherwise specified or allowed in accordance with this Chapter, wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive non-native weeds is required for the duration of the mitigation bond (Section 9.05A.070.H.2.a.viii).
- E. **Impacts to Buffers.** Requirements for the compensation for impacts to buffers are outlined in Section 9.05A.070 of this Chapter.
- F. **Overlapping Critical Area Buffers.** If buffers for two contiguous critical areas overlap (such as buffers for a stream and a wetland), the wider buffer applies.
- G. **Allowed Buffer Uses.** The following uses may be allowed within a wetland buffer in accordance with the review procedures of this Chapter, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:
1. Conservation and Restoration Activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.
  2. Passive Recreation. Passive recreation facilities designed and in accordance with an approved critical area report, including:
    - a. Walkways and trails, provided that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent (25%) of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five (5) feet in width for pedestrian use only. Raised boardwalks utilizing non-treated pilings may be acceptable.
    - b. Wildlife-viewing structures.
  3. Educational and scientific research activities.
  4. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not increase the footprint or use of the facility or right-of-way.
  5. 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, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.
  6. Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located completely outside of the wetland buffer boundary, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column is disturbed.
  7. Enhancement of a wetland buffer through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

8. Stormwater management facilities. Stormwater management facilities are limited to stormwater dispersion outfalls and bioswales. They may be allowed within the outer twenty-five percent (25%) of the buffer of Category III or IV wetlands only, provided that:
  - a. No other location is feasible; and
  - b. The location of such facilities will not degrade the functions or values of the wetland; and
  - c. Stormwater management facilities are not allowed in buffers of Category I or II wetlands.
9. Non-Conforming Uses. Repair and maintenance of non-conforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.

H. Signs and Fencing of Wetlands and Buffers.

1. **Temporary Markers.** The outer perimeter of the wetland buffer and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary "clearing limits" fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the Director of Public Works or the County Planner prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.
2. **Permanent Signs.** As a condition of any permit or authorization issued pursuant to this Chapter, the Planning Director may require the applicant to install permanent signs along the boundary of a wetland or buffer.
  - a. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post, or another non-treated material of equal durability. Signs must be posted at an interval of one (1) per lot or every fifty (50) feet, whichever is less, and must be maintained by the property owner in perpetuity. The sign shall be worded as follows or with alternative language approved by the director:

**Protected Wetland Area  
Do Not Disturb  
Contact Whitman County Planning  
Regarding Uses and Restriction**

- b. The provisions of subsection (a) may be modified as necessary to assure protection of sensitive features or wildlife.
3. **Fencing.**
  - a. The County Planner shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, the County Planner shall condition any permit or authorization issued pursuant to this Chapter to require the applicant to install a permanent fence at the edge of the wetland buffer, when fencing will prevent future impacts to the wetland.
  - b. Fencing installed as part of a proposed activity or as required in this Subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

**9.05A.060 - Critical Area Report for Wetlands**

- A. If the Director of Public Works or the County Planner determines that the site of a proposed development includes, is likely to include, or is adjacent to a wetland, a wetland report, prepared by a qualified professional, shall be required. The expense of preparing the wetland report shall be borne by the applicant.

- B. Minimum Standards for Wetland Reports.** The written report and the accompanying plan sheets shall contain the following information, at a minimum:
1. The written report shall include at a minimum:
    - a. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the wetland critical area report; a description of the proposal; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.
    - b. A statement specifying the accuracy of the report and all assumptions made and relied upon.
    - c. Documentation of any fieldwork performed on the site, including field data sheets for delineations, function assessments, baseline hydrologic data, etc.
    - d. A description of the methodologies used to conduct the wetland delineations, function assessments, or impact analyses including references.
    - e. Identification and characterization of all critical areas, wetlands, water bodies, shorelines, floodplains, and buffers on or adjacent to the proposed project area. For areas off site of the project site, estimate conditions within 200 feet of the project boundaries using the best available information.
    - f. For each wetland identified on-site and within 200 feet of the project site provide: the wetland rating per Wetland Ratings (Section 9.05A.020(B) of this Chapter); required buffers; hydrogeomorphic classification; wetland acreage based on a professional survey from the field delineation (acreages for on-site portion and entire wetland area including off-site portions); Cowardin classification of vegetation communities; habitat elements; soil conditions based on site assessment and/or soil survey information; and to the extent possible, hydrologic information such as location and condition of inlet/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, flood debris, etc.). Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.
    - g. A description of the proposed actions including an estimation of acreages of impacts to wetlands and buffers based on the field delineation and survey and an analysis of site development alternatives including a no-development alternative.
    - h. An assessment of the probable cumulative impacts to the wetlands and buffers resulting from the proposed development.
    - i. A conservation strategy for habitat and native vegetation that addresses methods to protect and enhance on-site habitat and wetland functions.
    - j. An evaluation of the functions of the wetland and adjacent buffer. Include reference for the method used and data sheets.
  2. A copy of the site plan sheet(s) for the project must be included with the written report and must include, at a minimum:
    - a. Maps (to scale) depicting delineated and surveyed wetland and required buffers on-site, including buffers for off-site critical areas that extend onto the project site; the development proposal; other critical areas; grading and clearing limits; areas of proposed impacts to wetlands and/or buffers (include square footage estimates);
    - b. A depiction of the proposed stormwater management facilities and outlets (to scale) for the development, including estimated areas of intrusion into the buffers of any critical areas. The written report shall contain a discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiod alterations from the project.

**9.05A.070 - Compensatory Mitigation**

- A. **Mitigation Sequencing.** Before impacting any wetland or its buffer, an applicant shall demonstrate that the following actions have been taken. Actions are listed in the order of preference.
1. Avoid the impact altogether by not taking a certain action or parts of an action.
  2. Minimize impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
  3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment.
  4. Reduce or eliminate the impact over time by preservation and maintenance operations.
  5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.
  6. Monitor the required compensation and take remedial or corrective measures when necessary.
- B. **Requirements for Compensatory Mitigation.**
1. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with *Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1)*, Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised.
  2. Mitigation ratios shall be consistent with Subsection G of this Chapter.
- C. **Compensating for Lost or Affected Functions.** Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either:
1. The lost wetland provides minimal functions and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington state watershed assessment plan or protocol; or
  2. Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the County, such as replacement of historically diminished wetland types.
- D. **Preference of Mitigation Actions.** Methods to achieve compensation for wetland functions shall be approached in the following order of preference:
1. Restoration (re-establishment and rehabilitation) of wetlands;
  2. Creation (establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of non-native species. This should be attempted only when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive to the wetland community that is anticipated in the design;
  3. Enhancement of significantly degraded wetlands in combination with restoration or creation. Enhancement alone will result in a loss of wetland acreage and is less effective at replacing the functions lost. Enhancement should be part of a mitigation package that includes replacing the impacted area and meeting appropriate ratio requirements;
  4. Preservation. Preservation of high-quality, at risk-wetlands as compensation is generally acceptable when done in combination with restoration, creation, or enhancement, provided that a minimum of 1:1 acreage replacement is provided by re-establishment or creation. Preservation of high-quality, at-risk wetlands and habitat may be considered as the sole means of compensation for wetland impacts when the following criteria are met:

- a. Wetland impacts will not have a significant adverse impact on habitat for listed fish, or other ESA listed species;
- b. There is no net loss of habitat functions within the watershed or basin;
- c. Mitigation ratios for preservation as the sole means of mitigation shall generally start at 20:1. Specific ratios should depend upon the significance of the preservation project and the quality of the wetland resources lost;
- d. The impact area is small (generally  $<1/2$  acre) and/or impacts are occurring to a low-functioning system (Category III or IV wetland). All preservation sites shall include buffer areas adequate to protect the habitat and its functions from encroachment and degradation.

**E. Type and Location of Compensatory Mitigation.** Unless it is demonstrated that a higher level of ecological functioning would result from an alternative approach, compensatory mitigation for ecological functions shall be either in kind and on site, or in kind and within the same stream reach, sub-basin, or drift cell (if estuarine wetlands are impacted). Compensatory mitigation actions shall be conducted within the same sub-drainage basin and on the site of the alteration except when all of the following apply:

1. There are no reasonable opportunities on-site or within the sub-drainage basin (e.g., on-site options would require elimination of high-functioning upland habitat), or opportunities on site or within the sub-drainage basin do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Considerations should include: anticipated replacement ratios for wetland mitigation, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);
2. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
3. Off-site locations shall be in the same sub-drainage basin unless:
  - a. Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the City and strongly justify location of mitigation at another site; or
  - b. Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the bank's certification.
4. The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland. An atypical wetland refers to a compensation wetland (e.g., created or enhanced) that does not match the type of existing wetland that would be found in the geomorphic setting of the site (i.e., the water source(s) and hydroperiod proposed for the mitigation site are not typical for the geomorphic setting). Likewise, it should not provide exaggerated morphology or require a berm or other engineered structures to hold back water. For example, excavating a permanently inundated pond in an existing seasonally saturated or inundated wetland is one example of an enhancement project that could result in an atypical wetland. Another example would be excavating depressions in an existing wetland on a slope, which would require the construction of berms to hold the water.

**F. Timing of Compensatory Mitigation.** It is preferred that compensatory mitigation projects be completed prior to activities that will disturb wetlands. At the least, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy of the action or development.

Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

1. The Director of Public Works or the County Planner may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a



written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties (e.g., project delay lapses past a fisheries window, or installing plants should be delayed until the dormant season to ensure greater survival of installed materials). The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, or general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the compensatory mitigation plan. The justification must be verified and approved by the County.

2.

G. Wetland Mitigation Ratios:

Category and Type of Wetland	Creation or Re-establishment	Rehabilitation	Enhancement	Preservation
Category I: Bog, Natural Heritage site	Not considered possible	6:1	Case-by-case	Case-by-case
Category I: Mature Forested	6:1	12:1	24:1	24:1
Category I: Based on functions	4:1	8:1	16:1	20:1
Category II:	3:1	6:1	12:1	20:1
Category III	2:1	4:1	8:1	15:1
Category IV	1.5:1	3:1	6:1	10:1

H. **Compensatory Mitigation Plan.** When a project involves wetland and/or buffer impacts, a compensatory mitigation plan prepared by a qualified professional shall be required, meeting the following minimum standards:

1. Wetland Critical Area Report. A critical area report for wetlands must accompany or be included in the compensatory mitigation plan and include the minimum parameters described in *Minimum Standards for Wetland Reports* (Section 9.05A.060.B) of this Chapter;
2. Compensatory Mitigation Report. The report must include a written report and plan sheets that must contain, at a minimum, the following elements. Full guidance can be found in *Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1)* (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised).
  - a. The written report must contain, at a minimum:
    - i. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the compensatory mitigation report; a description of the proposal; a summary of the impacts and proposed compensation concept; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project;

- ii. Description of how the project design has been modified to avoid, minimize, or reduce adverse impacts to wetlands;
  - iii. Description of the existing wetland and buffer areas proposed to be impacted. Include acreage (or square footage), water regime, vegetation, soils, landscape position, surrounding lands uses, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating, based on *Wetland Ratings* (Section 9.05A.020.B) of this Chapter;
  - iv. Description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing conditions: acreage (or square footage) of wetlands and uplands, water regime, sources of water, vegetation, soils, landscape position, surrounding land uses, and functions. . Estimate future conditions in this location if the compensation actions are NOT undertaken (i.e., how would this site progress through natural succession?);
  - v. A description of the proposed actions for compensation of wetland and upland areas affected by the project. Include overall goals of the proposed mitigation, including a description of the targeted functions, hydrogeomorphic classification, and categories of wetlands;
  - vi. A description of the proposed mitigation construction activities and timing of activities;
  - vii. A discussion of ongoing management practices that will protect wetlands after the project site has been developed, including proposed monitoring and maintenance programs (for remaining wetlands and compensatory mitigation wetlands);
  - viii. A bond estimate for the entire compensatory mitigation project, including the following elements: site preparation, plant materials, construction materials, installation oversight, maintenance twice per year for up to five (5) years, annual monitoring field work and reporting, and contingency actions for a maximum of the total required number of years for monitoring;
  - ix. Proof of establishment of Notice on Title for the wetlands and buffers on the project site, including the compensatory mitigation areas.
- b. The scaled plan sheets for the compensatory mitigation must contain, at a minimum:
- i. Surveyed edges of the existing wetland and buffers, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions;
  - ii. Existing topography, ground-proofed, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed to create the compensation area(s). Also existing cross-sections of on-site wetland areas that are proposed to be impacted and cross-section(s) (estimated one-foot intervals) for the proposed areas of wetland or buffer compensation;
  - iii. Surface and subsurface hydrologic conditions including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Also, illustrations of how data for existing hydrologic conditions were used to determine the estimates of future hydrologic conditions;
  - iv. Conditions expected from the proposed actions on site including future hydrogeomorphic types, vegetation community types by dominant species (wetland and upland), and future water regimes;
  - v. Required wetland buffers for existing wetlands and proposed compensation areas. Also, identify any zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this Chapter;

- vi. A plant schedule for the compensation area including all species by proposed community type and water regime, size and type of plant material to be installed, spacing of plants, typical clustering patterns, total number of each species by community type, timing of installation;
- vii. Performance standards (measurable standards reflective of years post-installation) for upland and wetland communities, monitoring schedule, and maintenance schedule and actions by each biennium.

I. **Buffer Mitigation Ratios.** Impacts to buffers shall be mitigated at a 1:1 ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.

J. **Wetland Mitigation Banks.**

1. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:
  - a. The bank is certified under state rules;
  - b. The Director of Public Works or the County Planner determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
  - c. The proposed use of credits is consistent with the terms and conditions of the bank's certification.
2. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification;
3. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

K. **In-Lieu Fee.** To aid in the implementation of off-site mitigation, the County may develop an in-lieu fee program. This program shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee mitigation, and state water quality regulations. An approved in-lieu-fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor, a governmental or non-profit natural resource management entity. Credits from an approved in-lieu-fee program may be used when paragraphs 1-6 below apply:

1. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts;
2. The mitigation will occur on a site identified using the site selection and prioritization process in the approved in-lieu-fee program instrument;
3. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument;
4. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three years of the credit sale;
5. Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu-fee program;
6. Credits from an approved in-lieu-fee program may be used to compensate for impacts located within the service area specified in the approved in-lieu-fee instrument.

L. **Advance Mitigation.** Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented consistent with federal rules, state policy on

advance mitigation and state water quality regulations documented in *Interagency Regulatory Guide: Advance Permittee-Responsible Mitigation* (Ecology Publication No. 12-06-015, December 2012).

M. **Alternative Mitigation Plans.** The County Planner may approve alternative critical areas mitigation plans that are based on best available science, such as priority restoration plans that achieve restoration goals identified in the SMP. Alternative mitigation proposals must provide an equivalent or better level of protection of critical area functions and values than would be provided by the strict application of this Chapter.

The County Planner shall consider the following for approval of an alternative mitigation proposal:

1. The proposal uses a watershed approach consistent with *Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington)* (Publication #10-06-07, Olympia, WA, November 2010);
2. Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas;
3. Mitigation according to Section 9.05A.070(E) is not feasible due to site constraints such as parcel size, stream type, wetland category, or geologic hazards;
4. There is clear potential for success of the proposed mitigation at the proposed mitigation site;
5. The plan shall contain clear and measurable standards for achieving compliance with the specific provisions of the plan. A monitoring plan shall, at a minimum, meet the provisions in Section 9.05A.070(H);
6. The plan shall be reviewed and approved as part of overall approval of the proposed use;
7. A wetland of a different type is justified based on regional needs or functions and values; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative;
8. Mitigation guarantees shall meet the minimum requirements as outlined in Section 9.05A.070(H)(a)(viii);
9. Qualified professionals in each of the critical areas addressed shall prepare the plan;
10. The County may consult with agencies with expertise and jurisdiction over the resources during the review to assist with analysis and identification of appropriate performance measures that adequately safeguard critical areas.

**9.05A.080 - Unauthorized Alterations and Enforcement**

A. When a wetland or its buffer has been altered in violation of this Chapter, all ongoing development work shall stop and the critical area shall be restored. The County shall have the authority to issue a “stop-work” order to cease all ongoing development work and order restoration, rehabilitation, or replacement measures at the owner’s or other responsible party’s expense to compensate for violation of provisions of this Chapter.

B. **Requirement for Restoration Plan.** All development work shall remain stopped until a restoration plan is prepared and approved by County. Such a plan shall be prepared by a qualified professional using the currently accepted scientific principles and shall describe how the actions proposed meet the minimum requirements described in Subsection (C). The Director of Public Works or the County Planner shall, at the violator’s expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

- C. **Minimum Performance Standards for Restoration.** The following minimum performance standards shall be met for the restoration of a wetland, provided that if the violator can demonstrate that greater functions and habitat values can be obtained, these standards may be modified:
1. The historic structure, functions, and values of the affected wetland shall be restored, including water quality and habitat functions;
  2. The historic soil types and configuration shall be restored to the extent practicable;
  3. The wetland and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historic functions and values should be replicated at the location of the alteration;
  4. Information demonstrating compliance with other applicable provisions of this Chapter shall be submitted to the Director of Public Works or the County Planner.
- D. **Site Investigations.** The Director of Public Works or the County Planner is authorized to make site inspections and take such actions as are necessary to enforce this Chapter. The Director of Public Works or the County Planner shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.
- E. **Penalties.** Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of this Chapter shall be guilty of a misdemeanor.
1. Each day or portion of a day during which a violation of this Chapter is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this Chapter shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The County may levy civil penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of this Chapter. The civil penalty shall be as described in the General Penalty Chapter (Chapter 1.12) of the Whitman County Code.
  2. If the wetland affected cannot be restored, monies collected as penalties shall be deposited in a dedicated account for the preservation or restoration of landscape processes and functions in the watershed in which the affected wetland is located. The County may coordinate its preservation or restoration activities with other cities in the watershed to optimize the effectiveness of the restoration action.

**Section 9.05A.090 – Appeal**

Appeal of any administrative wetlands ordinance decision shall be limited to the applicant, and shall be heard by the Board of Adjustment, as established by chapter 19.06 of the Whitman County Zoning Ordinance.

**CHAPTER 9.05B FISH AND WILDLIFE HABITAT CONSERVATION AREAS**

**Section 9.05B.010 – Purpose**

It is the intent of Whitman County to recognize the importance of protecting fish and wildlife habitat conservation areas while at the same time encouraging continued economic development of the County, including the continuation of agriculture. Implementation of this Chapter is directed toward preserving resources by steering incompatible development away from these areas and/or by providing adequate and appropriate mitigation measures to development that alleviate negative impacts. An applicant shall be required to obtain a fish and wildlife habitat evaluation for any parcel upon which any proposed development or non-development clearing activities within or adjacent to designated habitat areas. If the evaluation reveals the existence of a designated fish and wildlife habitat area a critical area report is required.

**Section 9.05B.020 – Designation**

All areas within Whitman County meeting one or more of the following criteria, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this ordinance and shall be managed consistent with the best available science, such as the Washington Department of Fish and Wildlife’s Management Recommendations for Priority Habitat and Species. Fish and wildlife habitat conservation areas shall include:

- A. Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association;
- B. State priority habitats and areas associated with state priority species; A state list of priority habitats is included in Appendix 1.
- C. **Habitats and Species of Local Importance.** Areas legislatively designated and mapped by the County because of unusual or unique habitat warranting protection due to their population status or sensitivity to habitat manipulation. Habitats may include a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.
  - 1. **Designation Process.** The County shall accept and consider nominations for habitat areas and species to be designated as locally important on an annual basis. The nomination may include management strategies for the species or habitats. Management strategies must be supported by the best available science, and where restoration of habitat is proposed, a specific plan for restoration must be provided prior to nomination. Habitats and species may be nominated for designation by any person. A habitat characteristics hand-out with guidelines on important characteristics for nominating locally important habitat areas is available from the planning office. The process for nomination is as follows:
    - a. The County Planner shall determine whether the nomination proposal is complete, and if complete, shall evaluate it according to the characteristics enumerated in subsection (1) and make a recommendation to the Planning Commission based on those findings;
    - b. The Planning Commission shall hold a public hearing for proposals and make a recommendation to the Board of County Commissioners based on the characteristics enumerated in subsection (1);
    - c. The Board of County Commissioners shall then decide whether or not to approve the application to designate an area for a Habitat or Species of Local Importance;
    - d. Approved nominations will be subject to the provisions of this Chapter.
- D. **Naturally Occurring Ponds Under Twenty Acres.** Naturally occurring ponds are those ponds under twenty (20) acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds, and landscape amenities, unless such artificial ponds were intentionally created for mitigation;
- E. **Waters of the State.** Waters of the state include 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, as classified in WAC 222-16-031 (or WAC 222-16-030 depending on classification used);

- F. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity.
- G. **State Natural Area Preserves and Natural Resource Conservation Areas.** Natural area preserves and natural resource conservation areas are defined, established, and managed by the Washington State Department of Natural Resources;
- H. **Areas of Rare Plant Species and High Quality Ecosystems.** Areas of rare plant species and high quality ecosystems are identified by the Washington State Department of Natural Resources through the Natural Heritage Program; and
- I. Land useful or essential for preserving connections between habitat blocks and open spaces.

**Section 9.05B.030 – Mapping**

The approximate location and extent of habitat conservation areas are shown on the critical area maps adopted by the County, as most recently updated. The following critical area maps are hereby adopted:

- A. Washington Department of Fish and Wildlife Priority Habitat and Species maps;
- B. Washington State Department of Natural Resources, Official Water Type Reference maps, as amended;
- C. Washington State Department of Natural Resources Shorezone Inventory;
- D. Washington State Department of Natural Resources Natural Heritage Program mapping data;
- E. Anadromous and resident salmonid distribution maps contained in the Habitat Limiting Factors reports published by the Washington Conservation Commission;
- F. Washington State Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area maps; and
- G. County official habitat maps.

These maps are to be used as a guide for the County, project applicants, and/or property owners and should be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.

**9.05B.040 – Critical Area Report-Additional Requirements for Habitat Conservation Areas**

In addition to the general critical area report requirements, the following elements must be met:

- A. **Preparation by a Qualified Professional.** A critical areas report for a habitat conservation area shall be prepared by a qualified professional who is a biologist with experience preparing reports for the relevant type of habitat;
- B. **Areas Addressed in Critical Area Report.** The following areas shall be addressed in a critical area report for habitat conservation areas:
  - 1. The project area of the proposed activity;
  - 2. All habitat conservation areas and recommended buffers within three hundred (300) feet of the project area; and

3. All shoreline areas, floodplains, other critical areas, and related buffers within three hundred (300) feet of the project area.

C. **Habitat Assessment.** An investigation of the project area to evaluate the potential presence or absence of designated critical fish or wildlife species or habitat. An assessment of habitats shall include, at a minimum, the following information:

1. Detailed description of vegetation on and adjacent to the project area and its associated buffer;
2. Identification of any species of local importance, priority species, or endangered, threatened, sensitive, or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;
3. A discussion of any federal, state, or local special management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;
4. A detailed discussion of the direct and indirect potential impacts on habitat by the project, including potential impacts to water quality;
5. A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the proposed activity; and
6. A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.

D. **Additional Information may be Required.** When appropriate due to the type of habitat or species present or the project area conditions, the County Planner may also require the habitat management plan to include:

1. An evaluation by an independent qualified professional regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate;
2. A request for consultation with the Washington Department of Fish and Wildlife or the local Native American Indian Tribe or other appropriate agency; and
3. Detailed surface and subsurface hydrologic features both on and adjacent to the site.

#### **Section 9.05B.050 – Performance Standards**

A. **General Performance Standards.** The following standards shall apply within all habitat conservation areas:

1. Alteration of habitat areas. A habitat conservation area may be altered only if the proposed alteration and any proposed mitigation does not degrade the functions and values of the habitat. New structures and land alterations shall be prohibited from habitat conservation areas except in accordance with this Chapter;
2. Non-indigenous species. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a state or federal permit or approval;
3. Mitigation and contiguous corridors. Mitigation sites shall be located to preserve or achieve contiguous wildlife habitat corridors to minimize the isolating effects of development on habitat areas;
4. Additional conditions. The County Planner shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions shall be based on the best available science and may include, but are not limited to, the following:
  - a. Establishment of buffer zones;
  - b. Preservation of critically important vegetation and/or habitat features such as snags and downed wood;



- c. Limitation of access to the habitat area, including fencing to deter unauthorized access;
  - d. Seasonal restriction of construction activities;
  - e. Establishment of a duration and timetable for periodic review of mitigation activities; and
  - f. Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.
5. Equivalent mitigation required. Mitigation of alterations to habitat conservation areas shall achieve equivalent or greater biologic and hydrologic functions and shall include mitigation for adverse impacts upstream or downstream of the development proposal site;
  6. Approvals and the best available science. Any approval of alterations or impacts to a habitat conservation area shall be supported by the best available science;
  7. Buffers.
    - a. Establishment of buffers. The County Planner shall require the establishment of buffer areas for activities adjacent to habitat conservation areas when needed to protect habitat conservation areas. Buffers shall consist of an undisturbed area of native vegetation or areas identified for restoration established to protect the integrity, functions, and values of the affected habitat. Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby and shall be consistent with the management recommendations issued by the Washington Department of Fish and Wildlife.
    - b. Increased habitat buffers. The County Planner may require increased buffer widths in accordance with recommendations of a qualified professional biologist and the best available science when it is determined that a larger buffer is necessary to protect habitat area functions and values due to site specific characteristics.
    - c. Habitat buffer averaging. The County Planner may allow the recommended habitat area buffer width to be reduced in accordance with a critical area report, the best available science, and the management recommendations issued by the Washington Department of Fish and Wildlife, only if:
      - i. It will not reduce stream or habitat functions;
      - ii. It will not adversely affect salmonid habitat;
      - iii. It will provide additional natural resource protection, such as buffer enhancement;
      - iv. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and
      - v. The buffer area width is not reduced by more than twenty-five percent (25%) in any location.
  8. Signs. The outer perimeter of the habitat conservation area or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur. The County Planner may require permanent signs with specific and appropriate wording be installed along the boundary of a habitat conservation area or buffer as a condition of any permit or approval;
  9. Fencing.
    - a. The County Planner shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, the Planning Director shall condition any permit or authorization issued pursuant to this Section to require the applicant to install a permanent fence at the edge of the habitat conservation area or buffer, when fencing will prevent future impacts to the habitat conservation area.
    - b. The applicant shall be required to install a permanent fence around the habitat conservation area or buffer when domestic grazing animals are present or may be introduced on site.

- c. Fencing installed as part of a proposed activity or as required in this Subsection shall be design so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes habitat impacts.
10. Subdivisions. The subdivision and short subdivision of land in fish and wildlife habitat conservation areas and associated buffers is subject to the following:
- a. Land that is located wholly within a habitat conservation area or its buffer may not be subdivided;
  - b. Land that is located partially within a habitat conservation area or its buffer may be divided provided that the developable portion of each new lot and its access is located outside of the habitat conservation area or its buffer and meets the minimum lot size requirements of Chapter 19.10 of the Whitman County Code;
  - c. Access roads and utilities serving the proposed subdivision may be permitted within the habitat conservation area and associated buffers only if the Planning Director determines that no other feasible alternative exists and when consistent with this Chapter.

**B. Specific Habitat Performance Standards.**

- 1. Endangered, threatened and sensitive species.
  - a. No development shall be allowed within a habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a management plan established by the Washington Department of Fish and Wildlife or applicable state or federal agency.
  - b. Whenever activities are proposed adjacent to a habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a critical area report prepared by a qualified professional and approved by the County. Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Washington Department of Fish and Wildlife for animal species, the Washington State Department of Natural Resources for plant species, and other appropriate federal or state agencies.
  - c. Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292). Whenever activities are proposed adjacent to a verified nest territory or communal roost, a habitat management plan shall be developed by a qualified professional. Activities are adjacent to bald eagle sites when they are within eight hundred (800) feet or within one half mile (2,640 feet) and in a shoreline foraging area. The habitat management plan shall be approved by the United States Fish and Wildlife Service.
- 2. Anadromous Fish.
  - a. All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:
    - i. Activities shall be timed to occur only during the allowable work window as designated by the Washington Department of Fish and Wildlife for the applicable species;
    - ii. An alternative alignment or location for the activity is not feasible;
    - iii. The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas;
    - iv. Shoreline erosion control measures shall be designed to use bioengineering methods or soft armoring techniques, according to an approved critical area report; and

- v. Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical area report.
  - b. Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.
  - c. Fills, when authorized by the locally adopted shoreline management program, shall not adversely impact anadromous fish or their habitat or shall mitigate any unavoidable impacts and shall only be allowed for a water-dependent use.
3. Riparian habitat areas. Unless otherwise allowed in this Chapter, all structures and activities shall be located outside of the riparian habitat area.
- a. Establishment of riparian habitat areas. Riparian habitat areas shall be established for habitats that include aquatic and terrestrial ecosystems that mutually benefit each other and that are located adjacent to rivers, perennial or intermittent streams, seeps, and springs.
  - b. Riparian habitat area widths. Recommended riparian habitat area widths are shown in the table below. A riparian habitat area shall have the width recommended, unless a greater width is required pursuant to Subsection (3c), or a lesser width is allowed pursuant to Subsection (3d). Widths shall be measured outward in each direction, on the horizontal plane, from the ordinary high water mark, or from the top of bank, if the ordinary high water mark cannot be identified

<b>Riparian Habitat Areas</b>	
Stream Type	Recommended RHA widths
Type 1 and 2; or shorelines of the state, or shorelines of statewide significance	250 feet
Type 3; or other perennial or fish bearing streams, 5-20 feet wide	200 feet
Type 3; or other perennial or fish bearing streams, < 5 feet wide	150 feet
Type 4 and 5; or intermittent streams and washes with low mass wasting potential	150 feet
Type 4 and 5; or intermittent streams and washes with high mass wasting potential	225 feet

- c. Increased riparian habitat area width. The recommended riparian habitat area widths shall be increased as follows:
  - i. When the County Planner determines that the recommended width is insufficient to prevent habitat degradation and to protect the structure and function of the habitat area;
  - ii. When the frequently flooded area exceeds the recommended riparian habitat area width, the riparian habitat area shall extend to the outer edge of the frequently flooded area;
  - iii. When a channel migration zone is present, the riparian habitat area width shall be measured from the outer edge of the channel migration zone;
  - iv. When the habitat area is in an area of high blowdown potential, the riparian habitat area width shall be expanded an additional fifty (50) feet on the windward side; or

- v. When the habitat area is within an erosion or landslide hazard area, or buffer, the riparian habitat area width shall be the recommended distance, or the erosion or landslide hazard area or buffer, whichever is greater.
- d. Riparian habitat area width averaging. The County Planner may allow the recommended riparian habitat area width to be reduced in accordance with a critical area report only if:
  - i. The width reduction will not reduce stream or habitat functions, including those of non-fish habitat;
  - ii. The width reduction will not degrade the habitat, including habitat for anadromous fish;
  - iii. The proposal will provide additional habitat protection;
  - iv. The total area contained in the riparian habitat area of each stream on the development proposal site is not decreased;
  - v. The recommended riparian habitat area width is not reduced by more than 25% in any one location;
  - vi. The width reduction will not be located within another critical area or associated buffer; and
  - vii. The reduced riparian habitat area width is supported by the best available science.
- e. Riparian habitat mitigation. Mitigation of adverse impacts to riparian habitat areas shall result in equivalent functions and values on a per function basis, be located as near the alteration as feasible, and be located in the same sub-drainage basin as the habitat impacted.
- f. Alternative mitigation for riparian habitat areas. The performance standards set forth herein for riparian habitat areas may be modified at the County's discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected sub-drainage basin as a result of alternative mitigation measures.
- 4. Aquatic habitat. Any activity which may be allowed pursuant to this Chapter that is within a riparian habitat area, pond, lake, water of the state, marine habitat or associated buffers shall not be approved unless the activity complies with the provisions of the Whitman County Shorelines Management Program, all applicable state and federal requirements, and is in accordance with an approved critical area report.

## **CHAPTER 9.05C CRITICAL AQUIFER RECHARGE AREAS**

### **Section 9.05C.010 – Purpose and Applicability**

- A. The purpose of this chapter is to designate and protect critical aquifer recharge areas pursuant to the Growth Management Act (chapter 36.70A RCW) in order to safeguard the public health, safety and welfare and to protect groundwater resources. Critical aquifer recharge areas (CARA) are areas with a recharging effect on aquifers used for potable water that are vulnerable to contamination that would affect water quality. Critical aquifer recharge areas have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water. These areas include the following:
- 1. Wellhead Protection Areas. Potable water-supply purveyors using ground water must develop and implement wellhead protection programs that include delineation of protection areas around each well, inventorying of contamination sources within wellhead protection areas, and development and implementation of water supply contingency and spill response plans to address contamination incidents that could cause loss of a well. The State of Washington wellhead protection regulations exclude individual domestic wells and well systems that do not meet the definition of public water supplies.

2. Sole source Protection aquifers: Sole source aquifers are areas designated by the U.S. Environmental Agency pursuant to the Federal Safe Water Drinking Act.
  3. Susceptible ground water management areas: Susceptible ground water management areas are areas that have been designated as moderately, or highly vulnerable or susceptible in an adopted ground water management program developed pursuant to Chapters 173-100 WAC.
  4. Special protection areas: Defined pursuant to WAC 173-200-090.
  5. Moderately, highly vulnerable or highly susceptible aquifer recharge areas: Aquifer recharge areas that are moderately, highly vulnerable or highly susceptible to degradation or depletion due to hydro-geologic characteristics are those areas delineated by a hydro-geologic study prepared in accordance with the state Department of Ecology guidelines or meeting the criteria established by the Department of Ecology.
- B. Aquifer recharge area susceptibility ratings: Aquifer recharge areas shall be rated as having high, moderate, or low susceptibility based on soil permeability, geologic matrix, infiltration, and depth to water as determined by the criteria established by the state Department of Ecology.
- C. The County has designated critical aquifer recharge areas pursuant to RCW 36.70A.170 by defining them and providing criteria for their identification. Project proponents are responsible for informing the County whether a critical aquifer recharge area exists on their property and is regulated pursuant to this chapter. Specific criteria for the designation of critical aquifer recharge areas are contained in this chapter. Current data, as confirmed by several hydro-geological studies, find that aquifer recharge in Whitman County to be an area-wide process. Recharge is thought to occur as deep percolation and snowmelt over a wide area rather than occurring as a process involving large volumes of recharge getting into the aquifer in discrete areas. To date, no specific critical aquifer recharge areas have been identified in Whitman County.

**Section 9.05C.020 - Procedure**

- A. An applicant seeking to develop property which requires any type of county permit or approval shall submit with the application an Affidavit of Awareness certifying that to the best of their knowledge none of the criteria stated in the affidavit exist on the property. This affidavit will comply with RCW 9A.72.085, (see WCC 9.05C.070). Any application that fails to contain a signed affidavit shall be rejected and only accepted upon resubmission of a signed affidavit.
- B. If any of the stated criteria on the Affidavit of Awareness are present on the development property, the Planning Office shall direct the applicant to comply with WCC 9.05C.070 and submit a certified hydro-geologic assessment.
- C. If an applicant's statement asserts that none of the WCC 9.05C.070 criteria 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. If the Planning Office has or obtains information which clearly establishes the applicant's statement is incorrect, the applicant will be advised in writing of the inconsistent information and advised to either (a) provide an amended statement adding the designated criteria as being applicable and obtain a hydro-geologic assessment, or, (b) present sufficient countering information clearly establishing that the basis for the Planning Office's concern is incorrect. The final determination concerning whether a hydro-geologic 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.
- D. Should the hydro-geological assessment conclude that the development will have a critical effect on an aquifer recharge area 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 hydro-geologic 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 and enforce all recommendations, conditions, and/or requirements as set forth in the hydro-geologic assessment.

**Section 9.05C.030 – Activities Allowed in Critical Aquifer Recharge Areas**

The following are allowed in critical aquifer recharge areas, and do not require approval or submission of a site assessment report:

- A. All residential uses;
- B. Development and improvement of parks, recreation facilities, open space, or conservation areas resulting in less than five percent total site impervious surface area that do not increase the use of a hazardous substance;
- C. Public water pipelines and supply storage structures;
- D. On-site domestic septic systems releasing less than 14,500 gallons of effluent per day and that are limited to a maximum density of one system per one acre.

**Section 9.05C. 040 – Site Assessment Report**

Development proposals in an aquifer recharge area require a site assessment report. The site assessment report must meet the requirements of this Section.

- A. **Preparation by a Qualified Professional.** The critical area report shall be prepared by, or under the direction of, and signed by a professional engineer, licensed in the State of Washington, trained and qualified to analyze geologic, hydrologic, and groundwater flow systems; or by a geologist or hydro-geologist who earns his or her livelihood from the field of geology and/or hydrogeology and has received a degree in geological sciences from an accredited four year institution of higher education and who has relevant training and experience analyzing geologic, hydrologic, and groundwater flow systems.
- B. A site plan shall be prepared in accordance with the requirements of the County Planner. In addition, a site assessment report shall include:
  - 1. A description of the project including those activities, practices, materials, or chemicals that have a potential to adversely affect the quantity or quality of underlying aquifer(s);
  - 2. Identification of appropriate mitigation measures and description of how they will prevent degradation of underlying aquifer(s);
  - 3. A site plan or another appropriately sealed map showing the approximate location of known or geologically representative well(s) (abandoned and active), spring(s), and surface watercourses within 1,000 feet of the subject project property. All well logs available through the County Health Department for identified wells within 1000 feet of the project property shall be included;
  - 4. A description of the site-specific hydro-geologic characteristics regarding impact to the quantity or quality of underlying aquifer(s). At a minimum this will include a description of the lithology, depth

to and static water level of known underlying aquifer(s), and depiction of groundwater flow direction and patterns on the appropriate map; and

5. Identification of the initial receptors of potential adverse impacts located hydraulically down-gradient from the project within 1,000 feet or as otherwise directed by the County Planner.

**C. Additional Site Assessment Elements.** After the initial project review, one or more of the site assessment elements listed below may be required based upon the proposed project activity, aquifer recharge area classification, complexity of underlying hydro-geologic conditions, and/or the perceived potential to adversely impact hydraulically down-gradient receptors. One or more of these additional elements may also be required if the Applicant chooses to demonstrate that certain mitigation measures are not necessary to protect the quantity or quality of the underlying aquifer(s), or that the project does not pose a detrimental risk to hydraulically down-gradient receptors.

1. Lithologic characteristics and stratigraphic relationships of the affected aquifer(s) and overlying geologic units (includes soil types) including thickness, horizontal and vertical extent, permeability, and infiltration rates of surface soils.
2. Delineation of identified structural features such as faults, fractures, and fissures.
3. Aquifer characteristics including determination or recharge and discharge areas, transmissivity, storage, hydraulic conductivity, porosity, and estimate of groundwater flow direction, velocity and patterns for the affected aquifer(s).
4. Estimate of precipitation, evaporation, and evapotranspiration rates for the project area.
5. Preparation of appropriate hydro-geologic cross sections depicting at a minimum underlying lithology and stratigraphy, aquifer(s), and potential or probable contaminant pathways from a chemical release.
6. Contaminant fate and transport including probable migration pathways and travel time of potential contaminant release(s) from the site through the unsaturated zone to the aquifer(s) from the site through the unsaturated zone to the aquifer(s) may be attenuated within the unsaturated zone and aquifer(s). Include consideration of advection, dispersion, and diffusion of contaminants in the groundwater.
7. Delineation of areas potentially affected by contaminant migration on the ground surface and/or through the affected aquifer(s).
8. Determination of background or existing groundwater quality underlying the project area.
9. Development of groundwater monitoring program to measure potential impacts of the development of underlying aquifer(s).
10. Development of a spill plan and/or contingency plan describing the specific actions, which will be taken if a release of a contaminant(s) occurs, or if groundwater monitoring results indicate a contaminant(s) from the site has entered the underlying aquifer(s).
11. The degree of continuity between groundwater and nearby surface water including potential impact to "closed" or "low-flow" streams from proposed groundwater withdrawals, and potential impacts to surface water quality from site runoff or contaminated groundwater discharge.
12. Applicable projects shall be required to determine appropriate pumping rates and schedules that maintain appropriate pumping rates and schedules that maintain dynamic draw down levels above mean seal level.
13. Applicable projects such as special use permits, short plats, or long plats shall test existing and/or test wells for nitrate levels and where appropriate calculate the nitrate loading rate at full build-out of the project. If the calculated nitrate loading in the intended water supply equals or exceeds 5 mg/L nitrate as nitrogen, the proposal will need to develop a mitigation plan. The point of compliance shall be determined based on project specifics.

14. A description of wetlands and FWHCAs and their buffers when such occur within 300 feet of the recharge area.

**Section 9.05C.050 – Performance Standards**

- A. General Performance Standards.** Except as may be otherwise provided, the following standards shall apply within all critical aquifer recharge areas:
1. Activities may only be permitted within a critical aquifer recharge area if the applicant can show that the proposed activity will not cause contaminants to enter the aquifer and the proposed activity will not adversely affect the recharging of the aquifer;
  2. The proposed activity must comply with the water source protection requirements and recommendations of the federal Environmental Protection Agency, the state Department of Health, and the Whitman County Health Department; and
  3. The proposed activity must be designed and constructed in accordance with existing local, state and federal laws and regulations, and the Stormwater Management Manual for Eastern Washington, as amended (Ecology 2004) for those geographic areas covered under the Eastern Washington Phase II Municipal Stormwater Permit (Ecology 2007) or activities covered under the Ecology General Construction Permit (Ecology 2005), and/or the locally adopted stormwater program, as applicable.
- B. Performance Standards - Specific Uses.** In addition to general performance standards required herein, the following standards shall be required for the following specific uses:
1. Storage tanks. Storage tanks shall meet the following requirements in addition to County building codes:
    - a. Underground tanks. All new underground storage facilities proposed for storage of hazardous substances or hazardous wastes shall be designed and constructed to:
      - i. Prevent releases due to corrosion or structural failure for the operational life of the tank;
      - ii. Be constructed of non-corrosive material, steel clad with a non-corrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substances; and
      - iii. Use material in the construction or lining of the tank that is compatible with the substance to be stored.
    - b. Above ground tanks. Above ground storage facilities proposed to store hazardous substances or waste shall be designed to:
      - i. Not allow the release of a hazardous substance to the ground waters, or surface waters;
      - ii. Have a primary containment area enclosing or underlying the tank or part thereof; and
      - iii. Incorporate a secondary containment system either built into the tank structure or a dike system built outside the tank or tanks.
  2. Vehicle repair and servicing.
    - a. Vehicle repair and servicing shall be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing shall be stored in a manner protecting them from weather and provide containment in the event of leaks.
    - b. No dry wells shall be allowed in critical aquifer recharge areas on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment shall be abandoned using techniques approved by the state Department of Ecology prior to the proposed activity.



3. Residential use of pesticides and nutrients. Application of household pesticides, herbicides, and fertilizers shall not exceed times and rates specified by the product manufacturer.
4. Spreading or injection of reclaimed water. Water re-use projects for reclaimed water shall be in accordance with County water and/or wastewater comprehensive plans and shall comply with the following requirements:
  - a. Surface spreading shall meet the ground water recharge criteria pursuant to Chapter 90.46.080 and 90.46.042 RCW; and
  - b. Direct injection shall be in accordance with standards pursuant to Chapter 90.46.042 RCW.

**Section 9.05C.060 - Prohibited uses**

- A. Landfills, including hazardous waste, municipal solid waste, special waste, woodwaste, inert waste, and demolition waste.
- B. Underground injection wells of classes I, III, and IV and subclasses 5FO1, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells.
- C. Mining of metals and hard rock. Sand and gravel mining shall also be prohibited from critical aquifer recharge areas rated as highly susceptible or vulnerable.
- D. Wood treatment facilities that allow any portion of the treatment process to occur over natural or manmade permeable surfaces.
- E. Facilities that store, process, or dispose of radioactive substances.
- F. Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source.
- G. Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow to a regulated stream.
- H. Activities that are not connected to an available sanitary sewer system in areas associated with sole source aquifers.

**Section 9.05C.070 – Evaluation**

- A. **Evaluation:** Before being issued a building permit an affidavit of awareness will be signed by the applicant indicating that the development is not within any public wellhead protection zones designated under WAC 246-290; the site will not be used for hazardous substances [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; the site will not be used for hazardous waste treatment and storage as set forth in RCW 70.105 Hazardous Waste Management, as now or hereafter amended; the site will not be used as a commercial feedlot; and the development envelope is not within 200 feet of the ordinary high water mark of a river, stream, lake or pond and by reference to the U.S.G.S. map is identified as “perennial” thereon.

If the proposed development involves any of the above mentioned examples the applicant shall be required to obtain a hydro-geologic assessment.

Affidavit of Awareness

I \_\_\_\_\_ state that I am not aware of any critical aquifer recharge areas near the location of my proposed development. Specifically, I am not aware of any public wellhead protection zones designated

under WAC 246-290; the site will not be used for hazardous substances [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; the site will not be used for hazardous waste treatment and storage as set forth in RCW 70.105 Hazardous Waste Management, as now or hereafter amended; the site will not be used as a commercial feedlot; the development envelope is not within 200 feet of the ordinary high water mark of a river, stream, lake or pond and by reference to the U.S.G.S. map is identified as "perennial" thereon; and the development does not involve any of the prohibited uses listed in Section 9.05C.060.

Signed \_\_\_\_\_ Date \_\_\_\_\_

(To assist applicants in complying with development within 200 feet of the above mentioned water courses, the following is a non-exclusive 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.)

## **CHAPTER 9.05D GEOLOGICALLY HAZARDOUS AREAS**

### **Section 9.05D.010 – Purpose**

It is the purpose of this Chapter to minimize hazards to the public from development activities on or adjacent to areas of geological hazard. For purposes of this Chapter, geologically hazardous areas include the following: erosion hazard areas, landslide hazard areas and seismic hazard areas.

### **Section 9.05D.020 – Designation of Specific Hazard Areas**

- A. **Erosion Hazard Areas.** Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to severe," "severe," or "very severe" rill and inter-rill erosion hazard.
- B. **Landslide Hazard Areas.** Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Example of these may include, but are not limited to the following:
1. Those areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" limitation for building site development;
  2. Those areas mapped by the Washington State Department of Natural Resources (slope stability mapping) as unstable (U or class 3), unstable old slides (UOS or class 4), or unstable recent slides (URS or class 5);
  3. Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the U.S. Geological Survey or Washington State Department of Natural Resources;
  4. Areas with all three of the following characteristics:
    - a. Slopes steeper than fifteen percent (15%);
    - b. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
    - c. Springs or ground water seepage.
  5. Areas that have shown movement during the Holocene epoch (from ten thousand years ago to the present) or that are underlain or covered by mass wastage debris of that epoch;
  6. Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

7. Slopes having gradients steeper than eighty percent (80%) subject to rock fall during seismic shaking;
8. Areas potentially unstable because of rapid stream incision, stream bank erosion, and undercutting by wave action;
9. Areas that show evidence of, or are at risk from snow avalanches;
10. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and
11. Any area with a slope of forty percent (40%) or steeper and with a vertical relief of ten (10) or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least ten (10) feet of vertical relief.

C. **Seismic Hazard Areas.** Areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface faulting.

D. **Other Hazard Areas.** Geologically hazardous areas shall also include areas determined by the County Planner to be susceptible to other geological events including mass wasting, debris flows, rock falls, and differential settlement.

**Section 9.05D.030 – Mapping**

The approximate location and extent of geologically hazardous areas are shown on the following critical area maps hereby adopted for reference. These maps are subject to continuous updating as new critical areas are identified; therefore, they are a reference source and are not intended to provide a final critical area designation. They are as follows:

- A. U.S. Geological Survey landslide and seismic hazard maps.
- B. Washington State Department of Natural Resources slope stability maps.
- C. Federal Emergency Management Administration flood insurance maps.
- D. Applicable maps adopted by Whitman County and local jurisdictions.

**Section 9.05D.040 – Allowed Activities in Geologically Hazardous Areas**

The following activities shall be allowed in geologically hazardous areas and shall not require a critical area report if the administrative official first determines the activity will not increase the risk of the hazard:

- A. Construction of new buildings with less than 2,500 square feet of floor or roof area, whichever is greater, and which are not residential structures or used as places of employment or public assembly.
- B. Additions to existing residences that are 250 square feet or less.
- C. Installation of fences.

**Section 9.05D.050 – Critical Area Report/Additional Requirements for Geologically Hazardous Areas**

A. **Preparation by a Qualified Professional.** A critical areas report for a geologically hazardous area shall be prepared by an engineer or geologist, licensed in the state of Washington, with experience analyzing geologic, hydrologic, and ground water flow systems, and who has experience preparing reports for the relevant type of hazard.

- B. Area Addressed in Critical Area Report.** The following areas shall be addressed in a critical area report for geologically hazardous areas:
1. The project area of the proposed activity; and
  2. All geologically hazardous areas within two hundred (200) feet of the project area or that have potential to be affected by the proposal;
- C. Geological Hazards Assessment.** A critical area report for a geologically hazardous area shall contain an assessment of geological hazards including the following site and proposal-related information at a minimum:
1. Site and Construction Plans. The report shall include a copy of the site plans for the proposal showing:
    - a. The type and extent of geologic hazard areas, any other critical areas, and buffers on, adjacent to, within two hundred (200) feet of, or that are likely to impact the proposal;
    - b. Proposed development, including the location of existing and proposed structures, fill, storage of materials, and drainage facilities, with dimensions indicating distances to the floodplain, if available;
    - c. The topography, in two-foot contours, of the project area and all hazard areas addressed in the report; and
    - d. Clearing limits.
  2. Assessment of Geological Characteristics. The report shall include an assessment of the geologic characteristics of the soils, sediments, and/or rock of the project area and potentially affected adjacent properties, and a review of the site history regarding landslides, erosion, and prior grading. Soils analysis shall be accomplished in accordance with accepted classification systems in use in the region. The assessment shall include, but not be limited to:
    - a. A description of the surface and subsurface geology, hydrology, soils, and vegetation found in the project area and in all hazard areas addressed in the report;
    - b. A detailed overview of the field investigations, published data, and references; data and conclusions from past assessments of the site; and site specific measurements, test, investigations, or studies that support the identification of geologically hazardous areas; and
    - c. A description of the vulnerability of the site to seismic and other geologic events.
  3. Analysis of Proposal. The report shall contain a hazards analysis including a detailed description of the project, its relationship to the geologic hazard(s), and its potential impact upon the hazard area, the subject property, and affected adjacent properties.
  4. Minimum Buffer and Building Setback. The report shall make a recommendation for the minimum no-disturbance buffer and minimum building setback from any geologic hazard based upon the geotechnical analysis.
- D. Incorporation of Previous Study.** Where a valid critical areas report has been prepared within the last five (5) years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, said report may be incorporated into the required critical area report. The applicant shall submit a hazards assessment detailing any changed environmental conditions associated with the site.
- E. Mitigation of Long-Term Impacts.** When hazard mitigation is required, the mitigation plan shall specifically address how the activity maintains or reduces the pre-existing level of risk to the site and adjacent properties on a long-term basis (equal to or exceeding the projected lifespan of the activity or occupation). Proposed mitigation techniques shall be considered to provide long-term hazard reduction only if they do not require regular maintenance or other actions to maintain their function. Mitigation may also

be required to avoid any increase in risk above the pre-existing conditions following abandonment of the activity.

**Section 9.05D.060 – Critical Area Report/Additional Technical Information Requirements for Specific Hazards**

In addition to the general critical area report requirements of Section 9.05D.050, critical area reports for geologically hazardous areas must meet the requirements of this Section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

**A. Erosion and Landslide Hazard Areas.** In addition to the basic critical area report requirements, the technical information for an erosion hazard or landslide hazard area shall include the following information at a minimum:

1. **Site Plan.** The critical area report shall include a copy of the site plan for the proposal showing:
  - a. The height of slope, slope gradient, and cross-section of the project area;
  - b. The location of springs, seeps, or other surface expressions of ground water on or within two hundred (200) feet of the project area or that have potential to be affected by the proposal; and
  - c. The location and description of surface water runoff features;
2. **Hazards Analysis.** The hazards analysis component of the critical areas report shall specifically include:
  - a. A description of the extent and type of vegetative cover;
  - b. A description of subsurface conditions based on data from site-specific explorations;
  - c. Descriptions of surface and ground water conditions, public and private sewage disposal systems, fills and excavations, and all structural improvements;
  - d. An estimate of slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure;
  - e. An estimate of the bluff retreat rate that recognizes and reflects potential catastrophic events such as seismic activity or a one hundred-year storm event;
  - f. Consideration of the run-out hazard of landslide debris and/or the impacts of landslide run-out on down slope properties.
  - g. A study of slope stability including an analysis of proposed cuts, fills, and other site grading;
  - h. Recommendations for building siting limitations; and
  - i. An analysis of proposed surface and subsurface drainage, and the vulnerability of the site to erosion;
3. **Geotechnical Engineering Report.** The technical information for a project within a landslide hazard area shall include a geotechnical engineering report prepared by a licensed engineer that presents engineering recommendations for the following:
  - a. Parameters for design of site improvements including appropriate foundations and retaining structures. These should include allowable load and resistance capacities for bearing and lateral loads, installation considerations, and estimates of settlement performance;
  - b. Recommendations for drainage and subdrainage improvements;
  - c. Earthwork recommendations including clearing and site preparation criteria, fill placement and compaction criteria, temporary and permanent slope inclinations and protection, and temporary excavation support, if necessary; and
  - d. Mitigation of adverse site conditions including slope stabilization measures and seismically unstable soils, if appropriate;

4. Erosion and Sediment Control Plan. For any development proposal on a site containing an erosion hazard area, an erosion and sediment control plan shall be required. The erosion and sediment control plan is subject to approval by the County Engineer;
5. Drainage Plan. The technical information shall include a drainage plan for the collection, transport, treatment, discharge, and/or recycle of water prepared in accordance with the approval of the County Engineer. The drainage plan should consider on-site septic system disposal volumes where the additional volume will affect the erosion or landslide hazard area;
6. Mitigation Plans. Hazard and environmental mitigation plans for erosion and landslide hazard areas shall include the location and methods of drainage, surface water management, locations and methods of erosion control, a vegetation management and/or replanting plan, and/or other means for maintaining long-term soil stability; and
7. Monitoring Surface Waters. If the County Engineer determines that there is a significant risk of damage to downstream receiving waters due to potential erosion from the site, based on the size of the project, the proximity to the receiving waters, or the sensitivity of the receiving waters, the technical information shall include a plan to monitor the surface water discharge from the site. The monitoring plan shall include a recommended schedule for submitting monitoring reports to the County.

**B. Seismic Hazard Areas.** In addition to the basic report requirements, a critical area report for a seismic hazard area shall also meet the following requirements:

1. The site map shall show all known and mapped faults within two hundred (200) feet of the project area or that have potential to be affected by the proposal;
2. The hazards analysis shall include a complete discussion of the potential impacts of seismic activity on the site (for example, forces generated and fault displacement); and
3. A geotechnical engineering report shall evaluate the physical properties of the subsurface soils, especially the thickness of unconsolidated deposits and their liquefaction potential. If it is determined that the site is subject to liquefaction, mitigation measures appropriate to the scale of the development shall be recommended and implemented.

**C. Other Geologically Hazardous Areas.** In addition to the basic requirements, the County Planner may require additional technical information to be submitted when determined to be necessary to the review the proposed activity and the subject hazard. Additional technical information that may be required, includes, but is not limited to:

1. Site Plan. The site plan shall show all hazard areas located within two hundred (200) feet of the project area or that have potential to be affected by the proposal; and
2. Hazards Analysis. The hazards analysis shall include a complete discussion of the potential impacts of the hazard on the project area and of the proposal on the hazard.

#### **Section 9.05D.070 – Performance Standards**

**A. General Performance Standards.** Except as otherwise provided, the following performance standards shall apply to geologically hazardous areas:

1. The activity will not increase the threat of the geological hazard to adjacent properties beyond pre-development conditions;
2. The activity will not adversely impact other critical areas;
3. The activity is designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than pre-development conditions; and
4. The activity is certified as safe as designed and under anticipated conditions by a qualified engineer or geologist, licensed in the state of Washington.

- B. Critical Facilities Prohibited.** Critical facilities shall not be sited within geologically hazardous areas unless there is no other practical alternative.
- C. Performance Standards – Erosion and Landslide Hazard Areas.** Activities on sites containing erosion or landslide hazards shall meet the general performance standards required herein and the specific following requirements:
1. A buffer shall be established from all edges of landslide hazard areas. The size of the buffer shall be determined by the administrative official to eliminate or minimize the risk of property damage, death, or injury resulting from landslides caused in whole or part by the development, based upon review of and concurrence with a critical area report prepared by a qualified professional;
  2. Alterations of an erosion or landslide hazard area and/or buffer may only occur for activities for which a geo-technical analysis is submitted and certifies that:
    - a. The development will not increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions;
    - b. The development will not decrease slope stability on adjacent properties; and
    - c. Such alterations will not adversely impact other critical areas.
- D. Design Standards – Erosion and Landslide Hazard Areas.** Development within an erosion or landslide hazard area and/or buffer shall be designed to meet the following basic requirements unless it can be demonstrated that an alternative design that deviates from one or more of these standards provides greater long-term slope stability while meeting all other provisions of this Chapter. The requirement for long-term slope stability shall exclude designs that require regular and periodic maintenance to maintain their level of function. The basic development design standards are:
1. The proposed development shall not decrease the factor of safety for landslide occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions. Analysis of dynamic conditions shall be based on a minimum horizontal acceleration as established by the current version of the International Building Code;
  2. Structures and improvements shall be clustered to avoid geologically hazardous areas and other critical areas;
  3. Structures and improvements shall minimize alterations to the natural contour of the slope, and foundations shall be tiered where possible to conform to existing topography;
  4. Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation;
  5. The proposed development shall not result in greater risk or a need for increased buffers on neighboring properties;
  6. The use of retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes; and
  7. Development shall be designed to minimize impervious lot coverage.
- E. Vegetation Retention.** Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area or related buffer shall be prohibited.
- F. Utility Lines and Pipes.** Utility lines and pipes shall be permitted in erosion and landslide hazard areas only when the applicant demonstrates that no other practical alternative is available. The line or pipe shall be located above ground and properly anchored and/or designed so that it will continue to function in the event of an underlying slide. Stormwater conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior.

- G. Point Discharges.** Point discharges from surface water facilities and roof drains onto or upstream from an erosion or landslide hazard area shall be prohibited except as follows:
1. Conveyed via continuous storm pipe downslope to a point where there are no erosion hazards areas downstream from the discharge;
  2. Discharged at flow durations matching pre-developed conditions, with adequate energy dissipation, into existing channels that previously conveyed stormwater runoff in the pre-developed state; and
  3. Dispersed discharge upslope of the steep slope onto a low-gradient undisturbed buffer demonstrated to be adequate to infiltrate all surface and stormwater runoff, and where it can be demonstrated that such discharge will not increase the saturation of the slope.
- H. Subdivisions.** The division of land in landslide hazard areas and associated buffers is subject to the following:
1. Land that is located wholly within a landslide hazard area or its buffer may not be subdivided. Land that is located partially within a landslide hazard area or its buffer may be divided provided that each resulting lot has sufficient buildable area outside of, and will not affect, the landslide hazard or its buffer; and
  2. Access roads and utilities may be permitted within the landslide hazard area and associated buffers if the County determines that no other feasible alternative exists.
- I. Prohibited Development.** On-site sewage disposal systems, including drain fields, shall be prohibited within erosion and landslide hazard areas and related buffers.
- J. Performance Standards - Seismic Hazard Areas.** Activities proposed to be located in seismic hazard areas shall meet the standards of Performance Standards – General Requirements [Section 9.05D.070(A)].
- K. Other Hazard Areas.** Activities on sites containing or adjacent to other geologically hazardous areas shall meet the standards of Performance Standards – General Requirements [Section 9.05D.070(A)].

## **CHAPTER 9.05E FREQUENTLY FLOODED AREAS**

### **Section 9.05E.010 - Declaration of Intent**

It is the purpose of this zoning district to minimize public and private losses due to flood conditions in specific areas designated by the County, and the Federal Insurance Administration and the accompanying Flood Insurance Study and Flood Insurance Rate Maps (FIRM) dated May 1, 1980, and as may be subsequently amended. This zoning district overlays present or future districts also associated with the property designated on the Flood Insurance Rate Maps which are adopted as part of this Chapter by reference and does not add to the specified uses, but, may restrict certain specified uses. This district is intended to meet the requirements of the federal government to maintain the County's eligibility for participation in the National Flood Insurance Program. The Flood Insurance Study and FIRM are on file at the Whitman County Planning Department. This ordinance shall apply to all areas of special flood hazards within the jurisdiction of unincorporated Whitman County.

### **Section 9.05E.020 - Compliance**

No structure or land area shall hereafter be constructed, located, extended, converted or altered without full compliance with this district and the district it may overlay.



**Section 9.05E.030 - Abrogation and Greater Restrictions**

The provisions of this district are not intended to repeal, abrogate or impair any existing easements, covenants, deed restrictions or zoning. However, where this district and another district, easement, covenant or deed restriction conflict, or overlap, whichever imposes the more stringent restrictions consistent with flood protection, shall prevail.

**Section 9.05E.040 - Warning and Disclaimer of Liability**

Flooding may occur to such an unpredictable extent that lands or uses outside of the designated flood plain are affected. The creation of this district does not imply that all areas outside of the district will always be safe from flooding. Therefore, the establishment of this district shall not create liability on the part of the county, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this district's provisions or any administrative decisions lawfully made thereunder.

**Section 9.05E.050 - Permitted Uses**

Within the special flood hazard area, all uses permitted as specified in the zoning district overlaid by the Flood Plain Zoning District. However, those uses are subject to the development permit process described in Section 9.05E.060 and to special building code requirements.

**Section 9.05E.060 - Development Permit Required**

A development permit shall be obtained before construction or development begins within any area of special flood hazard. The permit shall be for all "structures" including mobile homes, as defined in Whitman County Code (WCC) Section 19.03.420, and for all other "development" including fill and other activities, as defined in WCC Section 19.03.190. A floodplain evaluation is required for routine maintenance of drainages for such purposes of flood control and maintenance of tiling. Application for a development permit shall be made on forms furnished by the County Planning office and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- A. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
- B. Elevation in relation to mean sea level to which any structure has been flood-proofed where available flood data relates to depth of flood waters rather than height above mean sea level (e.g. the A-O Zone of the Flood Insurance Rate Map), then the depth of the 100-year flood should be substituted for elevation data;
- C. Certification by a registered professional engineer or architect that the flood-proofing methods for any non-residential structure meet the flood-proofing criteria in Section 9.05E.070; and
- D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. (Adopted May, 2003; Resolution No. 061233)

**Section 9.05E.065 – Permit Review**

- A. Review all development permits to determine that the requirements of this Chapter have been satisfied.
- B. The County Planner is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

- C. It is the applicant's responsibility to seek and obtain all of the other Federal, State, or local agency permits that must be obtained for the project. Although Whitman County may use the SEPA or other notification process to inform other jurisdictions and agencies, Whitman County is not liable for the applicant's failure to obtain these permits. The failure of the applicant to obtain these other permits, when brought to Whitman County's attention, is basis for rescinding the County permit. (Adopted May, 2003; Resolution No. 061233)
- D. The County Planner shall review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, the County Planner will assure that the encroachment provisions of Section 9.05E.070(E) are met.
- E. When base flood elevation data has not been provided (in A or V Zones) in accordance with Section 9.05E.010 – Declaration of Intent, the County Planner shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer Sections 9.05E.070(B) and (E) – Development Standards.
- F. The information to be obtained and maintained will be as follows:
  - 1. Where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in Section 9.05E.065(E), obtain and record the actual (as-built) elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement. (Recorded on a current elevation certificate [FF 81-31] with Section B completed by the local official);
  - 2. For all new or substantially improved flood-proofed non-residential structures where base flood elevation data is provided through the FIS, FIRM, or as required in Section 9.05E.065(E):
    - a. Obtain and record the elevation (in relation to mean sea level) to which the structure was flood-proofed (44 CFR 60.3(b)(5)(ii));
    - b. Maintain the flood-proofing certifications required in Section 9.05E.060(C) (44 CFR 60.3(b)(5)(iii)).
  - 3. Maintain for public inspection all records pertaining to the provisions of this ordinance (44 CFR 60.3(b)(5)(iii)).
- G. Alteration of watercourses (44 CFR 60.3(b)(6)).
  - 1. Notify adjacent communities and the Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
  - 2. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

**Section 9.05E.070 - Development Standards**

- A. Due to the inherent dangers of development with a special flood hazard area, special development, construction and installation standards are necessary. Compliance with these standards must be assured before a development permit will be issued.

These special development requirements shall apply within flood plain areas subject to special flood hazards as shown on the Flood Insurance Rate Map prepared by or for the Federal Insurance Administration and which are discussed within the Flood Insurance Study prepared by or for the Federal Insurance Administration; or, have otherwise been delineated by the County. The map and study are available through the County Engineer's office.

- B. In all areas of special flood hazards, the following standards are required:

1. Anchoring:
    - a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;
    - b. All mobile/manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).
  2. Construction Materials And Methods:
    - a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
    - b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage;
    - c. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
  3. Utilities:
    - a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
    - b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters;
    - c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and
    - d. Water wells shall be located on high ground that is not in the floodway.
  4. Subdivision Proposals:
    - a. All subdivision shall be consistent with the need to minimize flood damage;
    - b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
    - c. All subdivision proposals shall have adequate drainage provided to reduced exposure to flood damage; and
    - d. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or five acres (whichever is less).
  5. Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study, FIRM or from another authoritative source [Section 9.05E.065(E)], applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.
- C. In addition to meeting the requirements of Sections 1 and 2 of this part of the Code, the following standards shall also apply where the anticipated elevation of a flood having a 100 year or more frequent expectation of occurrence, has been developed and shown on a map or in a report adopted by the County.
1. Residential Construction:
    - a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one foot or more above base flood elevation; (Adopted May, 2003; Resolution No. 061233)
    - b. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by

allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
  - ii. The bottom of all openings shall be no higher than one foot above grade; and
  - iii. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
2. Non-Residential Construction. New construction and substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated one foot or more above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:
  - a. Be flood-proofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
  - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
  - c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the County Engineer;
  - d. Non-residential structures that are elevated, not flood-proofed, must meet the same standards for space below the lowest floor as described in Section 9.05E.070(C)(1); and
  - e. Applicants flood-proofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the flood-proofed level (e.g. a building constructed to the base flood level will be rated as one foot below that level). (Adopted May, 2003; Resolution No. 061233)
3. Mobile/Manufactured Homes. All mobile/manufactured homes to be placed or substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is one foot or more above the base flood elevation and is securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 9.05E.070(B)(1)(b). (Adopted May, 2003; Resolution No. 061233)
4. Critical Facility. Construction of new critical facilities shall be, to the extent possible, located outside of the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet. Access to and from the critical facility should also be protected to that height. Flood proofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of base flood elevation shall be provided to all critical facilities to the extent possible.
5. Recreational Vehicles. Recreational vehicles by Whitman County code are allowed in locations where RV Parks, storage and campgrounds have been permitted. In general, these facilities are not and have not been allowed within flood hazard areas. If a permit is granted to allow RV sites within a floodplain, the following additional requirements apply:
  - a. The RV can be on-site for fewer than 180 consecutive days; and
  - b. The RV must be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions. (Adopted May, 2003; Resolution No. 061233)

D. **AE and A1-30 Zones with Base Flood Elevations but no Floodways.** In areas with base flood elevations (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community’s FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

E. **Floodways.** Located within areas of special flood hazard established in Section 9.05E.050 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris, and increase erosion potential, the following provisions apply: Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer licensed in the State of Washington is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge. In addition, the developer and the developer’s professional engineer licensed in the State of Washington shall be responsible for periodic inspections, routine channel clearing and other related functions of the altered floodway’s maintenance. (Adopted May, 2003; Resolution No. 061233)

1. Construction or reconstruction of residential structures is prohibited within designated floodways, except for (i) repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and (ii) repairs, reconstruction or improvements to a structure, the cost of which does not exceed 50 percent of the market value of the structure either, (A) before the repair or reconstruction is started, or (B) if the structure has been damaged, and is being restored, before the damage occurred. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or to structures identified as historic places, may be excluded in the 50 percent.
2. If Section 9.05E.070(E)(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 9.05E.070 – Development Standards. (Amended March 19, 2012, Ordinance # 072876)

**Section 9.05E.080 - Variance Standards**

Refer to Chapter 19.06, Section 030.

**Appendix 1**

**Whitman County List of Priority Habitats and Species**

	Species/Habitat	State Status	Federal Status	Important Note
Habitats	Aspen Stands			These are the species and habitats Identified for Whitman County. This list of species and habitats was developed using the distribution maps found in the Priority Habitat and Species (PHS) List (see <a href="http://wdfw.wa.gov/conservation/p hs/">http://wdfw.wa.gov/conservation/p hs/</a> ). Species distribution maps
	Biodiversity Areas and Corridors			
	Juniper Savannah			
	Eastside Steppe			
	Shrub-Steppe			
	Riparian			
	Freshwater Wetlands & Fresh Deepwater			

	Instream			<p>depict counties where each priority species is known to occur as well as other counties where habitat primarily associated with the species exist. Two assumptions were made when developing distribution maps for reach species:</p> <p>1). There is a high likelihood a species is present in a county, even if it has not been directly observed, if the habitat it is primarily associated with exists.</p> <p>2). Over time, species can naturally change their distribution and move to new counties where usable habitat exists.</p> <p>Distribution maps in the PHS List were developed using the best information available. As new information becomes available, known distribution for some species may expand or contract. WDFW will periodically review and update the distribution maps in the PHS List.</p>
	Caves			
	Cliffs			
	Snags & Logs			
	Talus			
Fishes	Pacific Lamprey		Species of Concern	
	River Lamprey	Candidate	Species of Concern	
	White Sturgeon			
	Leopard Dace	Candidate		
	Mountain Sucker	Candidate		
	Bull Trout/Dolly Varden	Candidate*	Threatened*	
	Chinook Salmon	Candidate	Threatened (Upper Columbia spring run is endangered)	
	Rainbow Trout/Steelhead/Inland Redband Trout	Candidate**	Threatened*	
	Sockeye Salmon	Candidate	Threatened – Ozette Lake Endangered – Snake	

			River	
	Westslope Cutthroat			
Amphibians	Columbia Spotted Frog	Candidate		
	Western Toad	Candidate	Species of Concern	
Reptiles	Sagebrush Lizard	Candidate	Species of Concern	
Birds	American White Pelican	Endangered		
	E. WA breeding concentration of Grebes & Cormorants			
	E. WA breeding Terns			
	Great Blue Heron			
	Waterfowl concentration			
	Bald Eagle	Sensitive	Species of Concern	
	Ferruginous Hawk	Threatened	Species of Concern	
	Golden Eagle	Candidate		
	Peregrine Falcon	Sensitive	Species of Concern	
	Prairie Falcon			
	Chukar			
	Ring-Necked Pheasant			
	Wild Turkey			
	Upland Sandpiper	Endangered		
	E. WA breeding occurrences of Phalaropes, Stilts and Avocets			
	Yellow-billed Cuckoo	Candidate	Candidate	
	Burrowing Owl	Candidate	Species of Concern	
	Pileated Woodpecker	Candidate		
	Loggerhead Shrike	Candidate		
	Sage Sparrow	Candidate		
Sage Thrasher	Candidate			
Mammals	Merriam's Shrew	Candidate		
	Preble's Shrew	Candidate	Species of Concern	
	Roosting concentrations of Big-brown Bat, Myotis Bats, Pallid Bat			
	Townsend's Big-eared Bat	Candidate	Species of Concern	

	Black-tailed Jackrabbit	Candidate	
	White-tailed Jackrabbit	Candidate	
	Washington Ground Squirrel	Candidate	Candidate
	Moose		
	Northwest White-tailed Deer		
	Elk		
	Rocky Mountain Mule Deer		
Invertebrates	Columbia River Tiger Beetle	Candidate	
	Mann's Mollusk-eating Ground Beetle	Candidate	
	Giant Palouse Earthworm	Candidate	
	Shepard's Parnassian	Candidate	
	Silver-bordered Fritillary	Candidate	

\* Bull Trout only  
 \*\* Steelhead only

11:05 a.m. - Scott Ackerman stopped in and was advised that his request for a zone change had already been approved.

074729 15. Commissioner Swannack **moved** Commissioner Kinzer **seconded** the motion and it **carried** that the resolution to establish a new quarry royalty lease rate be signed as presented.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
 OF WHITMAN COUNTY, WASHINGTON**

**In the Matter of Establishing** )  
**A New Quarry Royalty Lease Rate** ) **RESOLUTION NO. 074729**  
**For payment to Quarry Owners** )  
**Countywide - Whitman County Road** )  
**Department, Whitman County,** ) **ESTABLISHING ROYALTY RATES**  
**Washington** )

WHEREAS, the Whitman County Road Department has been asked by quarry owners around the County to reassess lease rates (royalties) to be paid to property owners in consideration for use of aggregate crushed from their properties; and,

WHEREAS, the Whitman County Road Department has not increased its royalty rates in several years; and,

WHEREAS, the County Engineer has researched royalty rates for many of the rural counties across Eastern Washington; and,

WHEREAS, it has been determined that Whitman County's current base rate of 30 cents per ton is one of the lowest of the rural counties of Washington and that a



**BOCC MINUTES-10/21/13**

base rate of 40 cents per ton would be more equitable in terms of other rural counties royalty rates; and,

WHEREAS, the Board recognizes the necessity to compensate property owners a royalty rate that is considered fair and equitable for our region; and,

WHEREAS, the Board also recognizes the necessity of allowing Public Works the latitude to allow for higher lease rates for locations where a longer lease, or other conditions favorable to the County may exist,

NOW THEREFORE, BE IT HEREBY RESOLVED that Whitman County will establish a royalty compensation rate of 40 cents per ton for crushed rock materials, with the flexibility to establish higher lease rates for longer term leases, or other conditions considered favorable to Public Works, to take effect immediately upon execution of this resolution.

ADOPTED this 21<sup>st</sup> day of October, 2013.

BOARD OF COUNTY COMMISSIONERS  
OF WHITMAN COUNTY, WASHINGTON

\_\_\_\_\_  
Michael Largent, Chairman

ATTEST:

\_\_\_\_\_  
Arthur D Swannack, Commissioner

\_\_\_\_\_  
Maribeth Becker, CMC  
Clerk of the Board

\_\_\_\_\_  
Dean Kinzer, Commissioner

**D074729A 15A.** Mark Storey introduced Cheryl Holcomb who is replacing retiring employee Judy McMurray.

**11:15 a.m.** - Phil Meyer.

**074730 16.** Commissioner Kinzer **moved** Commissioner Swannack **seconded** the motion and it **carried** that the resolution to close the seasonal dirt roads be signed as presented.

**RESOLUTION NO. 074730**

BEFORE THE BOARD OF COUNTY COMMISSIONERS of Whitman County, Washington, in the matter of closing CERTAIN COUNTY ROADS FOR THE PERIOD FROM November 15, 2013 through March 15, 2014 pursuant to R.C.W. 47.48.010;

IT IS HEREBY RESOLVED that the dirt portion of the following roads be closed to vehicular traffic from November 15, 2013, through March 15, 2014; provided, however, that a special permit may be obtained by contacting the office of the Whitman County Engineer prior to traveling on any hereinafter listed road:

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<u>ROAD NO.</u>	<u>NAME</u>	<u>ROAD NO.</u>	<u>NAME</u>	<u>ROAD NO.</u>	<u>NAME</u>
0015	Waterman	2560	Mike Johnson	5160	McKenzie
0030	Merritt	2670	Baird	5170	Mader
0050	St. John	3200	Harwood Hill	5210	L West
0060	Wilhelm	3390	Gene Nelson	5220	Lawson
0100	Russell	3400	Jim Davis	5280	Mick Parvin
0110	Griffin	3430	Howard West	5370	McGreevy
0115	Carter	3440	Dickerson	5390	R. Zakarison
0190	Bourne	3450	Greenbox	5430	Bidle
0310	Catholic Cemetery	3460	Trunkey	5520	Kitzmilller
0410	Fairbanks North	3510	Tiegs	5525	Orville Boyd
1140	Bancroft	3550	Hitchings	5560	Wexler
1180	I.N. Balthis	3680	Gashous	5580	Gray
1420	Faught	3760	Mack Lloyd	5590	Reaney
1540	Bunny	3700	Jim Henning	6120	Guske
1550	B. Howard	3710	Cordell	6190	C.J. Ochs
2020	File	3890	McQuire	8050	Hofer
2030	Sheahan	3920	Miller Home Place	8080	Musgrove
2050	Finch	4290	Stubbes	8090	Klaus
2060	Tuttle Alexander	4365	Rattlesnake	8200	Getz-A.E. Seavers
2070	J.F. McCroskey	4375	Manning	8250	Nauert
2080	Kilpatrick	4380	Gene Feenan	8310	Pat O'Neil
2170	F.R. Martin	4390	Ruff	8320	Conrad
2220	Shahan	4410	McGrady	8330	Kincaid
2230	Tennessee Flat	4420	Bob Schultz	8350	Evans
2310	Peringer	4430	Morley	8450	Babbitt
2320	Huggins	4440	Bill Willson	8460	Enman-Kincaid
2330	Hubner	4460	Bixler	8470	Carothers
2350	J.W. Baylor	4470	Blackwell	8500	Benedict
2430	Westacott	4480	Rogers	9040	Country Club
2440	Sunrise	4560	Baillaine	9120	Gimlin
2520	Hilty	4600	L. Anderson	9130	Snow
		5010	Enos		

Dated this 21<sup>st</sup> day of October 2013.

BOARD OF COUNTY COMMISSIONERS  
OF WHITMAN COUNTY, WASHINGTON

\_\_\_\_\_  
Michael Largent, Chairman

ATTEST:

\_\_\_\_\_  
Arthur D Swannack, Commissioner

\_\_\_\_\_  
Maribeth Becker, CMC  
Clerk of the Board

\_\_\_\_\_  
Dean Kinzer, Commissioner

**BOCC MINUTES-10/21/13**

**074731** 17. Commissioner Kinzer **moved** Commissioner Swannack **seconded** the motion and it **carried** to publish the notice of dirt road closures.

**074732** 18. Commissioner Swannack **moved** Commissioner Kinzer **seconded** the motion and it **carried** that the Doneen Quarry lease be signed as presented.

**DIVISION UPDATES**

**Engineering Division:**

**074733** 19. A copy of a letter to Frank Gurney, Inc. authorizing him to proceed with the guardrail safety project and letters to all bidders notifying them of the award was received. An update on the guardrail project followed.

**074733A** 19A. A copy of a letter to Harry Johnson Plumbing & Excavation, Inc. authorizing him to proceed with the tree removal safety project and letters to all bidders notifying them of the award was received. An update on the tree removal project followed.

**Maintenance Division:**

**074733B** 19B. A quote for snowplow blades was awarded to Rebuilding and Hardfacing, Inc. of Colville, WA through the small works roster process in the amount of \$8,150.00.

**074733C** 19C. The annual winter snow and ice control letter sent to all school districts and U.S. Post Offices in Whitman County was received.

**074733D** 19D. A copy of the work schedule for Public Works commencing 11/04/13 received.

**Solid Waste Division:**

**074733E** 19E. A flyer regarding the October 23<sup>rd</sup> single stream recycling summit received.

**Building Division:**

**074733F** 19F. The 3<sup>rd</sup> quarter Building Department activity report provided by Dan Gladwill.

**D074733G** 19G. Mr. Gladwill also reported on his attendance at the National Building Code conference of which he received \$1,000 towards his expenses from the Washington Association of Building Officials association. Of the more than 400 code changes he voted on, 70%-75% went the way he preferred for more simplified and practical rules and regulations for rural areas.

**Planning Division:**

**D074733H** 19H. Alan Thomson said December 4<sup>th</sup> at 7 p.m. is the Planning Commission kick-off/open house for the Shoreline Management Act Master Plan update work that will be occurring over the next 2-1/2 years.

**11:40 p.m. - Recess.**

**BOCC MINUTES-10/21/13**

**1:30 p.m. - Reconvene/Board Business Continued/BOCC Workshop.**

Present: Tim Myers.

**074734 20.** Items discussed included parks winterized, fire restrictions lifted at parks, park donation, Bill Chipman Palouse Trail crack sealed, fall turf area weed spraying, Sunshine Trailhead improvements/dedication, and Developmental Services funds reallocated. No action taken.

**2:00 p.m. - Recess.**

**2:00 p.m. - Convene/Board of Health.**

Present: Troy Henderson, Michael Baker, Phil Hagihara, Scott Paradis, Matthew Chertudi and Wahab Kromah (Intern).

**DIVISION UPDATES:**

**Health Officer:**

**074735 21.** In the absence of Dr. Bowman, Mr. Henderson indicated the county's health is good.

**Environmental Health:**

**D074735A 22.** Scott Paradis noted one specimen has been submitted to the state for rabies testing. He then gave a brief food establishment update.

**D074735B 22A.** Matthew Chertudi said he is working on the fiscal side to clear up records between fiscal/food for billing purposes.

**D074735C 22B.** Phil Hagihara said on-site sewage issues slowed down during the federal shutdown allowing him an opportunity to clean up records for loan purposes.

**074735D 22C.** Michael Baker talked about the new state Group B water system regulations for 3 or less residences. The county has the option of 1) adopt our own regulations, 2) adopt something similar to the state, or 3) turn regulatory authority over to the state. The department is currently leaning towards local health control. He has a meeting next month with state official regarding this matter. The state is foregoing their fees to allow the county to charge the fees.

**D074735E 22D.** Mr. Baker advised the Board Asotin County is requesting environmental health only assistance therefore he is working on an agreement. The commissioners requested all expenses be covered by the agreement.

**Personal Health:**

**D074735F 23.** Troy Henderson noted one more case of Whooping Cough in Whitman County has been reported bringing the total to three.

**D074735G 23A.** Due to the regular flu vaccine provider having difficulty supplying the order, Mr. Henderson said the department has reached out to another provider to supply the vaccines.

**BOCC MINUTES-10/21/13**

**Administrative:**

**D074735H 24.** Mr. Henderson is in the process of revising the jail and school district agreements for nursing services.

**Next Meeting/Adjournment:**

**D074735I 25.** The next Board of Health meeting is November 18th.

**2:30 p.m. - Reconvene/Board Business Continued.**

**D074735J 26.** Approved documents signed.

**3:00 p.m. - BOCC Workshop.**

Present: Denis Tracy, Mark Storey, Alan Thomson, Sally Ousley, Bill McKee, Darrell Shaw, Judy Shaw and Angela Harvey.

**074736 27.** Initiative 502 discussed. No action taken.

**4:00 p.m. - Executive Session.**

Present: Denis Tracy, Gary Petrovich and Mark Storey.

**074737 28.** Commissioner Kinzer **moved** Commissioner Swannack **seconded** the motion and it **carried** to go into executive session with the above individuals until 4:45 p.m. in accordance with RCW 42.30.110(1)(i) for matters related to litigation.

**4:45 p.m. - Return to Open Session/Recess.**

**D074737A THE BOARD OF WHITMAN COUNTY COMMISSIONERS** met in their Chambers in the Whitman County Courthouse, Colfax, Washington for **Tuesday, October 22, 2013** at **9:00 a.m.** Chairman Michael Largent, Art Swannack and Dean Kinzer, Commissioners and Maribeth Becker, CMC, Clerk of the Board attended.

**9:00 a.m. - Reconvene/Board Business Continued/BOCC Workshop.**

Present: Gary Petrovich and Cinnamon Brown.

**074738 29.** Continuation of 2014 budget discussion held. No action taken.

**10:00 a.m. - Recess.**

**D074738A THE BOARD OF WHITMAN COUNTY COMMISSIONERS** met in their Chambers in the Whitman County Courthouse, Colfax, Washington for **Monday, October 28, 2013** at **9:00 a.m.** Chairman Michael Largent, Art Swannack and Dean Kinzer, Commissioners and Maribeth Becker, CMC, Clerk of the Board attended.

**9:00 a.m. - Reconvene/Board Business Continued.**

**D074738B 30.** Approved documents signed.

BOCC MINUTES-10/21/13

074739-074441 30A. General/Veterans/Payroll warrants numbered 306713-306786 for \$100,383.00.

074742-074748 30B. Personnel change orders.

9:15 a.m. - Adjournment.

D074748A Commissioner Kinzer **moved** to adjourn the **October 21, 22 and 28, 2013** meeting. Motion **seconded** by Commissioner Swannack and **carried**. The Board will meet in regular session, in their Chambers', in the Whitman County Courthouse, Colfax, Washington, on **November 4, 2013**. The foregoing action made this **28th** day of **October 2013**.

ss/ ARTHUR SWANNACK, COMMISSIONER

ss/ DEAN KINZER, COMMISSIONER

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MARIBETH BECKER, CMC  
Clerk of the Board

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MICHAEL LARGENT, CHAIRMAN  
Board of County Commissioners