

CHAPTER 6. REGULATIONS

A system of regulations that supports the recommendations proposed by a CFHMP is a critical component of effective flood hazard management. These recommendations may include engineered projects as well as regulatory programs affecting land use, shoreline management, resource management, and floodplain management. The need for engineered projects to prevent or mitigate flood hazards can often be eliminated if complementary and forward-looking regulatory programs are initiated before extensive development occurs. A general public understanding of existing regulations can help prevent the waste of time and money on projects that will never be permitted.

This chapter provides an overview of existing federal, state, and local regulatory and permitting requirements that relate to flood hazard management, surface water management, water quality, and wetlands protection (a detailed discussion of each is provided in Appendix F).

SUMMARY OF EXISTING REGULATIONS

Many laws that address flood hazard management directly or indirectly have been enacted at the federal, state, and local levels. Table 6-1 lists these laws in the categories of flood hazard management, stormwater management, sensitive areas, and other, and Table 6-2 provides further details on each of the laws cited.

Most federal laws are implemented at the state and local levels. For example, the federal Clean Water Act regulates stormwater discharge, but the EPA has delegated the responsibility of administering the program to the State of Washington. The National Flood Insurance Program, which offers affordable flood insurance to private property owners, is a national program administered by FEMA, but requires cities and counties to adopt floodplain regulations.

With the exception of the National Flood Insurance Program, the laws most relevant to flood hazard management originate at the state level. Most of these begin with state legislation that enables local governments to adopt regulations promoting public health, safety, and general welfare. Environmental laws that affect flood hazard management through habitat, shoreline, and other critical-area protection measures also exist at the state level, but enforcement is increasingly becoming the responsibility of local governments. State growth management requirements contain additional recommendations regarding land use and development near wetlands and in frequently flooded areas, with regulatory implementation largely in the hands of local jurisdictions.

COUNTY REGULATORY TOOLS FOR FLOOD HAZARD MANAGEMENT

Yakima County regulatory programs are in transition. The County is developing a Comprehensive Plan; has recently adopted a Critical Areas Ordinance (CAO) that integrates the Shoreline Master Program and the Flood Hazard Ordinance; and is updating the Flood Hazard Ordinance to incorporate the revised Flood Insurance Study.

TABLE 6-1.
SURFACE WATER MANAGEMENT REGULATIONS/POLICIES IN YAKIMA COUNTY

Category	Federal	State	Yakima County
Land Use Restrictions	<ul style="list-style-type: none"> National Flood Insurance Act/Flood Disaster Protection Act. Executive Order 11988 (Floodplains) 	<ul style="list-style-type: none"> Floodplain Management Program 	<ul style="list-style-type: none"> Flood Hazard Ordinance (currently part of Yakima County's Critical Areas Ordinance) Critical Areas Ordinance Zoning Ordinance
Facilities and Building Standards	--	<ul style="list-style-type: none"> Hydraulic Code (HPA) 	<ul style="list-style-type: none"> Flood Hazard Ordinance.
Planning and Policy	--	<ul style="list-style-type: none"> Growth Management Act (GMA) Flood Control by Counties 	<ul style="list-style-type: none"> Comprehensive Plan and SEPA/GMA Integration. Critical Areas Ordinance
Facilities	--	<ul style="list-style-type: none"> Hydraulic Code (HPA) 	<ul style="list-style-type: none"> Zoning Ordinance
Water Quality	<ul style="list-style-type: none"> Clean Water Act, Sections 401 and 402. 	<ul style="list-style-type: none"> Water Pollution Control Act (Water Quality Certification or Modification) State program for National Pollution Discharge Elimination System (NPDES) (when implemented for cities with less than 100,000 population). 	--
Planning and Policy	--	<ul style="list-style-type: none"> Growth Management Act Flood Control by Counties 	<ul style="list-style-type: none"> Comprehensive Plan and SEPA/GMA Integration. Critical Areas Ordinance
Stream Corridors	<ul style="list-style-type: none"> Clean Water Act, Section 404 River and Harbor Act 	<ul style="list-style-type: none"> Shoreline Management Act Hydraulic Code (HPA) 	<ul style="list-style-type: none"> Shoreline Master Program (currently part of Yakima County's Critical Areas Ordinance) Critical Areas Ordinance
Wetlands	<ul style="list-style-type: none"> Clean Water Act, Section 404 (dredge and fill) Executive Order 11990 River and Harbor Act 	<ul style="list-style-type: none"> Shoreline Management Act Executive Order 90-04 	<ul style="list-style-type: none"> Critical Areas Ordinance
Fisheries and Wildlife Habitat	--	<ul style="list-style-type: none"> Hydraulic Code 	--
General Environmental	<ul style="list-style-type: none"> National Environmental Policy Act 	<ul style="list-style-type: none"> State Environmental Policy Act (SEPA) 	<ul style="list-style-type: none"> SEPA Ordinance Comprehensive Plan and SEPA/GMA Integration.

The Comprehensive Plan will require changes in zoning and possibly in the permitting process; the revised CAO provides increased protection for wetlands; and the Flood Hazard Ordinance will incorporate revised floodplain boundaries. The fact that these changes are currently being worked out makes this an opportune time for development of the CFHMP because any regulatory tools the plan recommends to enhance flood hazard management can be incorporated in the laws now being revised.

The following are the primary regulations and programs pertaining to flood hazard management in Yakima County:

- **National Flood Insurance Program (NFIP)**—Determines floodplain boundaries, floodways, and flood hazard areas associated with the 100-year flood via a Flood Insurance Study and Flood Insurance Rate Map (FIRM). The NFIP provides federally-subsidized flood insurance to all property owners in exchange for the County's adoption of a local flood hazard ordinance that meets minimum standards.
- **Yakima County Critical Areas Ordinance**—Establishes development regulations for designated critical areas within Yakima County, satisfying requirements of the GMA. Yakima County's current ordinance designates 20 *stream corridors* -- defined as a collection of inter-dependent shoreline and wetland features associated with stream systems. The CAO was revised and recently adopted, and includes the following flood-related requirements:
 - All new construction and any improvements or additions to an existing floodproofed structure that would extend beyond the existing floodproofing shall have the lowest habitable floor elevated to a height equal to or greater than the base flood elevation.
 - Structures within 100 feet of the floodway, or the ordinary high water mark if no floodway has been established, shall be elevated to a height equal to or greater than the base flood elevation using zero-rise methods such as piers, posts, columns, or other methods, unless it can be demonstrated that nonzero-rise construction methods will not impede the movement of floodwater or displace a significant volume of water.
 - The size and spacing of any support devices used to achieve elevation shall penetrate to bearing soil, be sufficiently anchored to withstand hydrostatic and hydrodynamic pressures, and provide adequate support with a minimum obstruction to water movement.
 - Structures placed upon any support devices used to achieve elevation shall be designed to withstand the effects of hydrostatic and hydrodynamic pressures, the effects of buoyancy, and wind loads.
 - New construction and substantial improvements to existing structures that are necessarily subject to flood damage shall be constructed with materials that are resistant to flood damage.
 - All electrical and mechanical equipment or facilities subject to floodwater damage shall be located above the flood hazard elevation or otherwise

designed to prevent water from entering or accumulating within the components during flood conditions.

- Except where otherwise authorized, all new construction and substantial improvements to existing structures shall require certification by a registered professional engineer, architect, or surveyor that the design and construction are in accordance with adopted floodproofing standards.
- **Yakima County Open Space Tax Program**—Defines floodplains as a high-priority open space resource. The Tax Program reclassifies land as open space through the approval of the Planning Commission and County Commissioner. Once reclassified, assessed value of the property usually falls, resulting in reduced property taxes to the landowner.
- **Yakima County Shoreline Master Program**—Implements requirements of Washington's Shoreline Management Act at the local level. Yakima County defines shoreline jurisdictions as follows (Yakima County 1981):
 - Where the floodway has been established by a flood hazard study prepared by the FEMA's Federal Insurance Administration, shorelines jurisdiction shall be the floodway plus 200 feet, measured on a horizontal plane, or the 100-year floodplain, whichever is less.
 - Where the 100-year floodplain has been identified by a flood hazard study prepared by the COE but no floodway has been identified, shorelines jurisdiction shall be the 100-year floodplain boundary or 200 feet, measured in a horizontal plane, from the ordinary high water mark, whichever is greater.
 - Where there are no detailed floodplain or floodway studies from either the Federal Insurance Administration or the COE, shorelines jurisdiction shall be 200 feet, measured on a horizontal plane, from the ordinary high water mark.
 - Under no circumstances shall shorelines jurisdiction be less than 200 feet, measured on a horizontal plane, from the ordinary high water mark.
 - Additionally, all wetlands within the 100-year floodplain are included. Within the shoreline jurisdiction, developers who propose *substantial development* (total cost equal to or greater than \$2,500 or that materially interferes with public use of the shoreline or water) must obtain a substantial development permit evaluated by Ecology and the County.
- **Yakima County Flood Hazard Ordinance**—Required for participation in NFIP by setting minimum standards and regulations for development in Flood Hazard Areas. Floodplain boundaries are defined in the 1985 Flood Insurance Study for Yakima County, which is currently under revision. However, if the Flood Hazard Area identified on the FIRM also lies within a stream corridor identified in the CAO, the development regulations associated with the CAO apply. Yakima County Flood Hazard Ordinance is currently part of the County's CAO.

- **Yakima County Zoning Ordinance**—Implements land use recommendations from the comprehensive plan for areas within the unincorporated County. The Yakima County Critical Areas Ordinance and Zoning Ordinance are complementary. The CAO states that the regulation that is most restrictive shall apply to potential development. Existing County zoning outside the Yakima urban area does not include a Floodplain Overlay District that would reinforce requirements of the flood hazard ordinance.

PERMITTING REQUIREMENTS

Many of the regulatory programs summarized in Tables 6-1 and 6-2 and described in Appendix F contain permit requirements. A project may require one or more permits, depending on its nature and location. Table 6-3 shows permits required for projects of various types and in various locations. At least five permits are typically required for in-stream, shoreline, floodplain, and river engineering projects. The table also indicates that State Environmental Policy Act (SEPA) review is generally required for all the listed types of projects. SEPA review may consist of completing a checklist or an environmental impact statement (EIS) if the project is expected to have significant impact.

Many permit requirements depend on the project location in relation to the river, shoreline jurisdiction, and floodplain boundary. Only work in and adjacent to the Yakima River would require a COE 404 permit.

Some permits are issued following acquisition of other permits. Figure 6-1 illustrates permit timing relationships. The WSDOT right-of-way permit process, required whenever work is proposed within a state right-of-way, is listed first because it can have the longest processing time. The COE and Shorelines permit processes require procurement of most other required permits and approvals before issuance. SEPA compliance may be accomplished by preparing an environmental checklist, but if an EIS is found to be necessary, this can substantially delay procurement of all permits that require completion of the SEPA process.

The Hydraulic Project Approval (HPA) application can be submitted before the SEPA process is finished, but it will not be issued until SEPA review has been completed. Ecology will not issue the Water Quality Modification/Certification until the HPA has been issued. The grading and filling permit requires SEPA compliance prior to issuance. Individual processing times may require up to two months for these permits.

SEPA/GMA Integration

Yakima County is developing an integrated SEPA/GMA strategy for its comprehensive plan to reduce overlapping permitting requirements on development. Under the strategy, potential adverse effects of development will be defined as either *system impact* (affecting a system of facilities, services or the natural environment) or *project impact* (affecting a specific development project). A model will be used to determine mitigation measures that may be required. It is unclear at this time how the mitigation model will alter the permitting process for flood-related projects.

TABLE 6-3.
PERMIT REQUIREMENTS FOR FLOOD CONTROL WORK

	Project Location				Type of Work		
	In-Stream Work	Shoreline Work	Floodplain Work	Outside Floodplain	Structural Flood Control	Nonstructural Using Existing Regulation	Nonstructural Using Modified Regulations
DOT ROW Permit (for work in State right-of-way) <i>Washington Department of Transportation</i>		X			X	X	
COE 404/10 <i>U.S. Army Corps of Engineers</i>	X		X		X		
Shoreline Substantial Development <i>Yakima County</i>	X		X			X	
Hydraulic Project Approval (HPA) <i>Washington Department of Wildlife</i>	X		X		X		
SEPA Review <i>Yakima County</i>	X		X		X	X	X
Water Quality Modification/ Certification <i>Washington Department of Ecology</i>	X		X		X		
COE 401 (Water Quality Certification) <i>Washington Department of Ecology</i>	X		X		X		
Standard Development <i>Yakima County</i>	X		X		X	X	

