

## APPENDIX F. FEDERAL, STATE, AND LOCAL REGULATIONS AND POLICIES

This appendix provides an overview of the existing federal, state, and local regulations that directly or indirectly affect flood hazard management in Yakima County.

### **FEDERAL REGULATIONS**

#### **Clean Water Act**

The Clean Water Act of 1977 and the Water Quality Act of 1987 (amendments to the Federal Water Pollution Control Act) provide the backbone for national water quality policy and action. The goal is to eliminate pollutant discharges into "waters of the U.S." Sections 401, 402, and 404 of the Clean Water Act (33 USC 1251 et seq., as amended by Public Law 92-500) are pertinent to surface water management in Yakima County.

##### ***Section 401 - Water Quality Certification***

Section 401 (40 CFR 121) ensures activities requiring a federal permit (such as COE Section 404 permit for filling of a wetland) comply with the Clean Water Act, state water quality laws, and other appropriate state regulations (e.g., the Hydraulic Code, Water Pollution Act). Section 401 is implemented through a certification process. In the State of Washington, the Department of Ecology (Ecology) implements Section 401 requirements [WAC 173-225; RCW 90.48; WAC 173-201-035(8)(e)]. Ecology is the final authority on approval, denial, or development of special conditions for certification.

A Water Quality Certification ensures that federal permitted activities comply with water quality standards and discharge limitations for waters of the State of Washington (Chapter 173-201 WAC). The Certification is similar to a permit and is a prerequisite requirement for obtaining a COE permit, an FERC license, or other federal permit. Usually, the federal permitting agency notifies Ecology of applications for federal permits. Issuance of a Certification is exempt from SEPA requirements.

##### ***Application to Yakima County***

Most in-stream construction activities, including flood hazard management projects such as riprap revetment and gravel bar scalping, will unavoidably violate state water quality standards (particularly the turbidity standard) on a short-term basis. Such projects will require a Temporary Modification of Water Quality Standards, an order issued by Ecology to control water quality impact by short-term activities essential to the public interest. The order may be required before Ecology issues a Water Quality Certification and must comply with SEPA requirements (see below).

##### ***Section 402 - National Pollution Discharge Elimination System***

The Water Quality Act of 1987 amended Section 402 with a new subsection regulating stormwater discharges. The amendment requires a phased approach to control pollutants mobilized and transported by stormwater runoff. Although pollutants entering storm and surface water systems have historically been considered nonpoint in nature, they are now

regulated as point sources under Section 402(p) and subject to the permitting process of the Clean Water Act's National Pollutant Discharge Elimination System (NPDES).

On November 6, 1990, the EPA established permit requirements for stormwater discharges associated with industrial activity and municipal storm sewer systems (40 CFR Parts 122, 123, and 124). Permitting authority in Washington State was granted to Ecology by EPA.

#### *Application to Yakima County*

Yakima County is not classified as a large or medium municipality according to definitions specified in the NPDES regulations. Therefore, Yakima County is not currently subject to NPDES stormwater requirements. However, following the reauthorization of the Clean Water Act, smaller urban areas are likely to be regulated under Phase II of the NPDES stormwater regulations. It is difficult to predict the requirements to be established by the EPA under Phase II, but it is likely to affect communities such as Yakima. It is anticipated that regulatory compliance will emphasize implementation of Best Management Practices (BMPs) to control pollutants in stormwater. Such controls may include a variety of structural or nonstructural measures. The regulations for smaller urban areas are likely to reflect the experience EPA has gained from permitting larger cities and counties.

#### *Section 404 - Dredge and Fill Requirements*

Section 404 of the Clean Water Act (USC 1394) regulates the discharge of dredged or fill material into waters of the United States, including wetlands. The COE administers a permitting program under the provisions of Section 404.

Under the law, discharge of dredged or fill material to wetlands may require a nationwide permit or an individual permit. A nationwide permit is required for smaller projects and authorizes specific categories of work such as minor road crossing fills, replacement, repair, and rehabilitation, and mooring buoys. The review process generally takes less than 20 days. Nationwide Permit 26 covers wetland fills. This permit regulates filling that will cause the loss or substantial adverse modification of less than one acre of isolated waters or waters with an average annual flow of less than 5 cubic feet per second at the headwaters. This includes isolated wetlands and wetlands adjacent to and above the headwaters of tributary water bodies. Wetland fills of 1 to 10 also require environmental impact review by the COE, EPA, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Ecology. Individual permits are required for wetland proposals involving any of the following:

- Fill of less than 10 acres that is not authorized under Nationwide Permit 26
- Fill of more than 10 acres
- Fill of any wetland area adjacent to a stream and below the headwaters
- Fill of any area in tidal waters and their adjacent wetlands.

The individual permit review process includes an analysis by the COE of whether the project's benefits outweigh predicted environmental impact. Completion of an Environmental Impact Statement may be necessary for some projects. In addition, there is a 30-day period during which the proposal is available for review by federal, state, and local agencies, Native American groups, interest groups, and the general public.

Proposed wetland activities may be subject to other laws in addition to or in association with a Section 404 permit. For example, in the State of Washington, Ecology has the right to place conditions on or request denial of a Section 404 permit if a proposed project does not comply with state water quality laws. The COE cannot issue a Section 404 permit if the state has denied water quality certification. Furthermore, if any local agency permit is denied, the COE will deny the 404 permit.

### **National Flood Insurance Act / Flood Disaster Protection Act**

In 1968, the U.S. Congress initiated the National Flood Insurance Program (NFIP) (Chapter 44 CFR) under the National Flood Insurance Act to relieve the burden of disaster relief on the national treasury and state and local tax bases. The NFIP is administered by the Federal Insurance Administration (FIA), which is part of the Federal Emergency Management Agency (FEMA). The NFIP makes available affordable flood insurance to communities that adopt approved floodplain management regulations. Communities that do not participate in the NFIP do not qualify for certain flood disaster relief.

Congress added several provisions to the NFIP under the Flood Disaster Protection Act of 1973 in order to strengthen the program. The 1973 act provided additional incentives to communities to join the NFIP by substantially increasing the amount of flood insurance coverage available and providing penalties for communities and individuals that choose not to join the NFIP and are subsequently flooded. Specific new requirements include the following:

- Any acquisition or construction undertaken in identified special flood hazard areas requires purchase of federal flood insurance if available.
- Acquisition of properties in the floodplain to be secured under mortgages from a federally related lender require purchase of federal flood insurance if available.
- Communities identified by FEMA as flood-prone have one year from the time of designation to enroll in the NFIP; otherwise disaster-assistance funds and federal financial assistance for acquisition or construction of property in flood hazard areas will be denied.

The NFIP consists of an emergency program and a regular program. The emergency program is initiated when FIA notifies a community that it has been identified as a flood-prone area. Notification is provided in the form of a Flood Hazard Boundary Map (FHB). The FHB is a preliminary delineation of the flood hazard areas and shows no elevations. After receiving the FHB, a community becomes a participant by completing an application to the FIA. Upon acceptance of the application, limited amounts of flood insurance are made available to the community. The community is required to adopt minimum floodplain management regulations based on the FHB and is encouraged to use any additional information available to establish flood elevations.

A community enters the regular NFIP program upon adoption of an ordinance approved by FEMA. A detailed flood insurance study that involves hydrologic and hydraulic analyses is normally performed and is referenced in the ordinance as the basis for the regulatory program. The products of the study are the Flood Insurance Rate Map (FIRM) and the Flood Insurance Study. The Flood Insurance Study provides data on the width of the floodway and floodplain, the cross-sectional area, and the floodwater velocity at given points in the stream. The FIRM

delineates areas adjacent to rivers that are subjected to flood risks and an insurance rate is determined for each area. New FIRMs also delineate flood insurance rate zones, limits of the 100-year floodway and floodplain, and, frequently, the limits to the 500-year floodplain. FIRMs and the associated insurance studies are available from the regional branch of FEMA.

The 100-year flood determines the geographic jurisdiction of NFIP-related programs. The 100-year flood is frequently called the “base flood” and is defined as the discharge that has a one percent chance of occurring or being exceeded in a given year. The 100-year floodplain is the area that would become inundated by water during the 100-year flood.

The floodway is an engineering concept incorporated into the NFIP floodplain management criteria. A floodway is the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to convey the base flood without cumulatively increasing the water surface elevation more than a certain amount (one foot for NFIP). Floodways are calculated by FEMA for the 100-year base flood for major rivers and streams as part of the flood insurance study undertaken for a community.

Since 1990, communities that have adopted programs or regulations to reduce flood-related damages have been eligible to receive reduced insurance rates under the Community Rating System (CRS). Communities must apply to FEMA to be certified for a rate reduction before policy holders within the community can receive a rate reduction. There are 21 different activities, divided into four groups, that count towards the credit. The groups are public information, mapping and regulations, flood damage reduction, and flood preparedness.

### *Application to Yakima County*

Yakima County and three cities in the study area are currently members of the NFIP. Table E-1 displays dates of entry into the NFIP. FIRMs for all four jurisdictions are currently being updated. The FEMA community number for Yakima County is No. 530217. The current floodway and floodplain maps were created in June 1985. Each community has adopted Flood Damage Prevention Ordinances (see below) as required by NFIP. Therefore, federally subsidized flood insurance is available to local residents. To continue coverage, the communities must maintain participation in the NFIP and maintain minimum floodplain management regulations. FEMA requires a certification letter for any revisions to a FIRM. Certification activities include stream channel modifications, installation of culverts, and bridge construction. Yakima County may become eligible for CRS credits and a reduction in insurance rates after adoption and implementation of this plan.

TABLE E-1  
YAKIMA COUNTY INVOLVEMENT IN THE NATIONAL FLOOD INSURANCE PROGRAM

Community	Community Number	Date of Entry into NFIP and current FIRM <sup>a</sup>
Yakima County	530198	September 1977
Selah	530226	May 1982
Union Gap	530229	May 1983
Yakima	530311	December 1981

a. FIRMs for all four jurisdictions are currently being updated.

## **National Environmental Policy Act**

The National Environmental Policy Act (NEPA) (42 USC 4321 et seq.) requires federal agencies to review environmental impact of agency-sponsored development projects and of agency decisions on permits and approvals for privately-sponsored development projects. The NEPA process requires full disclosure and consideration of environmental impact along with technical and economic considerations.

Guidance for implementation of NEPA is provided by the Council on Environmental Quality (CEQ). The CEQ Regulations (40 CFR 1500-1508) place significant emphasis upon the consideration of alternatives, including ways to mitigate harmful environmental effects. Generally, the NEPA process occurs concurrently with COE Section 404 reviews. Most federal agencies have adopted their own regulations for implementing NEPA requirements.

NEPA requires the preparation of an environmental impact statement (EIS) for any federal action that would have significant adverse environmental impact. The EIS must thoroughly evaluate any adverse environmental impact of the proposed action and its alternatives. Permits issued by a federal agency (such as Section 404 permits) are among the federal actions that may require an EIS.

To determine whether a proposal would have significant adverse environmental impact, the agency may prepare an environmental assessment (EA). A permit applicant often provides much of the information and analysis used to prepare the EA. The EA contains sufficient evidence and analysis to determine whether an EIS is required. If an EIS is not required, a Finding of No Significant Impact (FONSI) document is prepared by the federal agency to explain why an EIS is not required. Compliance with NEPA is achieved upon completion of the FONSI or EIS.

### *Application to Yakima County*

Projects that require formal review and approval by federal agencies are often subject to environmental review. Federal agencies responsible for approving such projects generally perform the required EA or FONSI. Normally, NEPA documents can be substituted for those required under SEPA.

## **River and Harbor Act, Section 10**

The River and Harbor Act was enacted in 1899 to preserve the navigability of the nation's waterways. Section 10 (33 USC 403) prohibits the unauthorized obstruction or alteration of any navigable water of the United States. The provisions apply to all structures or work below the mean high water mark of navigable tidal waters and the ordinary high water mark of navigable fresh waters. Actions in wetlands within these limits are subject to Section 10 provisions.

Provisions of Section 10 are implemented by the COE through a permit process that includes consideration of navigation, flood control, fish and wildlife management, and environmental impact. Compliance with NEPA is required. Section 10 reviews often occur simultaneously with Section 404 permit processing.

### ***Application to Yakima County***

The Yakima River is a navigable waterway of the U.S. for 8.4 miles from its mouth to the Van Nysen Street Bridge in the Tri-Cities area. Within the CFHMP study area, the river is not classified as a navigable waterway. Therefore, activities in the river channel and wetlands within the Ordinary High Water Mark (OHWM) are generally not regulated through Section 10, although regulations set by Section 404 still apply.

### **Executive Order 11990 (Wetlands)**

In 1977, Executive Order 11990 directed federal agencies to avoid the unnecessary alteration or destruction of wetlands. The order requires federal agencies to provide leadership and take action to minimize the destruction, loss, or degradation of wetlands affected by any federal project or project that receives federal funding. Federal agencies must also address impact on wetlands and mitigate any unavoidable impact. The order establishes wetland protection as the official policy of all federal agencies.

### ***Application to Yakima County***

While the order does not regulate wetlands per se, it does establish wetland protection as the official policy of all federal agencies. Many policies and regulations in the State of Washington reflect this policy as described below.

### **Coastal Zone Management Act**

The Coastal Zone Management Act (CZMA) of 1972 and subsequent amendments establish a voluntary program through which States can receive financial and technical assistance to formulate plans for the efficient use of coastal zones. Each state is encouraged to develop a state coastal zone management plan for coastal resources. Once the state plan is approved by the federal government, additional federal financial assistance becomes available to implement the plan.

Sections 305(b)(2) and (5) of the CZMA require that the state management program define permissible land and water uses within the coastal zone and develop broad guidelines on priorities of uses in particular areas. The federally approved plan in the State of Washington is the Shoreline Management Act (RCW 90.58) as described below. Provisions of the act are implemented by the Department of Ecology in the Shorelands and Coastal Zone Management Program.

The Shoreline Management Act allows “reasonable and appropriate uses” under specified conditions that protect against “adverse effects to public health, and land and its vegetation and wildlife, and the waters of the state and their aquatic life.”

Additional guidelines on permissible land and water uses within state shorelines are included in WAC 173-16-060, which specifies 21 shoreline use activities that were determined to have a “direct and significant” impact not only on the coastal waters but on the environment in general and on the users of the coastal resources.

### *Application to Yakima County*

The County's shoreline master program regulates use and development for landowners and developers in unincorporated areas of Yakima County.

## **STATE REGULATIONS**

### **Water Pollution Control Act**

The Water Pollution Control Act (RCW 90.48) empowers the state to develop, maintain, and administer the statutes and programs required by the Clean Water Act. The policies set forth in the federal act are reflected in the State Water Quality Standards (WAC 173-201).

### *Application to Yakima County*

The Water Pollution Control Act empowers Ecology to bring punitive actions for the illegal discharge of pollutants, including fines, prosecution, and incarceration. It also authorizes assistance to local jurisdictions for construction of water quality control projects.

### **State Environmental Policy Act**

The Washington State Environmental Policy Act (SEPA) (Chapter 43.21C RCW) was passed to ensure that environmental values are considered in decisions by state and local government officials. Washington, as other states, has used NEPA as a model for the state process (SEPA). SEPA policies and goals apply to actions at all levels of government except the judiciary and state Legislature. The most recent implementing rules (WAC 197-11) were adopted by Ecology in 1990.

RCW 43.21C lists SEPA's four primary purposes as follows:

- To encourage productive and enjoyable harmony between people and their environment.
- To prevent or eliminate damage to the environment and biosphere.
- To stimulate the health and welfare of people.
- To enrich the understanding of ecological systems and natural resources important to the state and the nation.

The SEPA process starts with a permit application to an agency or an agency proposal for official action. Potential environmental impact is evaluated by the lead agency (agency with lowest level of permitting authority) and distributed to other affected agencies for comment. If the potential environmental impact is significant, an EIS is required. If the environmental impact can be mitigated, a Mitigated Determination of Nonsignificance (MDNS) is issued. If the potential environmental impact is insignificant, a Determination of Non-significance (DNS) is issued. After completion of the EIS, MDNS, or DNS agencies may act upon the permit application or other approvals required for the project.

A variety of proposed actions are categorically exempt from the SEPA process. Most categorical exemptions use size criteria to differentiate between exempt and non-exempt actions. Exempted

projects include most single-family homes, commercial buildings under 4,000 square feet, parking lots for 20 cars or less, and landfills or excavations of 100 cubic yards or less. Under SEPA provisions, cities and counties are allowed to set their own size criteria within a specified range for five categories of exemptions. Criteria cannot be more restrictive than those of SEPA unless the location of a proposed action is an environmentally sensitive area.

### ***Application to Yakima County***

Yakima County acts as the lead local agency in the SEPA process. SEPA requires an environmental assessment for floodplain management projects. The effect on flooding must be considered during the environmental review. The consistency of a proposal with existing plans and policies (e.g., local shoreline master programs, comprehensive plans, zoning codes) may also be evaluated. Completion of the SEPA process is necessary before agency decisions may be made on the Hydraulic Project Approval, Shoreline Substantial Development permit and other local and state permits.

### **Washington State Shoreline Management Act**

The purpose of the Washington State Shoreline Management Act (SMA) (RCW 90.58) is to protect public resources such as water, fish and wildlife, and supporting habitat by regulating public and private development in shoreline areas. SMA defines shoreline designations; provides guidance to Ecology and local jurisdictions for developing procedures, rules, and plans for shoreline activities; establishes timelines for the development of local shoreline management plans; and identifies activities generally exempt from shoreline permits.

Shorelines of the State that are governed by the SMA include the following:

- All water areas of the state, including reservoirs, and their associated wetlands, together with the lands underlying them, except 1) shorelines of statewide significance; 2) shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less and the wetlands associated with such upstream segments; and 3) shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes; and,
- Shorelines of Statewide Significance which include the rivers (downstream of where mean annual flow is 1,000 cubic feet per second or greater), adjacent lands within 200 feet of the ordinary high water mark, areas within the floodway, contiguous floodplain areas landward 200 feet from the floodway, and all associated marshes, bogs, and swamps.

The SMA defines wetlands as "those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all marshes, bogs, swamps, and river deltas associated with the streams, lakes, and tidal waters which are subject to the [Shoreline Management Act]."

The SMA requires permits for substantial development within the Shorelines of the State. Substantial development is defined as any development for which the total cost, or fair market value, exceeds \$2,500, or any development that materially interferes with normal public use of the water or Shorelines of the State. Exceptions include normal maintenance or repair of

existing structures, construction of residential bulkheads, emergency construction, construction of barns or similar agricultural structure on wetlands, construction or modification of navigational aids, construction of a single-family residence on a wetland, construction of docks for pleasure boats, irrigation systems, and pre-existing agricultural drainage and diking systems.

A conditional use permit can be issued to allow greater flexibility, consistent with the policies of RCW 90.58.020. By authorizing conditional use, the appropriate local government agency may attach special conditions to prevent undesirable effects of the proposed use. A variance can be granted for relief from bulk, dimensional, or performance standards set forth in the Shoreline Master Program where extraordinary or unique circumstances affect the property such that unnecessary hardships are imposed on the applicant.

The SMA provides the following criteria (in order of preference) to Ecology and local jurisdictions when developing master programs for Shorelines of Statewide Significance (RCW 90.58.020):

1. Recognize and protect state-wide interest over local interest.
2. Preserve the natural character of the shoreline.
3. Consider long-term over short-term benefit.
4. Protect the resources and ecology of the shoreline.
5. Increase public access to publicly owned areas of the shorelines.
6. Increase recreational opportunities for the public in the shoreline.
7. Provide for other considerations when appropriate, including economic development, circulation, housing, a range of land uses adjacent to shorelines, historic, cultural, and scientific considerations, and other considerations found to be appropriate or necessary.

Any permitted uses that are allowed based on the above criteria must minimize damage to the ecology and environment of the shoreline area and minimize any interference with the public's use of the water.

#### *Application to Yakima County*

Pursuant to the SMA, Yakima County adopted a shoreline master program (Title 23) on September 5, 1974. SMA gives primary authority over shoreline development to local governments following review from the State. The Yakima County Shoreline Master Program is discussed further in the local regulatory mechanisms section below.

#### **State Statutes Addressing Flood Hazard Management**

The three principal state statutes that address flood hazard management activities are titled: Flood Control by Counties (RCW 86.12), Floodplain Management (RCW 86.16), and State Participation in Flood Control Maintenance (RCW 86.26) (Ecology 1991). Portions of these statutes were amended in 1991 by Engrossed Substitute Senate Bill 5411 (SB 5411) to strengthen and coordinate flood hazard management activities statewide.

### ***Flood Control by Counties/Senate Bill 5411***

RCW 86.12, originally enacted in 1907, authorizes counties to levy taxes and exercise eminent domain to control and prevent flood damage. RCW 86.12 was substantially enlarged in 1991 by SB 5411, which added three new sections. SB 5411 developed a “coordinated and comprehensive state policy to address problems of flooding and minimize flood damage...” The bill greatly expands counties’ roles in the formulation and adoption of CFHMPs. Specifically, “the county legislative authority of any county may adopt a comprehensive flood control management plan for any drainage basin that is located wholly or partially within the county...” Plan elements are mandated. While counties are given responsibility for basin plan development, plans are to be developed through a participatory process involving cities, towns, or special districts within the basin.

### ***Floodplain Management Program***

Washington State’s Floodplain Management Program (RCW 86.16) integrates local and state regulatory programs in a comprehensive effort to reduce flood damages and protect human health and safety. The state program requires local flood-prone jurisdictions to adopt a flood damage prevention ordinance based upon federal standards contained in the NFIP.

### ***State Participation in Flood Control Maintenance***

Through the Flood Control Assistance Account Program (FCAAP), local governments are eligible for matching state funds to repair or restore existing flood control facilities, to maintain or improve channel capacity, and to develop comprehensive flood control management plans such as this document. An optional element of this program provides local governments a means to develop wetland management strategies in flood-prone areas.

### ***Application to Yakima County***

Yakima County’s Flood Hazard Ordinance is consistent with the requirements of the NFIP, as well as the state Floodplain Management Program. Therefore, Yakima County is eligible for national flood insurance and matching state funds to improve or construct flood control facilities and to develop flood control management plans. This CFHMP is funded by this program.

### ***Water Pollution Control Act***

The Water Pollution Control Act (Chapter 90.48 RCW) empowers the state to develop, maintain, and administer the federal statutes and programs required by the Clean Water Act. The policies set forth in the federal act are reflected in the State Water Quality Standards (WAC 173-201). Ecology can bring punitive actions against water quality violators including fines, prosecution, and incarceration as outlined in the act

### ***Application to Yakima County***

In the absence of water quality control measures and other best management practices, increased development can result in violation of water quality standards for the Yakima River. Activities within the County that may result in violations of state water quality standards can

be controlled or halted through the provisions of this act. Two water quality assessment programs have recently been conducted, National Water Quality Assessment (NAWQA) Program by U.S. Geological Survey (USGS) and a Total Maximum Daily Load (TMDL) study by Department of Ecology.

## **Washington State Hydraulic Code**

The Washington State Hydraulic Code (RCW 75.20.100-140) regulates activities affecting the state's salt and fresh waters. The purpose of the Hydraulic Code is to preserve fish and wildlife habitat in and around the waters of the state. The Hydraulic Code is administered by the Washington State Department of Fish and Wildlife.

Any work that falls within the definition of a hydraulic project requires a Hydraulic Project Approval (HPA) from the Department of Fish and Wildlife. Hydraulic projects are defined as work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. Application consists of a form submitted to the Department of Fish and Wildlife accompanied by project plans and specifications. Each of the following constitutes application for an HPA:

- A completed hydraulic project approval application submitted to the Department of Fish and the Department of Wildlife
- A completed forest practice application submitted to the Department of Natural Resources if the project is part of a forest practice as defined in WAC 222-16-010(19)
- A Section 10 or 401 public notice circulated by the COE or U.S. Coast Guard.

Verbal approval for emergency work may be granted immediately upon request to repair existing structures, move obstructions, restore banks, or protect other property that is subject to immediate danger by weather, flow, or other natural conditions. Verbal approval may also be granted immediately for driving across a stream during an emergency. "Emergency" is defined as an immediate threat to life or public or private property, or an immediate threat of serious environmental degradation arising from weather, stream flow conditions or other natural conditions.

The Hydraulic Code specifies technical provisions for hydraulic projects (WAC 220-110-050 through 220-110-220). Technical provisions do not automatically apply to each HPA, the applications are reviewed individually. Activities having provisions that are applicable to this plan include the following:

- Bank protection
- Bridge, pier, and piling construction
- Bridge construction—stringer type
- Channel change—temporary and permanent
- Channel realignment
- Temporary bypass culvert or flume
- Dredging
- Gravel removal

- Log and log jam removal
- Logging
- Pond construction
- Water diversions.

A hydraulic project application may be denied when the Department of Fish and Wildlife rules it is directly or indirectly harmful to fish and adequate mitigation cannot be assured by conditioning or modifying the proposal. The code states that protection of fish life is the only grounds for denying or conditioning an application.

The code is currently being revised. The revised code may include provisions for regulating the quality and quantity of stormwater discharges to fish-bearing waters. Proposed changes also provide greater emphasis on bioengineering. For example, vegetative bank stabilization would be incorporated to provide riparian cover for fisheries.

#### *Application to Yakima County*

The County will be required to obtain an HPA for most structural flood control activities including stream bank protection; construction of bridges, piers, and docks; culvert installation; gravel removal; channel realignments; placement of outfalls; debris removal; and pipeline crossings. HPAs are required for activities in natural drainage corridors as well as in flowing stream corridors.

#### **Growth Management Act**

In April 1990, the Washington Legislature passed the Growth Management Act (RCW 36.70A). Amended by the Legislature in 1991 and 1993, the Act takes significant steps toward managing growth in the state's fastest growing counties. The Act defines 13 goals to guide development of comprehensive plans and regulations in counties and cities that are required to or choose to plan under this act. The goals include the following:

- Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
- Encourage the retention of open space and development of recreational opportunities; conserve fish and wildlife habitat; increase access to natural resource lands and water; and develop parks.
- Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forests and productive agricultural lands, and discourage incompatible uses.
- Protect the environment and enhance the state's high quality of life, including air and water quality and the availability of water.

The Growth Management Act (GMA) is administered by the Washington State Department of Community, Trade and Economic Development (CTED). According to Section 4.0 of the GMA, the following counties and their cities are required to develop and adopt comprehensive plans by July 1, 1995:

- Counties with a population of 50,000 or more that have experienced a population increase of at least 10 percent in the last 10 years, and cities within such counties.
- Counties, regardless of population, that have experienced a population increase of more than 20 percent in the last 10 years, and cities within such counties.

Local governments are required to classify and designate “resource lands of long-term commercial significance” and “critical areas.” Resource lands of long-term commercial significance include agricultural, forest, and mineral resource lands. Critical areas include wetlands, fish and wildlife habitat areas, aquifer recharge areas, frequently flooded areas, and geological hazardous areas.

Comprehensive plans must include the following:

- A description of objectives, principles, and standards used to develop the plan.
- A land use element designating the proposed general distribution, general location and extent of uses of lands. The land use element should also provide for the protection of the quality and quantity of groundwater used for public water supplies, review drainage, flooding, and stormwater runoff patterns, and provide guidance for corrective actions to mitigate or cleanse discharges that pollute waters of the state.
- A housing element recognizing the vitality and character of established residential neighborhoods.
- A capital facilities plan consisting of an inventory of publicly owned facilities, a forecast of future needs, proposed locations and capacities of expanded or new capital facilities, and a six-year financing plan.
- A utilities element consisting of the general location and capacity of all existing and proposed utilities, including electric lines, telecommunication lines, and natural gas lines.
- A transportation element that implements and is consistent with the land use element.
- A rural element (counties only) permitting land uses compatible with the rural character of such lands that provide for a variety of rural densities.

Optional elements of the plan include economic development, conservation, solar energy, and recreation.

The GMA also requires the designation of areas for which urban growth shall be encouraged and areas where growth can occur only if it is not urban in nature. Furthermore, each urban growth area is required to include greenbelt and open space areas. Open space corridors between and within urban growth areas must include lands designated for recreation, wildlife habitat, trails, and connection of critical areas.

The GMA establishes reporting requirements for counties and cities required to develop comprehensive plans. Designations of resource lands of long-term commercial significance and critical areas were required by March 1, 1992. The development of comprehensive plans or

modification of existing plans was to have begun by March 1, 1992. County-wide planning policies, which are used to provide the framework for comprehensive plans, were to be developed by July 1, 1993. Extensions enacted by the 1993 Legislature postponed both the comprehensive plan and implementation regulations deadlines from 1994 to 1995.

DCTED has established a program of technical and financial assistance and incentives to encourage the creation of comprehensive plans and development regulations throughout the state. The act encourages jurisdictions to require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve it.

The GMA requires the adoption of regulations and procedures for the development of short plats and subdivisions, regional transportation plans, forest practices and water rights issues. The GMA also encourages economic prosperity and balanced economic growth by building to local capacity in rural areas and encouraging urban-rural links.

House Bill 1025 amended the GMA and established requirements that county-wide planning policies be adopted as a framework for county and city comprehensive plans. These policies, to be adopted by the county in cooperation with its cities, were required by July 1, 1992. The following features were to be included:

- Urban Growth Areas (areas targeted for higher density development)
- Policies for promotion of contiguous and orderly development and provision of urban services to such development
- Policies for siting public capital facilities of a county-wide or state-wide nature
- Policies for county-wide transportation facilities and strategies
- Policies that consider the need for affordable housing, such as housing for all economic segments of the population and parameters for its distribution
- Policies for joint county and city planning within urban growth areas
- Policies for county-wide economic development and employment
- An analysis of fiscal impact.

#### *Application to Yakima County*

Yakima County is required to develop a comprehensive plan. Yakima County meets both criteria specified in RCW 36.70A.040: at least 50,000 residents and a population increase of more than 10 percent over the previous 10 years (1980 - 1990). Yakima County is currently finalizing its GMA comprehensive plan, *Plan 2015*.

Yakima County was awarded a DCTED grant to integrate redundant parts of the SEPA and GMA processes. The approach adopted by the County has been to define potential adverse impact of new development as either *system impact* or *project impact* according to Washington laws applied to determination of impact fees (RCW 82.02).

A *system impact* affects a system of facilities, services or the natural environment. An off-site impact is generally a system impact. The level of impact is determined and quantified at the time of comprehensive plan development, based on the population forecasts and preferred land

use advocated by the Comprehensive Plan. A *project impact* affects a specific development project rather than a natural or service system. An on-site impact is generally a project impact. Potential adverse impact is determined on a case-by-case basis at the time of permit approval, similar to the existing SEPA process.

In the case of system impact, including stormwater, a mitigation model will be employed that converts information about the type, size and location of proposed developments into a monetary mitigation obligation. Once determined, the developer may fulfill the obligation by providing equivalent facilities in any system service category according to a "Cafeteria Plan" administered by the Yakima County Planning Department. An early draft of the Cafeteria Plan suggested several potential mitigations for the *floodplain protection* system, including land dedication, on-site stormwater detention, cluster development, design standards, buffering, natural/native vegetation, transfer of development rights, purchase of development rights, greenway programs, defined boundaries, and education.

The Flood Hazard Management Plan will be an important addition to the critical areas inventory and to the comprehensive planning process addressing future land use, transportation, environmentally sensitive areas, and capital improvements.

### **Executive Order 90-04, Protection of Wetlands**

Washington Executive Order 90-04 directs all state agencies to "rigorously enforce their existing authorities to ensure wetlands protection" and includes the following stipulations:

- Ecology shall exercise its authority under the Shoreline Management Act and the Clean Water Act to condition, deny, or appeal permits to assure wetlands protection.
- Ecology shall develop a model wetlands protection element for local governments to consider when amending shoreline master programs under the Shoreline Management Act.
- The Departments of Wildlife and Fisheries shall fully implement the authority granted under the Hydraulic Code to condition or deny permits to protect fish life assuring wetlands protection.

The order also directs the Department of Natural Resources, the Forest Practices Board, the Department of Agriculture, the Department of Community Development, and other state agencies to review and amend their rules and regulations to better protect wetlands. Ecology is directed to assist these agencies in the review of their rules. Development of statewide policies, standards for wetlands rating systems and inventories, mitigation, buffers, restoration, and enhancement is the prime responsibility of Ecology. The executive order also creates an interagency Wetlands Review Board and requires wetlands education and outreach activities.

In response to Executive Order 90-04, Ecology developed a Model Wetlands Protection Ordinance in September 1990. The model ordinance is a voluntary technical assistance recommendation. Ordinance standards and policies are based on existing local ordinances that protect wetlands and on the expertise of Ecology staff and other professional experts. Local governments may use the model ordinance to achieve the goal of "no net loss of wetlands"

within their jurisdiction. Ecology has no authority to require that local governments adopt the ordinance or any of its policies or standards.

In addition, Ecology has established a Wetland Protection Grant Program to assist local jurisdictions in implementing wetland protection regulations. Local jurisdictions that choose to adopt the model ordinance under the grant program can modify the ordinance based on public comment and site-specific needs of the community and its environmental setting. Local programs funded by the grant are expected to reflect the intent of the model ordinance to achieve a goal of no net loss of wetland functions and values.

#### *Application to Yakima County*

Because Executive Order 90-04 requests that all actions of local governments in the state be consistent with its intent and goals, the County can gain additional support from the state in the regulation of activities in its wetlands. Wetlands provisions in existing state regulations, such as the Hydraulic Code and the Shoreline Management Act, are also strengthened as a result of this order.

### **Water Resources Program - Surface and Groundwater Codes**

The water resources program is administered by Ecology in accordance to Chapter 90.03, 90.45, and 90.54 RCW. The goal of the program is to ensure that waters of the state are properly allocated for the greatest benefit of people of the state and to regulate uses according to established water rights. Ecology manages surface and groundwater planning, water rights adjudication, and water well technology.

#### *Application to Yakima County*

The water resources program would apply to Yakima County if flood hazard management practices divert water from the Yakima River or channel re-routing affects other water-users.

### **Forest Practices Act**

The Forest Practices Act (RCW 76.09) regulates forest practices on state and private lands. Responsibility for administering the act lies with the Forest Practices Board and the Department of Natural Resources (DNR). Rules and regulations are enumerated in Title 222 of the WAC. Notification or application must be sent to DNR before the start of any forest practices except those with no direct potential for damaging a public resource.

Forest practices are divided into four classes, depending on their potential for *impact* on the environment. Under the classification system, an operation with no direct potential for damaging a public resource, such as removal of less than 5,000 board feet of timber for personal use in a 12-month period, would be rated Class I. Potentially significant operations such as forest practices in areas designated as critical habitat of threatened or endangered species would be rated Class IV Special.

The following rules apply to forestry activities in riparian and wetland areas (Chapter 22 WAC):

Riparian Management Zones (RMZs) are to be established adjacent to Type 1, 2, or 3 streams as defined in WAC 222-16-030. They extend anywhere from 25 to 100 feet from the stream, depending on the type and average width of the stream. Specific requirements relating to the minimum number of trees that must be left within the RMZ, the ratio of conifer to deciduous trees, and the minimum size of standing trees are listed for each water type and average stream width.

Wetland Management Zones (WMZs) are to be established for non-forested wetlands (defined as wetlands that have, or if the trees were mature would have, a crown closure of less than 30 percent). Specific widths of the WMZ (as measured horizontally from the wetland edge or the point where the non-forested wetland becomes a forested wetland) are specified depending on type and size of the non-forested wetland. A total of 75 trees that have a diameter at breast height (dbh) of greater than 6 inches must be left after harvest in each acre with the WMZ. The regulations also contain suggestions for the number and types of trees that should be left in forested wetlands.

The WAC also contains regulations pertaining to road construction and maintenance, reforestation, and the use of forest chemicals.

The DNR is assessing Watershed Administrative Units (drainage basins of 10,000 to 50,000 acres) to determine the impact of forest practice on fish, water, and capital improvements of the state (WAC 222-22). WAC 222-22-010 describes the project as follows:

The long-term objective ...is to protect and restore [public resources] and productive capacity of fish habitat adversely affected by forest practices while maintaining a viable forest products industry... through prescriptions designed to protect and allow the recovery of fish, water, and capital improvements of the state or its political subdivisions, through enforcement against non-compliance of the forest practices rules in Title 222 WAC, and through voluntary mitigation measures.

The forest practices rules and regulations will receive continuing review through annual evaluations, development of resource management plans to achieve the purpose and policies of the Forest Practices Act, and adoptive management. Adoptive management involves modification of the regulations when baseline data, monitoring, evaluation, or the use of interdisciplinary teams show modifications will better meet the purpose and policies of the act.

#### *Application to Yakima County*

Forest Practices rules affect flood hazard management insofar as they ensure that watersheds such as the Yakima River's are managed responsibly to limit their contribution to increased flooding.

### **COUNTY REGULATORY MECHANISMS**

#### **Planning Documents**

The Yakima County Council has adopted various comprehensive planning documents affecting floodplain management. These non-regulatory documents are used as policy guidelines for making future land use decisions in the County. They are implemented through County

zoning, shoreline, and floodplain codes. Those that affect floodplain management are discussed below.

### ***Yakima County Comprehensive Plan***

The 1977 Yakima County Comprehensive Plan addresses flood hazard potential in its section on the natural environment. The following policy directives are designed to guide floodplain development:

- Prohibit the construction of buildings in the floodway or any river or stream and discourage structural development in the floodplain; any essential floodplain development shall be floodproofed.
- Maintain sufficient open space for the storage of floodwaters.
- Ensure that proposed subdivisions and large site developments include provisions to protect the natural drainage system, or provide supplemental drainage facilities.
- Encourage the expansion of water storage capacities where feasible.

The 1977 Comprehensive Plan establishes a *Shoreline-Wetland Areas* land use category, the criteria for which include "all areas covered by flood management programs or mapped as floodplains or floodway."

The 1981 Yakima Urban Land Use Plan and 1981 Yakima Rural Land Use Plan apply the recommendations of the County's Comprehensive Plan within the Yakima urban area.

### ***1995 Comprehensive Plan (Pending)***

Yakima County is in the process of completing its Growth Management Act Comprehensive Plan, *Plan 2015*. To account for the County's physical and cultural diversity, the pending Plan contains separate recommendations for the Upper and Lower Valleys. The CFHMP study area lies completely within the Upper Valley. Policy recommendations of *Plan 2015* that impact flood management in Yakima County are discussed in the section on SEPA/GMA Integration.

### ***Open Space Tax Program***

Yakima County recognizes the importance of incentive programs that give property tax concessions for conserving open space. Many property owners are eligible to apply for an open space tax classification that reduces their property tax obligation.

### ***Yakima County Zoning Ordinance***

The Yakima County Zoning Ordinance is adopted as Title 15 of the Yakima County Code. This ordinance was most recently amended in May 1992. The purpose of the Zoning Ordinance is to further the goals and policies of the Comprehensive Plan for the physical development of the County. The County is divided into 17 zoning districts. The zoning ordinance describes uses, density requirements, setbacks, lot clustering and reserve tract, building setbacks, height regulations, lot coverage, and development standards for each zoning district. Most of the area within the Yakima River floodplain is zoned general rural or rural settlement.

## **Yakima County Flood Hazard Ordinance**

Yakima County's Flood Hazard ordinance (County Ordinance 3-1985) is required by the FEMA for participation in the NFIP. The Ordinance regulates development in areas of special flood hazard. Development is defined as any manmade change to real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations. Special flood hazard areas are areas subject to a one percent or greater chance of flooding in any given year as shown in FEMA flood hazard maps. The ordinance emphasizes standards for construction of residential and nonresidential structures. Standards for flood hazard protection in special flood hazard areas include the following:

- Anchoring requirements for new developments, substantial improvements, and manufactured homes
- Requirements of flood-resistant construction materials and utility equipment and the use of construction methods that minimize flood damage
- Design and location requirements for water and sewage disposal systems that minimize adverse impact due to flooding
- The requirement that subdivision proposals include designs to minimize flood damage
- Review of building permits to ensure proposed construction is reasonably safe from flooding.

The provisions for flood hazard protection in designated floodways are considerably more stringent than those for special flood hazard areas. The placement, construction, reconstruction, or substantial improvement of any structure is prohibited in the floodway, as are a range of other encroachments associated with development. However, exceptions to this requirement can be made if the encroachment does not result in more than one foot increase in flood levels during the base flood, unless a residential structure is involved, in which case no exceptions are allowed. If this requirement is satisfied, the general and special standards for special flood hazard areas must still be met for construction and substantial improvements within floodways.

Yakima County's Critical Areas Ordinance defines 20 stream corridors and suggests new, more stringent regulations on development within them. If a project lies within an identified Flood Hazard Zone, and also within an identified stream corridor, the regulations contained in the Critical Areas Ordinance supersede those contained in the flood hazard ordinance. This is significant to the extent that the Critical Areas Ordinance advocates a policy of zero rise in flood levels during the base flood as a condition for exception to requirements for building in the floodway.

## **Yakima County SEPA Ordinance**

SEPA is implemented at the local level through Yakima County's Planning Department. Policies and procedures are specified in Title 16 of the County Code. Title 16 largely incorporates the State's rules for ensuring potential environmental impact is considered when making decisions such as the issuance of permits. The SEPA process is as follows:

- A permit application is submitted to a County agency or an agency proposes an activity, plan, ordinance, or regulation.
- Yakima County determines whether the proposal is exempt from the SEPA regulation. If so, no further action relating to SEPA is required.
- If the project is not exempt, an environmental checklist is completed. The checklist solicits additional information to be used in determining potential impact on earth, air, water, plants, animals, energy and natural resource, environmental health, land and shoreline use, housing, aesthetics, light and glare, recreation, historical and cultural preservation, transportation, public services, and utilities.
- The environmental checklist is reviewed to determine whether the project is likely to have significant environmental impact. If not, a determination of non-significance (DNS) is issued and no further action is required.
- If it is determined that the project will have significant adverse environmental impact but mitigation measures could reduce or eliminate the impact, a mitigated DNS may be issued. The mitigated DNS documents the mitigation measures that must be implemented with the project.
- If it is not possible to issue a DNS or mitigated DNS, an environmental impact statement must be prepared.

## **Yakima County Shoreline Management**

Yakima County regulates shoreline uses and development through its Shoreline Master Program (SMP). The SMP is implemented under requirements of the Washington State Shoreline Management Act, which gives local governments authority to regulate shoreline development and activities. It was adopted by the County and Ecology in 1974.

The program's jurisdiction is defined as "those lands extending landward for 200 feet in all directions as measured on the horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways and all marshes, bogs, swamps, and river deltas associated with the streams and lakes which are subject to the provisions of these regulations, the same to be designated by the Washington State Department of Ecology."

The SMP divides County shorelines into four designations: Natural, Conservancy, Rural, and Urban. The most stringent regulations are associated with natural shoreline areas and the least stringent regulations are associated with urban shoreline areas.

The SMP regulates 16 categories of land use activity. The activities include agriculture, aquaculture, archeological, natural and historic sites, commercial, dredging, forest management, historic sites, industrial activities, landfill, mining, recreation, residential, roads and railways, shoreline protection activities, signs, solid waste disposal, and utilities. For each activity, the SMP defines the policies and regulations for each shoreline designation.

The SMP regulates shoreline use and development through the following permit requirements:

- **Shoreline substantial development permit** -- Required for development that costs \$1,000 or more or that materially interferes with the normal public use of the water or shorelines of the state.
- **Shoreline conditional use permit** -- Applies to uses or developments listed in the regulations as being permitted only conditionally. This permit is designed to recognize and allow for special circumstances or a type or style of land use that is consistent with the goals and policies of the SMP, yet are not provided for under the program.
- **Shoreline variance** -- An adjustment of the SMP's standard regulations for a particular site.

### **Yakima County Critical Areas Ordinance**

On October 1, 1994, Yakima County adopted a Critical Areas Ordinance (CAO) to comply with the Washington State Growth Management Act. The purpose of the CAO is to identify and manage environmentally critical areas and ecosystems in accordance with Yakima County's Comprehensive Plan.

The ordinance regulates 20 *stream corridors*, defining them to include the 100-year floodway and floodplain, the main and all secondary channels of the stream, any vegetated shallows, any additional flood-prone areas determined by professional geologists or engineers, and jurisdictional wetlands in upland environments. Location descriptions of stream corridors are contained in the CAO, and the Planning Department has mapped these locations.

Permit applications begin with a pre-application conference with the Planning Department to discuss the project feasibility and regulatory restrictions. Upon submittal of a project proposal, the Department makes an initial determination as to whether the project affects or impairs a designated critical area and the level of project review required. If the project affects a critical area, additional guidance may be provided through a technical assistance conference with representatives of agencies and organizations with expertise, interest, or jurisdiction in the project.

A critical area development authorization application must be filed with the Planning Department for projects in identified critical areas. Information required for the application is listed in the ordinance. Following evaluation of the project, the Planning Department may grant a critical area development authorization, grant a conditional authorization, return the application for needed revisions that would eliminate or reduce critical area impact, or deny the application.

### **Other Local Regulatory Mechanisms**

Cities in the Upper Yakima Valley have ordinances similar to those administered by the County. The cities of Union Gap, Selah, and Yakima have flood damage prevention ordinances. Yakima Valley cities also administer shoreline programs, zoning ordinances, subdivision ordinances, and building codes.