

TITLE 20
COORDINATING GOVERNMENT REGULATION

Chapters:

20.01 Coordinating Government Regulation of Land and Natural Resource Use

Chapter 20.01

COORDINATING GOVERNMENT REGULATION OF LAND AND NATURAL RESOURCES USE*

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ARTICLE I.

PRELIMINARY PROVISIONS

20.01.010 Purpose.

The purpose of this chapter is to establish as county law the basis and process for determining how federal and state agencies are to coordinate and consult with Whitman County in actions affecting land and natural resources use, in order that the citizens of Whitman County may preserve their customs, culture, and economic stability, and protect and use their environment. This chapter addresses federal and state agency regulation of land and natural resources use directly and is intended to be used as a positive guide for federal

and state agencies in their development and implementation of regulations affecting land and natural resources use in Whitman County.

20.01.020 Coordination with growth management act, comprehensive plan and existing county law.

A. The provisions of this chapter shall be in addition to and, to the extent permitted by law, coordinated with the final Whitman County Comprehensive Plan adopted pursuant to the Washington State Growth Management Act. The effectiveness of this chapter, however, shall not depend upon adoption of the comprehensive plan or the authority of the county to adopt such a plan.

B. This chapter shall be coordinated with existing and future county ordinances, resolutions, policies and plans. It is intended as a set of provisions that shall provide a general framework as well as specific guidance and shall work in conjunction with other county ordinances, resolutions, policies and plans. In the event this chapter conflicts with such other ordinances, resolutions, policies and plans, the provisions of this chapter shall be given effect to the fullest extent possible. However, it is the adopting board's intention these provisions be construed in pan material with other existing laws.

20.01.030 Effectiveness-Validity under constitutional, federal and state law-Severability.

A. This chapter shall be effective upon adoption by the board of county commissioners.

B. The validity of this chapter is based upon the rights of citizens granted by the Constitutions of the United States and the State of Washington, the authority of the county to protect and uphold such rights, and existing federal and state laws mandating that federal and state agencies consult and coordinate with local governments in actions affecting use of land and natural resources. If any provision of this chapter shall be found invalid or unenforceable by a court of competent jurisdiction.

C. The remaining provisions shall not be affected thereby, but shall remain in full force and effect, and to that extent the provisions of this chapter shall be severable.

20.01.040 Definitions.

For the purpose of this Chapter, and any regulations promulgated hereunder the following words shall be defined as follows:

- A. "Action", when used with respect to any federal or state agency, shall have the broadest possible meaning in the context of any exercise of authority, and shall include, without limitation, any proposal, policy, regulation, rule, consideration, finding, study, or gathering or review of data, that may lead to any substantive rule, regulation or administrative action or determination.
- B. "Culture", socially transmitted behavior patterns, arts, beliefs, institutions, and all other products of human work and thought typical of a population or community; and the integrated pattern of human behavior passed to succeeding generations. The historical foundations of the local area; those characteristics that create the basis for how the community is defined.
- C. "Cultural resources", places composed of districts, sites, buildings, structures, and objects

significant in American History, architecture, archeology, engineering and culture. Places that meet the criteria established by the state or locality (county) for significant historic and prehistoric value within the jurisdiction of the local government.

- D. "Customs", a practice followed as a matter of course among a people, which by common adoption and acquiescence and by long and unvarying habit has become compulsory and has acquired the force of law with respect to the place. How a given practice is carried out, i.e., the custom of grazing cattle is to graze the open range during the summer and move the cattle in closer during the winter month, etc.
- E. "Federal agency", "state agency" or any combination thereof, shall mean each department, agency, commission or other instrumentality receiving its authority from the executive, legislative or judicial branch of the United States or the State of Washington, respectively, including without limitation independent regulatory agencies and public corporations, together with each officer, agent or employee thereof in the performance of official duties.
- F. "Private property" shall mean all property protected by the Fifth and Fourteenth Amendments to the United States Constitution and the counterparts of the State of Washington Constitution.

ARTICLE II.

GENERAL GUIDANCE

20.01.050 General guidance.

To the fullest extent required or permitted by law, including this chapter, all federal and state agencies shall, in all actions considered, proposed or taken that affect or have the potential of affecting the use of land or natural resources within Whitman County:

- A. Consider the effects such actions have on: (i) community stability; (ii) maintenance of custom, culture and economic stability; and (iii) conservation and use of the environment and natural resources, as part of the action taken;
- B. Coordinate procedures to the fullest extent possible with the county, on an equal basis and not with the county as subordinate, prior to and during the taking of any federal or state action;
- C. Meet with the county commissioners to establish, through a memorandum of understanding or otherwise, the process for such coordination, including joint planning, joint environmental research and data collection, joint hearing, and joint environmental assessments;
- D. Submit a list and description of alternatives in light of possible conflicts with the county's laws, policies and plans, including the comprehensive plan; consider reconciling the proposed action with the county's laws, policies, and plans, including the comprehensive plan; and after such consideration, take all practical measures to resolve such conflict and display the results of such consideration in appropriate documentation;

- E. Consult, in any environmental impact statement or otherwise, and not assume that any proposed actions would be consistent with county conditions or would have a non-significant impact, without coordination and consultation with the county and review of data specific to the county;
- F. Coordinate with the county so as to comply with federal and state statutes and regulations, and county laws, policies and plans, including the comprehensive plan and in the absence of "direct constitutional conflict;
- G. Take appropriate mitigation measures adopted with the concurrence of the county to mitigate adequately adverse impacts on culture, custom, economic stability or protection and use of the environment; and
- H. Respect and not violate through regulatory means or otherwise any private property rights of citizens of Whitman County.

ARTICLE III.

SPECIFIC GUIDANCE

20.01.060 Agriculture.

The custom and culture associated with agricultural production in Whitman County is significant to the economic stability, livelihood and well being of its citizens and protection and use of their environment. The purpose of this section is to provide clear guidance to federal and state agencies when actions taken by such entities affect or have the potential of affecting agricultural and livestock production in Whitman County.

- A. In general, since the regulation of any aspect of agricultural production may impact the ability of county citizens to use land and use and conserve natural resources for agricultural purposes, all federal and state agencies shall: (i) notify the county commissioners of proposed actions; (ii) provide and detailed statement assessing the specific effects on the custom, culture, economy and environment of Whitman County; (iii) consider all alternatives to the taking of such actions; and (iv) to the extent permitted by law, take appropriate mitigation measures adopted with the concurrence of the county commissioners.
- B. To the extent permitted by law, federal and state agencies shall avoid taking actions that are inconsistent with the Whitman County Right to Farm Ordinance No. 044668, dated February 4, 1991 or any successor resolution, ordinance or like provision in the comprehensive plan, without the concurrence of the county commissioners.
- C. To the extent permitted by law, federal and state agencies shall avoid taking actions that have the effect of obstructing, or making financially inefficient, agricultural production within Whitman County.
- D. To the extent permitted by law, federal and state agencies shall give adequate consideration to the designation and use of lands and agricultural lands in the comprehensive plan and as otherwise consistent with the custom, culture, and economy of Whitman County.

20.01.070 Livestock, timber and wood products.

The custom and culture associated with livestock, timber and wood products production in Whitman County is significant to the economic stability, livelihood and well-being of its citizens and protection and use of their environment. The purpose of this section is to provide clear guidance to federal and state agencies when actions taken by such entities may affect livestock, timber and wood products production in Whitman County.

- A. All federal and state agencies shall prior to initiating, studying or taking any action affecting livestock, timber or wood products production in Whitman County: (i) notify the county of proposed actions; (ii) provide a detailed statement assessing the specific effects on custom, culture, economy and environment of Whitman County; (iii) consider all alternatives to the taking of such actions; and (iv) to the extent permitted by law, take appropriate mitigation measures adopted with the concurrence of the county commissioners.
- B. To the extent permitted by law, federal and state agencies shall avoid taking actions that reduce opportunities for a livestock, timber and wood products industry to be continued at levels consistent with the custom, culture and economy of Whitman County.
- C. The production of livestock, timber and wood products from sources in Washington, Oregon and Idaho has been and continues to be an important part in the preservation of custom, culture and economic stability and protection and use of the environment of Whitman County. The provisions of this section shall therefore apply fully to actions taken by federal and state agencies with respect to sources of timber in such states.

20.01.080 Cultural resources, recreation, wildlife and parks.

The custom and culture associated with cultural resources, recreation, wildlife and parks in Whitman County are significant to the livelihood and well being of its citizens and protection and use of their environment. It is the continuing policy of Whitman County to (i) assure for all citizens safe, healthful, productive and aesthetically and culturally pleasing surroundings, (ii) preserve important historic, cultural and natural aspects of our county heritage, and (iii) maintain whenever possible an environment which supports diversity and variety of individual choice. The purpose of this section is to provide clear guidance to federal and state agencies when actions by such agencies may affect cultural resources, recreation, wildlife, and parks in Whitman County.

- A. Before any action is considered, proposed or taken affecting cultural resources, recreation, wildlife or parks uses in Whitman County, federal and state agencies shall: (i) notify the county of any proposed action; (ii) provide a detailed statement assessing the specific effects on custom, culture, economy and environment of Whitman County, including, without limitation, public health and safety; (iii) consider all alternatives to the taking of such actions; and (iv) to the extent permitted by law, take appropriate mitigation measures adopted with the concurrence of the county commissioners.
- B. Federal and state agencies shall avoid taking actions affecting cultural resources, recreation, wildlife and parks opportunities within Whitman County that are incompatible with local

custom, culture and economic stability or preservation and use of the environment, or that otherwise fail to protect private property rights and local determination.

- C. In connection with any action related to sensitive, threatened or endangered plant or animal species, a federal or state agency shall:
- (1) At the earliest possible time, give actual notice to Whitman County of the intent to consider or propose a species for listing, or to change or propose critical habitat;
 - (2) Base the listing of a species on the best scientific and commercial data relating specifically to Whitman County and not generalized over a wider geographic area;
 - (3) List a species as threatened or endangered only after taking into account the efforts of Whitman County to conserve the species;
 - (4) Only implement a recovery plan if it will provide for conservation of a species;
 - (5) In designating critical habitat, base the designation on the best scientific data available and, after taking into consideration economic impacts, exclude as critical habitat all impacted areas unless, based upon the best scientific and commercial data available, failure to designate would result in extinction of the species;
 - (6) Complete and forward to Whitman County in a timely manner all documentation required by law when designating critical habitat;
 - (7) Consider and directly respond to comments submitted by Whitman County;
 - (8) Not develop protective regulations or recovery plans if a Whitman County plan is in place to protect effectively the species within Whitman County;
 - (9) Protect the species through alternatives with the least impact on the custom, culture and economic stability and preservation and use of the environment of Whitman County; and
 - (10) To the extent permitted by law, take appropriate mitigation measures adopted with the concurrence of the county commissioners to mitigate adequately any impact on custom, culture, economic stability, and protection and use of the environment, including any impact on public use and access and private property rights.

20.01.090 Land acquisition and disposition, mining and minerals, and private property rights.

A. Land is significant to the preservation of custom, culture and economy, and preservation and use of the environment and natural resources. In addition, land provides much of the tax base for vital public functions, such as funding of public schools and administration of county government. When land (including any interest in land) is acquired or held in trust by federal and state agencies, it may be removed from this tax base and the citizens of Whitman County may suffer as a result. For these reasons, it is the policy of Whitman County that the design and development of all federal and state land acquisitions, including by forfeiture,

donation, purchase, eminent domain or trust, and disposals, including adjustments and exchanges, be carried out to the benefit of the citizens of Whitman County.

1. To the extent permitted by law, federal and state agencies shall prior to acquiring any lands or interest in lands within Whitman County: (i) notify the county of proposed acquisitions; (ii) provide a detailed statement assessing the specific effects on the custom, culture, economy and environment of Whitman County; (iii) consider all alternatives to the taking of such actions; and (iv) to the extent permitted by law, take appropriate mitigation measures, such as payments in lieu of taxes, adopted with the concurrence of the county commissioners.
2. Before any federal, or state agency pursues any disposition, adjustment or exchange of land within Whitman County, the county commissioners shall be notified of, consulted about, and otherwise involved in all federal and state land dispositions, adjustments, and exchanges.

B. Whitman County recognizes that the conservation and use of mining and mineral resources are significant to preservation of the custom, culture and economic stability of its citizens and protection and use of their environment.

1. Any federal or state action that has or could have the effect of changing existing use of mining or mineral resources within the county shall be critically considered in relationship to the historic and current use of such resources in the county.
2. It is the intent of the county commissioners to act within the existing legal framework concerning planning and management of the county's natural, cultural, economic and environmental resources related to mining and minerals.

C. Whitman County recognizes that the protection of private property rights is essential to preservation of the custom, culture and economic stability of its citizens and protection and use of their environment. Federal and state agencies shall fully comply with all caselaw, statutes, regulations, rules, and guidelines concerning protection of private property rights in Whitman County, including, without limitation: (i) United States Executive Order 12630, Governmental Actions and Interferences With Constitutionally Protected Property Rights, dated March 16, 1988; and (ii) Section 18 of the Washington Growth Management Act, Protection of Private Property (R.C.W. 36.70A.370), and guidelines of the Attorney General of the State of Washington promulgated with respect thereto:

1. All private property and private property rights of Whitman County citizens shall be fully protected under the Fifth and Fourteenth Amendments of the United States Constitution and the United States Civil Rights Act, as well as, this chapter and other appropriate state statutes and provisions of the Washington Constitution.
2. The violation of the private property rights of any Whitman County citizen by any federal or state agency shall be deemed to be a violation of this chapter, and liability for such violation shall be on the federal or state agency as well as on the federal or state official or employee responsible for making any decision or implementing any action which results in such violation.

20.01.100 Water resources.

Whitman County recognizes that the conservation and development of water resources are essential to preservation of the custom, culture and economic stability of its citizens and protection and use of their environment. To the extent permitted by law, federal and state agencies shall avoid taking actions affecting water rights and water resources that are incompatible with local custom, culture and economic stability or preservation and use of the environment, or that otherwise fail to protect private property rights and local determination.

- A. Any federal or state action that has or could have the effect of changing existing water rights or water uses within the county shall be critically considered in relationship to the historic and current use of water in the county by humans, vegetation, livestock and wildlife. It is the intent of the county to assist federal and state agencies in the planning and management of the county's natural, cultural, economic and environmental resources related to water use. Since the regulations of any aspect of water rights or water use may impact the ability of county citizens to use land and natural resources, all federal and state agencies shall, when taking any action related to restricting or limiting water use or water rights: (i) notify the county commissioners of proposed actions; (ii) provide a detailed statement assessing the specific effects on the custom, culture, economy and environment of Whitman County; (iii) consider all alternatives to the taking of such actions; and (iv) to the extent permitted by law, take appropriate mitigation measures adopted with the concurrence of the county commissioners.
- B. Any proposed definition of wetlands, any action affecting the management of river flows or the sources or uses of irrigation, and any other federal or state action that has any effect on water rights or water uses within the county: (i) shall be coordinated with the county; (ii) to the extent permitted by law, shall comply with all county water use plans; and (iii) shall not violate any water rights.
- C. To the extent permitted by law, Whitman County shall have the authority to define and designate wetlands, and to the extent such authority is exercised, and otherwise in accordance with law, federal and state agencies shall act in compliance with acceptance and enforcement of such definitions and designations. In addition, the county may continue to develop, in coordination with private landowners and governmental agencies, water management plans that encompass water resources on both governmentally owed and privately owned lands.
- D. To the extent permitted by law, Whitman County shall have the authority to establish development regulations for point source and non-point source water pollution. To the extent such authority is exercised, and otherwise in accordance with law, federal and state agencies shall be subject to, and shall comply with all administrative requirements, controls, processes, and sanctions of such development regulations.
- E. The use of water that originates from sources outside Whitman County has been and continues to be an important part in the preservation of custom, culture and economic stability and the protection and use of the environment of Whitman County. The provisions of this section shall therefore apply fully to actions taken by federal and state agencies in any jurisdiction that affect water rights and water uses within Whitman County.

- F. Before any federal or state agency acquires or agrees to acquire any interest in water rights in Whitman County, directly, indirectly or in trust, for any purpose (including for transfer to or use in any other jurisdiction), by donation, purchase, condemnation or otherwise, such agency shall fully comply with all provisions of this chapter. In addition, federal and state agencies shall not acquire for any public purpose any interest in water rights within Whitman County without: (i) first coordinating and consulting with the county commissioners; and (ii) ensuring that private water rights are protected.

20.01.110 Air quality.

Whitman County recognizes that the conservation and use of air quality resources are significant to preservation of the custom, culture and economic stability of its citizens and protection and use of their environment.

- A. All federal and state agencies shall prior to taking any action affecting air usage within Whitman County: (i) notify the county of the proposed action; (ii) provide a detailed statement assessing the specific effects on the custom, culture, economy and environment of Whitman County; (iii) consider all alternatives to the taking of such action; and (iv) to the extent permitted by law, take appropriate mitigation measures adopted with the concurrence of the county.
- B. Any federal or state action that has or could have the effect of changing existing use of air resources within the county shall be critically considered in relationship to the historic and current use of air resources in the county by humans, vegetation, livestock, and wildlife. Any proposed designation of federal or state pollution non-attainment areas and any other federal or state action that has any effect on air resources within Whitman County shall be coordinated with the county commissioners and shall comply with all county air quality standards and use plans.
- C. It is the intent of the county to assist federal and state agencies in the planning and management of the county's natural, cultural, economic and environmental resources related to air quality. Whitman County shall have the authority to establish development regulations regarding air pollution and develop air quality productions plans of its own design. To the extent such authority is exercised, federal and state agencies shall act in compliance with acceptance and enforcement of such regulations, to the extent permitted by law. In addition, the county commissioners shall have the authority to continue to develop, in coordination with private land holders and governmental agencies air quality management plans that encompass clean air resources throughout Whitman County. To the extent such authority is exercised and otherwise as permitted by law, federal and state agencies shall be subject to, and shall comply with, all administrative requirements, controls, processes, and sanctions of such regulations and plans.

ARTICLE IV.

MONITORING AND ENFORCEMENT

20.01.120 General authorization.

Whitman County shall have the authority to develop and maintain monitoring and compliance standards

to evaluate and to enforce compliance by federal and state agencies with the provisions of this chapter, the comprehensive plan, and other ordinances, resolutions, policies and plans of Whitman County. Any actions that may be taken or authority that may be exercised by Whitman County pursuant to this chapter or otherwise in accordance with law may be taken or exercised by action of the Whitman County Board of Commissioners. The county may by resolution of the board of commissioners exempt any action or area of action by a federal or state agency from compliance with this chapter.

20.01.130 Natural resource advisory committee and subcommittees.

A basic premise of this chapter is that involvement by citizens is crucial to the preservation of their custom, culture and economic stability and protection and use of their environment. This is particularly true with respect to coordinating government regulation of land and natural resources use.

- A. In order to involve citizens in the monitoring and enforcement of compliance with the provisions of this chapter, there shall hereby be established the Whitman County Natural Resource Advisory Committee for Federal and State Actions Affecting Land and Natural Resources Use (the "natural resource advisory committee"), and the subcommittees thereof named below. The basic function of the natural resource advisory committee and the subcommittees shall be to monitor federal and state actions and advise the county commissioners regarding compliance by such agencies with this chapter. The natural resource advisory committee and the subcommittees shall be advisory only and shall in no way bind the county commissioners, who shall have final authority regarding interpretation and enforcement of this chapter.
- B. The members of the natural resource advisory committee shall be the chair and vice chair of the following subcommittees, each of which shall have the chair, vice-chair, members, and specific duties designated by the board of county commissioners from time to time in furtherance of this chapter: (i) agriculture; and (ii) livestock, timber and wood products; (iii) cultural resources, recreation, wildlife and parks; (iv) land acquisition and disposition, mining and minerals, and private property rights; (v) water resources; (vi) air quality; and (vii) research and data collection. In furtherance of this chapter, the board of county commissioners may by resolution: (i) expand or contract the number of members of the natural resource advisory committee and any subcommittee; or (ii) change the subcommittees or establish other subcommittees.
- C. The board of county commissioners shall appoint on the first Monday of each year, or as soon thereafter as practical, the chair, vice chair and other members of each subcommittee. Members of the natural resource advisory committee and each subcommittee must be citizens of Whitman County over the age of eighteen years, with terms of appointment as follows: Initially, members shall be appointed for one, two or three year terms; thereafter, terms shall be for a period of three years, staggered so that the terms of one--third of the members expire each year. Any person may be re-appointed at the pleasure of the county commissioners. The county commissioners may remove any person from a chair, vice chair or membership position for cause and may fill vacancies as needed from time to time. The clerk of the board shall be responsible for keeping all necessary records of said committee and subcommittees and respective members and terms of office.
- D. At its initial meetings, the natural resource advisory committee shall adopt operational

procedures for itself and the subcommittees, which, along with any later amendments thereto, shall be subject to the approval of the county commissioners. To the extent required by law, the natural resource advisory committee and subcommittees shall be subject to the Open Public Meetings Act (R.C.W. Ch.42.30) and the Public Disclosure Act (R.C.W. Ch.42.17) Staffing for the natural resource advisory committee and subcommittees shall be at the direction of the board of county commissioners.

- E. When determining which citizens shall be appointed, the county commissioners shall consider the purpose of this chapter and the functions each subcommittee and the natural resource advisory committee shall perform. While no specific criteria must be met, appointments should collectively reflect an expertise and involvement in the primary subject matter(s), and the broad diversity of the many aspects of the culture, custom, economy and environment of Whitman County.

20.01.140 Research and data collection.

In furtherance of the purposes of this chapter, it is the intent of the county to develop and maintain a research database of information regarding the custom, culture, economy and environment of Whitman County.

20.01.150 Enforcement.

A. The county commissioners shall have the authority to request the prosecuting attorney's office to bring an action to enforce this chapter in any court or administrative tribunal of competent jurisdiction and to seek cumulative remedies, including any criminal or civil penalties allowed by law, equitable relief, and monetary compensation when the county tax base or the general welfare or health and safety of the citizens of the county is at issue.

B. Nothing in this chapter shall be construed to limit any remedy that any person may have under the laws of the State of Washington or of the United States. Every person, who under color of any law, statute, ordinance, regulation, custom or usage, of the United States of the State of Washington, subjects, or causes to be subjected, any person within Whitman County to the deprivation of any property rights secured by this chapter shall be liable to the person(s) injured in an action at law, suit in equity or other proper proceeding for redress.

C. Any person alleging a violation of the private property rights protected by this chapter may, after exhausting all other state and federal remedies, submit a written complaint to the county sheriff, who may in his or her discretion determine whether any criminal action may be brought if it is of misdemeanor nature. If it is of a felony nature, the county sheriff shall investigate the purported violation and refer it to the prosecuting attorney for action with appropriate recommendations. The board may direct staff, with the sheriff's consent, to assist in such investigations.

D. Every person, who under color of law, statute, ordinance, regulation, or custom, willfully subjects any person within Whitman County to the deprivation of any property rights secured or protected by this chapter shall be guilty of a misdemeanor punishable by not more than ninety days in jail, a fine of not more than one thousand dollars, or both.