

## **Title 43 ENVIRONMENT**

### Chapters:

Chapter 43.21C - SEPA RULES

Chapter 43.24 - HAZARDOUS WASTE

Chapter 43.28 - SOLID WASTE

Chapter 43.70 - PROTECTION OF CRITICAL AREAS

Chapter 43.80 - BEACH NOURISHMENT PROJECTS

Chapter 43.90 - SHORELINES MANAGEMENT PROGRAM

### **Chapter 43.21C SEPA RULES**

#### Sections:

[43.21C.010\(1\) TITLE.](#)

[43.21C.010\(2\) AUTHORITY.](#)

[43.21C.010\(3\) PURPOSE.](#)

#### **43.21C.010(1) TITLE.**

This Chapter shall be cited as the Wahkiakum County SEPA Ordinance.

(Ord. 104-84)

#### **43.21C.010(2) AUTHORITY.**

The County of Wahkiakum, adopts this Chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120 and SEPA Rules, WAC 197-11-904.

(Ord. 104-84)

#### **43.21C.010(3) PURPOSE.**

This Chapter contains the Wahkiakum County SEPA procedures and policies. The SEPA Rules, Chapter 197-11, Washington Administrative Code (WAC) will be used in conjunction with this code.

(Ord. 104-84)

[ SECTION 2.0 ] - GENERAL REQUIREMENTS—DEFINITIONS.

[ SECTION 3.0 ] - CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS.

[ SECTION 4.0 ] - ENVIRONMENTAL IMPACT STATEMENTS (EIS).

[ SECTION 5.0 ] - COMMENTING AND RESPONDING.

[ SECTION 6.0 ] - USING EXISTING ENVIRONMENTAL DOCUMENTS.

[ SECTION 7.0 ] - AGENCY SEPA DECISIONS.

[ SECTION 8.0 ] - AGENCY COMPLIANCE.

**SECTION 2.0 GENERAL REQUIREMENTS—DEFINITIONS.**

[43.21C.020\(1\) DEFINITION—ADOPTION BY REFERENCE.](#)

[43.21C.020\(2\) ADDITIONAL DEFINITIONS.](#)

[43.21C.020\(3\) DESIGNATION OF RESPONSIBLE OFFICIAL.](#)

[43.21C.020\(4\) SEPA INFORMATION.](#)

[43.21C.020\(5\) LEAD AGENCY DETERMINATION AND RESPONSIBILITIES.](#)

[43.21C.020\(6\) TIME LIMITS APPLICABLE TO THE SEPA PROCESS.](#)

[43.21C.020\(7\) COORDINATION OF ENVIRONMENTAL REVIEW WITH COUNTY ACTION.](#)

**43.21C.020(1) DEFINITION—ADOPTION BY REFERENCE.**

This part contains the basic requirements that apply to the SEPA process. It also contains uniform usage and definitions of terms under SEPA. The County adopts the following sections of the WAC by reference:

197-11-040	Definitions.
050	Lead Agency.
055	Timing of the SEPA process.
060	Content of environmental review.
070	Limitations on action during SEPA process.
080	Incomplete or unavailable information.
090	Supporting documents.
100	Information required of applicants.

922	Lead agency rules.
924	Determining the lead agency.
926	Lead agency for governmental proposals.
928	Lead agency for public and private proposals.
930	Lead agency for private projects with one agency with jurisdiction.
932	Lead agency for private projects requiring licenses for more than one agency, when one of the agencies is county/city.
934	Lead agency for private projects requiring licenses from a local agency, not a county/city and one or more state agencies.
936	Lead agency for private projects requiring licenses from more than one state agency.
938	Lead agency for specific proposals.
940	Transfer of lead agency status to a state agency.
942	Agreements on lead agency status.
944	Agreements on division of lead agency duties.
946	DOE resolution of lead agency duties.
948	Assumption of lead agency status.
700	Definitions.
702	Act.
704	Action.
706	Addendum.

708	Adoption.
710	Affected tribe.
712	Affecting.
714	Agency.
716	Applicant.
718	Built Environment.
720	Categorical exemption.
722	Consolidated appeal.
724	Consulted agency.
726	Cost-benefit analysis.
728	County/city.
730	Decisionmaker.
732	Department.
734	Determination of nonsignificance (DNS).
736	Determination of significance (DS).
738	EIS.
740	Environment.
742	Environmental checklist.
744	Environmental document.
746	Environmental review.
748	Environmentally sensitive area.

750	Expanded scoping.
752	Impacts.
754	Incorporation by reference.
756	Lands covered by water.
758	Lead agency.
760	License.
762	Local agency.
764	Major action.
766	Mitigated DNS.
768	Mitigation.
770	Natural environment.
772	NEPA.
774	Nonproject.
776	Phased review.
778	Preparation.
780	Private project.
782	Probable.
784	Proposal.
786	Reasonable alternative.
788	Responsible official.
790	SEPA.

792	Scope.
793	Scoping.
794	Significant.
796	State agency.
797	Threshold determination.
799	Underlying governmental action.

(Ord. 104-84)

**43.21C.020(2) ADDITIONAL DEFINITIONS.**

In addition to those definitions contained within WAC 197-11-700 through 799, when used in this Chapter, the following terms shall have the following meanings, unless the context indicates otherwise:

- A. "Department" means any division, subdivision or organizational unit of the County established by ordinance, rule or order.
- B. "SEPA Rules" means Chapter 197-11 WAC adopted by the Department of Ecology.
- C. "Ordinance" means the ordinance, resolution, or other procedure used by the County to adopt regulatory requirements.
- D. "Early notice" means the County's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated Determination of Non-Significance procedures).
- E. "EIS" means Environmental Impact Statement.
- F. "DNS" means Determination of Non-Significance.
- G. "DS" means Determination of Significance.
- H. "WAC" means Washington Administrative Code.
- I. "Public Works Director" means the Wahkiakum County Engineer or Public Works Director or such designee or employee under his direction as he may specify or direct to perform such services.

(Ord. 104-84)

**43.21C.020(3) DESIGNATION OF RESPONSIBLE OFFICIAL.**

- A. For those proposals for which the County is the lead agency, the responsible official shall be the County Public Works Director or his designee.

- B. For all proposals for which the County is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required Environmental Impact Statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules adopted by reference in this Chapter.

(Ord. 104-84)

#### **43.21C.020(4) SEPA INFORMATION.**

The County shall retain all documents required by the SEPA rules (197-11 WAC) and make them available in accordance with Chapter 42.17 RCW, at the office of the Public Works Director.

(Ord. 104-84)

#### **43.21C.020(5) LEAD AGENCY DETERMINATION AND RESPONSIBILITIES.**

- A. When the County receives an application for or initiates a proposal that involves a nonexempt action, the Public Works Director shall determine the lead agency for that proposal under WAC 197-11-050 and WAC 197-11-922 through WAC 197-11-940; unless the lead agency has been previously determined.
- B. When the County is the lead agency for a proposal, the Public Works Director shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.
- C. When the County is not the lead agency of a proposal, all departments of the County shall use and consider as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. No County department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the County may conduct supplemental environmental review under WAC 197-11-600.
- D. If the County or any of its departments receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of determination, or the County must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within fifteen day time period. Any such petitioner on behalf of the County shall be initiated by the Public Works Director.
- E. The Public Works Director is authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944.
- F. When the Public Works Director makes a lead agency determination for a private project, he/she shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal (that is: which agencies require nonexempt licenses).

(Ord. 104-84)

#### **43.21C.020(6) TIME LIMITS APPLICABLE TO THE SEPA PROCESS.**

The following time limits (expressed in calendar days) shall apply when the County processes licenses for all private projects and those governmental proposals submitted to the County by other agencies:

- A. Categorical Exemptions. The county shall identify whether an action is categorically exempt within seven days of receiving a completed application.
- B. Threshold Determinations. The County should complete threshold determinations that can be based solely upon review of the environmental checklist for the proposal within fifteen days of the date an applicant's adequate application and completed checklist are submitted.

Complex proposals where additional information is needed and/or those proposals accompanied by an inaccurate checklist may require additional time. Upon request by an applicant, the responsible official shall select a date for making a threshold determination and notify the applicant of such date in writing. In no event shall the responsible official unreasonably delay the threshold determination.

(Ord. 104-84)

**43.21C.020(7) COORDINATION OF ENVIRONMENTAL REVIEW WITH COUNTY ACTION.**

- A. For nonexempt proposals, the DNS or final EIS for the proposal shall accompany the Public Works Director's staff recommendation to any appropriate decision-making body.
- B. If the County's only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the County conduct environmental review prior to submission of the detailed plans and specifications.

(Ord. 104-84)

**SECTION 3.0 CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS.**

[43.21C.030\(1\) CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS—ADOPTION BY REFERENCE.](#)

[43.21C.030\(2\) FLEXIBLE THRESHOLDS FOR CATEGORICAL EXEMPTIONS.](#)

[43.21C.030\(3\) USE OF EXEMPTIONS.](#)

[43.21C.030\(4\) ENVIRONMENTAL CHECKLIST.](#)

[43.21C.030\(5\) MITIGATED DETERMINATION OF NONSIGNIFICANCE \(DNS\).](#)

**43.21C.030(1) CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS—ADOPTION BY REFERENCE.**

This part contains rules for deciding whether a proposal has a "probably significant, adverse environmental impact" requiring an EIS to be prepared. This part also contains rules for categorical exemptions and rules for evaluating the impacts of proposals not requiring an EIS as well as the application of exemptions and flexible thresholds. The County adopts the following sections of the WAC by reference, as supplemented in this part:

197-11-300	Purpose of this part.
305	Categorical exemptions.



310	Threshold determination required.
315	Environmental checklist.
330	Threshold determination process.
335	Additional information.
340	Determination of nonsignificance (DNS).
350	Mitigated DNS.
360	Determination of significance (DS)/initiation of scoping.
390	Effect of threshold determination.
800	Categorical exemptions.
880	Emergencies.
890	Petitioning DOE to change exemptions.

(Ord. 104-84)

**43.21C.030(2) FLEXIBLE THRESHOLDS FOR CATEGORICAL EXEMPTIONS.**

- A. The County establishes the following exempt levels for minor new construction under WAC 197-11-800(l)(b) based on local conditions:
1. For residential dwelling units in WAC 197-11-800(l)(b)(i): up to twenty dwelling units;
  2. For agricultural structures in WAC 197-11-800(1)(b)(ii): up to thirty thousand square feet;
  3. For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(l)(b)(iii): up to twelve thousand square feet and up to forty parking spaces;
  4. For parking lots in WAC 197-11-800(1)(b)(iii): up to forty parking spaces;
  5. For landfills and excavations in WAC 197-11-800(l)(b)(v): up to five hundred cubic yards.
- B. Whenever the County establishes new exempt levels under this section, it shall send them to the Department of Ecology, headquarters office, Olympia, Washington, under WAC 197-11-800(l)(c).

(Ord. 104-84)

#### **43.21C.030(3) USE OF EXEMPTIONS.**

- A. When the County receives an application for a license or initiates a proposal, the responsible official shall determine whether the license and/or the proposal is exempt. The determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal. The County shall not require completion of an environmental checklist for an exempt proposal.
- B. In determining whether or not a proposal is exempt, the responsible official shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the responsible official shall determine the lead agency, even if the license application that triggers the department's consideration is exempt.
- C. If a proposal includes both exempt and nonexempt actions, the County may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:
  - 1. The County shall not give authorization for:
    - a. Any nonexempt action;
    - b. Any action that would have an adverse environmental impact; or
    - c. Any action that would limit the choice of alternatives.
  - 2. A department may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification of the physical environment would serve no purpose if nonexempt action(s) were not approved.
  - 3. A department may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

(Ord. 104-84)

#### **43.21C.030(4) ENVIRONMENTAL CHECKLIST.**

- A. A completed checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this Chapter except a checklist is not needed if the County and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The County shall use the environmental checklist to determine the threshold determination.
- B. For private proposals, the County will require the applicant to complete the environmental checklist, providing assistance as necessary. For County proposals, the department initiating the proposal shall complete the environmental checklist for proposals.

(Ord. 104-84)

#### **43.21C.030(5) MITIGATED DETERMINATION OF NONSIGNIFICANCE (DNS).**

- A. As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of the proposal made by the applicant.
- B. An applicant may request in writing early notice of whether a Determination of Significance (DS) is likely under WAC 197-11-350. The request must:

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the County is lead agency; and,
  2. Precede the County's actual threshold determination for the proposal.
- C. The responsible official should respond to the request for early notice within ten working days. The response shall:
1. Be written;
  2. State whether the County currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that are leading the County to consider a DS; and,
  3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarification.
- D. To the extent practicable, the County should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.
- E. When an applicant submits a changed or clarified proposal, along with a revised environmental checklist, the County shall base its threshold determination on the changed or clarified proposal and should make the determination within fifteen calendar days of receiving the changed or clarified proposal:
1. If the County indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the County shall issue and circulate a determination of nonsignificance under WAC 197-11-340(2).
  2. If the County indicated areas of concern, but did not indicate the specific mitigation measures that would allow it to issue a DNS, the County shall make the threshold determination, issuing a DNS or DS as appropriate.
  3. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent stormwater runoff" are inadequate, whereas proposals to "muffle machinery to x decibel" or "construct 200 foot stormwater retention pond at y location" are adequate.
  4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.
- F. A mitigated DNS is issued under WAC 197-11-340(2), requiring a fifteen calendar-day comment period and public notice.
- G. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the County.
- H. If the County's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the County should evaluate the threshold determination to assure consistency with WAC 197-11-840(3)(a) (withdrawal of DNS).
- I. The County's written response under Section 43.21C.030(2) shall not be construed as a determination of significance. In addition, preliminary discussion of clarification or changes to a proposal, as opposed to a written request for early notice, shall not bind the County to consider the clarifications or changes in its threshold determination.

(Ord. 104-84)

**SECTION 4.0 ENVIRONMENTAL IMPACT STATEMENTS (EIS).**

**[43.21C.040\(1\) ENVIRONMENTAL IMPACT STATEMENTS \(EIS\)—ADOPTION BY REFERENCE.](#)**

[43.21C.040\(2\) PREPARATION OF EIS.](#)

**43.21C.040(1) ENVIRONMENTAL IMPACT STATEMENTS (EIS)—ADOPTION BY REFERENCE.**

This part contains the rules for preparing environmental impact statements. The County adopts the following sections of the WAC by reference, as supplemented by this part:

197-11-400	Purpose of EIS.
402	General Requirements.
405	EIS types.
406	EIS timing.
408	Scoping.
410	Expanded scoping.
420	EIS preparation.
425	Style and size.
430	Format.
435	Cover letter or memo.
440	EIS contents.
442	Contents of EIS on nonproject proposals.
443	EIS contents when prior nonproject EIS.
444	Elements of the environment.
197-11-448	Relationship of EIS to other consideration.
450	Cost-benefit analysis.

455	Issuance of DEIS.
460	Issuance of FEIS.

(Ord. 104-84)

**43.21C.040(2) PREPARATION OF EIS.**

- A. Preparation of draft and final EIS's and Supplemental EIS's is the responsibility of the responsible official. Before the County issues an EIS, the responsible official shall be satisfied that it complies with this Chapter and Chapter 197-11 WAC.
- B. The draft and final EIS or Supplemental EIS shall be prepared by the Public Works Department staff, the applicant, or by a consultant selected by the County or the applicant. If the responsible official requires an EIS for a proposal and determines that someone other than the County will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the County's procedure for EIS preparation, including approval of the draft and final EIS prior to distribution.
- C. The County may require an applicant to provide information the County does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this Chapter or that is being requested from another agency. (This does not apply to information the County may request under another ordinance or statute).

(Ord. 104-84)

**SECTION 5.0 COMMENTING AND RESPONDING.**

[43.21C.050\(1\) COMMENTING AND RESPONDING—ADOPTION BY REFERENCE.](#)

[43.21C.050\(2\) PUBLIC NOTICE.](#)

[43.21C.050\(3\) DESIGNATION OF OFFICIAL TO PERFORM CONSULTED AGENCY RESPONSIBILITIES FOR THE COUNTY.](#)

**43.21C.050(1) COMMENTING AND RESPONDING—ADOPTION BY REFERENCE.**

This part contains rules for consulting, commenting and responding on all environmental documents under SEPA, including rules for public notice and hearings. The County adopts the following sections by reference, as supplemented in this part:

197-11-500	Purpose of this Part.
502	Inviting Comment.

504	Availability and cost of environmental documents.
508	SEPA register.
535	Public hearings and meetings.
545	Effect of no comment.
550	Specificity of comments.
560	FEIS response to comments.
570	Consulted agency costs to assist lead agency.

(Ord. 104-84)

**43.21C.050(2) PUBLIC NOTICE.**

- A. Whenever the County issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3) the County shall give public notice as follows:
1. If public notice is required for a nonexempt license, the notice shall state whether a DS or DNS has been issued and when comments are due.
  2. If no public notice is required for the permit or approval, the County shall give notice of the DNS or DS by at least one of the following:
    - a. Posting the property, for site-specific proposals;
    - b. Publishing notice in a newspaper of general circulation in the County, or general area where the proposal is located;
    - c. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
    - d. Notifying the news media;
    - e. Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or
    - f. Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals or subject areas);
  3. Whenever the County issues a DS under WAC 197-11-360(3), the County shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408.
- B. Whenever the County issues a draft EIS under WAC 197-11-455(5) or a supplemental EIS under WAC 197-11-620, notice of the availability of those documents shall be given by:
1. Indicating the availability of the draft EIS in any public notice required for nonexempt license; and by at least one of the following methods:
    - a. Posting of property, for site-specific proposals;

- b. Publishing notice in a newspaper of general circulation in the County or general area where the proposal is located;
  - c. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
  - d. Notifying the news media;
  - e. Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or,
  - f. Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals or subject areas).
- C. Whenever possible, the County shall integrate the public notice required under this section with existing notice procedures for the County's nonexempt permit(s) or approval(s) required for the proposal.
- D. The County may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

(Ord. 104-84)

**43.21C.050(3) DESIGNATION OF OFFICIAL TO PERFORM CONSULTED AGENCY RESPONSIBILITIES FOR THE COUNTY.**

- A. The Public Works Director shall be responsible for preparation of written comments for the County in response to a consultation request prior to a threshold determination, participation in scoping, or reviewing a draft EIS.
- B. This person shall be responsible for the County's compliance with WAC 197-11-550 whenever the County is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the County.

(Ord. 104-84)

**SECTION 6.0 USING EXISTING ENVIRONMENTAL DOCUMENTS.**

**43.21C.060(1) USING EXISTING ENVIRONMENTAL DOCUMENTS—ADOPTION BY REFERENCE.**

**43.21C.060(1) USING EXISTING ENVIRONMENTAL DOCUMENTS—ADOPTION BY REFERENCE.**

This part contains rules for using and supplementing existing environmental documents prepared under SEPA or NEPA for the County's own environmental compliance. The County adopts the following sections of the WAC by reference:

197-11-600	When to use existing environmental documents.
610	Use of NEPA documents.

620	Supplemental environmental impact statement - Procedures.
625	Addenda - Procedures.
630	Adoption - Procedures.
635	Incorporation by reference - Procedures.
640	Combining documents.

(Ord. 104-84)

**SECTION 7.0 AGENCY SEPA DECISIONS.**

[43.21C.070\(1\) AGENCY SEPA DECISIONS—ADOPTION BY REFERENCE.](#)

[43.21C.070\(2\) SUBSTANTIVE AUTHORITY.](#)

[43.21C.070\(3\) NOTICE—STATUTE OF LIMITATIONS.](#)

**43.21C.070(1) AGENCY SEPA DECISIONS—ADOPTION BY REFERENCE.**

This part contains rules and policies for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The County adopts the following sections of the WAC by reference:

197-11-650	Purpose of this Part.
655	Implementation.
660	Substantive authority and mitigation.
680	Appeals.

(Ord. 104-84)



#### **43.21C.070(2) SUBSTANTIVE AUTHORITY.**

- A. The policies and goals set forth in this Chapter are supplementary to those in existing ordinances, resolutions and plans of the County of Wahkiakum.
- B. The County may attach conditions to a permit or approval for a proposal so long as:
  - 1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this Chapter; and
  - 2. Such conditions are in writing; and,
  - 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
  - 4. The County has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and,
  - 5. Such conditions are based on one or more policies in subsection D of this section and cited in the license or other decision document.
- C. The County may deny a permit or approval for a proposal on the basis of SEPA so long as:
  - 1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a final EIS or final supplemental EIS prepared pursuant to this Chapter; and,
  - 2. A finding is that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and,
  - 3. The denial is based on one or more policies identified in subsection D of this section and identified in writing in the decision document.
- D. The County designates and adopts by reference the following policies as the basis for the County's exercise of authority pursuant to this section:
  - 1. The County shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
    - a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
    - b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
    - c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
    - d. Preserve important historic, cultural, and natural aspects of our national heritage;
    - e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
    - f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and,
    - g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.
  - 2. The County adopts by reference the policies in the following County ordinances, plans and resolutions as existing or amended in the future:
    - a. Comprehensive Plan of the County of Wahkiakum adopted August 6, 1984;

- b. Shorelines Master Program of the County of Wahkiakum adopted July 28, 1975 and approved by the State of Washington on August 12, 1975 and Revised on February 23, 1981 by Resolution 09-81;
  - c. Ordinance Number 98-80 relating to Addressing, adopted November 3, 1980;
  - d. Resolution Number 13 relating to Flood Insurance and Flood Plains, adopted March 18, 1975; and,
  - e. Sub-Division Control Ordinance Number 78-69 adopted May 19, 1969.
- E. Except for permits and variances issued pursuant to the County of Wahkiakum Shoreline Master Program, when any proposal or action not requiring a decision of the Board of County Commissioners is conditioned or denied on the basis of SEPA by a non-elected official, the decision shall be appealable to the Board of County Commissioners. Such appeal may be perfected by the proponent or any aggrieved party by giving notice to the responsible official within ten days of the decision being appealed. Review by the Board of County Commissioners shall be on a de novo basis.

(Ord. 104-84)

**43.21C.070(3) NOTICE—STATUTE OF LIMITATIONS.**

- A. The County applicant for, or proponent of an action, may publish a notice of action pursuant to RCW 43.21C.080 for any action.
- B. The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the Public Works Director, applicant or proponent pursuant to RCW 43.21C.080.

(Ord. 104-84)

**SECTION 8.0 AGENCY COMPLIANCE.**

[43.21C.080\(1\) AGENCY COMPLIANCE—ADOPTION BY REFERENCE.](#)

[43.21C.080\(2\) FEES.](#)

**43.21C.080(1) AGENCY COMPLIANCE—ADOPTION BY REFERENCE.**

This part contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, listing agencies with environmental expertise, selecting the lead agency and applying these rules to current agency activities as well as the application of exemptions and flexible thresholds. The County adopts the following sections of the WAC by reference as supplemented by this part:

197-11-900	Purpose of this Part.
902	Agency SEPA policies.
916	Application to ongoing actions.

920	Agencies with environmental expertise.
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The County also adopts the following forms and sections of the WAC by reference:

197-11-960	Environmental checklist.
965	Adoption Notice.
970	Determination of nonsignificance (DNS).
980	Determination of significance and scoping notice (DS).
990	Notice of action.

(Ord. 104-84)

**43.21C.080(2) FEES.**

Fees for any permits or inspections required by the terms or provisions of this chapter shall be as set from time to time by a resolution duly adopted by the Board of County Commissioners.

(Ord. 144-06 § 1: Ord. 104-84)

**Chapter 43.24 HAZARDOUS WASTE**

Sections:

[43.24.010 HAZARDOUS WASTE MANAGEMENT PLAN ADOPTION.](#)

[43.24.020 AUTHORIZATION.](#)

**43.24.010 HAZARDOUS WASTE MANAGEMENT PLAN ADOPTION.**

The County adopts the Cowlitz-Wahkiakum Moderate Risk Hazardous Waste Management Plan, as approved by the Cowlitz-Wahkiakum Governmental Conference on February 21, 1991, along with the plan's appendices and executive summary.

(Res. 10-91 § 1)

#### **43.24.020 AUTHORIZATION.**

The Chairman of the Board of County Commissioners is authorized to execute any documents necessary to signify Wahkiakum County's approval of said plan.

(Res. 10-91 § 2)

#### **Chapter 43.28 SOLID WASTE**

##### Sections:

[43.28.010 SOLID WASTE MANAGEMENT PLAN ADOPTION.](#)

[43.28.020 ENERGY RECOVERY PLAN ADOPTION.](#)

#### **43.28.010 SOLID WASTE MANAGEMENT PLAN ADOPTION.**

The County adopts the Cowlitz-Wahkiakum Solid Waste Management Plan, as approved by the Cowlitz-Wahkiakum Governmental Conference on November 14, 1984, together with the said plan appendage document, executive summary and special studies related to energy recovery, landfill alternatives and sludge disposal.

(Res. 45-84)

#### **43.28.020 ENERGY RECOVERY PLAN ADOPTION.**

The Board of the Wahkiakum County Commissioners amends the Joint Comprehensive Solid Waste Management Plan of Cowlitz County to include a policy of energy recovery from shredded solid waste for sale as a supplemental fuel in hogged fuel boilers and the Board adopts by reference the study entitled "Energy Recovery from Solid Waste in Cowlitz County, Washington," dated June 1974, and completed by the Engineering Firm CH<sub>2</sub>M/Hill as project number P 8156.0, as the energy recovery element of said Joint Comprehensive Solid Waste Management Plan of Cowlitz County.

(Res. 17-77)

#### **Chapter 43.70 PROTECTION OF CRITICAL AREAS**

##### Sections:

[43.70.010 PURPOSE.](#)

[43.70.020 STATUTORY AUTHORIZATION.](#)

[43.70.030 DEFINITIONS.](#)

[43.70.040 APPLICABILITY.](#)

[43.70.050 EXEMPTIONS.](#)

[43.70.060 RELATIONSHIP TO OTHER REGULATIONS.](#)

[43.70.070 REASONABLE USE EXCEPTION.](#)

[43.70.080 SINGLE-FAMILY RESIDENCE EXCEPTION.](#)

[43.70.090 ESTABLISHMENT OF DEVELOPMENT PERMIT.](#)

[43.70.100 DESIGNATION OF ADMINISTRATOR.](#)

[43.70.110 DUTIES AND RESPONSIBILITIES OF ADMINISTRATOR.](#)

[43.70.120 CRITICAL AREA INVENTORY MAPS.](#)

[43.70.130 PRE-EXISTING NONCONFORMING USE AND DEVELOPMENT STANDARDS.](#)

[43.70.140 VARIANCES.](#)

[43.70.150 APPEALS.](#)

[43.70.160 ENFORCEMENT.](#)

### **43.70.010 PURPOSE.**

This chapter is intended to implement the provisions of Section 36.70A.060 of the Revised Code of Washington, and to further the objectives of the Wahkiakum County Comprehensive Plan and the Wahkiakum County Shoreline Management Master Program. In compliance with the mandate of the Washington State Growth Management Act, the County finds that certain portions of the County constitute critical areas. These critical areas contain valuable natural resources, perform important ecological functions and processes, provide agricultural production, provide scenic and recreation qualities important to the character of the County, and/or present a hazard to life and property.

In addition, this chapter reflects the policy of Wahkiakum County that any proposed method to conserve resource land should emphasize maintenance of existing practices. This chapter is not intended to deprive any person of the viable economic use of his/her property. To the extent that private property is regulated under this chapter, review and processing of permits shall be coordinated with other land use approvals so that additional bureaucratic burdens are not imposed upon the landowner.

Identification, designation, and regulation of critical areas are, therefore, necessary to promote the public health, safety and general welfare of Wahkiakum County's citizens by provisions designed:

- A. To classify and designate geologically hazardous areas, frequently flooded areas, potential aquifer recharge areas, wetlands, and fish and wildlife habitat conservation areas, as defined herein, as critical areas that are of special concern to Wahkiakum County;
- B. To protect critical areas from the adverse impact of development located within such designated areas, while protecting the constitutional rights of property owners;
- C. To reduce the potential for personal injury, loss of life, property damage or financial losses due to flooding, erosion, landslides or steep slope failures;
- D. To protect against publicly financed expenditures due to the misuse of critical areas which causes unnecessary maintenance and replacement of public facilities and avoidable costs for public emergency rescue and relief operations;
- E. To protect the rural lifestyle and quality of life of Wahkiakum County by preserving the county timber, farming and fishing resources.

(Ord. 131-00 § 1)

#### **43.70.020 STATUTORY AUTHORIZATION.**

The legislature of the State of Washington pursuant to RCW 36.70A.060(2) has authorized counties to adopt regulations to protect critical areas. The legislature of the State of Washington pursuant to RCW 36.70A.170 has authorized counties to designate natural resource lands and critical areas.

(Ord. 131-00 § 2)

#### **43.70.030 DEFINITIONS.**

Unless specifically defined in this section, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

"Administrator" means the Wahkiakum County Public Works Director or his/her designee.

"Applicant" means any natural person or business entity such as a corporation or a partnership which applies for a development proposal, permit or approval subject to review under this chapter. "Applicant" shall also mean any predecessor or successor in interest involving the same or fundamentally the same individuals or entities.

"Aquifer recharge areas" means geological formations with recharging areas having an effect on aquifers used for potable water where an essential source of drinking water is vulnerable to contamination.

"Commercial activity" means a privately or publicly owned or operated facility or place of business open to the public for sale of goods or services. Examples include restaurants and taverns, hotels, motels, offices, personal services, retail stores, recreational vehicle parks and campgrounds.

"De novo" means a new hearing as opposed to a review of a record created at a prior hearing.

"Department" means the Wahkiakum County Public Works Department.

"Development" means a construction project involving property improvement or change of physical character within the site; the act of using land for building or extractive purposes. "Development" shall include, but shall not be limited to, the activities identified in Section 43.70.040 of this chapter.

"Excavation" means the mechanical removal of earth material.

"Existing and on-going agricultural activities" means current use, or use within the preceding twenty-five years, of a tract of land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable or animal products or of berries, grain, honey, straw, hay, turf, seed, Christmas trees, hybrid cottonwood, or other similar short-rotation hardwoods grown on land that has been prepared by intensive cultivation and tilling or livestock, and that has long-term commercial significance for agricultural production. Agricultural activities include operation and maintenance of farm and stock ponds or drainage ditches, operation and maintenance of ditches, and normal maintenance repair or operation of existing structures or facilities. An operation ceases to be an agricultural activity when the area on which it is conducted is proposed for conversion to a nonagricultural use or has lain idle for more than twenty-five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation or drainage ditches related to an existing agricultural activity; PROVIDED, HOWEVER, if the land has lain idle for more than five years, but less than twenty-five years, in order to take advantage of the exemption set forth in Section 42.70.050(B) of this chapter, an applicant shall be prohibited from converting such land to nonagricultural use for a period of ten years from the date when the agricultural use was resumed. In such cases, the applicant may be required to work with the local Conservation District or other qualified professional to establish a farm plan designed to minimize adverse impacts to wetlands. Forest practices are not included in this definition. Reliance upon this definition does not relieve any applicant from complying with applicable wetlands regulations, interpretations, and procedures promulgated by the U.S. Army Corps of Engineers or the Federal Environmental Protection Agency.

"Filling or fill" is a deposit of earth material, man-made materials, or other potentially damaging materials, placed by artificial means.

"High intensity land use" includes public road construction, housing development greater than one house per two and one-half acres, commercial land use, and industrial land use.

"Industrial activity" means public or private use of land or structures for manufacturing, processing, deep water port development, and energy generation facilities.

"Low intensity land use" includes private and county access road maintenance/construction, and housing development less than or equal to one house per two and one-half acres.

"Mitigation" means avoiding, minimizing or compensating for adverse critical area impacts, including the following, in the following order of preference:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing 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. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the operation;
5. Compensating for the impact by replacing, enhancing or providing substitute resources or environments;
6. Monitoring the impact and the compensation project. Mitigation for individual actions may include a combination of the above measures.

"Nonconforming structure" means a structure which was lawfully constructed or established prior to January 1, 2001, but which does not conform to present regulations or standards of this chapter.

"Normal maintenance or repair" means those acts to an area to prevent a decline from or to restore to a state comparable to its original condition, except if repair requires total replacement or causes substantial adverse impacts to the critical area.

"Pond" means a naturally existing or artificially created body of standing water less than twenty acres in size and not defined as "shorelines of the state" by RCW 90.58 (Shoreline Management Act). Ponds can include reservoirs which exist on a year-round basis and occur in a depression of land or expanded part of a stream. A pond is bounded by the ordinary high water mark or the extension of the elevation of the pond's original high water mark within the stream, where the stream enters the pond.

"Qualified critical area professional" means a person with experience, education, and professional degrees and training pertaining to the critical area in question, and with experience in performing delineations, analyzing critical area functions and values, analyzing critical area impacts, and recommending critical area mitigation and restoration. The Administrator shall require professionals to demonstrate the basis for qualifications and shall make final determination as to qualifications. Demonstration of qualifications may include, but shall not be limited to, professional certification.

"Reasonable alternative" means an activity that could feasibly attain or approximate a proposal's objectives, but at a decreased level of environmental degradation. Reasonable alternatives may be used, in part, to mitigate adverse impacts.

"Reasonable use" means the economically viable use of a property owner's land as articulated by federal and state courts in regulatory takings cases.

"Riparian zone or stream setback" means a specified area alongside a stream where specific measures are taken to protect water quality and fish and wildlife habitat. Riparian zones shall not be developed and natural vegetation shall be maintained. Non-native invasive species may be controlled within the riparian zone so long as adverse impacts to the riparian zone are minimized.

"Steep slope" means an area which is equal to or in excess of thirty percent slope, or where the grounds surface rises ten feet or more vertically within a horizontal distance of twenty-five feet.

"Stream type" means the classification of a stream according to the water typing system adopted by the Washington State Forest Practices Board and promulgated in Section 222-16-030 of the Washington Administrative Code. Type I, II, III, IV, and V streams are synonymous with Type 1, 2, 3, 4, and 5 waters as defined in WAC 222-16-030.

(Ord. 131-00 § 3)

#### **43.70.040 APPLICABILITY.**

The provisions of this chapter shall apply to an activity requiring a valid development permit and which occurs in a critical area or its buffer or riparian zone subject to this chapter unless otherwise exempt. These activities may include but are not limited to the following:

- A. Removing, excavating, disturbing or dredging soil, sand, gravel, minerals or organic matter of any kind;
- B. Dumping, discharging, or filling with any material;
- C. Constructing, demolishing or altering the size of any structure;
- D. Destroying or altering vegetation through clearing, harvesting, cutting, intentional burning, shading or planting vegetation where these activities would alter the character of a critical area;
- E. Draining or artificial flooding that alters the water table;
- F. Discharges into water that result in adverse changes to a critical area.

All activities subject to a development permit under this chapter shall be coordinated with the requirements of the following permits and approvals: clearing, filling and grading; subdivision or short subdivision; flood control permit; shoreline substantial development; variance, conditional use and other permits leading to the development or alteration of land. If two or more critical areas designations apply to a single plot of land, both or all designations shall apply.

(Ord. 131-00 § 4)

#### **43.70.050 EXEMPTIONS.**

The following activities shall be exempt from the provisions of this chapter:

- A. All policies, regulations, and procedures of this chapter are null and have no effect on those activities and uses conducted pursuant to Washington State Forest Practices Act and its rules and regulations and/or conducted in conformity with an approved Habitat Conservation Plan;
- B. Existing and on-going commercial and industrial activities as defined in this chapter;
- C. Existing and on-going agricultural activities as defined in this chapter, including those activities legally conducted in wetland areas at the time of the adoption of this chapter. In order to establish this exemption, the Administrator may require an applicant to provide documentation that the area in question has previously been used for agricultural production. Documentation may include one or more of the following:
  - 1. Evidence of the presence of agricultural activity within the boundary of the proposed development (dated photograph, dated video, topographic surveys),
  - 2. Old aerial photographs showing agricultural activity within the proposed development area,



3. Old maps drawn by registered engineers/surveyors showing the presence of agricultural activity in the proposed development area,
  4. Evidence that established plants of cultivated (not native) agricultural plant species are present within the proposed development, or
  5. The presence of farm records and/or farm plans prepared by the local Conservation District or Agricultural Extension Service;
- D. Access, maintenance, operation or reconstruction of existing roads, streets, driveways, utility lines, and associated existing structures; PROVIDED, reconstruction does not exceed the footprint of the existing improved road right-of-way;
  - E. Installation, construction, or replacement of utility lines in improved county/city right-of-way;
  - F. Normal maintenance, repair, operation, or reconstruction of existing structures, facilities or improved areas provided that reconstruction meets the guidelines for a "nonconforming structure" as defined;
  - G. Maintenance of groundcover or other vegetative matter intentionally planted in a critical area that was disturbed prior to the effective date of this chapter;
  - H. Site investigative work require by a city, county, state or federal agency for preparing a land use application submitted such as surveys, soil logs, percolation tests and other related activities provided impacts in environmentally critical areas are minimized and disturbed areas are restored within one year after tests are concluded;
  - I. Recreational uses such as sport fishing or hunting, scientific or educational reviews (or other activities which have minimal adverse impacts on critical areas);
  - J. Intentionally created wetlands made from uplands (with the exception of wetlands established expressly for purposes of mitigation) or surface water systems including irrigation and drainage ditches, grass-lined swales and canals, farm ponds, and landscape or ornamental amenities;
  - K. Emergency actions which must be undertaken immediately or for which there is insufficient time for full compliance with this chapter when it is necessary to prevent an imminent threat to public health or safety, to public or private property or to prevent serious environmental degradation. Prior to engaging in an emergency action, the Administrator shall provide written determination that an emergency action is required and the reasons underlying that determination in accordance with this section. In the event a person or agency determines that the need to take emergency action is so urgent that there is insufficient time for review by the department, such emergency action may be taken immediately.

The person or agency undertaking such action shall notify the Administrator within two working days following the commencement of the emergency activity. Following such notification the director shall make a written determination if the action taken was within the scope of the emergency actions taken in this subsection. The Administrator may require after-the-fact mitigation for adverse impacts to wetlands.

(Ord. 131-00 § 5)

#### **43.70.060 RELATIONSHIP TO OTHER REGULATIONS.**

No permit granted pursuant to this chapter shall remove an applicant's obligation to comply with applicable provisions of other federal, state or local law or regulations. In the event of any conflict between these regulations and any other regulation or regulations of the County, the regulations which provide the most protection to the critical areas shall apply.

(Ord. 131-00 § 6)

#### **43.70.070 REASONABLE USE EXCEPTION.**

- A. If the application of this chapter would deny all reasonable use of the property, development may be allowed which is consistent with the general purposes of this chapter and the public interest. An application for a critical area reasonable use exception shall be filed with the administrator who shall consult with the Prosecuting Attorney and shall issue a final decision.
- B. The Administrator, in approval of a reasonable use exception, must determine that:
  - 1. Application of this chapter would deny reasonable use of the property;
  - 2. There is no other reasonable use with less impact on the critical area;
  - 3. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site;
  - 4. Any alteration permitted to these critical areas shall be the minimum necessary to allow for reasonable use of the property;
  - 5. Any authorized alteration of a critical area under this section shall require mitigation under the mitigation plan approved by the Administrator; and
  - 6. The inability to derive reasonable economic use of the property is not the result of actions in segregating or dividing the property, thus creating the undevelopable conditions after January 1, 2001.

(Ord. 131-00 § 7)

#### **43.70.080 SINGLE-FAMILY RESIDENCE EXCEPTION.**

The standards and restrictions contained in this chapter shall not be used to preclude the placement of a single-family residence on an otherwise legally buildable lot of record. Standards contained in this chapter may be applied on established properties to limit the proposed location of structures and proposed removal of vegetation. Mitigation may also be required.

(Ord. 131-00 § 8)

#### **43.70.090 ESTABLISHMENT OF DEVELOPMENT PERMIT.**

- A. **Development Permit Required.** A development permit shall be obtained before development begins within any critical area or its buffer. A development permit will be issued as part of a building or shorelines permit as may be required by law. In cases where the development is exempt from both building and shorelines permits, a development permit in the form of a letter will be used. Fees for the issuance of development permits and related inspections shall be as set from time to time by a resolution duly adopted by the Board of County Commissioners.
- B. **Preapplication Process.** Any person who considers that this chapter may apply to development of a particular property is encouraged to request a meeting with the County Public Works Department to discuss and receive preliminary comments on the potential effects of this chapter in advance of making a formal application for any permit. A preapplication meeting may include the following determinations:
  - 1. The actual presence or absence of a critical area based on maps, photographs, or other information, either supplied by the prospective applicant for by the department; and if a critical area is indicated, what options may be available;
  - 2. The absence, presence or extent of a critical area based on a site inspection by Department Staff (e.g., by measuring slopes, or noting general land surface characteristics);

3. Whether a site evaluation would be required to establish the absence, presence, or extent of a critical area; and/or
4. Whether a special report would be required to determine if the regulations applicable to a known critical area can be met.

The purpose of a preapplication meeting is to provide a prospective applicant and the County the opportunity to determine if and how this chapter may apply, so that if desired, the scope and design of the proposal may be modified to reduce or avoid restrictions which may be imposed by this chapter. Since site information and proposal are typically incomplete at the preapplication stage, and that more specific site and proposal information is typically generated prior to making a final application, preliminary determinations made through a preapplication meeting shall not be binding.

- C. Application for Development Permit. Application for a permit shall be made on forms furnished by the Public Works Department. This chapter is not intended to create a separate permit process for development proposals. To the extent possible, the County shall consolidate the review and processing of permits related to critical lands with other land use approvals. Applicants shall be required to submit a site plan drawn to scale with a north arrow and identifying known locations of critical areas, location of proposed structures, roads, water boundaries, if applicable, and activities including clearing, grading, and general topographic information. Applicants shall be required to provide such documentation, illustrations, maps, and accurate engineering data as the Administrator may deem necessary to adequately appraise the development proposed, the potential impact on the environment of the critical area, and to ensure compliance with this chapter.

(Ord. 144-06 § 2; Ord. 131-00 § 9)

#### **43.70.100 DESIGNATION OF ADMINISTRATOR.**

The Public Works Director or his/her designee is appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

(Ord. 131-00 § 10)

#### **43.70.110 DUTIES AND RESPONSIBILITIES OF ADMINISTRATOR.**

Duties of the Administrator shall include, but not be limited to:

- A. Permit Review.
  1. Review all development permits to determine that the permit requirements of this chapter have been satisfied.
  2. Review all development permits to determine that all necessary permits have been obtained or are being applied for from those federal, state or local government agencies from which prior approval is required. The County's review shall not be determinative as to whether such other state, federal or local permits are required. The final responsibility for making such determination as to the necessity for other permits is with the permit applicant.
  3. Review all development permits to determine if proposed development is located in a critical area. If located in a critical area, assure that the provisions of this chapter are met.
  4. Consult with a qualified critical area professional with respect to application of the standards contained in Section 43.70.200 of this chapter.
- B. Use of Other Data. When there is a question regarding the location or existence of a critical area within a development proposal, the Administrator shall obtain, review, and reasonably utilize any maps or other source available.

- C. Information to be Obtained. Where maps or available information are insufficient to determine the existence or location of a critical area within the development proposal, the Administrator shall request a study be prepared by a qualified engineer or qualified critical area professional. The applicant may select from a qualified critical area professional list or register which is maintained by the County. In the event that an applicant chooses to utilize the services of a qualified critical area professional not listed on the County register, the County may at its discretion and at the applicant's expense, retain a qualified critical area professional to review and confirm the applicant's reports and studies.
- D. Coordination of Reporting Requirements. To avoid duplication, the information required by the section should be coordinated with report requirements for any other critical area located in the development proposal.

(Ord. 131-00 § 11)

#### **43.70.120 CRITICAL AREA INVENTORY MAPS.**

The location and extent of environmentally critical areas and land within the County are shown on the maps adopted as part of this chapter. These maps are intended to be used as a guide for the assistance of property owners and as information for the public. Boundaries are generalized; field investigation and analysis by a qualified critical area professional may be required to confirm the existence of a critical area. In the event of any conflict between the location, designation or classification of a critical area shown on the County maps and the criteria or standards of this chapter, the criteria and standards of this chapter as supported by determination of a field investigation shall prevail.

(Ord. 131-00 § 12)

#### **43.70.130 PRE-EXISTING NONCONFORMING USE AND DEVELOPMENT STANDARDS.**

"Pre-existing nonconforming development" means a use or structure which was lawfully constructed, approved or established prior to January 1, 2001, but which does not conform to present regulations or standards of this chapter. The following rules govern nonconforming uses:

- A. A nonconforming development may be continued provided that it is not enlarged, intensified, increased or altered in any way which increases its nonconformity.
- B. If a nonconforming development has been discontinued for a period of twelve consecutive months, new alterations to the structure or use shall conform to the regulations and standards of this chapter.
- C. If a nonconforming development is discontinued for twelve consecutive months, or for twelve months during any two-year period, any subsequent development shall conform to the regulations and standards of this chapter. It is not necessary to show that the property owner intends to abandon the nonconforming development in order for the nonconforming rights to expire.
- D. A nonconforming development cannot be changed to another nonconforming development, regardless of the conforming or nonconforming status of the structure in which it is located.
- E. Structures in existence on January 1, 2001, and that do not meet the requirements of this chapter for wetlands, streams, or steep slope hazards may be remodeled or reconstructed provided that the new construction or related activity does not further intrude into a stream, wetland, or steep slope or other critical area and is subject to the standards of the Wahkiakum County Flood Control Ordinance (Title 86 RCWC) for substantial improvement to any area of special flood hazard.

- F. If any nonconforming development is destroyed by fire, flood, windstorm or other natural disaster, it may be restored to its pre-existing condition. If destruction is the result of a flood, any reconstruction shall comply with the applicable provisions of the Wahkiakum County Flood Damage Prevention Ordinance.

(Ord. 131-00 § 13)

#### **43.70.140 VARIANCES.**

##### **A. Procedure.**

1. Subject to the public notice and hearing provisions of this section, the Administrator may consider applications for variances from the requirements of this chapter. An application for a variance shall be made upon forms provided by the Public Works Department.
2. In reviewing an application for variance, the Administrator shall consider all maps, special reports, all relevant factors, standards specified in other sections of this chapter and other applicable local, state or federal requirements.
3. Following his review of the application for variance, the Administrator shall prepare a written staff report including a recommendation with respect to granting or denying the requested variance. Within sixty days of receipt of variance application, the Administrator shall submit his staff report to the Wahkiakum County Planning Commission.
4. Upon receipt of the Administrator's staff report, the Planning Commission shall schedule a public hearing to review the variance application. Notice of the public hearing shall be published in the Wahkiakum County Eagle at least fourteen calendar days prior to the scheduled hearing. Written notice of the hearing shall also be provided to the applicant at least fourteen calendar days prior to such hearing.
5. The Planning Commission shall conduct its public hearing on the variance application not more than forty-five days after its receipt of the Administrator's staff report. Any interested person may appear and be heard regarding the variance application, subject to hearing procedures adopted by the Planning Commission.
6. Following the public hearing, the Planning Commission shall review the variance application to determine whether the application meets the criteria set forth in subsection B of this section. The Planning Commission shall then submit its recommendations to the Board of Wahkiakum County Commissioners. The recommendations shall be accompanied by written "Findings of Fact." A copy of the recommendations and findings shall be forwarded to the applicant.
7. The Board of Wahkiakum County Commissioners shall consider the variance application within fourteen calendar days of its receipt of the recommendations and findings from the Planning Commission. The Board of County Commissioners may approve, deny, or approve within conditions, the variance application. The decision of the Board of County Commissioners shall be final.

##### **B. General Conditions.**

1. A variance in the applications of the regulations of this chapter to a particular piece of property or a variance to the use prohibitions of this chapter may be granted when the application meets all of the following criteria:
  - a. Because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of this chapter is found to deprive subject property of rights and privileges enjoyed by other properties in the vicinity; PROVIDED, HOWEVER, the fact that surrounding properties have been development under regulations in force prior to January 1, 2001, shall not be the sole basis for the granting of a variance;

- b. The granting of the variance will not be materially detrimental to the critical area, public welfare or injurious to the property in the area in which the property is situated or contrary to the goals, policies and purpose of this chapter;
  - c. The granting of the variance is the minimum necessary to accommodate the permitted use; and
  - d. No other reasonable alternative exists; i.e., no other activity could feasibly attain a proposal's objectives but at a decreased level of environmental degradation.
2. If granting a variance hereunder results in impacts to a critical area, mitigating measures shall be undertaken pursuant to Section 43.70.200.
  3. Except when application of this chapter would deny all reasonable use of the property, an applicant who seeks an exception from the requirements of this chapter shall pursue relief by means of a variance.

(Ord. 131-00 § 14)

#### **43.70.150 APPEALS.**

- A. A person aggrieved by the issuance or denial of a development permit or variance or reasonable use exception or by the imposition of a civil penalty may appeal such action to the Board of County Commissioners. Any such appeal shall be in writing and must be filed with the Board within fourteen days of the transmittal of the Administrator's decision to the applicant. The appeal shall specify the reasons therefor. The Administrator shall provide the Board with the findings and documentation relating to the decision being appealed.
- B. The Board, following a de novo hearing, shall affirm, modify or reverse the Administrator's decision. The appellant carries the burden of proof on appeal. The Board shall reach a decision on the appeal within twenty-one days following the filing of the appeal unless the appellant consents to the extension of time. The Board's decision shall be in writing and shall contain findings of fact and shall be filed with the Clerk of the Board and a copy thereof shall be transmitted to the appellant.
- C. The decision of the Board shall be final and conclusive unless within fourteen days from the date of transmittal the original applicant or an adverse party files appeal to the Superior Court for Wahkiakum County for a writ of certiorari, a writ of prohibition, or a writ of mandamus. The filing of such an appeal within such time limit shall stay the effective date of the order of the Board until such time as the appeal shall have been adjudicated or withdrawn. Concurrently with filing such notice of appeal, the aggrieved party shall serve a copy thereof on the Clerk of the Board.
- D. Any appeal hereunder which is transmitted through the United States Mail shall be deemed filed and received by the County on the date shown by the Post Office cancellation mark stamped upon the envelope or other appropriate wrapper containing it.

(Ord. 131-00 § 15)

#### **43.70.160 ENFORCEMENT.**

- A. The Prosecuting Attorney shall bring such injunctive, declaratory, or other actions as are necessary to insure compliance with this chapter.
- B. Any person who fails to comply with this chapter, by either engaging in activities within critical areas of the County prohibited by this chapter or by failing to conform to the terms of a permit issued pursuant to this chapter, shall also be subject to civil penalty of not less than One Hundred nor more than One Thousand Dollars for each violation. The severity of any penalty shall be based on the nature of the violation and the damage or risk to the public or to public resources. Each violation or

each day of noncompliance, except for periods of appeal as defined in Section 43.70.150, shall constitute a separate violation.

- C. Notice to Comply. If a violation of this chapter has occurred and the Administrator determines that a stop work order is unnecessary, then the Administrator shall issue and serve upon the applicant a notice which will clearly set forth:
  - 1. a. The specific nature, extent, and time of failure to comply with the terms of this chapter, and/or
  - b. The relevant provisions of this chapter relating thereto; and
  - 2. The specific course of action ordered by the Administrator to be followed by the applicant to correct such failure to comply and to prevent, correct and/or compensation for material damage to critical areas which resulted from any violation of this chapter.
- D. The Administrator shall have the authority to serve upon an applicant a stop work order which shall be a final order of the County if immediate action is necessary to prevent continuation of or to avoid material damaged to a critical area. The stop work order shall set forth:
  - 1. The specific nature, extent, and time of the violation;
  - 2. An order to stop all work connected with the violation; and
  - 3. The specific course of action needed to correct such violation and to correct and/or compensation for damage to critical areas which has resulted from any violation of this order.
- E. The civil penalty provided for in this section shall be imposed by a Notice of Infraction in writing either by certified mail with return receipt requested or by personal service, to the person incurring the same. The notice shall describe the violation with reasonable particularity and shall order the acts constituting the violation or the potential violation to cease and desist, and in appropriate cases, required necessary corrective action within a specified time. The Administrator is authorized to issue a Notice of Infraction if an applicant has failed to take the corrective action specified in a Notice to Comply within thirty days of the issuance of such Notice to Comply, or if an applicant violations any stop work order issued pursuant to this section.
- F. Any civil penalty imposed pursuant to this section shall be subject to review by the Board of County Commissioners as provided in Section 43.70.150.
- G. Any person subject to this chapter who violates any provision of this chapter or the provisions of a permit issued pursuant to this chapter shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to such violation.

(Ord. 131-00 § 16)

CLASSIFICATION AND PROTECTION OF CRITICAL AREAS

DESIGNATION OF NATURAL RESOURCE LAND

**CLASSIFICATION AND PROTECTION OF CRITICAL AREAS**

[43.70.170 FREQUENTLY FLOODED AREAS.](#)

[43.70.180 GEOLOGICALLY HAZARDOUS AREAS.](#)

[43.70.190 AQUIFER RECHARGE AREAS.](#)

[43.70.200 WETLANDS.](#)

[43.70.210 FISH AND WILDLIFE HABITAT CONSERVATION AREAS.](#)

#### **43.70.170 FREQUENTLY FLOODED AREAS.**

- A. Classification. All flood hazard areas shall be as identified in the scientific and engineering report entitled "The Flood Insurance Study for Wahkiakum County," dated September 28, 1990, with accompanying Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency (FEMA), and all areas identified within Wahkiakum County's Flood Control Ordinance, Title 86 RCWA, as areas of special flood hazard.
- B. Mapping. All flood hazard areas identified by the Federal Insurance Administration in "The Flood Insurance Study," dated September 28, 1990, together with Flood Insurance Maps (FIRM) dated September 1990, are adopted by reference and declared to be part of this chapter. The Flood Insurance Study and Maps are on file at the Auditor's Office and Public Works Department located at 64 Main Street, Cathlamet, Washington 98612.
- C. Designation. Areas of Wahkiakum County meeting the classification criteria for frequently flooded areas are hereby designated as such under RCW 36.70A.170.
- D. Development Performance Standards. Since Wahkiakum County's Flood Control Ordinance (Title 85 RCWC) regulates development within frequently flooded areas as classified and designated herein, the Wahkiakum County Flood Control Ordinance is adopted by reference and declared to be a part of this chapter.

(Ord. 131-00 § 17)

#### **43.70.180 GEOLOGICALLY HAZARDOUS AREAS.**

- A. Classification. Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake or other geological event. They pose a threat to the health and safety of the public. The following definitions shall be used in classifying geologically hazardous area:
  - 1. Erosion Hazard Area. Erosion is a common occurrence due to hydrologic and geologic characteristics, vegetative conditions and human land use. Erosion hazard areas are sites designed by the USDA Soil Conservation Service as containing highly erodible or having the potential to become highly erodible due to disturbance of ground cover.
  - 2. Seismic Hazard Areas. Seismic hazard areas are areas subject to a severe risk of earthquake damage as a result of seismically induced ground shaking, slope failure, differential settlement, soil liquefaction, or surface faulting. For purposes of this classification, seismic hazardous areas are those areas that are underlain by alluvium as identified by United States Geologic Service (USGS) maps.
  - 3. Volcanic Hazard Areas. Volcanic hazard areas are areas which have potential risk to life and property by mud flows or flooding as a result of volcanic activity from Mt. St. Helens. All volcanic mudflow hazard areas shall be identified as flood hazards in the scientific and engineering reports entitled, "The Flood Insurance Study for Wahkiakum County," dated September 1990, with accompanying Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency (FEMA).
  - 4. Landslide Hazard Areas. Landslide hazard areas are areas within Wahkiakum County that are subject to potential slope failure due to a combination of geologic, topographic and hydrological factors. These areas include:
    - a. Areas identified by the Wahkiakum County Comprehensive Plan, 1984 (Figure 1, page 38);



- b. Areas of historic failures or potentially unstable slopes, such as areas mapped within future Soil Conservation Service Slide Hazard Areas Studies; or marine bluffs, quaternary slumps, earthflows, mudflows, or landslides on maps published by the United States Geological Survey or Department of Natural Resources Division of Geology and provisions of the Uniform Building Code (UBC) as adopted by Wahkiakum County.
- B. Designation. Areas of Wahkiakum County meeting the classification criteria for geologically hazardous areas are hereby designated as such under RCW 36.70A.170.
- C. Landslide and Erosion Hazard Area Standards. All development within designated landslide and steep slope hazard areas shall adhere to the following standards:
  - 1. An erosion control plan shall be submitted to the administrator for approval prior to any clearing, construction or other development in an erosion hazard area. The erosion control plan shall be designed so that the hazard is or mitigated such that the site is rendered as safe as an area without erosion hazards.
  - 2. For landslide hazard areas with a slope of thirty percent or steeper and with a vertical relief of ten or more feet except areas of consolidated rock, a geological analysis and landslide control plan shall be submitted to the Administrator for approval prior to activity which would change the hydrologic characteristics of the site, such as filling, building, clearing construction, or other development in the area. The geological analysis shall indicate that:
    - a. There is not significant risk to the development proposal or adjacent properties; or
    - b. That the proposal is designed so that the hazard is significantly eliminated or mitigated such that the site and adjacent property are rendered as safe as an area without geologic hazards.
  - 3. All proposed development on slopes greater than fifty percent over a vertical height of at least ten feet shall be avoided if possible. Proposals for development shall include technical studies that evaluate the subsurface conditions and offer engineering solutions, including increase slope stabilization methods.

(Ord. 131-00 § 18)

#### **43.70.190 AQUIFER RECHARGE AREAS.**

Municipal water for Wahkiakum County is pumped directly from the Elochoman River and from ground water adjacent to the Grays River. There are no known critical aquifer recharge areas within the County.

(Ord. 131-00 § 19)

#### **43.70.200 WETLANDS.**

Wetlands are essential and unique features of Wahkiakum County which provide multiple public benefits that are economically and culturally important to Wahkiakum County. Wetlands include shallow or deep water marshes, rivers, sloughs, ponds, bogs, wet meadows and forests, shrub wetlands and other lands which support a prevalence of vegetation adapted to saturated soils. Important functions provided by wetlands include flood control, shoreline stabilization and erosion control, aquatic and wildlife habitat, water quality maintenance, recreation, agriculture and silviculture, food chain support and productivity, and aesthetic functions.

- A. Definition. "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil

conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland 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 intentionally created as a result of the construction of a road, street or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate conversion of wetlands.

- B. Classification. Wetlands are classified according to the Washington State Wetland Rating System for Western Washington, Second Edition.
- C. Designation. Areas meeting the definition of wetland found in this chapter are designated as such under RCW 36.70A.170. PROVIDED, HOWEVER, the following wetlands shall not be regulated under this chapter:
  - 1. Any Category III wetland which has an aggregate area of less than or equal to two thousand five hundred square feet;
  - 2. Any Category IV wetland which has an aggregate area of less than or equal to five thousand square feet.
- D. Identification and Delineation of Wetlands. Wetlands shall be identified and delineated according to the most current edition of the State of Washington Department of Ecology's manual adopted pursuant to RCW 90.58.380.

The approximate extent and/or location of most wetlands within Wahkiakum County are shown on existing National Wetland Inventory maps and in the Shoreline Management Master Program Environmental Designation Atlas for Wahkiakum County, 1980. The mapped boundaries are approximate and unmapped wetlands may exist. Any conflicts between inventory maps and the provisions of this chapter shall be resolved pursuant to the provisions for delineating wetlands. Wetlands not shown on the maps are still subject to the provisions of this chapter.

A determination of whether a wetland exists on any parcel that is the subject of a development application shall be mandatory. Wahkiakum County will accept a written determination by the U.S. Army Corps of Engineers, Washington Department of Ecology, or a qualified critical areas professional as to whether a specific parcel contains a wetland; in lieu of a formal written determination, the Administrator, after consultation with and concurrence by a qualified critical area professional, in his or her discretion, may also consider other reliable evidence in determining whether a wetland exists. If wetlands are found on any parcel that is the subject of a development application, the applicant is responsible for delineating the wetlands.

- E. Standards.
  - 1. Any development proposed within a critical wetland area shall be reviewed by the Administrator to ensure that:
    - a. Any alteration to critical wetland areas comply with applicable state and federal law;
    - b. Any development avoids adverse impacts to regulated wetlands to the extent possible considering the reasonable use of the property and takes affirmative and appropriate measures to minimize and compensate for unavoidable impacts;
    - c. Any development complies with applicable provisions of the Shoreline Management Master Program of Wahkiakum County;
    - d. Natural drainage systems with associated wetland corridors shall be maintained to protect natural hydrologic function, water quality, and to reduce public costs due to potential flooding;
    - e. Any reduction of tidal and nontidal critical wetlands shall be mitigated through careful location and design of mitigating proposals approved by the Administrator; and

- f. Wetlands located within public-owned and designated forest resource lands will be governed by and subject to compliance with the State Forest Practices Act.
- 2. Wetland permits shall not be effective and no activity thereunder shall be allowed during the time provided to file a permit appeal.

F. Wetland Buffers and Development Setbacks.

- 1. A wetland buffer and/or development setbacks shall be required for all regulated activities adjacent to wetlands. Any wetland created, restored or enhanced as compensation for approved wetland alterations shall also include the standard buffer required for the category of the created, restored, or enhanced wetland. All buffers shall be measured from the wetland boundary; PROVIDED, HOWEVER, if the wetland is separated from the upland areas by an improved public roadway, the buffer areas shall not extend into the upland side of the roadway. The following wetland buffers are established:

<u>Wetland Category</u>		<u>Buffer</u>
Category I	High intensity land use	200 feet
	Low intensity land use	150 feet
Category II	High intensity land use	150 feet
	Low intensity land use	100 feet
Category III	High intensity land use	75 feet
	Low intensity land use	50 feet
Category IV	High intensity land use	50 feet
	Low intensity land use	25 feet

- 2. Standard wetland buffer areas may be modified by averaging buffer widths or a combination of averaging and reduction. Wetland buffer width averaging shall be allowed only where the applicant demonstrates all of the following:
  - a. Averaging will provide the necessary biological, chemical and physical support necessary to protect the wetland;
  - b. Width averaging will not adversely impact the wetland's functions and values; and
  - c. The total area contained within the wetland buffer after averaging is no less than that contained within the standard buffer prior to averaging. In no instance shall the buffer width be reduced by more than fifty percent of the standard buffer.
- 3. If there is a vertical separation of more than twenty-five feet between the wetland and the proposed development, then no buffer is required, PROVIDED, the slope of the vertical

separation is greater than forty-five degrees and a development setback of not less than twenty-five feet is maintained at the top of the vertical separation.

4. Except as otherwise specified, wetland buffer zones shall be retained in their natural condition. Where buffer disturbance has occurred during construction, revegetation with native vegetation may be required. Wetland buffer zones shall be vegetated with native species. Non-native invasive species may be controlled within the wetland buffer zone so long as adverse impacts to the wetland are minimized.
5. Permitted Uses in a Wetland Buffer Zone. Regulated activities shall not be allowed in a buffer zone except for the following:
  - a. Activities having minimum adverse impacts on buffers and no adverse impacts on regulated wetlands. These may include low-intensity passive recreational activities such as previous trails, nonpermanent wildlife watching blinds, short-term scientific or educational activities, and sports fishing or hunting.

G. Mitigation.

1. Except as provided in subdivisions 6 and 7 of this subsection, as a condition of any permit allowing alteration of wetlands, the applicant will engage in the restoration, creation or enhancement of wetlands in order to compensate for the impacts resulting from the applicant's actions. The applicant shall develop a County-approved mitigation plan.

For guidance on what should be contained in a mitigation plan, the applicant should consult the interagency document title, "Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals," available from the Permit Coordinator.

2. Alteration of wetlands shall require the creation, restoration or enhancement of wetlands to provide equivalent or greater area, functions and values. In order to address the risk and time lag associated with created, restoring or enhancing wetlands, the Administrator may require mitigation in excess of a 1:1 ratio. In making a determination regarding the appropriate mitigation ratio, the Administrator will be guided by the Washington State Department of Ecology publication entitled, "Wetland Mitigation Replacement Ratios: Defining Equivalency, February, 1992."

The following standard ratios shall apply to the creation or restoration of wetlands:

Category I	6:1
Category II or III	
Forested	3:1
Scrub-Shrub	2:1
Emergent	2:1
Category IV	1.25:1

3. The standard replacement ratio may be increased under the following circumstances:

- a. High degree of uncertainty as to the probable success of the proposed restoration or creation;
  - b. Significant period of time between destruction and replication of wetland functions;
  - c. Projected losses in functional; and/or
  - d. Off-site compensation.
4. The standard replacement ratio may be decreased under the following circumstances:
    - a. Findings of special studies coordinated with agencies and/or other qualified individuals with expertise which demonstrates that no net loss of wetland function or value is attained under the decreased ratio;
    - b. In all cases, a minimum acreage replacement ration of 1:1 shall be required.
  5. All wetland restoration, creation and/or enhancement projects required pursuant to this chapter either as a permit condition or as the result of an enforcement action must receive the Administrator's written approval of the mitigation plan prior to commencement of any wetland restoration, creation or enhancement activity.
  6. Any Category III wetland which has an aggregate area of less than or equal to two thousand five hundred square feet shall be exempt from any mitigation requirements.
  7. Any Category IV wetland which has an aggregate area of less than or equal to five thousand square feet shall be exempt from any mitigation requirements.

(Ord. 131-00 § 20)

**43.70.210 FISH AND WILDLIFE HABITAT CONSERVATION AREAS.**

- A. Definition. Fish and wildlife habitat conservation means land management for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created.
- B. Classification. Fish and wildlife habitat conservation areas shall be identified according to the following table:

<u>Classifications WAC 365-190-080(5)</u>	<u>Description</u>
1. Areas with which state or federal designated endangered, threatened or sensitive species have a primary association.	Areas which, if significantly altered, may reduce the likelihood that the species will reproduce over the long term. Habitats associated with these species are those identified by the Washington Department of Fish and Wildlife's current system for mapping species of concern. These habitats are designated as critical areas, where endangered, threatened and sensitive species are verified to have a primary association.
2. Species and habitats of local importance.	Habitat: All priority habitats occurring in Wahkiakum County as identified in the current edition of the Washington State Department of Fish

	and Wildlife's Priority Habitats and Species (PHS) List.
	Species: All priority species occurring in Wahkiakum County as identified in the current edition of the Washington State Department of Fish and Wildlife's Priority Habitats and Species (PHS) List.
3. Commercial and recreational shell fish areas.	There is a small commercial and recreational crawfish fishery in Wahkiakum County.
4. Kelp and eel grass beds; herring and smelt spawning areas.	No kelp, eel grass beds, or herring spawning areas are known to occur in Wahkiakum County.
	The Washington State Hydraulic Code guidelines (WAC 232) and information from the Washington State Department of Fisheries and Wildlife are used to identify smelt spawning areas.
5. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat.	Naturally occurring ponds are waters with a surface area of less than 20 acres but greater than one acre and manmade ponds developed as mitigation as part of a permitting process or mitigation agreement. Naturally occurring ponds do not include ponds deliberately created such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds (of less than three years duration) and landscape amenities.
6. Waters of the state.	Waters of the state shall be those defined in WAC 222-16-030, Forest Practices Board, Definitions.
7. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity.	Waters of the state which regularly have game fish introduced.
8. State natural area preserves and natural resource conservation areas.	Currently, there is only one state natural resource conservation area in Wahkiakum County—Hendrickson Canyon. It is owned by the State of Washington and managed by the Department of Natural Resources.

C. Designation. Lands of Wahkiakum County fulfilling the classification criteria for critical fish and wildlife conservation areas set forth in subsection B of this section are designated as such under RCW 36.70A.170.

D. Standards.

1. The Administrator shall ensure that any development within fish and wildlife habitat conservation areas, as classified in subsection B of this section, shall be reviewed according to the following performance standards.

When impacts to fish and wildlife habitat cannot be avoided, the performance standards contained in this subsection shall be used to develop plans submitted for regulated activities. Critical area permits may be conditioned to reflect the following performance standards contained in this subsection D:

- a. Consider habitat in site planning and design.
  - b. Locate buildings and structures in a manner that preserves the habitat or minimizes adverse impacts.
  - c. Consolidate habitat and vegetated open space in contiguous blocks, and where possible locate habitat contiguous to other habitat, open space or landscaped areas to contribute to a continuous system or corridor that provides connections to adjacent habitat areas.
  - d. Use native species in any landscaping of disturbed or undeveloped areas and in any enhancement of habitat or buffers.
  - e. Emphasize heterogeneity and structural diversity of vegetation in landscaping.
  - f. Remove and/or control any noxious, or undesirable species of plants as identified by the Wahkiakum County Noxious Weed Control Board, but with due attention to possible negative impacts of herbicide sprays to wetlands.
  - g. Preserve trees to the extent possible, preferably in consolidated areas.
  - h. Preserve and introduce native plant species which serve as food, shelter from climatic extremes and predators, and structure and cover for reproduction and rearing of young for critical wildlife.
  - i. Preserve the natural hydraulic and ecological functions of drainage systems.
  - j. Preserve fish and wildlife habitat conservation areas through maintenance of stable channels, adequate low flows, management of stormwater runoff, erosion and sedimentation.
  - k. Manage access to fish and wildlife habitat conservation areas to protect species which are sensitive to human disturbance.
  - l. Maintain or enhance water quality through control of runoff and use of best management practices.
2. Habitat Management Plan—Classification 1 Only. A habitat management plan may be required if the regulated activity is within two hundred fifty feet of a Classification 1 habitat area, or identified within one thousand feet of a point location (nests, dens, etc.) for a Classification 1 habitat area. The Habitat Management Plan will meet the following criteria:
    - a. The habitat management plan will be prepared by a qualified expert.
    - b. Habitat management plans will be sent to the Washington State Department of Fish and Wildlife and other appropriate state and federal agencies for comment with the SEPA checklist.
  3. Habitat Protection for Classification 2. Protection for these habitat areas shall be through compliance with the performance standards contained in subsection (D)(1) of this section.

4. Habitat Protection for Classifications 3 and 4. If found to occur, protection of these areas shall be coordinated by the Administrator with the Washington State Department of Fish and Wildlife.
5. Habitat Protection for Classifications 5, 6 and 7. Protection for these habitat areas shall be through the maintenance of riparian zones as required under this chapter, the Shoreline Management Act, the Federal Clean Water Act, and the State Hydraulic Code and/or best management practices. Within Classification 6—Type 1, 2, 3, 4 and 5 waters as defined in Chapter 222-16-030, WAC, Forest Practices Board, Definitions—are regulated streams.
6. Habitat Protection for Classification 8. Protection for state natural areas preserves and natural resource conservation area habitat is achieved by the Washington State Department of Natural Resources.

E. Riparian Zones.

1. Riparian zones and/or development setback areas shall be required for all regulated activities adjacent to streams. All riparian zones/setbacks shall be measured from the Ordinance High Water Mark (OHWM). The following riparian zones/setback areas are established:

<u>Stream Type</u>		<u>Riparian Zone Width</u>
Type I	High intensity land use	100 feet
	Low intensity land use	50 feet
Type II	High intensity land use	100 feet
	Low intensity land use	50 feet
Type III	High intensity land use	75 feet
	Low intensity land use	50 feet
Types IV and V	High intensity land use	50 feet
	Low intensity land use	25 feet

2. In any event, the required stream setback shall terminate at any improved County road right-of-way or dike.
3. In locations where the vertical separation is greater than twenty-five feet as measured between the ordinary high water mark and the land to be developed, no riparian zone/setback shall be required, PROVIDED, the slope of the vertical separation is greater than forty-five degrees and the vertical separation consists primarily of nonvegetated exposed rock.
4. As to areas adjacent to the Columbia River, the riparian zone/setback shall be twenty-five feet, provided, the following three circumstances exist: (a) the land consists primarily of dredge spoils or similar degraded habitat; (b) the land lacks any significant woody vegetation; and (c) there are no associated wetlands present.



5. Required riparian zone widths on clearing proposals on existing lots may be varied as follows:
  - a. External Riparian Zone Averaging. Required riparian zones can be reduced to the average shoreside building setback of existing neighboring residences which are within one hundred fifty feet and downstream. For the purpose of calculating this average, undeveloped neighboring property shall be considered as maintaining a setback equal to the normally required riparian zone width. For example, a new home proposed between an existing residence located fifty feet from shore and an undeveloped property normally subject to a one hundred foot riparian width under this chapter may then be located as close as seventy-five feet from shore.
  - b. Internal Riparian Zone Averaging. Subject to review under the standards contained in this chapter, portions of the riparian zone can be reduced up to fifty percent from the normal standards of this chapter if riparian zone widths are correspondingly increased elsewhere within the applicant parcel, such that the overall size and function and values of the riparian zone are maintained in the parcel.
  - c. In no event shall the width of the riparian zone be less than twenty-five feet.

(Ord. 131-00 § 21)

### **DESIGNATION OF NATURAL RESOURCE LAND**

[43.70.220 AGRICULTURAL LANDS.](#)

[43.70.230 FOREST LANDS.](#)

[43.70.240 MINERAL RESOURCE LANDS.](#)

[43.70.250 SEVERABILITY.](#)

[43.70.260 EFFECTIVE DATE.](#)

[43.70.270 CITATION/CODIFICATION.](#)

### **43.70.220 AGRICULTURAL LANDS.**

- A. Designation. Areas which are identified as agricultural land by the Wahkiakum County Comprehensive Plan's existing land use map (Wahkiakum County Comprehensive Plan, 1984, Figure 4, page 74) are designated as agricultural lands for purposes of RCW 36.70A.170.
- B. Right to Farm.
  1. Within areas designated as agricultural land, a farm operation shall not be found to be a public or private nuisance if the farm or farm operation conforms to generally accepted agricultural and management practices.
  2. Within areas designated as agricultural land, a farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation existed before a change in the land use or occupancy of adjacent land or other land in the general area.
  3. Within areas designated as agricultural land, farm operations shall not be restricted to time of day or days of the week, but shall be conducted according to generally accepted agricultural and management practices.
  4. Within areas designated as agricultural land, farm operations shall not be found to be a public or private nuisance when conducted according to generally accepted management practices when in turn these practices may be subject to varying conditions which include, but are not limited to:

geographical location, weather, soil types and conditions, type of crop or livestock and management systems.

5. This subsection should not be construed to compromise existing County, state and federal laws.

(Ord. 131-00 § 22)

#### **43.70.230 FOREST LANDS.**

Designation. Areas which are identified as forest areas by the Wahkiakum County Comprehensive Plan's existing land use map (Wahkiakum County Comprehensive Plan, 1984, Figure 4, page 74) are designated as forest lands for purposes of RCW 36.70A.170.

(Ord. 131-00 § 23)

#### **43.70.240 MINERAL RESOURCE LANDS.**

Designated. All lands which have known reserves of extractable minerals in commercial quantities, as identified in records maintained by the State of Washington Department of Natural Resources, are designated as mineral resource lands for purposes of RCW 36.70A.170.

(Ord. 131-00 § 24)

#### **43.70.250 SEVERABILITY.**

Should any section, clause or provision of this chapter be declared invalid, the same shall not affect the validity of this chapter as a whole or any part thereof other than the part so declared invalid.

(Ord. 131-00 § 25)

#### **43.70.260 EFFECTIVE DATE.**

The ordinance codified in this chapter shall be in full force and effect from and after the 1st day of January, 2001.

(Ord. 131-00 § 26)

#### **43.70.270 CITATION/CODIFICATION.**

The ordinance codified in this chapter may be referred to as the "Wahkiakum County Critical Areas Protection Ordinance" and shall be codified as Chapter 43.70 of the Revised Code of Wahkiakum County.

(Ord. 131-00 § 27)

### **Chapter 43.80 BEACH NOURISHMENT PROJECTS**

Sections:

[43.80.010 PROHIBITION OF CONSTRUCTION.](#)

#### **43.80.010 PROHIBITION OF CONSTRUCTION.**

- A. No structure of any sort may be constructed, erected, or placed on the lands created by the Pancake Point, Sand Pit, or any other future beach nourishment projects of the Army Corps of Engineers.
- B. Violation of subsection A. of this section is a gross misdemeanor. Costs of removal of such structure and environmental mitigation, if any, shall be recoverable as restitution.
- C. The remedy provided in this section is not exclusive. The application or applicability of this section shall not prohibit either the County of the property owner from exercising any other right or remedy provided by law, ordinance, or equity.

(Ord. No. 148-08, § 1, 3-18-08)

#### **Chapter 43.90 SHORELINES MANAGEMENT PROGRAM**

##### Sections:

[43.90.010 EXEMPTION FROM REVIEW OF CATEGORICAL EXEMPTIONS.](#)

[43.90.020 SHORELINES MASTER PROGRAM—ADOPTION.](#)

[43.90.030 SHORELINES MASTER PROGRAM—COPY TO DEPARTMENT OF ECOLOGY.](#)

[43.90.040 SHORELINES MASTER PROGRAM—EFFECTIVE UPON APPROVAL.](#)

[43.90.050 PERMIT AND EXEMPTION APPLICATION—PROCESSING.](#)

[43.90.060 PERMIT AND EXEMPTION APPLICATION—REVIEW.](#)

[43.90.070 REVIEW TIME REQUIREMENTS.](#)

[43.90.080 AMENDMENT TO ENVIRONMENTAL DESIGNATION ATLAS—PRICE ISLAND.](#)

[43.90.090 SHORELINE MASTER PROGRAM—AMENDMENTS.](#)

#### **43.90.010 EXEMPTION FROM REVIEW OF CATEGORICAL EXEMPTIONS.**

- A. The Wahkiakum County Planning Commission shall be relieved of its obligation to review applications for categorical exemptions to the Shorelines Management Act and the Wahkiakum County Master Program, which exemptions shall be reviewed by the Permit Coordinator pursuant to the "Letter Exemption" provisions of WAC 173-14-115 which provides in pertinent part:

Whenever a development falls within the exemptions stated in WAC 173-14-040 and the development is subject to a U.S. Corps of Engineers section 10 permit under the Rivers and Harbors Act of 1899, or a section 404 permit under the Federal Water Pollution Control Act of 1972, the local government shall prepare a letter addressed to the applicant and the appropriate regional office of the department, exempting the development from the substantial development permit requirements of chapter 90.58 RCW.

- B. This exemption shall be in substantially the form prescribed in WAC 173.14.040 and shall be supplied by the permit coordinator.
- C. Resolution 23-78 is amended to conform to this section.

(Res. 27-82)

**43.90.020 SHORELINES MASTER PROGRAM—ADOPTION.**

The proposed revisions in the Shorelines Master Program of Wahkiakum County, as summarized in the attached three page document and as more specifically set forth in the revised compiled program, maps, atlas and rules, regulations and guidelines, are approved and adopted as the official revised Shorelines Master Program of Wahkiakum County, Washington.

(Res. 9-81 § 1)

**43.90.030 SHORELINES MASTER PROGRAM—COPY TO DEPARTMENT OF ECOLOGY.**

A copy of the revised program shall be transmitted to the Department of Ecology for its statutory review.

(Res. 9-81 § 2)

**43.90.040 SHORELINES MASTER PROGRAM—EFFECTIVE UPON APPROVAL.**

Upon approval by the Department of Ecology, such revised Shorelines Master Program for Wahkiakum County, Washington shall be in full force and effect as provided by RCW 90.58.210, 90.58.220 and 90.58.230.

(Res. 9-81 § 3)

**43.90.050 PERMIT AND EXEMPTION APPLICATION—PROCESSING.**

Applications in Wahkiakum County for shoreline management permits or exemptions shall be submitted to the Wahkiakum County Permit Coordinator on application forms approved by said Permit Coordinator. At the time of such application, the applicant shall pay a processing fee in an amount as prescribed and set from time to time by a resolution duly adopted by the Board of County Commissioners. Upon receipt of a complete application and the required fees, the Wahkiakum County Permit Coordinator shall:

- A. Provide a copy of each application together with supporting documentation available to him, to the Wahkiakum County Planning Commission for its review and recommendations;
- B. Make a recommendation to the Board of County Commissioners as to whether such application should be granted or denied based upon the guidelines set forth in the Wahkiakum County Shorelines Management Master Program as the same exists or is hereafter amended; and
- C. Present to the Board of County Commissioners for their action at the first regular meeting of the Board following action upon the application by the Planning Commission, the following:
  1. The application and supporting documentation,
  2. The recommendation of the Permit Coordinator, an]
  3. The recommendation, findings and conclusions of the Planning Commission.

(Ord. 144-06 § 3: Res. 23-78 § 1)

#### **43.90.060 PERMIT AND EXEMPTION APPLICATION—REVIEW.**

The Wahkiakum County Planning Commission shall review all shorelines management permit or exemption applications received from the Permit Coordinator and shall study and review the same to determine whether such applications conform to the Master Program of the County, which review shall culminate in written findings, conclusions and recommendations for action by the Board of County Commissioners.

(Res. 23-78 § 2)

#### **43.90.070 REVIEW TIME REQUIREMENTS.**

The review of all applications shall proceed in conformity with the time requirements of the Act and it is the direction of the Board of County Commissioners that insofar as practicable no undue delay occur.

(Res. 23-78 § 3)

#### **43.90.080 AMENDMENT TO ENVIRONMENTAL DESIGNATION ATLAS—PRICE ISLAND.**

- A. The aquatic and shoreland designations on the portion of Price Island is changed from Urban to Conservancy as shown on the maps attached to the resolution codified in this section. The rural shoreland and conservancy aquatic environments of the property along Deep River is changed to urban, as shown on the maps attached to the resolution codified in this section.
- B. A copy of the revised program is transmitted to the Department of Ecology for its statutory review.
- C. Upon approval by the Department of Ecology, such revised Shorelines Master Program for Wahkiakum County, Washington, shall be in full force and effect as provided in RCW 90.58.210, 90.58.220 and 90.58.230.

(Res. 25-85 §§ 1—3)

#### **43.90.090 SHORELINE MASTER PROGRAM—AMENDMENTS.**

- A. The proposed amendments to the Shorelines Master Program of Wahkiakum County, as set forth in the fifteen page document attached to the ordinance codified in this section are approved and adopted.
- B. A copy of the adopted amendments are transmitted to the Department of Ecology for its statutory review.
- C. Upon approval by the Department of Ecology, the amendments to the Shoreline Management Master Program for Wahkiakum County, Washington, shall be in full force and effect as provided by RCW 90.58.200, .210, .220 and .230.

(Res. 9-92 §§ 1, 2, 3)